

Charity: Well. Welcome back to INsight. We're here with Dave Farnbauch today. We're going to talk about the impact of social media when you have a PI claim. So you have a PI claim, are insurance companies and other attorneys going to use your social media, or what you've done on social media in your PI claim?

Dave Farnbauch: Well, Charity, there's no question that it's probably going to be one of the first things that an insurance company does in terms of their investigation of a new claim, because insurance companies and defense lawyers have come to the realization that there's a significant percentage of the population that really do put a big portion of their personal life out there on the internet for public consumption. So it's really a low cost, easily accessible way to get oppo research on a plaintiff that is going to be making a personal injury claim.

Charity: Sure. It can be a treasure trove, I am sure.

Dave Farnbauch: Right. I mean, people don't realize that, and we're not talking about just Facebook, we're talking about Twitter. There's all kinds of different forms of social media, just an internet Google search that they can do. YouTube. I can tell you that over the years I've been involved in numerous cases where we've gone in a deposition and midway through the deposition a defense lawyer will trot out printouts of different social media and put that in front of somebody that's making a personal injury claim. And it can become very problematic to try to explain away things that are on social media posts.

Charity: What are they looking for? So we were talking about earlier, my husband and daughter were in a car accident. I posted a picture. They were in a car accident. Are they looking for that nugget? Are they looking for somebody saying something different than what they're saying now? What are they looking for when they're researching?

Dave Farnbauch: Well, I mean, I think number one, it gives them a lot of information about who they're dealing with. So there's just a lot of information that will be sort of told, tell the story about what kind of person you are by your social media presence. But I think mostly what they're looking for are instances through your posts that show some inconsistency with what you're trying to portray in a lawsuit. I'm injured, I'm hurt, I'm disabled, I'm not able to work, I'm in pain. And then contrast that with what they find on your social media posts. If you've got party pics, if you're taking pictures, you're on an ATV and you're jumping over logs in your ATV, that is just ironclad proof that you are not as disabled and hurt as you are claiming in your lawsuit.

Charity: So what about privacy settings? You know you can set, I think, you can set Facebook and Instagram, I don't know about Twitter as far as privacy settings. Does that protect you?

Dave Farnbauch: Well it really doesn't, unfortunately. First of all, there are companies that are out there that you can hire that have their channels to be able to get social

media. Forensic firms that will go back in time and be able to reconstruct what you've put on your social media, whether you've tried to delete it, or you have privacy settings or whatever. So if an insurance company really wants to get their hands on your social media accounts, they have their channels to do that. And the other thing is, too, is they can send subpoenas in the lawsuit. If they can make a case that if they get evidence that you do make posts, and you do communicate with your friends and neighbors, and so forth on social media, you can actually get what we call a request for production from the other side requesting that you produce that in a lawsuit.

Charity: Well, you just brought up one thing that I'm always curious about. What if you delete it? I've always told my kids don't put things on social media because even if you delete it, it lives on an infamy. Is that true?

Dave Farnbauch: Well, you can delete it, but that's something that can get you in trouble in a lawsuit because there's a concept in the law of evidence known as spoliation, where if you knowingly or intentionally take evidence in a civil case and you get rid of the evidence. You destroy it, or whatever. And, of course, pictures or posts that you made are potentially relevant to your level of injury, or disability, or whatever. If you take that evidence and destroy it intentionally to try to prevent the other side from getting access to that, then potentially you can get in trouble in your civil case because of spoliation of evidence.

Charity: Oh, great advice when it comes to social media. If you have a possible PI claim that you'd like Sweeney Law Firm to help you with, they would love to discuss it with you. All you have to do is give them a call today, 420-3137. We'll be right back.