

Major impact

AI adoption accelerates changes for handling process in class-action cases



Guest Editorial

By [James Morsch](#)

James Morsch is a partner at Saul Ewing's Chicago office, where he leads the class actions practice group. He also teaches about class actions at the Loyola University Chicago School of Law.

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Class-action suits are increasingly challenging companies' use of artificial intelligence, but the larger impact of AI may be on the class-action practice itself.

AI will make it cheaper and faster for the plaintiffs' class-action bar to investigate potential claims, recruit and perform due diligence on potential class representatives and litigate class actions successfully. AI will also assist companies named in these types of law suits to reach early resolutions of claims, challenge a plaintiff's liability and damages methodologies and weed out false claims. Lawyers involved in class actions will need to master the technology and use it effectively to benefit their clients. Courts will be challenged like never before to understand how AI works and its reliability.

Commentators have written a lot about the new wave of class actions challenging the use of AI in employment decisions, algorithmic pricing, development of intellectual property, privacy invasions and other applications. These types of lawsuits will proliferate over time as companies develop different uses for AI, make mistakes on how it is employed and utilize it to make decisions traditionally made by humans. Companies that fail to understand the limits, biases and impact of AI, and to set audit and other protections in place to govern its use will be targeted by class-action lawyers.

AI also will change the way class actions are formulated, litigated, administered and resolved. A critical mass has already started building. Before a class-action complaint is filed, a plaintiffs' lawyer must investigate whether there are viable claims to make on behalf of a class, identify the lawsuit's target, recruit a client to serve as the representative of the putative class, and, most importantly, evaluate the upside of the case compared to how much money will need to be invested. AI will lower the costs of each step and speed up the pre-litigation stage. Class lawyers adept at using AI should know the answers to these critical questions before they file suit:

(1) have courts validated the theory of the case; (2) do the name plaintiff's circumstances make her typical of the class she seeks to represent or potentially disqualify her; (3) what is the amount of commerce at issue and potential damages that can be claimed for the class; (4) how quickly can the necessary discovery be conducted and a class certification motion be filed in the case; and (5) how much of counsel's or litigation funder's resources will be needed to prosecute the class action.

With AI assistance, lawyers will be able to short circuit many of the tasks associated with drafting a viable complaint, formulating discovery, reviewing a defendant's documents and testimony, and developing a methodology to prove the defendant's liability on a class-wide basis. Experts retained by the class will be able to develop more sophisticated damage models and make them more bullet-proof against successful *Daubert* challenges. Critically, AI deployment should increase a plaintiff lawyer's potential return on investment in class cases by reducing counsel's costs and forcing a faster decision on whether it can be certified.

AI will also dramatically change the way defendants respond to class actions. Defense counsel should be able to investigate the named plaintiff to determine before discovery if there's baggage that could disqualify the plaintiff from representing the class. With AI assistance, defense lawyers should be able to provide clients with fast and reliable exposure analyses about the value of the claims if certified and or on the abilities and proclivities of the class lawyers. Since plaintiffs or their experts will utilize AI-assisted models of liability and damages, defense lawyers will need to understand how to interrogate those models effectively to challenge the underlying assumptions.

Most class actions that survive early motions to dismiss and certification settle because of the pressure a certified class can impose on a defendant. AI already is playing a role in effectuating class notice and administration. As more AI-assisted programs are developed, the costs of providing class notice should decrease, leaving more money for the class. At the same time, generative AI may give rise to more bogus claims in settlements. Given the increase in claims aggregators and the interest of bad actors in intercepting payments meant for settlement class members, parties will need to develop methods for thoroughly vetting proof of membership in the case and entitlement to a claim in a settlement. AI will need to be trained to

identify phony evidence, sort out duplicative claims, and audit allocation plans to ensure class members receive their rightful share of class settlements.

AI adoption represents an inflection point in class action practice. Buckle up for the ride.

Practice Areas: [Artificial Intelligence](#), [Class Action Litigation](#), [Class Actions](#)

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