



Barclay Damon Live Presents *Cyber Sip*™
Season 3, Episode 11: “Managing AI Risk at Your Law Firm: Best Practices,” With Laura Zaroski
Host: Kevin Szczepanski, Barclay Damon

[Kevin Szczepanski]: Welcome back to *Cyber Sip*. We have back with us again for the third time—there is one other guest that has been on three times—this is like SNL, your next time you will be four times. But joining us for the third time is Laura Zaroski, who is the managing director of Gallagher’s law firms practice. I get that right?

[Laura Zaroski]: You got that right.

[Kevin]: Laura’s not only managing director at Gallagher Insurance, but you were a practitioner, a real-life practitioner in private practice for, what, about 16 years as well. So you’ve got that multiple vantage points. And I think it’s going to be great for our topic today. We’re going to talk about AI insurance tips for lawyers, and I feel... I have to say, Laura, I think this is maybe the fourth or fifth episode I’ve done this year on AI and part of me thinks, is that too much? But everyone wants to talk about AI in multiple industries. So we have law firms, big, small and in between. First question for you, Laura, is are lawyers using generative AI in their practices and what’s your experience been? What kinds of firms are using it? What kinds are still staying away from it?

[Laura]: All right. Well, thanks, Kevin. It’s a great question because AI is really a hot topic in the law firm space. What we do, every renewal that we’ve had with our firms this year, we’ve been asking that question because underwriters are asking that question at renewal. Are you using AI? What are you using it for? What type of safeguards are you putting in place with the use of AI? And the answers from our firms are very, very varied I would say. Some firms say, oh, we’ve been using it for promotions, for summaries, some say, I don’t know what we’re using it for. We’ve never asked. And we also have some firms on the other extreme that say we absolutely prohibit the use of AI at our firm. I find that one a little strong because I think, you know, the partners may not be using it, but I always caution those firms to maybe, you know, put the question out there to the younger associates or even the paralegals, because I think there are some folks probably using it that some of the firms aren’t aware about. So I think it’s something they do need to address.

[Kevin]: Right.

[Laura]: You should be talking about it’s an incredible tool. So it’s something I think we should learn to use strategically, but also learn to understand the dangers in the law firm space of using OpenAI.

[Kevin]: So of the firms you’re seeing that are using OpenAI right now, Laura, how are they using it? What tasks are they drawing on AI to perform that maybe one or more associates were performing just two years ago?

[Laura]: Now AI can really be a fantastic first- or second-year associate. (Laughs) We see them using it for summarizing depositions, interrogatory answers, routine motions, helping folks write letters, maybe even response letters, demand letters, and certainly doing research. So those are all things that I think are safe



to use it for. I mean, the results are quick, often very good. I've certainly put letters in it and it's corrected my grammar and really spit out some really wonderful work product. So using it for that aid almost as an assistant. The key is though, I think you definitely need to check your work. We've been keeping kind of a... ongoing list of where we see lawyers running the trouble with AI. What we've seen the most time is a lot of sanctions when they've used AI and it's cites cases and the cases don't exist. And the courts that I've seen those cases, when you haven't checked your work and have sanctioned those firms. On the heavier side, we've seen one firm that used for their closing arguments and lost the case. The client found that out and sued, saying I wanted a real attorney doing my closing arguments, not AI. So that's a true malpractice case. And I think there was a case recently out of Florida where the attorney was sanctioned and his license was suspended for a year for misuse and not checking the work with AI. So definitely lawyers are getting into trouble. So we caution them to understand that, to know what's out there and to be really using it in ways that are safe and not ways that might get them into trouble.

[Kevin]: So there are three things that come to mind based on what you just said, Laura. Number one, we're all hearing about the famous or infamous cases in New York where lawyers are submitting fake cases to the courts and they when they're caught, they don't admit it. But it sounds like, as you just said, those are just examples. They're... these cases are almost like termites. You see one or you see one or two, but there aren't one or two. For every one we hear about, there are probably dozens, if not hundreds of these claims. The second thing that occurs to me is... that I want to ask you about is disclosure. So the problem that the lawyer had in the case where he used AI to do his closing is that he didn't tell the client he was doing that in advance. And can you talk a little bit about the importance of disclosure? Because I think that's going to be one of the main tenets that we see concerning AI going forward. If you use it, your clients may like that, but they're going to want to know that you're using it and what you're using it for.

