



Facebook No Friend for FSCO Claimant

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A FSCO arbitrator has ordered a claimant to produce to the insurer all photographs with her image posted to her Facebook profile (including any limited-access or private portion of her profile) for the period May 5, 2008 to May 5, 2010.

In *Rakosi v. State Farm*, the claimant claimed entitlement to income replacement benefits, attendant care benefits, medical benefits and the cost of various assessments, including a chronic pain assessment recommended at 1 ½ years post-accident. The application for the assessment claimed that she had experienced no functional improvement in her pain condition.

State Farm managed to obtain copies of various photos from the claimant's public profile on Facebook and another social networking site named Hi5. Several photographs on the Hi5 site depicted Ms. Rakosi engaged in a variety of activities, including what appears to be an activity known as "zip-lining". State Farm then sought production of her "non-public" photos from Facebook.

The arbitrator noted that the test for production at FSCO remains "semblance of relevance." He stated:

The test at this [pre-hearing] stage is not whether the moving party has established clear relevance between the documents sought and the issues in dispute, but whether the documents have a rational connection or semblance of relevance to the issues in dispute. Indeed, in the absence of formal discovery, a party may not be able to establish relevance to a higher standard without first gaining access to the documents or files.

In this case, Ms. Rakosi's Hi5 account shows photographs of her engaging in various social and recreational activities. These photographs may not prove to be as compelling as State Farm believes them to be, but I am satisfied that at least a semblance of relevance exists between these photographs and Ms. Rakosi's claims that she is unable to work or engage in certain self-care activities due, at least in part, to a chronic pain condition. I am also satisfied that Ms. Rakosi's Facebook profile likely contains photographs similar to those shown on the Hi5 site.

Of note, the arbitrator found that the fact documentary production may fail to ultimately disclose anything of any import should not preclude a party from having access to files or classes of documents that have a rational connection to the issues in dispute.

This case provides yet another example of how insurers can obtain a wealth of information about claimants using social media.

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