Noninvasive Prenatal Genetic Testing: Cutting Edge Technology Portends New Wrongful Life/Birth Theories of Liability Against Healthcare Providers, Labs & Diagnostic Companies

by Alicia Bromfield, Esq. and Donald B. Lenderman

Noninvasive prenatal testing (“NIPT”) is a popular option for high risk pregnancy patients desiring to screen for chromosomal abnormalities.1 By analyzing fetal DNA circulating within the maternal blood, NIPT does not require an invasive procedure that involves extraction of fetal cells for chromosomal analysis; rather, it involves a simple blood test. The patient who elects NIPT can avoid the procedure-related risk—albeit small—of miscarriage that accompanies amniocentesis and chorionic villous sampling. Through direct-to-consumer advertising, manufacturers of NIPT kits are dominating the market for prenatal screening. NIPT use has quickly penetrated clinical practice, and it has become the screening test of choice for fetal aneuploidy.2

We anticipate that clinical healthcare providers, laboratories and the NIPT developers will face significant liability exposure in connection with NIPT technology. The number of wrongful life and/or birth suits alleging failure to diagnose chromosomal abnormalities utilizing conventional biochemical serum testing and diagnostic testing has resulted in staggering verdicts and settlements (see chart on pg. 15). We anticipate similar wrongful life/birth claims will be pursued in connection with the more widespread use of the NIPT. In this article, we explore some of the anticipated theories that will be advanced by the plaintiffs’ bar. Given the potential for an increase in wrongful life/birth claims, healthcare providers, laboratories and NIPT developers should ensure their insurance, including professional liability and/or products liability coverage, protects them from the liability exposures emanating from this newer technology.

Understanding Noninvasive Prenatal Testing

NIPT analyzes fragments of cell free DNA circulating within the maternal blood stream.3 NIPT is a screening test that determines the probability of a limited number of common chromosome abnormalities (e.g., Trisomy 13, Trisomy 18 [Edward Syndrome], Trisomy 21 [Down Syndrome], and sex chromosome abnormalities). It does not provide screening for a broader range of genetic abnormalities such as neural tube defects or ventral wall defects.4

As a screening test, NIPT is designed to assess the risk for a potential genetic problem rather than to make the diagnosis of an actual genetic condition. A “positive” result on NIPT does not necessarily mean that the fetus in fact has a chromosomal abnormality. False positive and false negative results do occur, implicating the need for counseling from a qualified maternal fetal medicine specialist, geneticist, or genetic counselor to guide management decisions in light of positive results.

Understanding NIPT Results

The healthcare provider must set expectations with respect to the limitation of NIPT as a screening test. A patient looks to the provider as a...
In the beginning of 2016, then PLUS President Heather Fox formed operational task forces to address some specific areas where PLUS may be able to enhance member value or make operational improvements. More than 120 people volunteered for these task forces, and about 50 PLUS members were selected for these limited duration task forces. The groups met a number of times and did a significant amount of independent and sub-group work. Working with a staff and Board liaison, the task forces generated a final report and reported their findings and recommendations to the PLUS Board of Trustees. The PLUS Board acted on many of the recommendations and directed staff to begin to implement some of the recommendations immediately, as well as to continue further research on other recommendations. This entire process is about PLUS not resting; not being content with its successes. Despite being a relevant, financially secure, progressive organization PLUS is always looking to get better. It is building momentum.

**Task Forces Move PLUS Forward**

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**So what is PLUS working on to build momentum as a result of these task force recommendations?**

As I discussed in last issue of the PLUS Journal, the Journal is moving to a quarterly publication with enhanced content. This is the final printed issue of the PLUS Journal...going forward the Journal will be provided electronically. This is progress. This is a positive step forward. That progress will be on further display as PLUS develops a digital publishing platform that will greatly enhance the functionality and capabilities of the digital Journal. Additionally, as part of this progressive move to enhance information delivery, PLUS has begun to encourage greater participation in the PLUS blog. The blog will begin to highlight even more photos from events and more personal stories from PLUS member companies and individual members. As a result of these efforts, the PLUS blog saw a 100% increase in page views in 2016. Expect 2017 to see a continued increase in usage.

- PLUS is also enhancing its staffing and adding resources toward expanding the frequency and value of webinars, and exploring other communications and technology available to provide distance education. In addition, PLUS will take steps to develop webinar series; provide CE and CLE for webinars; improve the method of submitting and approving topics for webinars; and make each learning opportunity available through various electronic media. Overall, look for expanded efforts by PLUS to meet the unique needs and demands of today’s adult learners.

- PLUS has already made changes to its website that have dramatically increased the speed and responsiveness of the site. Registering for events or renewing membership is now faster and easier. I hope you have been on plusweb.org and have seen these changes. If not I encourage you to do so. Additionally, in the future PLUS will be modifying web pages and menus to reduce the number of clicks, as well as improve the site’s overall functionality.

- The PLUS Board and Staff is delving deeper into opportunities to provide relevant research, information and data to PLUS membership through modern technologies and/or partnerships with third-party providers.

- PLUS is embarking on an effort to determine the potential cost and functionality of a mobile application that could incorporate many of the items recommended by the task forces. This would include, but not be limited to events, learning, publications, networking, personal brand-building, transactions, and information sharing. The development of this recommendation will improve how members can get information from and connect with PLUS, as well as with other PLUS members at any time and from any place.

Again, this is just the beginning. These are just some of the things PLUS is working on to build momentum and continue to make your association the one you want and deserve. Thank you.
Evolution isn’t as linear a process as we see depicted in those drawings of a fish crawling onto the shore, with a furry creature walking ahead of it, turning into variations on an apelike theme, and reaching its perfection in a human, briefcase in hand, ready to sell insurance.

Evolution wasn’t linear—it hit dead ends, made wrong turns, and was derailed by a giant “reset” button hurtling down from space. Is the traditional insurance broker one such dead end, to be supplanted by... something?

Novel ways of delivering insurance to the public are sometimes termed “disruptors,” though “game changers” might be more apt. What picture should we draw at the far right of an insurance evolution sketch—perhaps a robot, a virtual cloud, or an app? And what happens when something goes wrong? It’s a premise all insurance is based upon, but when the consumer is in the pilot’s seat, who takes the blame for the crash?

Some Alternative Delivery Models

Game changers typically find ways to bundle insurance purchases with activities in which people or businesses participate more often than once a year. The insurance transaction becomes more efficient, but runs a risk of becoming ancillary and commoditized, rather than a personal service.

Here are a few commonplace activities that are being bundled with insurance:

Driving

Twenty or so years ago the idea of “pay at the pump” auto insurance was in vogue. It sounded fair: those who drive the most pay the most, though the gas pump can’t take one’s driving record or sobriety into account. With hybrid, CNG, hydrogen, and fully electric cars now on the road, gasoline usage is not a reliable measure of risk.

