



# 2026 SPRING CONFERENCE

April 29 - May 01

*JW Marriott, Nashville, TN*

# NASHVILLE

# From Algorithms to Arguments: Arbitrating with Generative Artificial Intelligence

May 1, 2026 8:35 am – 9:35 am

# **INDUSTRY USE OF AI AND EARLY CASE LAW GUIDANCE**

# Insurance Company Use of AI

- **Underwriting**
  - risk evaluation
  - pricing
- **Claim handling**
  - assessing claims
  - valuing losses
  - drafting claims correspondence
- **Fraud detection**
- **Customer service**
  - providing quotes
  - customer chatbots
  - call center support

# AI Litigation – Claims Determinations

- **Est. of Lokken v. UnitedHealth Grp., Inc.**, 766 F. Supp. 3d 835 (D. Minn. 2025)
- **Est. of Barrows v. Humana, Inc.**, 2025 U.S. Dist. Lexis 158565 (W.D. Ky, 2005)
  - Health insurance agreement provided that care decisions would be made by physicians and/or did not disclose use of AI
  - Putative class alleged insurer denied claims using predictive AI model
- **Kisting-Leung v. Cigna Corp.**, 2025 U.S. Dist. Lexis 61242 (E.D. Cal. 2025)
  - Insurance policies state that “determinations of medical necessity are made by a medical director”
  - Medical directors spent on average of 1.2 seconds reviewing the AI recommendations
  - Court held: “[D]efendants’ interpretation of the plan provision requiring determinations of medical necessity be made by a medical director—as allowing an algorithm to make the decision so long as a medical director pushes the button—conflicts with the plain language of the plan”

# AI Litigation – Pricing / Antitrust

- **In re Zelis Repricing Antitrust Litigation**, 25-cv-10734 (D. Mass.)
- **Erie County Medical Center Corporation v. Multiplan, Inc.**, 24-cv-06776 (N.D. Ill.)
  - Alleged hub-and-spoke antitrust violations
  - Third-party health care payors provide claims data to a “repricing” vendor, which uses artificial intelligence to determine reimbursement rates for out-of-network providers
  - Plaintiff health care providers allege a conspiracy to artificially depress reimbursement rates

# AI USE IN ARBITRATION AND LITIGATION:

# Cautionary Tales: Jeopardizing Privilege

- **U.S. v. Heppner**, 25-cr-00503, ECF No. 27 (S.D.N.Y Feb. 27, 2026)
  - Criminal defendant communicated with Claude regarding defense strategy after receipt of grand jury subpoena
  - Court found the communications were (a) not privileged because they were not communications with counsel and also not confidential and (b) not work product because they were not prepared by or at the request of counsel and did not reflect counsel's strategy
- **Warner v. Gillbaro**, 24-cv-12333, ECF No. 94 (E.D. Mi. Feb. 10, 2026)
  - Court denied defendant's motion to compel production of *pro se* plaintiff's communications with ChatGPT
  - Court held that material constituted plaintiff's "internal analysis and mental impressions" and was protected under the work product doctrine
- **Concord Music Grp v. Anthropic PBC**, 2025 U.S. Dist. Lexis 262233 (N.D. Cal. 2025)
  - Court held prompts used by plaintiffs' counsel in Claude as part of their investigation into potential claims are work product
  - Court held that work product was waived for certain communications because plaintiffs will be presenting evidence on their investigation

# 2025 International Arbitration Survey AI Results

## Adoption and Uses

**Rapid growth expected** in AI use over the next five years to improve efficiency.

**Current uses:** legal and factual research, data analytics, document review.

**Likely expansion:** drafting assistance and evaluating legal arguments.

**Drivers of adoption:** time savings (54%), cost reduction (44%), reduced human error (39%).

## Challenges and Outlook

**Key concerns:** errors and bias (51%), confidentiality risks (47%), lack of experience (44%), regulatory gaps (38%).

**Resistance to AI in decision-making** tasks requiring arbitrator judgment or discretion.

**General acceptance:** AI for administrative and procedural support.

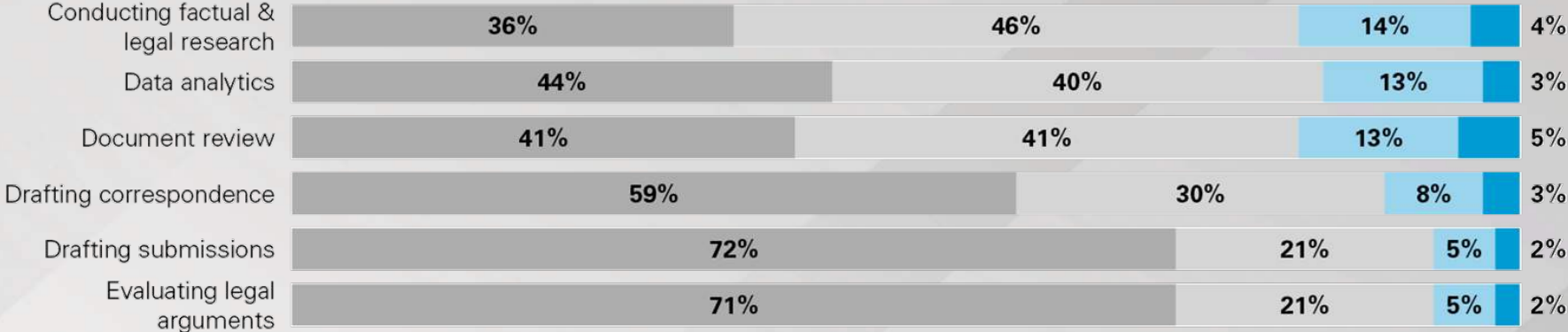
**Future outlook:** greater reliance by arbitrators (52%) and emergence of AI-related roles (40%).