[Laura]: I think at this point in this early stage, the infantile stages of AI that people really need to be cautious of what they're using it for, and also best practices would probably say, you know what, if you're using it, let the clients know. If they have an objection, they should state it then. If they don't or they're comfortable with that, then you won't run into that situation. As we saw in that case that ended in a malpractice suit. I think now you definitely, you know, talk about it at your firm, maybe even start an AI committee. I really like that, when our firms are having roundtables with people from, you know, old partners, young partners, associates, paralegals, what's the best use? What have they found has really been helpful in letting, like the partner that leads each case saying, this is what we're going to let the client know. But I do you know, we think where's the future? If I if I pull out my crystal ball, I think in the next year or two, you're going to have clients coming to you requiring law firms to use it for some of these, you know, associate-type tasks and not wanting to pay that billable hours for certain summaries and for certain routine motions that you've done over and over again. So, you know, I say to our firms, you know, get ahead of this, you know, be ahead of the curve and start, you know, getting guidelines in place for your firm, talking about the usage and being prepared for what the future has for AI, because it's here to stay. Just like Lexis/Nexis, Westlaw technology keeps coming in different forms. So I think embracing it early and understanding it early is key.

[Kevin]: Yeah, no, I think that's great advice. I want to stay on that subject of lawyers misusing AI. And the third question I wanted to ask relates to the use of AI for research. So we know these lawyers are getting in trouble for misusing AI, or maybe they're using it accurately and they're just not interpreting the results. But Laura, I'm curious, we talked a little bit about this offline. Is that an AI problem or is that a competency issue under the rules of professional practice. Whether you're using AI or not, you need to conduct research as a lawyer should. And you need to be checking the validity of your case results? So I'm wondering how you think about that. Is that really an AI problem?

[Laura]: It's just an old fashioned, you know, errors and omissions problem. And we get a lot of questions: Are, you know, are there endorsements or exclusions on policies for the use of AI? And the answer is at this point, no. We consider that just a mistake, like any other mistake. You know, you need to check your work. You need to check the cites. And if someone misses that and it impacts the case, that's just good old fashioned,



you know, negligence. So at this point, it's getting treated like any other type of negligence. So just double-checking your work. I mean, AI does a good job of being, like I said, a free assistant. But like any assistant or any young lawyer, that work needs to be checked and, you know, the analytics, and the thinking that you're paying a lawyer to do that can't be replaced. So fear not lawyers. You are not being replaced by AI. Certain tasks can be replaced with AI, but still, the critical thinking and all that you learned in law school that still needs to be done by a human being. So again, don't fear AI is taking a job. It's just taking some of those tasks that you probably didn't like doing anyways. So I think AI really is your friend. It's just learning how to best use the technology and how to safely use the technology. You certainly don't want any privileged and confidential information on an open AI source. I know a lot of the legal world is starting to find safe places and AI programs that are safe to use, you know, put in client data. So I think we need to keep watching that evolution of the product and the safeguards. And I think within the a year, at most, maybe a little more, this conversation will be completely different.

[Kevin]: Yeah, no, I agree. I think when people talk about the misuse of AI, the assumption is that you're using ChatGPT or some open AI source, but I think the trend is going to be using closed or even proprietary AI sources. I think some of the big law firms already have their own proprietary AI sources, and I think that's where we're headed. But let's stay on insurance for a moment. So I, I'm going to take a wild guess and I'll... Please let me tell me what you think. I don't think we're going to see AI exclusions. I'm not sure we need AI policies, although maybe we'll see those. But I do think and I wonder your thoughts. I do think we're going to see more stringent underwriting around the issue of AI. Law firms are going to be asked, do you use it? What do you use? How do you use it? What guardrails do you have in place? Are you seeing any of that underwriting now, Laura, or is that something we're going to see over the next several months or a year?

[Laura]: Right now we're seeing the questions from underwriters definitely at renewal, but it's a pretty open-ended question right now, and they're not frankly looking for any specific answer. If you have an AI policy in place, that's great. If you don't, they'd like you to consider, you know, again, it doesn't have to be a policy. You know, it's more like, I think at this point, "guidelines" is what I like better. And it's going to be something that keeps evolving again, as the technology and the way you're using it keeps evolving. So, you know, I like to say at this point, underwriters just want to make sure you're thinking through it and understanding it's here. People might be using it, but there's no specific answer quite yet. Again, we have this conversation next year, I think we might be having a different conversation. You know, I get underwriters are really looking for you to put in place good risk management to be doing best practices that safeguards the firm and also safeguards the carrier from the malpractice clients. So it's kind of a win-win on both sides. And I think that's why the topic is coming up at this point.