Nobody has yet instituted a plan to charge all drivers of every type of vehicle for mandatory auto insurance, but some entrepreneurs, and even traditional insurers, are changing the auto insurance paradigm by monitoring car usage and charging accordingly. Where available, Progressive’s Snapshot device, a plug-in monitor that records a car’s usage, drivers’ habits, and times of use, creates data that are used along with more conventional factors to calculate insurance premiums. Esurance’s Pay Per Mile, currently available in Oregon, uses a similar combination of a plug-in monitor and other underwriting criteria.

Taking the concept one step farther, Metromile uses driving statistics plus a base premium to price auto insurance. Metromile is a GPS-equipped system that pairs via Bluetooth to an app on the owner’s smartphone. It relays the car’s miles per gallon, cost of gasoline, time the car is being driven, and other statistics helpful to the driver. A traditional insurer provides the coverage based on the calculated, flexible premium.

On-line Shopping

People are becoming increasingly comfortable with depersonalized shopping—no “hard sell,” no face-to-face interaction with a salesperson, no elbowing through crowds at the mall. Cyber Monday, the bulge in online commerce after Thanksgiving, is becoming Cyber Everyday.

Most insurers already have Web portals for typical consumer policy placements. These portals are not simply adjuncts to your friendly, neighborhood insurance agent, they are the preferred means of conducting some types of insurance business. GEICO urges in ads, “Fifteen minutes [online] can save you 15 percent or more on car insurance!”

Aggregators tout their ability to save the consumer money by instantaneously comparative-shopping the applicant to many carriers. “Convenience shopper?” asks Policy Genius. “We’re building a one-stop shop. If you need life insurance and pet insurance, you shouldn’t have to go to a bunch of different sites.”

How Do You Compete With Free?

Give-aways have always been part of the broker-policyholder relationship. Whether it’s a free wall calendar that arrives annually in the December mail, the golf game followed by lunch at the club, or the complimentary spa day, there’s nothing like “free” to build or maintain a relationship.

Some brokerage firms have translated this idea to the cyber realm by offering non-insurance services free online as an inducement, or even an explicit quid pro quo, for placing insurance through the firm. Recognizing how complex employee benefit programs can be to manage, Zenefits, a multi-state brokerage firm, offers its benefit management software free of charge to businesses for which it places coverage. There are other examples, such as the “free” risk management review some brokers offer, and the five-minute online “insurance checkup” offered by PolicyGenius.com.

Social Vouching

Explicit vouching for an insurance product or service on a “Peer to Peer” or “P2P” basis can be a strong incentive for a purchase: “This insurance deal is so good that if we pool our money we can both cut our premiums!”

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North Carolina Supreme Court Holds That the Typical Auditor-Client Engagement Does Not Create a Fiduciary Relationship

by Richard A. Simpson and Ashley E. Eiler

In CommScope Credit Union v. Butler & Burke, LLP, Case No. 5P15, the North Carolina Supreme Court held that an independent auditor generally does not owe any fiduciary duty to its client, overturning a decision by the North Carolina Court of Appeals in a case that has generated substantial attention within the accounting profession, both in North Carolina and nationwide.1

The Proceedings Below

CommScope, which is a credit union organized under North Carolina law, failed for over a decade to file mandatory informational tax returns with the Internal Revenue Service ("IRS"). After discovering this failure, the IRS assessed a substantial penalty against the credit union.

CommScope brought suit against the accounting firm that had served for many years as its independent auditor, asserting claims for breach of contract, negligence, professional malpractice, and breach of fiduciary duty. It alleged that the auditor breached its professional duties by not requesting copies of the informational tax returns as part of the audit and by failing to discover that CommScope’s General Manager had failed to file the returns. The auditor asserted a number of affirmative defenses, including contributory negligence and in pari delicto.

The trial court granted the auditor’s motion to dismiss, holding that CommScope’s complaint failed to state a claim on which relief could be granted.

The Court of Appeals, however, reversed the trial court and remanded the case for proceedings on the merits.2 That court first held that the allegations of the complaint, if true, established a fiduciary relationship between CommScope and the auditor.3 The Court of Appeals also held that neither contributory negligence nor in pari delicto supported dismissal of CommScope’s complaint.4

The North Carolina Supreme Court

The Supreme Court granted the auditor’s petition for discretionary review to consider whether the auditor owed a fiduciary duty to CommScope and whether CommScope’s claims are barred by the doctrines of contributory negligence and/or in pari delicto.5 During the merits briefing stage, five different organizations submitted amicus briefs in support of the auditor’s position on the fiduciary duty issue.6

On September 26, 2016, the Supreme Court issued a 6-0 ruling reversing the Court of Appeals’ decision on the fiduciary duty issue.7 The Supreme Court recognized that, under North Carolina law, fiduciary relationships are characterized by a heightened level of trust that requires the fiduciary to act in the best interests of the other party.8 The Supreme Court held that, unlike some relationships (such as attorney-client and trustee-trust beneficiary), the auditor-client relationship does not give rise to a fiduciary relationship as a matter of law, primarily because independent auditors owe significant obligations to third parties and to the public at large that preclude them from acting solely in the audit client’s best interests.9

Although the Supreme Court concluded that a fiduciary relationship could arise as a matter of fact, the court held that the allegations in CommScope’s complaint, when taken as true, did not give rise to a fiduciary relationship between CommScope and the auditor.10 The complaint alleged that the auditor agreed to audit CommScope’s financial statements and other records in accordance with Generally Accepted Auditing Standards (“GAAS”), with the goal of expressing an opinion as to whether those financial statements fairly presented CommScope’s financial position.11 Because GAAS and other applicable professional standards require an auditor to maintain independence and display impartiality while performing an audit, and because the complaint did not allege that the auditor agreed to perform any additional services for CommScope that could give rise to a fiduciary relationship, the Supreme Court held that the auditor did not owe any fiduciary duties to CommScope as a matter of fact.12 Rather, the auditor’s pledge to perform the audit and to obtain reasonable assurance that the credit union’s financial statements were free from material misstatements is consistent with what GAAS and other professional standards require of every independent audit engagement.13

As to the issue of whether CommScope’s complaint was subject to dismissal based on the doctrines of contributory negligence and/or in pari delicto, the Supreme Court announced that the six members who considered the case (one Justice having recused herself) were “equally divided” as to whether the facts alleged by CommScope establish those defenses.14

Accordingly, the Supreme Court held that the decision of the Court of Appeals on this issue would stand for purposes of this case, but would be without any precedential value.15 The case therefore will be remanded for further proceedings.

continued on page 15
Legendary quarterback Peyton Manning, the NFL’s only five-time Most Valuable Player and a 14-time Pro Bowl selection, has earned his place among the greatest quarterbacks in league history as the active leader in nearly every statistical passing category. Peyton will share real world leadership tips and how you can become a winner too by learning to adapt to changing circumstances. Whether you’re a leader today or aspire to be one, Peyton combines his trademark humor and real life stories to challenge audiences to reach higher than they ever thought possible.