**Key requirements:** transparency, guidelines, and training to support adoption.

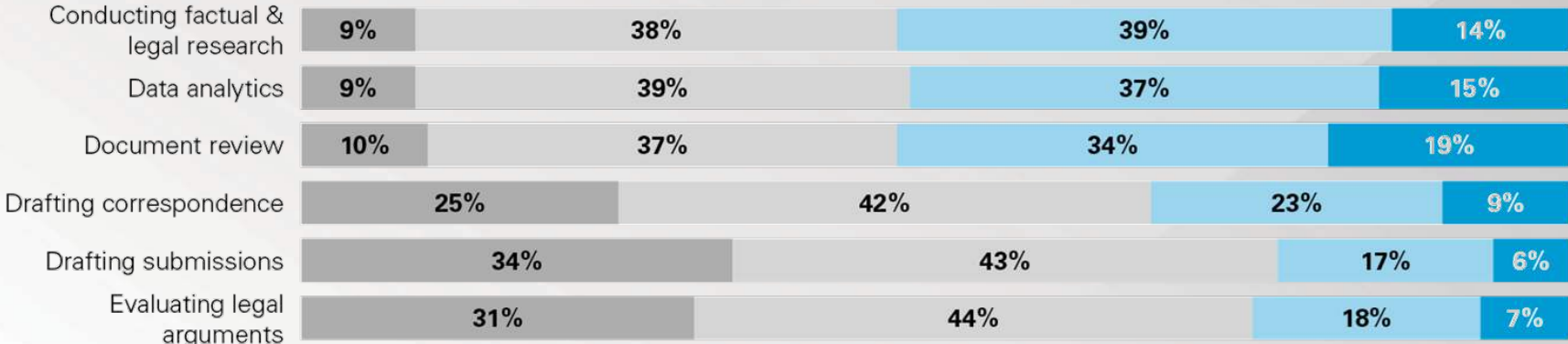
Source: 2025 International Arbitration Survey – *The path forward: Realities and opportunities in arbitration*, White & Case and Queen Mary University of London School of International Arbitration, available at: <https://www.whitecase.com/insight-our-thinking/2025-international-arbitration-survey>

# How often have you used, and do you expect to use, AI tools and technology?

## Use of AI tools and technology: Past 5 years



## Use of AI tools and technology: Next 5 years



■ Never ■ Sometimes ■ Often ■ Almost always

Source: 2025 International Arbitration Survey – The path forward: Realities and opportunities in arbitration, White & Case and Queen Mary University of London School of International Arbitration, available at: <https://www.whitecase.com/insight-our-thinking/2025-international-arbitration-survey>

# Pre-Hearing: Disclosure and Discovery

Generative AI document review tools e.g., Relativity aiR for Review

## Attorney Describes The Matter

<b>Matter Overview</b> ⓘ	This case involves allegations of poisoning among movie stars. The American western frontier, that embody the spirit, struggle, and/or d
<b>People and Aliases</b> ⓘ	John Wayne, actor known for western movies produced in the 1950 Sergio Leone, a director known for so-called Spaghetti Westerns of John Ford, famed director
<b>Noteworthy Entities</b> ⓘ	<ul style="list-style-type: none"><li>- BigThorium: The company where all these persons were involved, w complaints, housing, security, and monitoring of workers' emails.</li><li>- CNCinCareers: Recruitment company hired by BigThorium to find w</li></ul>
<b>Noteworthy Terms</b> ⓘ	<ul style="list-style-type: none"><li>- Papers: slang term for immigration documents including Permanen</li><li>- Complex or Barracks: Buildings owned by BigThorium used to hous</li><li>- Project Alpha: Code name for recruiting effort offering international</li></ul>

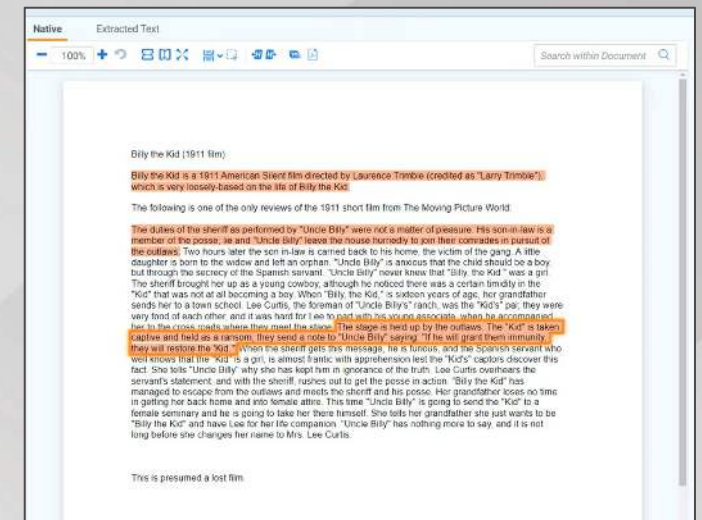
Leverage a prompt iteration experience to help identify responsiveness criteria and key issues

