Leave No E-Rock Unturned

Excavating the Social Media Goldmine in Construction Claims

By Andrew L. Smith

Social media is here to stay and is especially helpful construction claims and litigation. How are you using social media evidence to evaluate your claims and defend your case?

Social media presents a treasure trove of minable information, which if properly used, can be a "game changer" in many claim investigations and lawsuits. This article will explore the many forms of available social media data.

We will address actual case law about social media evidence. We will also expound upon the many practical uses and applications of social media, based on insight from numerous highly qualified members of the insurance profession.

With great power comes great responsibility. This article will address ethical concerns and liability implications resulting from improperly obtaining social media evidence through the use of deceit, fraud, or other obtrusive measures. Lastly, we will overview admissibility concerns and the rules of evidence to consider when relying upon social media data at trial.

We are not just talking about Facebook. Sure, there is Twitter. But have you considered mining information from WhatsApp, YouTube, Snapchat, or Periscope? Social media comes in many shapes and sizes. There are actually six different recognized types of social media, including (1) social networks; (2) bookmarking websites; (3) social news; (4) media sharing; (5) microblogging; and (6) blog comments and forums. Social media mediums include texting, messaging, photographs, connected postings, and video footage.

The possibilities for obtaining information through social media are truly endless. It is vital that we continue to consider *all* available avenues when investigating an individual or business through social media or otherwise seeking written discovery of this data.

A Few Quick and Eye-Popping Statistics

Before we deep dive into the intricacies of social media information, let us touch on the sheer volume of information available. Social media is indeed ubiquitous, and the statistics certainly offer verification of this fact.

- There are 2.3 billion active social media users across the world. Any given inter-

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net user has an average of five social media accounts.

- Facebook has over 1.71 billion users. YouTube has over 1 billion users, and WhatsApp has 900 million users. Collectively, Facebook, YouTube, and WhatsApp are the three most popular social media platforms worldwide.
- Facebook adds 500,000 new users every single day. Six new profiles are created every second. There are 40 million active small business pages on Facebook. A typical user has at least 338 Facebook friends.
- There are 60 billion messages sent through Facebook messenger and WhatsApp per day.
- Three hundred hours of videos are uploaded on YouTube every minute. There are 3.25 billion hours of video footage watched on YouTube every month. The most watched video, entitled "Charlie Bit My Finger," has been viewed 834,956,899 times!
- Snapchat users watch 6 billion videos every day.

We could go on and on regarding the jaw-dropping statistics associated with social media usage. Suffice it to say, in all likelihood, your insured, the parties, the claimant, and other key players in any claim or lawsuit are on social media and may have even posted information on the pertinent insurance claim or litigation.

Words of Wisdom from Our Trusted Claims Professionals

Before we turn to the existing case law, we will turn to words of wisdom from individuals deep in the trenches: our trusted claims professionals.

Mrs. Hina Shah, Old Republic Construction Program Group

Hina Shah is an assistant vice president, claim director at Old Republic Construction Program Group. Mrs. Shah was previously with Liberty Mutual and Turner Construction. She has extensive experience handling many aspects of claims and risk management. The following will provide several real-life examples of her use of social media in claims investigations and litigation.

As a Pre-Text for Surveillance

Let us consider a bodily injury or workers' compensation claim for which it becomes evident that the claimant is alleging ongoing disability. We often talk about conducting surveillance to gain an understanding of the individual's level of activity and disability. Typically, the personal information in the claim file is limited to name, address, phone number, and date of birth. Surveillance can, at times, be assigned somewhat blindly with simply the injured body part and above-noted information. We can spin our wheels just trying to identify the correct person. Considering the statistics on the number of users on social media outlined earlier in this article, it is highly likely that the claimant is active on some form of social media.

For starters, even if the settings are private, we can typically obtain a profile photo, which can then be shared with the insured, employer, or witness, to make a positive identification of the individual easily. Once we start digging, the amount of information that can be uncovered is endless. Just consider how often you have posted on social media about your whereabouts, the folks you are with, or how you are feeling.