As a leader who is unusually connected to communities through social media, is very active in advising and investing in start-ups, and is an avid humanitarian in some of the poorest areas of the world, Kat Cole sticks out like a sore thumb in the crowd of her foodservice and franchise industry peers. She is a YGL (Young Global Leader) of the World Economic Forum, is starting a foundation to fund creative, sustainable approaches to education and self-sufficiency, and is one of only two foodservice company leaders listed on CNBC’s Next 25 List Innovators, Leaders and Disruptors—2014, which is dominated by tech start-ups and a few financial groups and Fortune 50 companies. She is passionate about creating and highlighting opportunities, innovation and community building that come out of the foodservice industry.
PLUS Board and Awards Call for Nominations

The Nominations and Leadership Committee is seeking suggestions from PLUS members for potential candidates for the PLUS Board of Trustees and our distinguished annual awards. If you, as a PLUS member, feel that you or someone you know would be a good candidate for the PLUS Board or a deserving recipient of an award, please submit the potential candidate's name, current employer and position, a list of contributions to PLUS, additional comments about the proposed candidate's character and accomplishments, and whether the candidate is proposed as a Board nominee or an Award recipient to PLUS Executive Director Robbie Thompson at rthompson@plusweb.org by Friday, May 12.

Board of Trustees

Trustees are elected to the Board for a term of three years, with terms staggered so that one-third of Trustee positions shall conclude each year. A number of factors are considered when evaluating candidates, including stature in the industry, company position, years in the business, past service to PLUS, and the current balance and composition of the Board (underwriters, brokers, attorneys, company representation, diversity, geography, etc.).

Awards

Each year the Professional Liability Underwriting Society presents two awards at its Annual Conference...

The PLUS 1 Award is presented to an individual who has contributed substantially to the advancement and image of the professional liability industry.

The PLUS Founders Award recognizes a PLUS member who has made lasting and outstanding contributions to PLUS and represents the spirit and dedication of individuals who have contributed selflessly to create, lead and improve the Society.

Further Award criteria and lists of past recipients are available upon request.

PLUS staff will submit additional information about Trustee candidates and Award nominees to the Nominations and Leadership Committee. The Committee will consider all suggestions offered by PLUS members and hold meetings over the Summer to determine Trustee candidates to be listed on the ballot submitted to membership in late September and Award recipient recommendations to the Board, respectively.

PLUS will archive all information from this process, consider suggested candidates for other leadership positions within PLUS, and present information about them to the Nominations and Leadership Committee in subsequent years. ☺

Thank you for your support and involvement in this process.
Robotic Liability: Insurers 21st Century Global Conundrum

by Jesse Lyon

It is clear that the intersection of humanity and robots is presently being transported from the human imagination and formed into a tangible reality. Many books and movies like iRobot and Her have analyzed various potential impacts of that intersection, but it is time now to acknowledge that the complete intersection will be that of humanity, robots, and liability. It is insufficient, however, to know that advanced robotics and liability will intersect with each other. Instead, advanced robotics is going to thrust upon insurers a world that is extremely different from the one they sought to indemnify in the 20th century. Already, drones and autonomous vehicles are forcing some parts of the insurance sector to try and determine where responsibility exists so that liability can be appropriately assigned, and those efforts will continue for at least the next decade and beyond. The liability created by the combination of robots operating with humanity now falls on commercial, and especially professional, insurers to engineer robotic liability products because, by establishing a clear path forward now, this will provide clients and the global economy with stability along with providing insurers another valuable stream of revenue.

There are some ground rules that must be considered first before bringing robotic liability to life. First, what is the definition of a robot? For the purposes of this paper, professor Ryan Calo’s definition of a robot will be used. According to the professor, a robot can sense, process, and act upon its environment. There is also the realization that presently it may be beyond human ability to create a unified robotic liability doctrine for insurance purposes. This is largely due to the environments in which robots will exist in as well as the ramifications of those environments from a legal, physical, and practical stand point. After all, drones capable of sustained flight are inherently going to exist in a different realm from ground based autonomous vehicles, and the same is true for robots capable of sub-orbital and intra-planetary flight.

Therefore, this paper is going to focus on a discreet part of robotic liability: those robots used in agricultural fields. Another reason for focusing on one area of robotics is to keep things simple while exploring this uncharted part of the insurance sector.

The farmer, the field, and the harvest is the most commonplace of settings, and it is in this area that dimensions of robotic liability can be easily analyzed and understood. Plant husbandry draws upon thousands of years of human knowledge, and it is already using aerial drones and big data analytics to maximize crop yields. Additionally, the agricultural arena has a high likelihood of being an area wherein robots cause significant shifts in multiple areas of the economy.

Within the next two or three years a robot, like this paper’s fictional AARW (autonomous agriculture robotic worker), will be created and sent to the fields to begin to replace human labor when it comes time to harvest a crop. There are multiple reasons for this belief, starting with the advance of robotic technology. In 2015 the DARPA Robotics Challenge was held, and it demonstrated the deployment of an array of robots that will be the ancestors of a robot like AARW. In that competition robots were required to walk on uneven terrain, accomplish tactile tasks, and even drive a traditional vehicle. While the robots in that challenge were not largely or fully autonomous, they are the undeniable major step towards productive autonomous robots.

Additionally, there are already simple machines that can perform a variety of functions, even learning a function by observing human movements, and the gap between the drawing board and reality is being quickly eroded with the tremendous amount of computer hardware and software knowledge that is produced by both private and public institutions each month. Moreover, there are strong labor and economic incentives for the introduction of robots into the agricultural field. Robots are able to work non-stop for twelve hours, are free from any form of health and labor laws, and can have life expectancies in the five to fifteen year range. Furthermore, crops are, more often than not, planted in fields with straight rows and require only the robotic ability to pick up an item, like a watermelon, take it to a bin, deposit the melon in the bin, and then repeat the same steps on the next watermelon. All this requires only a modest amount of know-how on the robot’s part. If AARW is built to industrial quality standards, then it will only require a minimal amount of maintenance over the course of each year. And if AARW is powered using solar panels, then the cost of its fuel will be included in the robot’s purchase price, which means that the minor maintenance cost along with a possible storage cost will be the only on going operating costs. With its ability to work non-stop and with no overhead costs for complying with human health and labor laws, AARW will be a cheaper alternative to human workers, providing a strong economic incentive for farmers to use robots in the field.

