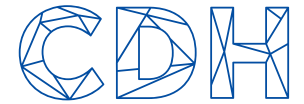


Dispute Resolution

ALERT | 15 July 2025



In this issue

SOUTH AFRICA

Hallucination Complications



For more insight into our
expertise and services

Hallucination Complications

As artificial intelligence (AI) tools become increasingly embedded in legal practice, South African legal practitioners (and potentially their insurers) face a new risk, challenging traditional professional liability and insurance coverage.

These developments raise the question as to whether professional indemnity insurance will cover attorneys and advocates when AI-generated errors lead to client losses.

The hallucination-induced complications

A recent plethora of judgments (both locally and internationally) have dealt with case law references submitted in argument that simply do not exist – the dreaded AI “*hallucination*”.

One question that arises out of this legal “*evolution*” and the move towards actively utilising AI in legal practice is whether a client will have a valid claim against an attorney for professional negligence where the attorney’s reliance on AI-generated content is a contributing (or the sole) factor that results in an adverse judgment or order being delivered against them.

Duty of care

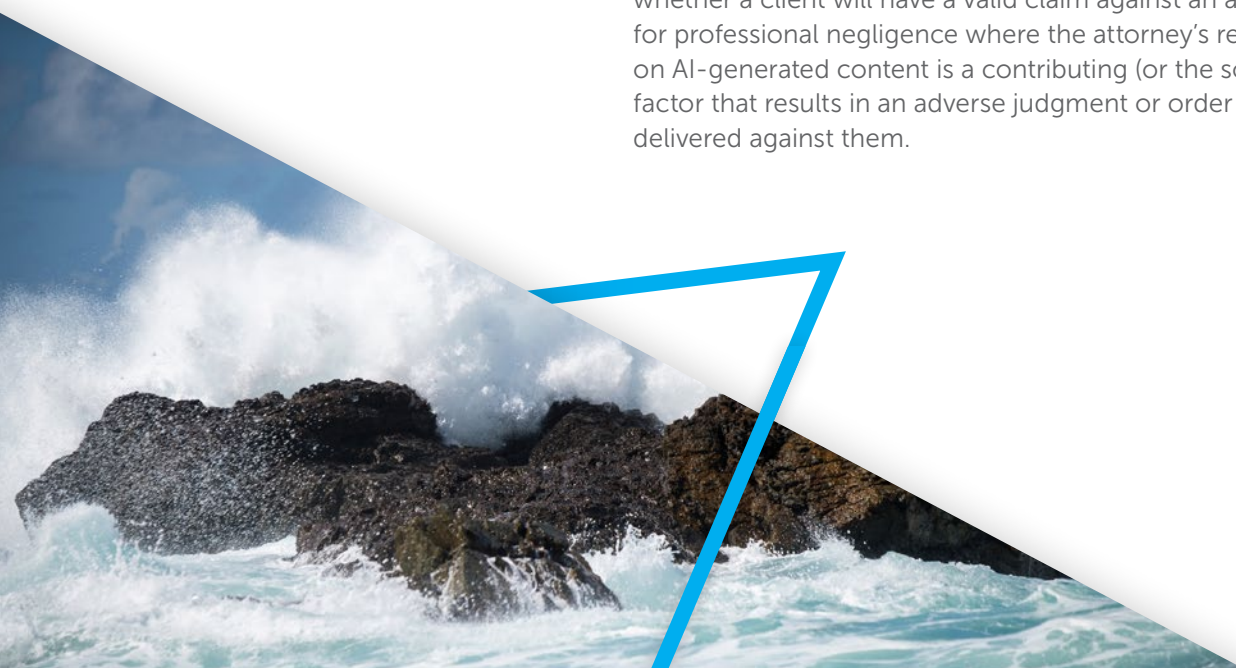
The duty of care owed by legal practitioners to their clients includes the obligation to verify the accuracy and reliability of all legal submissions, regardless of their source. If an attorney incorporates unchecked fictitious case law or misleading arguments manufactured or hallucinated by an AI tool and this materially affects the outcome of the client’s matter, then the client could demonstrate that the attorney failed to exercise the standard of skill and diligence expected of a reasonable legal practitioner. This could also potentially give rise (depending on the facts of the matter) to a delictual or contractual claim for damages, particularly where the client suffers financial or reputational harm as a result of their attorney’s negligence.