Take, for instance, a personal-injury action involving a plumber who sustained a shoulder, neck, and back injury, requiring surgery after being struck by a large object falling from a significant distance. He alleges that due to his injuries, he is totally incapacitated from any and all construction-related work for the remainder of his work-life expectancy. We conduct a social media search and find a number of postings regarding a new home that he just purchased, and he was seeking assistance with construction. In this particular case, the surveillance did not yield him performing any construction activity himself, but it was helpful in giving us a place to start with the field efforts. Had he been caught performing the construction activity himself, the social media search, in conjunction with the footage, would have substantially reduced the value of the case. Before the social media search, it could be a struggle just to locate the individual.

When you can determine that a claimant is relatively active on social media, and the damages are significant, it may make sense to allow your trusted investigators to search and save all the social media hits every two weeks automatically and ensure that they continue to follow up. We have done this in the past and found within those searches that we can sometimes obtain a time and location to perform surveillance, rather than the typical independent medical examination or simply going to a home address and waiting, both of which incur significantly more time and expense.

For starters, even if the settings are private, we can typically obtain a profile photo, which can then be shared with the insured, employer, or witness, to make a positive identification of the individual easily.

Taking it one step further, do not forget the friends list and "tags." When a friend is tagged, we can access his or her information as well, and if his or her settings are public, we can obtain claimant information and whereabouts this way.

During Settlement Negotiations and Mediation

While there are various factors to consider pertaining to the admissibility at trial of the social media data gathered, there is no reason that it cannot be used as leverage at the time of mediation or settlement negotiations. Social media is a means for us to combat the damages case that a plaintiff is attempting to build.

By way of example, a plaintiff who sustained a bicep and shoulder injury with surgery alleged that he would never return to work in construction. He claimed significant limitations with heavy lifting. Social media searches revealed that he was an avid fisherman. We were then able to obtain photos of him posing with a very large fish

that he had just caught. The photos were dated post-accident and post-surgery. We were able to dispute the extent of disability to the shoulder at the time of mediation.

Even if a plaintiff's attorney will argue that the social media proof is not damaging or admissible, surely the plaintiff will experience some anxiety about the future of his or her case if we have information that clearly contradicts his or her own testimony.

It is amazing the volume and depth of information that people readily post about themselves, their friends, or their online "connections." It's as if people cannot help themselves.

Mr. Jacob Roberts, Great American Insurance Group

Jacob Roberts is a claim specialist with Great American Insurance Group. He is also an attorney licensed to practice law in Ohio. His focus is on litigated and high-exposure commercial general liability claims. Since entering the insurance industry, Mr. Roberts has obtained numerous insurance designations, including the widely recognized Chartered Property Casualty Underwriter (CPCU) designation. Below, Mr. Roberts comments on the usage of social media in any claims investigation. He also offers commentary on how account-holders fail to "second-guess" or even think about the content that they post on social media.

Postings Open to the World

If you asked most people, they would readily acknowledge that their social media accounts are accessible by almost anyone. These same people would also likely acknowledge the fact that a social media account, or any type of digital medium, can never truly be deleted. Despite these realizations, few people act in a way that evidences their understanding of these realizations. It is amazing the volume and depth of information that people readily post about themselves, their friends, or their online "connections." It's as if people cannot help themselves. This open sharing can be a treasure trove of information for claim investigation purposes.

It is an amazing contradiction that while people realize that an online post may be accessible forever, the public rarely acts in a way that acknowledges this fact. Within a few hours, we can often obtain not only past and archived posts, but also deleted posts. It should be noted that this is not limited to social media, either. The same capabilities apply to all online matter. For example, insurers are often able to obtain versions of web pages as they appeared on certain days in the past with relative ease.

Scope of Social Media Searches

We often utilize social media in expected ways, including (1) tracking and locating individuals; (2) monitoring and comparing social media accounts to alleged injuries and facts of loss; and (3) even confirming alibies. Utilization of social media, of course, applies to the most widely popular applications, such as Facebook, Snapchat, and YouTube. However, we also have the ability to monitor and access less-known social mediums, such as blogs, "check-in" apps, and the like.

Although the focus of a search is often a claimant, we can also expand searches to include family members, witnesses, acquaintances, and online friends or connections. The information obtained can be used as a first step to aid in identifying potential witnesses, and it can also be used for more in-depth investigation.

