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PRACTICE AREAS

Workers Compensation

Personal Injury

Motor Vehicle Accidents

Wrongful Death

Court Holds Private Social Media Postings Discoverable in Personal Injury Lawsuit

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It's undeniable—social media use is increasing exponentially. And, with this rapid increase in the use of social media, more attorneys are quickly realizing the utility of social media postings in litigation. When witnesses or parties to a lawsuit publicly post about their activities and whereabouts, the information can be used to dispute claims of injury during the settlement phase of a case or as impeachment material at trial.

Because social media is a relatively new phenomenon, courts and ethics committees are just now beginning to address issues related to the use of social media postings in lawsuits. For example, as reported in this [law.com article](#), just last month, a New York court issued a ruling regarding the discoverability of private social media postings in a [personal injury trial](#).

The plaintiff in that case brought a lawsuit against the manufacturer and the distributor of a chair that she alleged was defective. As a result of the defect, she fell from the chair, resulting in numerous injuries. The plaintiff claimed that as a result of her injuries, including herniated discs and restricted motion in her neck and back, she was mostly confined to her home and bed.

The defendants sought access to the plaintiff's private postings on Facebook and MySpace, two popular social networking sites. Her attorneys opposed the request, claiming that permitting access to the messages would violate her privacy and allow the defendants access to information that was completely irrelevant to the lawsuit.

The court disagreed with the plaintiff, concluding that defendants were entitled to access the private postings as part of the pre-trial discovery process:



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Plaintiffs who place their physical condition in controversy, may not shield from disclosure material which is necessary to the defense of the action... Accordingly, in an action seeking damages for personal injuries, discovery is generally permitted with respect to materials that may be relevant both to the issue of damages and the extent of a plaintiff's injury...

(It is) reasonable to infer from the limited postings on Plaintiff's public Facebook and MySpace profile pages, that her private pages may contain materials and information that are relevant to her claims or that may lead to the disclosure of admissible evidence.

This is an important ruling, if only because it highlights the risks of interacting on social media sites when involved in a lawsuit. Plaintiffs attorneys should take note and may very well want to advise their clients to delete any social media accounts and to refrain from using social media while their lawsuit is pending.

Howard Ankin of Ankin Law Office LLC (www.ankinlaw.com) handles [workers' compensation](#) and [personal injury cases](#). Mr. Ankin can be reached at (312) 346-8780 and howard@ankinlaw.com.