The presumed comfort of insurance

When faced with a claim being made against them for negligence, an attorney is going to turn to their Professional Indemnity (PI) insurers. In this regard, PI insurance is designed to protect legal practitioners against claims arising from negligence in the course of their professional duties.

With the question of whether the client has a claim against the attorney having been addressed, the question that then arises is whether the attorney’s PI insurance cover extends to negligence arising out of the use of AI tools.

While PI policies generally cover negligence by legal practitioners, they often contain specific exclusions or limitations and require the insured to act diligently and to take reasonable steps to prevent or mitigate losses.



Hallucination Complications

CONTINUED

The discomfort of rejection

In circumstances where an attorney relies on AI-generated or hallucinated content, such as case law, without verifying its accuracy, insurers may argue (and would be justified in doing so) that this constitutes a failure to satisfy the reasonable steps obligation.

The situation becomes even murkier when considering the evolving nature of AI tools. Unlike junior attorneys or paralegals, AI systems are not regulated, licensed, or subject to professional codes of conduct. AI is not tested and made to write board exams, and it does not have to make an application for admission into the profession as a fit and proper person.

This lack of accountability may (and should) prompt insurers to treat AI-related errors as outside the scope of traditional coverage, unless the policy explicitly includes technology-related risks. In such cases, the error may be deemed a result of negligence on the part of the practitioner, rather than a fault of the AI tool itself.

The use of unverified AI tools, particularly those prone to hallucinations, will likely be construed as a breach of professionals' duty to act with reasonable care and skill – meaning that insurers would likely reject PI claims of this nature.

A cautionary tale

Attorneys who incorporate AI tools into their practice must do so with caution, ensuring that all outputs are thoroughly reviewed and verified. Failure to do so may not only expose them to regulatory scrutiny but also leave them without the safety net of their PI insurance if things go wrong.

To mitigate these risks, law firms should consider implementing internal protocols for AI use, including mandatory verification of all AI-generated content. Training programmes should educate legal professionals on the limitations of AI tools and the importance of human oversight.

Insurers, for their part, may need to revisit policy wording to address the evolving landscape of legal technology. This could include specific endorsements for AI-related risks or exclusions that clarify the boundaries of coverage.

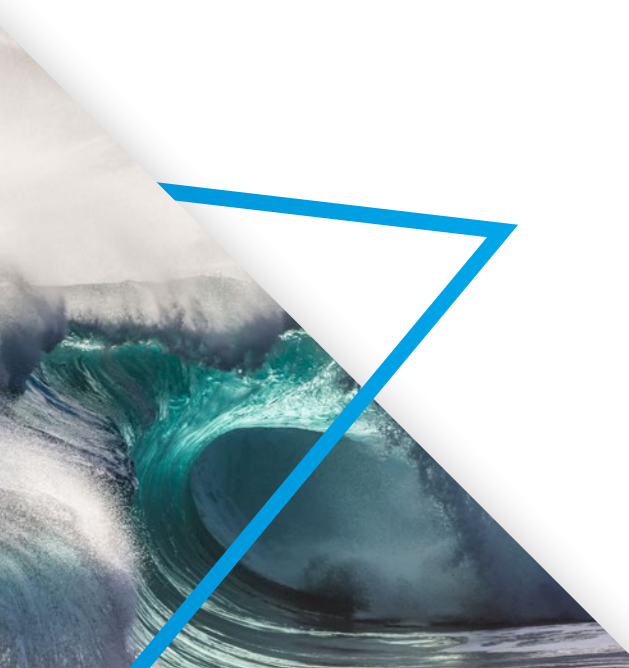
The South African Law Reform Commission may also play a role in shaping future regulation. As AI becomes more prevalent in legal practice, statutory guidance is necessary to delineate responsibilities and liabilities.

The integration of AI into legal practice offers immense potential, however, it also introduces complex risks. The consequences of AI hallucinations can be severe, in a professional, ethical and financial sense.

Whether insurers will cover attorneys in such scenarios depends largely on policy wording, the nature of the error, and the steps taken to mitigate risk.

Until clearer guidance emerges, attorneys and advocates would be wise to treat AI as a tool – not a substitute – for professional judgment. Insurers, on the other hand, must grapple with the reality that the future of legal risk is no longer purely human error.

