MARTIN & JONES PLLC
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There seem to be more and more reasons to **BE CAREFUL** about what you "post" on social media like Facebook, Instagram and Twitter. Good advice at anytime, but even better advice if you have suffered injuries as a result of another person's negligence. When an injured person is forced to file a lawsuit because the insurance company is being unfair, insurance company lawyers are more frequently scrutinizing social media both before and after the injury. And some courts are making the injured victim produce social media information. A recent New York Court of Appeals found that a Facebook user's "private data" may even be subject to discovery if the postings contain material relevant to how the injury occurred, or the injury itself. If a picture or posting on social media can be made to seem inconsistent with a claimed injury, a jury may very well agree with the insurance company lawyers, and rule against the injured person.

In a recent personal injury case, the injured person claimed injuries after falling from a horse. The injured person claimed to have suffered spine and brain injuries causing memory loss, problems writing, and social isolation.

The injured person testified at her deposition that she had had a Facebook account to which she posted frequently, including photographs of her pre-injury lifestyle, and possibly her post-injury lifestyle. She also testified that she became a recluse after the incident and had trouble using a computer, and writing.

In the injured person's deposition she testified that she could no longer cook, travel, engage in sports, ride a horse, go to the movies, and had difficulty reading, writing, reasoning, and using a computer. The insurance company lawyer claimed that Facebook photographs and messages might contain information relevant to these claims.

The court granted the insurance company lawyer's motion requiring the injured person to produce all photographs of herself posted "privately" on Facebook after the incident, excluding any showing nudity or romantic relationships.

The court noted that making a personal injury claim does not necessarily make a person's entire social media data "automatically discoverable" and that parties are protected from "unnecessarily onerous" discovery demands, but in certain circumstances, the information may be relevant.

Facebook and other social media material is more and more being requested by Insurance Defense counsel. If the social media contains information which is relevant to the incident or injuries a judge may allow the information to be

discovered. If the information is discovered, it can be taken out of context. Accordingly, after an injury it would be wise not to include anything about the incident, injuries, or any other posting that would be inconsistent with an injury in social media. The best advice is after an injury, don't put anything on social media without talking with a lawyer.

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