An agricultural robot will, however, create unique exposures for a farmer and those exposures will cultivate the need for robotic liability. It is true that, at the very least, arguments can be made for completed operations/product liability and Technology E&O exposures with AARW in the field. However, there are multiple reasons why it would be unwise to try and relegate liability for AARW to any current product. First and foremost, there is a strong expectation among scholars and legal experts that robots
are going to do unexpected things. One example that may apply to AARW is the following hypothetical situation. At harvest time the farmer brings AARW to the field to collect the farmer’s crop of watermelons. The location of the field just happens to be near a highway on which big rigs travel, and part of the field lies next to a blind corner in the highway. As AARW successfully harvests one row after another the farmer’s attention drifts, and she begins talking with a neighbor. Suddenly near the blind corner there is a screech of tires and a loud bang as a big rig slams into AARW, which, for an unknown reason, walked into the highway. Who should bear responsibility for the untimely demise of AARW? If AARW were a cow then it would be the insurer of the big rig who would have to reimburse the farmer for the loss of one of her cows. In certain respects AARW and a cow are the same in that they can sense, process, and act upon their environment. However, a cow has what is often described as a mind of its own, which is why insurance companies and the law have come to place the fault of a rogue cow on the unwitting vehicle operator instead of the aggrieved farmer. AARW, though, is not a cow. Instead, it is a machine created to harvest produce. Does the software code that controls the robot’s actions equate to the free will of an animal, like a cow? The farmer who lost the cow does not go back to the rancher and demand her money back from the rancher for having been sold a reckless bovine product, even though the cow had a certain amount of free will. Why should the creator of the robot be expected to reimburse the farmer for the loss of AARW? How does it make sense for products liability to come into play when the rancher shares no blame for the indiscreet cow? Technology companies have been extremely successful at escaping liability for the execution of poorly crafted software so the farmer is unlikely to find any remedy in bringing a claim against the provider of the software, even if it is a separate entity from the one which assembled AARW. Regardless of where blame is assigned, the issue is an awkward one for insurers who try and force the liability for the robot’s actions into any current insurance product. At worst the farmer would not be made whole (Technology E&O), and at best changing existing laws would likely only partially compensate the farmer for the loss of AARW.

As seen in the above example of AARW meeting a grizzly end when coming into contact with a big rig, the liability waters are already murky without robotic liability. Machine learning will likely create situations that are even more unexpected than the above possibility. One such theoretical scenario would be AARW imitating the farmer if the farmer were to occasionally give free produce samples to people passing by the field. If AARW were to also offer free samples then new liability issues would arise. In the absence of robotic liability insurance businesses, such as a farmer, would have a burdensome and, likely, tortuous road to being made whole again, something which neither benefits the farmer nor insurers.

Who should be responsible for the mistake or offending action on the robot’s part is another area that current insurance products are unable to appropriately consider. In the above two examples it would be unfortunate to place all of the blame on AARW or the farmer. After all, had the farmer been more aware of AARW’s location, then the farmer would likely have been able to save AARW from its grim end. The farmer’s lack of action also gave rise to AARW offering free samples to people passing by the field. Yet the software giving rise to AARW making the decision to cross a highway unexpectedly, as well as to engage in purposeful “petty” theft brings into question the quality of programing with which the robot was created. In the paper written by M.C. Elise and Tim Hwang “Praise the Machine! Punish the Human!” there is a sufficient amount of historical evidence to make it unwise to expect liability to be appropriately adjudicated were a farmer to sue the creator of AARW for its questionable choices in either of the above examples. With an autonomous robot like AARW it is possible to bring into consideration laws as they relate to human juveniles. From a legal standpoint a juvenile is responsible if she decides to steal an iPad from a store, but, if she takes the family Prius for a joyride, then the parents are responsible for any damage the juvenile causes to another person’s body or property. Autonomous robots will inherently be allowed to make choices on their own, but should responsibility apply to the robot and the farmer as it does in juvenile law for a child and a parent? From a responsibility standpoint on the insurer’s part it makes sense to assign responsibility to the appropriate party. In the instance of AARW entering a highway the responsibility should fall on the farmer, since the farmer should have been close enough to prevent it from going outside of its home area. Theft, even for a robot, is wrong and, since AARW incorrectly applied an action it learned, it remains largely responsible for its thievery. To more fairly distribute blame, it may be worthwhile for robotic liability to contain two types of deductibles. One would be the deductible paid when fifty-one percent of the blame were due to human negligence, and such a deductible would be treble the second deductible that would apply if fifty-one percent of the blame was due to an incorrect choice on the robot’s part. This would help to impress on the human the need to make responsible choices for the robot’s actions, while also recognizing that robots will sometimes make unexpected choices, choices that may have been largely unforeseeable to human thinking. Such assignment of responsibility should also have a high chance of withstanding judicial and underwriting scrutiny.

Another disservice to delegating robots to any existing form of liability is in the form of underwriting expertise. As it currently stands, most insurers who offer Cyber Liability and Technology E&O seem to possess little expertise with regard to the intersection of risk and technology, which is already having detrimental impacts on those insurers. It is also having negative influences on the clients of those same insurers, since the clients suffer time and again from
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learned intermediary to interpret results and to tailor management options. Individualized assessment of the risk of a genetic abnormality is vital if the patient is to make an informed management decision that may result in termination of a pregnancy.

One of the advantages of NIPT is that more affected fetuses will be discovered when compared to conventional biochemical screening (i.e., triple screen or quad screen testing). Studies have shown that NIPT is generally highly sensitive (>90%), meaning that the test is quite capable of detecting positive cases of chromosomal abnormalities. Sensitivity is an indication of the proportion of positive subjects in a population correctly identified by the test. The specificity of NIPT is also high (greater than 99%), meaning that the non-affected subjects in the population are identified as negative by the test. Despite the high sensitivity and specificity of NIPT, false-positive and false-negative results may still occur. The challenge to healthcare providers is to identify whether a positive screening result actually represents an affected fetus or whether the result is a false-positive.

Manufacturers’ claims that suggest near certainty of test results are based on the sensitivity of the testing. If a screening test yields a false-positive result, diagnostic testing is warranted to ascertain whether the fetus is truly affected. If the patient declines diagnostic testing, some patients may elect termination of the pregnancy based solely on the positive screening result. Without diagnostic confirmation, some of those patients may terminate normal pregnancies that were false-positives.

The limitations of NIPT are revealed in their positive predictive value. This statistical concept helps elucidate what role NIPT results will play in a woman’s management decisions during the pregnancy. The positive predictive value is a measure of the likelihood that a patient with a positive test result is a true-positive and has the subject condition. It is defined as the number of true-positives divided by the sum of true-positives and false-positives. The concept is related to how frequently the condition occurs within a tested population.

Discussion of the positive predictive value can help the patient to place a positive screening result in a more meaningful context. For example, a comparison of the incidence of Down Syndrome in a low risk pregnant population (women under age 35) to a high risk population (women over age 35) illustrates the importance of context when interpreting a positive screening result. The prevalence of Down Syndrome increases with advancing age. The incidence of Down Syndrome at a maternal age of 25 is approximately 1 in 1000. By age 40, the incidence increases to approximately 1 in 75. The reported positive predictive value of NIPT for detecting Down Syndrome at age 25 is 33%. By age 40, the positive predictive value increases to 87%. The implication is that only 1 in 3 women with a positive screening result at age 25 will be a true-positive with an affected fetus whereas the chance of a true-positive is considerably greater at age 40. When the prevalence of the condition is rare, the positive predictive value of the screening test decreases. Consequently, positive results are more likely to be false-positives in such low risk populations with a low prevalence of the condition.