[Kevin]: So I know we talked a little bit about these best practices, but maybe we can tie them all into our next... the next part of our discussion. So when a law firm comes to you at renewal time, walk us through; how does this issue of AI come up and what are some of the best practices that you talk to your law firm clients about?

[Laura]: I mean, certainly one of the first questions we ask because it's really come to fruition in the last year, we'll find what they're using it for, how they're using it. If they've had discussions with the firm about the usage and kind of walk them through putting guidelines or policy in place. So we have like a drafted AI policy that we share with our firms just to get them started. Kind of like eight or nine bullet points for them to look at and then craft something that fits what they're firm is comfortable with. But it's a good starting point to get that conversation moving along. And each firm has a little different view on it, and it all depends. A lot on their practice and what materials they have as to what policy they might want to put in place. So really we're starting and engaging in that conversation with our firms, getting them thinking about it. And, you know, they're excited to have that conversation as well and to really know what should I be thinking about? What the dangers are. Again, we share with them the cases we've seen so far, and they're usually excited to kind of to deal with this issue because it's pretty revolutionary and it can be really a help to the firms when they realize how best to use it in their practice.



[Kevin]: Right. You mentioned those eight or nine bullet points and those of you listening in who are Gallagher customers, you already know those. So without sharing the secrets that only customers should have, Laura, what are some of those guidelines that should be part of any good AI policy or position statement?

[Laura]: Mm hmm. Well, I think number one is always making sure that client information, anything private and confidential, is not put on an open AI source. That's really the paramount issue, I think, is be very careful what you're using it for. What's going in it. I think the next thing would be ways that can save time and money to your clients. I think really looking at the things that it's properly used for, that are safe to use it for. Drafting reply letters, like I said, summarizing things. These are things that I think are pretty day-to-day that you're like, these are these are things that we're comfortable with using it for. I also like having part of your policy that if you're using it on a case that anyone on that team reports to the partner, what they're using it for, when they've used it. And that's something that the lead partner can have a conversation with the client again, to avoid the situation where a client said, oh, I don't want AI ...or I'm comfortable with it. At this point I think that's something that you should be doing as well. So those are probably the main bullets and then there's more involved in it as well. But again, we said we've got to leave this open ended. You know, these are kind of, you know, your guardrails for this year's risk moving forward. And I think, again, as the product evolves and the uses get better, you know, next year, you need to revisit this. I'd say every few months you might want to revisit the policy to make sure it's evolving with the product.

[Kevin]: I think that's right. You know, I think a lot about "disclosure." So I will... not the movie "Disclosure" with Michael Douglas and you I can't remember her name. She's married to...

[Laura]: Demi Moore.

[Kevin]: Demi Moore. I love that. It's this close to being a terrible film, but it's actually very interesting. I think everyone who's practicing in L.A. or discrimination law should watch the movie "Disclosure." All right. To our listeners, viewers, you'll never get that 20 seconds back. But we should do a podcast about that movie, right?

[Laura]: It's still a good movie...

[Kevin]: ... if nothing else. If you get nothing else out of what I'm saying. You know, "Disclosure" is a good film. So speaking of "Disclosure," I was doing a presentation to a bankruptcy group a few weeks ago, and I was talking about I at one point and it was a great group because both the practitioners and the bankruptcy judges, several of them from this judicial district, were there. And so I picked on one in the back of the room and I said, judge, do you expect that any lawyer using AI to generate research or even text in a submission to you should disclose to the court that he or she is doing so? And the judge looked at me and immediately said "That would be a good idea." Now I have to say... we should all comply with the rules of ethics. I'm not sure that frankly matters. For example, if we analogize it to Lexis or Westlaw, does the...should a judge care whether I'm using Lexis or Westlaw or Case Text? You know, there are analogies to be drawn. With that in mind, do you think it's a best practice for lawyers to be disclosing to their clients and to tribunals that they are using AI and what they're using it for?

