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What's In Your Tacklebox?

Trolling The Deep Sea For Hidden Data With Social Media And
Surveillance Investigations To Impact Claim Values

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Social Media Investigations: A Defense Tool in Worker's Compensation and Insurance Claims

In the digital age, social media has transformed from a platform for personal expression into a treasure trove of evidence for legal and insurance purposes. When it comes to worker's compensation claims and insurance-related injury disputes, insurers and employers are increasingly turning to social media investigations as a powerful tool to evaluate the legitimacy of claims, reduce payout values, and bolster defenses in litigation. By analyzing claimants' online activity—posts, photos, videos, and more—stakeholders can uncover discrepancies between reported injuries and real-world behavior, vital background for future discovery efforts with the goal of changing the narrative of the litigated story or settlement discussion.

The Rise of Social Media as Evidence

Worker's compensation and personal injury claims hinge on the claimant's allegations of disability, pain, or loss of function. Traditionally, insurers relied on medical records, witness statements, and surveillance to assess claims. However, the advent of social media has added a new dimension to these investigations. Platforms like Facebook, Instagram, X, and TikTok offer a window into claimants' lives, often revealing activities that contradict their stated limitations. Social media searches can be used to set up future traditional surveillance, contest a Plaintiff's credibility on allegations of disability, find spoliation of evidence/statements against interest or even identify side businesses that establish earnings and ability. It is a tool to look beyond the basic statements and testimony from the injured worker or plaintiff.

Insurance companies and defense attorneys have recognized this potential. Recent industry surveys show that over 70% of insurance adjusters reported using social media evidence in at least one case annually. Additionally, a growing number of firms are employing specialized investigators to comb through online profiles. This shift reflects not only the breadth of social media engagement—where over 4.8 billion people globally maintain active accounts—but also its legal admissibility when properly obtained.

How Social Media Investigations Work

Conducting a social media investigation involves more than a casual scroll through a claimant's public profile. While some might think a quick Google search will provide salient facts, more often many stones are left unturned. Investigators, often trained in digital forensics, systematically analyze posts, comments, tagged photos, and even metadata (like timestamps and geolocation tags) to build a comprehensive picture of a claimant's activities. Publicly available content is fair game, but ethical and legal boundaries prevent hacking or accessing private accounts without consent. It is quite clear that investigators, adjusters and even counsel are skating on thin "ethical ice" if they seek to "friend" or "follow" a claimant/plaintiff for the purposes of a bypassing private social media status. However, when asked, courts may compel claimants to provide access to private posts if deemed relevant to the case.

Additionally, it is imperative to consider how the information is to be used when the process starts. While even a trained defense counsel, paralegal or adjuster could learn these search skills, be forewarned that they might be making themselves a witness for trial. If you find great evidence, it still must be authenticated with a proper legal foundation to be admitted. The best avenue to use the evidence that is obtained is via an outside third party so that the social media "expert" can testify at trial to document the process of obtaining the information.

Reducing Claim Values and Strengthening Litigation Defense

The primary goal of social media investigations in these contexts is twofold: to reduce claim payouts and to fortify defenses in litigation. By identifying evidence of exaggerated or fraudulent claims, insurers can negotiate lower settlements or deny claims outright. Many times, the defense only needs one nugget to tip the scales in the settlement negotiations or defense of the claim to impact the credibility of the Plaintiff.

In litigation, social media evidence can be a game-changer. Defense attorneys use it to challenge the plaintiff's narrative, impeach their credibility, or demonstrate that the injury's impact is less severe than claimed. Courts have increasingly accepted this evidence, provided it is authenticated and relevant. For example, timestamps on posts can establish a timeline of recovery, while photos of physical activity can contradict claims of ongoing pain or immobility.

Ethical and Legal Considerations

Despite its effectiveness, social media investigations raise ethical and privacy concerns. Critics argue that claimants may be unfairly judged for isolated moments captured online, which may not reflect their overall condition. A single photo of someone standing at a party, for instance, doesn't necessarily disprove chronic pain. Additionally, the line between permissible investigation and invasive surveillance is thin, prompting some jurisdictions to impose stricter guidelines on how evidence is collected and used.

Legally, admissibility varies by jurisdiction. In the U.S., the Stored Communications Act and state privacy laws limit access to private accounts, while public posts are generally admissible if relevant. Courts often balance the probative value of social media evidence against potential prejudice, ensuring it isn't misused to misrepresent a claimant's condition. It is important to recognize that as social media usage becomes more pervasive, the judges and jurors evaluating the evidence will be very aware of how information is produced by a claimant/plaintiff and obtained by the defense.

The Future of Claims Defense

As social media platforms evolve and users become more aware of their digital footprints, the cat-and-mouse game between claimants and investigators will intensify. Claimants may lock down profiles or limit posts, while investigators may turn to advanced tools like AI-driven content analysis to uncover hidden evidence. For now, social media investigations remain a cost-effective, powerful tool for insurers and employers seeking to minimize fraudulent claims and defend against inflated lawsuits.

Social media has expanded the proverbial "tacklebox" for an adjuster or defense counsel to aid in the investigation and defense of worker's compensation and insurance-related injury claims. By providing real-time, often unfiltered glimpses into claimants' lives, it offers a counterweight to subjective testimony, driving down claim values and strengthening litigation defenses. As this practice grows, it underscores a broader truth: in the age of oversharing, what you post online can—and will—be used against you.