Healthcare Providers—Potential Liabilities

The interval between development of a new technology and its implementation into clinical practice is a vulnerable time for providers. The potential for liability exists as providers learn about NIPT. During that period, standards of practice are coalescing as more and more providers become familiar with the technology and make it available to their patients.

To minimize the potential for liability, healthcare providers should consider the following:

1. As a screening test, how likely is NIPT to uncover an abnormal result? What interventions, if any, are available to address the result?

2. What are the patient’s preferences about undergoing testing? What options are available to the patient in light of a positive result, a negative result, or no result?

3. What are the detection rates of false-positive and false-negative? What is the likelihood that a positive result is a true positive?

These above-referenced topics are a mere sampling of information that the provider should incorporate into the informed consent discussion prior to offering NIPT. Well-documented communications in the patient chart are valuable in the event of future litigation.

Noninvasive prenatal testing has rapidly emerged as a beneficial technology to identify certain fetal chromosomal abnormalities. As providers and patients navigate the NIPT learning curve, potential liabilities arise from knowledge gaps about the limitations of NIPT and its role in a broader prenatal care regimen. As providers incorporate NIPT into practice, they are well advised to provide pre- and post-test counseling and to consult genetics experts as appropriate.

Potential theories of tort liability relating to NIPT include:

Failure to Offer NIPT

The failure to offer prenatal testing, including NIPT, is a concern, particularly in areas underserved by genetics specialists. Plaintiffs’ attorneys will exploit not only the failure to use NIPT technology appropriately but also the failure to offer it to patients as...
A Message to New Underwriters: You Are What Your Relationships Say You Are

by James Finke, RPLU+

Iconic NFL football coach Bill Parcells famously coined the phrase “You are what your record says you are.” Bill’s point rang loud and clear in the football world: your team is defined by its bottom-line results. Wins and losses. To be sure, this principle has application in our business as well. An insurance company’s bottom line results allow it to sustain and make a positive impact on the world around it. Things like protecting what's important to clients, delivering value to shareholders, providing career opportunities to employees, and carrying out philanthropic endeavors in communities.

My advice to new underwriters is that “You are what your relationships say you are.” The broker partners you choose to associate yourself with will have a tremendous impact on your ability to contribute positively to your firm’s bottom line. Understand that you cannot effectively do your job without strong broker relationships. Your brokers, in turn, are dependent upon you. Each side needs the other to get deals done and succeed.

I recall walking wide-eyed around the host hotel lobby at my first PLUS Conference. I was a recent college grad and I knew basically no one. Meanwhile, my colleagues greeted brokers from all over the country as if they were old friends. It turns out that it looked that way because they actually were old friends; old friends that happened to write a lot of profitable business together. I wondered at the time how they got to that point. These were clearly personal relationships that went beyond just business. How does that happen?

In my experience, these relationships are born out of service. Things like being responsive, respecting deadlines, and picking up the phone. Plain and simple hard work can help you establish strong working relationships with your brokers. These things are basic, but critical. The working relationship is the foundation upon which the deeper personal relationship can be built.

In a market with a seemingly endless influx of capital, it feels like two new competitors enter the business every time one departs. Coverages can be replicated and expanded on a dime; rates can be slashed, for a little while at least. You can’t control what your competitors do

Continued on page 17

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well. Plaintiffs’ attorneys are already marketing to clients who had “inadequate prenatal screenings.” Litigation experts will soon emerge on both sides of the issue of whether NIPT is an available option for prenatal screening or is mandated as a first-line screening test.

In 2007, the American College of Obstetricians & Gynecologists recommended fetal chromosomal screening to all pregnant patients regardless of age. The organization also urged physicians to provide information on detection and false positive rates, limitations of screening testing and diagnostic procedures, and the risks of such testing. Reaffirmed in 2013, ACOG’s recommendation is evidence of an established standard of practice for prenatal care.

**Inadequate History Taking and Communication**
A recent notable verdict sheds light on this potential area of liability. In December 2013, a jury in King County, Washington returned a $50 million verdict against a hospital and a laboratory for negligent performance of genetic testing. The parents of the minor plaintiff sought prenatal genetic testing because the father was a carrier for a genetic condition known as an unbalanced chromosome translocation. Plaintiff alleged that the parents sought the testing to decide whether to continue the pregnancy. Plaintiff’s counsel persuaded the jury that understaffing in the hospital’s genetics counseling clinic resulted in a failure to provide appropriate history and instructions to the laboratory that performed the testing. As a result, the laboratory failed to look specifically for the translocation and failed to detect the genetic abnormality. The child was born with profound cognitive and physical deficits.

**Failure to Provide Informed Consent Regarding Risks**
As NIPT is available for all pregnant patients rather than just high risk patients, providers must be cognizant of the limitations of NIPT in that population and effectively communicate them to their patients. NIPT is screening and not diagnostic. Although NIPT has higher sensitivity to detect Trisomy 18 and 21 when compared to conventional serum testing, false positives and negatives are still possible.

As a consequence of these limitations, professional societies recommend a diagnostic test for any patient with a positive NIPT result. Moreover, they caution that “management decisions, including termination of the pregnancy, should not be based on the results of the cell-free DNA screening alone.” The informed consent discussion with the patient is likely to be longer given the addition of NIPT to the prenatal screening regimen. Providers may also have to clarify patients’ misperceptions about the role of NIPT in prenatal diagnosis as the result of aggressive direct-to-consumer marketing efforts. Documentation of the informed consent discussion remains an integral part of reducing the risk of malpractice claims.

**Failure to Warn Relatives and the Duty of Confidentiality**
Inherent to genetic testing is the ability to learn information that may impact a patient’s biologic family members. The limit of patient privacy in the field of genetics is evolving. The physician’s duty of patient confidentiality may collide with the desire to counsel other family members about a familial genetic issue. Physicians often treat multiple members within the same family. The physician may be in the unenviable position of learning that one family member is a carrier of a genetic abnormality while the patient’s sister does not know or would not want to know about any prenatal genetic information.

The prevailing legal stance is that physicians must protect the confidential information of patients. However, three states (FL, MN, and NJ) have recognized a duty that extends to family members who may be affected by the information. The implications of genetic information can be significant. The question of whether to notify relatives of pertinent findings highlights the importance of pretest counseling regarding the impact of test results not only for the patient but also for her relatives and offspring. The law will need to address this very important arena as the popularity of NIPT surges.