[Laura]: We have definitely seen a lot of states taking different positions on that, Kevin. And I think West Virginia, Florida, where we're talking about making new rules. And just like you were saying, disclosure rules: when you've used it, how you've used it. Personally, I'll say you don't disclose all the other technology you've used, how you've researched, I'm not sure why this is any different. I don't know how that helps the court. I don't know how that right certainly doesn't shield you for making mistakes where you didn't, you know, shepardize the cases. Or read the cases and review the cases to make sure they really exist. So I just I don't know. I really don't think we need new rules. I think the existing rules cover, you know, being responsible for your work and the duty to oversee people that that work for you, the duty of competence, all those things are already there. So, you know, it's AI today, five years from now, another technology, I think the rules apply



to anything that you're using that go into those briefs. But I don't think any new rules are necessary. I've certainly seen many states trying to put them together or talking about it. I just think we've already got the safeguards in place for those type of things.

[Kevin]: Yeah, we just need to extend them to AI, I agree with you. I think that a lot of the new there are some judicial districts that have set out specific rules with respect to AI. Look, I think that's fine. But in the end I think for example in federal courts, Rule 11 and Rule 37 ought to be sufficient to address it. If you're citing... you're signing a pleading, you're certifying that what you've said is accurate. And if it includes fake cases that you got from ChatGPT, whether or not there's an AI policy out there, you've got a problem.

[Laura]: Right?

[Kevin]: So I think.

[Laura]: Hallucinated cases versus citing fake cases are citing cases that are bad law. This is all the same mistake, right? I think the current rules are pretty much cover that.

[Kevin]: No, I agree with you, too. So we talked a little bit about coverage. We know there are no AI policies, there are no AI exclusions that we're aware of. But if you're a lawyer and you're having this discussion with one of your law firms, Laura, they're going to inevitably say to you, well, do I have adequate coverage under my LPL policy? Either the one I'm renewing or the one I'm coming to you for the first time. What do you say to them when... you know in this context?

[Laura]: Today. Right. Well, we do a lot of benchmarking for our clients with what their peers are purchasing, what competitors, what people in their space are purchasing. I think that's helpful to make an educated decision on how many limits the firm wants to buy, but we also ask them to look at the type of cases they're working. And the value of those cases, because making a mistake in one of your larger cases, what's that risk? Is it \$10 million? Is \$40 million? Is it \$400 million?

[Kevin]: Right.

[Laura]: And that shouldn't help firms to understand what they need to buy and what makes them sleep at night. You know, many times some people are very happy with a low limit and others say, look, I want to make sure we're really covered no matter what happens. So, you know, there's a lot of things that go into deciding on the limits, the risk tolerance, as well as the type of cases you're handling and the value of them. So we kind of walk all of our clients through that to kind of get to know the zone that they want to be in. And, you know, also we can, you know, quote out a bunch of different limits and they can see what seems appropriate and what's affordable this year and then maybe budget for next year if they want to start slowly moving up their limits to get to a certain amount. And also say many times there are clients that require certain limits. We've seen it for, you know, banks certainly require it. Other financial institutions, PE require certain numbers, as do carriers, insurance carriers. I mean, in order to be on their panels, you have to carry a certain amount of limits. So many things go into why they carry certain limits. And it's definitely a conversation you should be having every year.

[Kevin]: All right. So in our remaining time, because I know we've got to go, I'm going to give you the last word. If you're, you know, you have one or two things that you absolutely have to say to one of your clients who's wrestling with this question of AI, what are you going to tell them?

[Laura]: I tell them first get on it and play with it. There are some great things you can do and forget about work. It's great for planning vacations, it's great for drafting letters, it's great for doing a whole bunch of things. So start to play with it, you know, understanding how to prompt it and prompt it better. It really is a fascinating tool. As far as your work life, I'd say start a committee and get, you know, different people from



all walks of life at the firm on it. It's a fun topic. It's great to see ways you can use it to save yourself time to save, you know, it's usually the jobs you didn't want to do anyways. So really, you know, embrace it, enjoy it, and let it sit and see how it evolves. And we'll have this conversation again in a year.

[Kevin]: That sounds great. All right. So let's both experiment with it in the next couple of weeks and then we'll compare notes.

[Laura]: Sounds great.

[Kevin]: All right. Laura Zaroski, managing director of Gallagher's law firm practice. Thank you so much for coming back for your third appearance on Cyber Sip. I'm so glad to have you, as always.

[Laura]: All right. Thanks, Kevin, and thanks, Barclay Damon, for having me.

[Kevin]: I'll look forward to seeing you again soon. And I also look forward to seeing all of you again soon on our next episode. Thanks.

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