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When Facebook Fights Back



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In a world where technology and social media are literally at our fingertips and a part of our everyday lives, it can be difficult to convince a potential or current client of the importance of “laying low” on Facebook, Twitter, Instagram, and the like. While we tread lightly with suggesting to our clients to adjust their privacy settings on various social media accounts, there are certain actions that just cannot be “unseen.” Take Robert McGeehan, a 59-year-old mailman for the U.S. Postal Service in Cape May County, New Jersey. McGeehan filed for workers’ compensation benefits between July 2015 and July 2017, arguing that an on-the-job fall and wrist injury prevented him from performing his work duties. McGeehan’s Facebook account told a different story. Not only was McGeehan not shown how to adjust his settings so the content was private and only viewable by his “friends,” McGeehan took it a

step further. He posted photographs of himself zip lining and rock rappelling while on vacation in 2015. This is quite literally our worst nightmare, a client who alleges an injury is keeping him from his normal day-to-day life, yet surveillance paints a different picture. The irony of course is this was not even an undercover operation, but rather a shot in the foot by McGeehan himself. The New Jersey Office of the Insurance Fraud Prosecutor and Attorney General’s Office got wind of the Facebook content, and after an investigation, this past September McGeehan was charged with stealing more than \$75,000 in federal workers’ compensation benefits.

There are multiple lessons to be learned from McGeehan. First, we cannot assume that any client will “know better” than to post photographs of himself performing activities that directly contradict his injury claims. Facebook is not a unique problem that only affects teenagers and the so-called Millennial Generation. Do not think that just because your client is in his 50s or 60s you do not need to have a conversation about the importance of toning it down on social media. Second, we as trial lawyers need to recognize that Facebook and other social media platforms are not going away. We need to understand how they work and how they can

be used against us in the courtroom. If you do not have an account, I suggest creating one if only to learn how to adjust privacy settings so you can show your clients. Run a social media check and see what the content is like. Is your client posting photographs or sharing controversial articles that are “public” and viewable by all? Not only is this information that a defense attorney might see, but your potential jurors might see it as well. Lesson learned – don’t let your client “McGeehan” himself. Just as you talk to your clients about surveillance, talk to them about social media.

Finally, it is also crucial that we understand our ethical obligations as they affect Facebook and other social media. At the very least, every attorney should read and understand Opinion 2014-5 issued by the Professional Guidance Committee of the Philadelphia Bar Association and Formal Opinion 2014-300 issued by the Pennsylvania Bar Association Committee on Legal Ethics. ♦

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