Roy Barendse, Tim Smit and Paige Winfield



OUR TEAM

For more information about our Dispute Resolution practice and services in South Africa, Kenya and Namibia, please contact:



Rishaban Moodley

Practice Head & Director:
Dispute Resolution
Sector Head:
Gambling & Regulatory Compliance
T +27 (0)11 562 1666
E rishaban.moodley@cdhlegal.com



Tim Fletcher

Chairperson
Director: Dispute Resolution
T +27 (0)11 562 1061
E tim.fletcher@cdhlegal.com

Imraan Abdullah

Director:
Dispute Resolution
T +27 (0)11 562 1177
E imraan.abdullah@cdhlegal.com

Timothy Baker

Director:
Dispute Resolution
T +27 (0)21 481 6308
E timothy.baker@cdhlegal.com

Eugene Bester

Director:
Dispute Resolution
T +27 (0)11 562 1173
E eugene.bester@cdhlegal.com

Neha Dhana

Director:
Dispute Resolution
T +27 (0)11 562 1267
E neha.dhana@cdhlegal.com

Denise Durand

Director:
Dispute Resolution
T +27 (0)11 562 1835
E denise.durand@cdhlegal.com

Claudette Dutilleux

Director:
Dispute Resolution
T +27 (0)11 562 1073
E claudette.dutilleux@cdhlegal.com

Jackwell Feris

Sector Head:
Industrials, Manufacturing & Trade
Director: Dispute Resolution
T +27 (0)11 562 1825
E jackwell.feris@cdhlegal.com

Nastascha Harduth

Sector Head: Corporate Debt,
Turnaround & Restructuring
Director: Dispute Resolution
T +27 (0)11 562 1453
E n.harduth@cdhlegal.com

Anja Hofmeyr

Director:
Dispute Resolution
T +27 (0)11 562 1129
E anja.hofmeyr@cdhlegal.com

Corné Lewis

Director:
Dispute Resolution
T +27 (0)11 562 1042
E corne.lewis@cdhlegal.com

Nomlayo Mabhena-Mlilo

Director:
Dispute Resolution
T +27 (0)11 562 1743
E nomlayo.mabhena@cdhlegal.com

Sentebale Makara

Director:
Dispute Resolution
T +27 (0)11 562 1181
E sentebale.makara@cdhlegal.com

Vincent Manko

Director:
Dispute Resolution
T +27 (0)11 562 1660
E vincent.manko@cdhlegal.com

Khaya Mantengu

Director:
Dispute Resolution
T +27 (0)11 562 1312
E khaya.mantengu@cdhlegal.com

Richard Marcus

Director:
Dispute Resolution
T +27 (0)21 481 6396
E richard.marcus@cdhlegal.com

Burton Meyer

Director:
Dispute Resolution
T +27 (0)11 562 1056
E burton.meyer@cdhlegal.com

Desmond Odhiambo

Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E desmond.odhiambo@cdhlegal.com

Lucinde Rhoodie

Director:
Dispute Resolution
T +27 (0)21 405 6080
E lucinde.rhodie@cdhlegal.com

Clive Rumsey

Sector Head: Construction & Engineering
Director: Dispute Resolution
T +27 (0)11 562 1924
E clive.rumsey@cdhlegal.com

Belinda Scriba

Director:
Dispute Resolution
T +27 (0)21 405 6139
E belinda.scriba@cdhlegal.com

Tim Smit

Sector Head:
Consumer Goods, Services & Retail
Director: Dispute Resolution
T +27 (0)11 562 1085
E tim.smit@cdhlegal.com

Marelise van der Westhuizen

Director:
Dispute Resolution
T +27 (0)11 562 1208
E marelise.vanderwesthuizen@cdhlegal.com

Joe Whittle

Director:
Dispute Resolution
T +27 (0)11 562 1138
E joe.whittle@cdhlegal.com

Roy Barendse

Executive Consultant:
Dispute Resolution
T +27 (0)21 405 6177
E roy.barendse@cdhlegal.com

BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.
Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI

Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114
E cdhkenya@cdhlegal.com

NAMIBIA

1st Floor Maerua Office Tower, Cnr Robert Mugabe Avenue and Jan Jonker Street, Windhoek 10005, Namibia
PO Box 97115, Maerua Mall, Windhoek, Namibia, 10020
T +264 833 730 100 E cdhnamibia@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdh Stellenbosch@cdhlegal.com

©2025 14883/JUL