## aiR Analyzes Documents Using Inputs



See detailed rationale and citations so you can understand and defend results

## Attorney Reviews aiR's Analysis



View insights directly in the context of documents and accept coding decisions if desired

# AI Fact Development & Case Management Tools

AI-based tools including Relativity aiR for Case Strategy



**Generate a list of facts**

Automatically identify critical facts based on the key documents, people, and issues of the case.



**Visualize your fact chronology**

Take your fact statements one step further with a visualized timeline of how the events unfolded.



**Summarize key documents and transcripts**

Understand the context of a document at-a-glance as you work through your case narrative.



**Understand the elements of your case**

Get a summary of your case, including the important facts, entities, and issues, and how it all ties together.



**Get a 360-degree view into each witness**

Prepare a witness summary with the critical facts, issues, and documents for a key player.



**Jump start your deposition prep**

Create a deposition outline of questions to ask with links to supporting exhibits.

# AI at the Arbitration Hearing



A screenshot of the 'zz.eMerge Demonstration Database' Fact Navigator interface. The interface features a 'Timeline' view on the left with a blue bar chart showing events from 2005 to 2020. Key events include 'Paso's Announcement of Additional Active Capacity' (2009), 'Market Manipulation' (2009), 'Complaint Against El Paso Natural Gas' (2011), 'Market Manipulation' (2011), and 'Order on Reporting California Gas' (2019). A 'Filter' section on the left allows searching for facts by category, such as 'Syed Ahsan Ali's Employment History', 'David Suss's Employment and Training', and 'Expansion of Event of Default Definition'. The main panel displays a 'Fact' titled 'FERC Order on Reporting California Gas Sales' dated July 26, 2001, 12:00 AM. It includes a 'Description' of the FERC order, 'Citations' to related documents, and 'Fact Score and Arguments'.

A screenshot of an email thread interface. The email is from 'Sally Sanders' dated January 10, 2014. The subject is 'Instructions you were given for that order size'. The thread shows a conversation between 'A: Kim' and 'O: Kim'. The 'O: Kim' message includes a quote: 'This fact is crucial as it shows that taking steps to monitor and control California, which is directly related proving market manipulation by...'. The interface also shows a 'Designation Counter' and 'Designation History' on the right side.

# Confidentiality: The First & Most Critical Obligation

- **Never input confidential party information into open/public AI systems.**
- Most consumer-grade AI tools (including public ChatGPT and Claude) may use inputs for training or to retain data. Read the terms.
- Before using any AI tool in a matter, vet data retention, storage, and third-party sharing policies
- Use only enterprise/closed AI systems with appropriate data processing agreements and confidentiality protections
- Arbitrators: your duty of confidentiality extends fully to how you use AI to analyze case materials
- **Risk scenario:** An arbitrator uploads excerpts of confidential witness statements into a public AI chatbot to generate a summary. The data may be used to train models and otherwise retained by the third-party platform provider.

# AI Principles and Guardrails

## *AI Principles*

### **Transparency**

Based upon the risk of the use case, consider openness regarding an AI system's known limitations.

### **Accuracy**

Treat AI outputs as drafts or research aids, not authoritative legal conclusions. Review for accuracy, especially for higher risk use cases.

### **Reliability**

AI systems should behave consistently and within known limits but produce probabilistic (not authoritative) responses. AI output should be viewed as assistive, and independent judgment should be exercised for higher risk use cases.

### **Accountability**

Clearly define ownership for AI-assisted work product. Use of AI does not shift professional, ethical, or legal responsibility

### **Confidentiality**

Understand the data classification (sensitivity level) of documents and data to be used an AI system (including prompts, transcriptions, and other resource documents)

## *AI Guardrails*

# Institutional Guidelines

- **April 2024:** *Silicon Valley Arbitration & Mediation Center (“SVAMC”) Guidelines on the Use of AI in Arbitration*
- **June 2024:** *JAMS AI Rules and AI Protective Order*
- **October 2024:** *Stockholm Chamber of Commerce (“SCC”) Arbitration Institute Guide to the use of artificial intelligence in cases administered under the SCC rules*
- **March 2025:** *Chartered Institute of Arbitrators (“CI Arb”) Guideline on the Use of AI in Arbitration*
- **March 2025:** *AAA’s International Centre for Dispute Resolution (“AAA-ICDR”) Guidance on Arbitrators’ Use of AI Tools*
- **2025-present:** *ICC Commission on Arbitration and ADR Task Force on AI in Dispute Resolution*