**Diagnostic Companies/Labs–Potential Liabilities**
As the plaintiffs’ bar continues to search for new deep pockets and new theories of liability in wrongful birth/ wrongful life litigation, some attorneys have turned their attentions to the diagnostic companies. By targeting these companies instead of or in addition to typical healthcare providers, plaintiffs may be able to circumvent medical malpractice damages caps in certain states. In addition, the competition among NIPT companies is fierce and has resulted in several instances of patent litigation and litigation involving unfair competition. Such competition creates fodder for plaintiffs’ bar to argue that diagnostic companies put profit over people; that NIPT kits have been rushed to market, and that the methodologies have not been scientifically vetted.

**Failure to Warn–Representations made in advertising and Inadequate Disclaimers**
Plaintiffs may allege that certain representations made in direct to consumer advertising of NIPTs amount to negligent misrepresentations and/or false advertising. Such statements, posted on diagnostic company websites and in promotional materials, could include “clear answers” and “results you can count on.” Although such statements are more akin to “puffery,” plaintiffs will allege that they relied on such statements as truth and were damaged when such statements proved to be false. Due to the intense competition...
among NIPT companies, tests are aggressively marketed and plaintiffs will claim that such advertisements fail to warn sufficiently of the limitations and potential errors in the test. Although NIPT results are typically delivered directly to physicians, a claim could also be made that the test results, themselves, do not contain adequate disclaimers and warnings regarding the accuracy of the screen.\textsuperscript{11}

**Defective Design**

Plaintiffs will claim that in addition to tests being falsely advertised, the NIPTs themselves are defectively designed and/or manufactured. Any time parents receive a false positive or false negative, they can argue that the test is per se defective due to its yielding the wrong results. Such claims could be bolstered by allegations that the intense competition and pressure to rush the tests to market resulted in inadequate trials and false confirmation that the test methodologies were sound.\textsuperscript{12}

**What's at stake? Wrongful Birth/Wrongful Life Verdicts and Settlements**

Although not all states recognize causes of action for wrongful birth and/or wrongful life, where such lawsuits are allowed to proceed, the damages can be staggering. (See chart below, which provides a sampling of jury verdicts and settlements that highlight the high stakes of wrongful birth claims.)

With new technology comes new expectations and potential new liabilities. Given the potential for an increase in wrongful life/birth claims resulting from new technologies, all involved in prenatal care—from healthcare providers to laboratories to NIPT developers—should ensure their insurance provides the best protection from these new liability exposures.\textsuperscript{+}

<table>
<thead>
<tr>
<th>Year Resolved</th>
<th>State</th>
<th>County</th>
<th>Amount</th>
<th>Defendants</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>New Jersey</td>
<td>Bergen County</td>
<td>$8,250,000 (settlement)</td>
<td>Healthcare providers, including u/s technician</td>
<td>Doctor and technician failed to interpret nuchal measurement abnormalities. Child born with numerous birth defects.</td>
</tr>
<tr>
<td>2013</td>
<td>New Jersey</td>
<td>Monmouth County</td>
<td>$7,100,000 (settlement)</td>
<td>Physicians, technicians, employer -hospital</td>
<td>Mother underwent an amniocentesis done so that prenatal cytogenetic testing could be performed to determine if the fetus was afflicted with any genetic disorders. The plaintiff maintained that the history of the mother giving birth to a special needs child and advanced maternal age placed her at higher risk, and that if the parents were advised of the abnormality, the pregnancy would have been terminated. The child was born with Wolf-Hirschhorn syndrome, a debilitating disease characterized by an abnormal facial appearance, delayed growth and development, intellectual disability, and seizures.</td>
</tr>
<tr>
<td>2013</td>
<td>Washington</td>
<td>King County</td>
<td>$50,000,000 (verdict)</td>
<td>Hospital and lab</td>
<td>Wrongful-birth claim brought by the parents of male infant who was born with an unbalanced translocation, resulting in myotubular myopathy with profound physical and cognitive disabilities. Allegations that defendants Lab and Medical Center failed to perform and secure genetic testing when it was known that the father had a chromosome abnormality that might produce a disabled child</td>
</tr>
<tr>
<td>2012</td>
<td>Oregon</td>
<td>Multnomah County</td>
<td>$2,943,505 (verdict)</td>
<td>Healthcare providers</td>
<td>Parents sought prenatal testing. CVS testing wrongly interpreted as showing no sign of Down Syndrome. Allegations that non-standard small tissue sample used. Child subsequently born with Down Syndrome.</td>
</tr>
<tr>
<td>2012</td>
<td>Massachusetts</td>
<td>Unknown</td>
<td>$2,900,000</td>
<td>Healthcare providers</td>
<td>Parents sought assurance that their 13 week fetus did not have any chromosomal issues. Child was born with Down Syndrome.</td>
</tr>
<tr>
<td>2011</td>
<td>Massachusetts</td>
<td>Worcester County</td>
<td>$7,611,806 (settlement)</td>
<td>Doctors</td>
<td>Mother, who at age 37, was a high risk pregnancy, received intermittent Cantonese interpreters during her prenatal care but, she was not provided with sufficient information necessary to make an informed decision regarding whether or not to undergo amniocentesis to determine if the fetus had an abnormality. Child born with Cri-du-Chat Syndrome</td>
</tr>
<tr>
<td>2011</td>
<td>Florida</td>
<td>West Palm Beach</td>
<td>$4,500,000 (verdict)</td>
<td>Healthcare providers (hospital settled pre-trial)</td>
<td>Mother had several ultrasounds where tech failed to confirm presence of legs or arms, part of minimal elements of standard examination of fetal anatomy. Child was born with aplasia and hypoplasia, with both arms absent, absent leg and other deformities.</td>
</tr>
</tbody>
</table>
The 2017 edition of PLUS University takes place in Chicago, August 21 & 22. Attendees will learn from industry veterans and get in-depth instruction on multiple professional liability lines. Attendees will also receive a complimentary digital copy of PLUS Curriculum module 01/02, Fundamentals of Liability Insurance/CGL Insurance Overview, to review prior to the live session. Put your career on a winning trajectory, register for PLUS University now!

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<tr>
<td>2011</td>
<td>North Carolina</td>
<td>Mecklenburg County</td>
<td>$2,026,381 (arbitration)</td>
<td>Physician, reproductive clinic</td>
<td>IVF technician failed to recognize parents were carriers of cystic fibrosis gene. Child was born with cystic fibrosis.</td>
</tr>
<tr>
<td>2010</td>
<td>California</td>
<td>Los Angeles</td>
<td>$3,325,000 (settlement)</td>
<td>Healthcare providers</td>
<td>Physicians failed to diagnose chicken pox virus in utero. Child was born with multiple congenital abnormalities.</td>
</tr>
<tr>
<td>2007</td>
<td>Florida</td>
<td>Unknown</td>
<td>$23,553,000 (verdict)</td>
<td>Hospital</td>
<td>Parents of one son diagnosed with Smith-Lemli Opitz Syndrome consulted geneticists during pregnancy with second child to confirm child did not have the same condition. They were told child was normal; however, child had same condition.</td>
</tr>
<tr>
<td>2007</td>
<td>New Jersey</td>
<td>Passaic County</td>
<td>$28,000,000 (verdict)</td>
<td>Physicians, laboratory</td>
<td>Child born with myotubular myopathy. His mother was a carrier, and two of her nephews died of the disease shortly after birth. Mother claimed that child’s defect was never detected by medical professionals, despite her requests to test for MTM.</td>
</tr>
<tr>
<td>2006</td>
<td>New Jersey</td>
<td>Unknown</td>
<td>$14,000,000 (settlement)</td>
<td>Healthcare providers</td>
<td>Child born with thalassemia major. Early blood test showed abnormal hemoglobin marker. Incorrect diagnosis of anemia. Failed to run additional tests.</td>
</tr>
<tr>
<td>2002</td>
<td>New Jersey</td>
<td>Union County</td>
<td>$4,200,000 (settlement and verdict)</td>
<td>Hospital, doctors (including OB/GYN and radiologist, clinic)</td>
<td>U/S technician reported possible heart defect. Radiologist did not order follow up. Child was born with deformed left ventricle.</td>
</tr>
</tbody>
</table>

**Endnotes**

1. This noninvasive approach differs from conventional biochemical serum screening (maternal serum alpha-fetoprotein, human chorionic gonadotropin, and unconjugated estradiol), and diagnostic testing such as amniocentesis and chorionic villous sampling.
4. ACOG Committee Opinion, “Cell-free DNA Screening for Fetal Aneuploidy,” no. 640 (Sep. 2015).
5. ACOG Committee Opinion, “Cell-free DNA Screening for Fetal Aneuploidy,” no. 640 (Sep. 2015).
11. See, e.g., allegations set forth in Kivett v. Ariosa Diagnostics, Inc. et al., Superior Court of the State of California, County of San Mateo, Case No. CV124508.
12. Id.

**Conclusion**

The Supreme Court’s decision in *CommScope Credit Union v. Butler & Burke, LLP* brings North Carolina back into line with the majority of jurisdictions nationwide that recognize that, given the impartiality and independence required of auditors, a standard auditor-client relationship does not give rise to any fiduciary obligations. ☺
Pooling risks is nothing new—it goes back to the London docks, where shipping merchants met at Lloyd’s Coffeehouse to swap tall tales and share the high risks of a ship laden with cargo meeting a watery end. There they signed on the reverse sides of the goods’ bills of lading for percentages of the shipping risks and rewards, thus literally “underwriting” them and coining the term we still use.

P2P pooling has many of the same characteristics. The participants typically are not strangers, but are friends in at least the social media sense of that term. Such affiliations may be initiated by brokers or insurers, and have been used to write health, property, automobile, and other lines of insurance. The idea has caught on in Australia, New Zealand, the Far East, and parts of Europe, but is in its infancy in the U.S.

There are other game-changing business models as well. Though diverse in their approach, the “disruptors” share a common goal: to streamline the insurance placement process by reducing the amount of interaction between the applicant and the broker.

**Duty? What duty?**

Each new insurance delivery method puts its own twist on the eternal question facing insurance brokers: when do I cross the line from being an order-taker, simply effecting the customers’ stated needs, and become an advisor, bearing a responsibility to recommend coverages that the customer needs, but hasn’t requested?

In traditional brokerage settings, courts generally imply a duty to advise if the broker has worked with the customer for several years and the customer has always accepted the broker’s recommendations. This is sometimes termed a “special relationship.”

In the online shopping models described above, can the consumer ever have a special relationship with the broker or the direct-writing insurer?

One imagines the policyholder’s testimony in an under-insurance lawsuit: “I completely trusted Full Faith & Credit Insurance Company’s website to advise me about what policy limit I should buy. I had used that site for five years, and over that time FF&C’s website never rejected my yearly selection of the limit with the lowest premium as being inappropriate to my needs. I thought the website and I understood each other.”

In the P2P scenario, may the second “peer,” who has followed the first peer’s advice to pool their insurance purchase, sue the first peer, who is not a licensed insurance professional, for malpractice?

Can both peers sue the broker through whom they jointly procured coverage, although the broker’s role was only to fill their order?

Innovative delivery systems may place too much trust in lay policyholders’ ability to assess their insurance needs. After all, licensed, experienced insurance professionals often disagree about a customer’s insurance requirements: how is a novice to know that an exclusion in his umbrella policy creates a gap in coverage? People who would never dream of performing surgery on themselves are, in essence, taking scalpels in hand to sculpt their financial security.

**Things that go bump in the night**

The mismatch between a primary liability policy and an umbrella policy is just one example of things that can make policyholders lose sleep after a loss. Here are some others; there are many more:

1. **Property coverage: inadequate replacement limits**
   
   In a rapidly rising housing market, the replacement cost limit stated in a homeowner’s policy for the past five years may be grossly inadequate to rebuild following a total loss. Entire California subdivisions were lost in a series of wildfires in 2007, and according to one study done after the tragedy, 75 percent of the homeowners were underinsured for replacement costs by an average of $240,000.
   
   (California Insurance Commissioner Dave Jones sought to remedy such shortfalls by requiring carriers to afford true “replacement” coverage. That regulation is being challenged in court as exceeding the Commissioner’s authority.)

2. **Disability income insurance**
   
   Younger workers often buy life insurance to protect their loved ones’ financial security in the event of their premature deaths. They may overlook the risk of long-term disabilities that prevent them from working, occurring before their eligibility for Social Security disability income payments. Insuring against this risk is especially important in single-breadwinner households. Online comparison shoppers may be focused on getting the best price for life insurance, without appreciating that dying isn’t the only way to become unable to earn an income.

3. **Scope of “Insureds” under liability insurance**
   
   Many commercial general liability (CGL) policies covering small businesses automatically cover the business owner’s spouse, but do not do so if the business incorporates as a limited liability corporation, or LLC. Will the typical CGL policyholder anticipate this change when he or she incorporates the business?

4. **Professionally speaking**
   
   Businesses that sell products don’t usually think of themselves as “professions” like doctors and accountants, but if part of their work is giving advice to customers, and that advice leads to a loss that doesn’t fit within the scope of a CGL policy, a gap results. So-called “miscellaneous professional liability” policies can fill the gap, but who will suggest such a policy to a business owner who thinks a CGL policy covers everything?

   There are potential gaps in every type of insurance—auto, health, fidelity bonds, you name it. If peace of mind is the goal of buying insurance, isn’t a large part of that peace knowing that one’s insurance needs have been evaluated by an expert, and that the expert has his or her own professional liability policy to address errors in judgment?

**Natural selection**

The game changers are onto something. Today’s consumers are cyber-savvy, accustomed to instant responses, and adventurous. But they also demand value. They will drop something novel the moment it fails to meet expectations—just look at a few reviews of new restaurants on Yelp.

Recent innovations in the insurance market may or may not become the “new normal.” The traditional insurance broker is far from going the way of the pterodactyl, but how can he or she compete with these seductive delivery systems? An insurance policy may be treated as a commodity, like a suit of clothes, but one size does not fit all. Buying even a single policy often requires some tailoring.

“Survivor,” the long-running television competition, exhorts its contestants to “outwit, outplay, outlast” the other challengers. In the insurance marketplace, “outperform” may be a better verb.

Brokers will survive and flourish by differentiating their insurance services from the commoditized sales of products. But it won’t be a linear progression. Evolution never is.
A Message to New Underwriters continued from page 11

in this regard. What you can control is the level of service you provide. And it pays. Understand that when you blindly send a quote by email, a competitor who took the time to pick up the phone and communicate with the broker is being positioned to write that piece of business.

Service doesn’t mean saying “yes” 100% of the time. A disciplined underwriting approach means you’re going to have to tell your favorite brokers “no”, likely on a daily basis. It is, however, incumbent upon you to explain why the answer is “no” and to do it in a timely manner. A quick response allows your partners to focus their efforts on finding another market who can provide a solution for that risk. Brokers will tell you that they would rather get a quick “no” so they can move on than to wait for weeks and get a “yes” at the last minute. Speed matters.

When it comes to broker relationships, there is a difference between a partner and a producer. That is to say that a broker’s ability to simply place business with you does not make them a partner. Partners value their relationships with carriers. They understand that a company’s ability to write the business at a profit allows that company to stay in that market and continue to serve those brokers. A partner is not regularly pushing you to write business that you don’t want to write.

You will find that the 80/20 rule applies with 80% of your business written coming from your top 20% of brokers. Let those 20% be partners who you have a shared trust and respect for. Reward that 20% with absolute top tier service.

In closing, as technologically advanced as our business is, at its core it is still about people working with people. Specifically, people working with people that they like. The path to these personal relationships with your brokers is paved first by service. Align yourself with exceptional people so you can contribute positively to your firm’s bottom line. You are what your relationships say you are.

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The PLUS Foundation’s Women’s Leadership Network creates opportunities to network and learn from the experience of women who are leaders by virtue of their achievements. The Foundation endeavors to raise corporate awareness of the value of developing and diversifying leadership. Proactive companies that encourage employees to participate in these events will help realize the overall industry goal of increasing the percentage of women in leadership roles.

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inadequate coverage and unreasonable pricing. Therefore, to avoid repeating mistakes of the recent past, it would only be advantageous to create robotic liability that would be unencumbered by such existing deficiencies. By establishing a new insurance product and entrusting it to those who do understand the intersection of humans, liability, and robots, then insurers will be able to satisfy the demands of those who seek to leverage robots while also establishing a reliable stream of new revenue. A 21st century product ought to be worthy of a 21st century insurance policy.

Another aspect of exposure that needs to be considered is in how a robot is seen socially, something professor Calo discusses in his paper “Robotics and the Lessons of Cyberlaw.” Unquestionably robots are going to be affected by how humanity views them. Sometimes humans will use a term like “uncanny valley” to describe how they feel about a robot, but a majority of the time robots are likely to be viewed as companions, or valued possessions or perhaps even as friends. At the turn of the last century, Sony created an experimental robotic dog named Aibo. During that time, Aibo gained a certain amount of positive interest due to its unique status, but now a number of Aibos are enjoying a second life due to the pleasure people in retirement homes experience when interacting with them. The demand has been such that it caused one of the original Sony engineers of Aibo to create his own company just to repair dysfunctional Aibos. While that particular robot is fairly limited in its interactive abilities, it provides an example of how willing people are to create unexplored liability territory. Accordingly, the most efficient way to go into the future is by creating robotic liability now because, with such a product, insurers have the ability to both generate a new stream of revenue while at the same time providing a more economically stable world.
Calendar of Events

Chapter Events*

Canadian Chapter
- April 26, 2017 • Future PLUS Networking Reception • Toronto, ON
- May 17 • Educational Seminar • Montreal, QC
- June 17 • Educational Seminar • Toronto, ON
- June 17 • Educational Seminar • Halifax, NS

Eastern Chapter
- April 27, 2017 • Networking Reception • New York, NY
- August 7, 2017 • Golf Outing • New Rochelle, NY (New Location)

Hartford Chapter
- May 24, 2017 • Educational Seminar • Hartford, CT
- September 5, 2017 • Golf Outing • West Hartford, CT

Mid-Atlantic Chapter
- May 4, 2017 • Educational Seminar • Philadelphia, PA
- July 18, 2017 • Golf Outing • Phoenixville, PA

Midwest Chapter
- April 27, 2017 • Networking Reception • Indianapolis, IN
- May 4, 2017 • Networking Reception • Cleveland, OH
- June 16, 2017 • Educational Seminar with Lloyd’s • Chicago, IL
- June 2017 • Networking Reception • Chicago, IL
- June 2017 • Networking Reception • Kansas City, MO
- June 2017 • Networking Reception • Detroit, MI
- June 21, 2017 • Golf Outing • Lemont, IL (New Date)

Women’s Leadership Event
- May 10, 2017 • Hyatt Regency • San Francisco, CA

2017 PLUS University
- August 21-22, 2017 • Gleacher Center • Chicago, IL

New England Chapter
- May 4, 2017 • Networking Reception • Boston, MA
- July 24, 2017 • Golf Outing • Cohasset, MA

Northern California Chapter
- July 2017 • Educational Seminar • San Francisco, CA
- August 18, 2017 • Golf Outing • San Francisco, CA (New Location)

Northwest Chapter
- May 18, 2017 • Educational Seminar • Seattle, WA

Southeast Chapter
- May 3, 2017 • Educational Seminar • Miami, FL
- July 2017 • Future PLUS Networking Reception • Atlanta, GA
- September 18, 2017 • Golf Outing • Cumming, GA (New Location)

Southern California Chapter
- May 18, 2017 • Educational Seminar • Los Angeles, CA
- June 22, 2017 • Networking Reception • Los Angeles, CA
- July 31, 2017 • Golf Outing • Los Angeles, CA

Southwest Chapter
- April 20, 2017 • Educational Seminar • Denver, CO
- May 11, 2017 • Educational Seminar • Phoenix, AZ

International Events

Women’s Leadership Event
- May 10, 2017 • Hyatt Regency • San Francisco, CA

2017 PLUS University
- August 21-22, 2017 • Gleacher Center • Chicago, IL

Women’s Leadership Event
- October 3, 2017 • The Yale Club • New York, NY

2017 PLUS Conference
- November 1-3, 2017 • Marriot Marquis • Atlanta, GA

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