For example, by searching a Facebook post, insurers can preserve a record of hundreds, perhaps even thousands, of posts, which may help uncover the facts of a loss, damages, liability, party and witness identities, and other more valuable details.

A "Double-Edged" Sword

Here are a few parting words from Mr. Roberts:

Although we don't often think about it, it should be understood that social media is available to serve not only as the proverbial sword by the insurance company, but often, social media can be used as the shield by a claimant. Going even one step further, claimants also have the ability to use social media to support their allegations or to go towards their damages calculations.

Existing Case Law

According to the American Bar Association, just between January 1, 2010, and November 1, 2011, there were 674 published cases involving social media evidence in some capacity. Social media posts, comments, and photos can be used as evidence at trial to attack a witness's credibility, to show a witness's state of mind, and to dispute damages, among other things. Courts typically allow discovery of personal information posted on a social-networking website if (1) it is relevant to the litigation; and (2) the discovery request is narrowly tailored. *See United States v. Villanueva*, 2009 U.S. App. lexis 3852 (11th Cir. Feb. 15, 2009); *Beye v. Horizon Blue Shield of New Jersey*, 568 F. Supp. 2d 556 (D.N.J. 2008); *Ledbetter v. Wal-Mart Stores, Inc.*, 2009 U.S. Dist. Lexis 113117 (D. Col. Nov. 13, 2009); *Romano v. Steelcase, Inc.*, 907 N.Y.S.2d 650 (N.Y. 2010); *McMillen v. Hummingbird Speedway, Inc.*, 2010 Pa. Dist. & Cnty. Dec. Lexis 270 (Pa. Sept. 9, 2010); *EEOC v. Simply Storage Mgt., LLC*, 2010 U.S. Dist. Lexis 52766 (S.D. Ind. May 11, 2010); *Bass v. Miss Porter's School*, 2009 U.S. Dist. Lexis 99916 (D. Conn. Oct. 27, 2009); *Mackelprang v. Fidelity Natl. Title Agency of Nevada, Inc.*, 2007 U.S. Dist. Lexis 2379 (D. Nev. Jan. 9, 2007). Courts have also compelled interrogatory responses disclosing a party's social-networking website usernames, logins, and passwords. *See, e.g., McMillen v. Hummingbird Speedway, Inc.*, 2010 Pa. Dist. & Cnty. Dec. Lexis 270 (Pa. 2010); *Ledbetter v. Wal-Mart Stores, Inc.*, 2009 WL 1067018 (D. Colo. Apr. 21, 2009).

Courts generally hold that users of social networking websites lack a legitimate expectation of privacy in the materials intended for publication or public posting. See *Moreno v. Hanford Sentinel, Inc.*, 172 Cal. App. 4th 1125 (Cal. 2009) (holding that no person would have s rea-

sonable expectation of privacy where the person took the affirmative action of posting his or her own writing on MySpace, making it available to anyone with a computer and opening it up to public eye); *Beye v. Horizon Blue Cross Blue Shield of New Jersey*, 568 F. Supp. 2d 556 (D. N.J 2008) (stating, "[t]he privacy concerns are far less where the beneficiary herself chose to disclose the information."); *Dexter v. Dexter*, 11th Dist. No. 2006-P-0051, 2007-Ohio-2568 (holding that there is no reasonable expectation of privacy regarding MySpace writings open to public view); *EEOC v. Simply Storage Mgt.*, LLC, 2010 U.S. Dist. Lexis 52766 (S.D. Ind. May 11, 2010) (stating, "a person's expectation and intent that her communications be maintained as private is not a legitimate basis for shielding those communications from discovery"). Indeed, the Facebook privacy policy states, "it helps you share information with your friends and people around you," and "Facebook is about sharing information with others." The privacy policies of social networking websites usually disclaim responsibility for breaches of privacy measures. Facebook's policy explicitly states, "please keep in mind that if you disclose personal information on your page * * * this information may become publicly available." Moreover, "[Facebook] may disclose information pursuant to subpoenas, court orders, or other requests (including civil and criminal matters) if [Facebook] has a good faith belief that the response is required by law."

For example, in *Romano v. Steelcase, Inc.*, 907 N.Y.S.2d 650 (N.Y. 2010), the plaintiff filed suit against a chair manufacturer, alleging that she suffered permanent injuries restricting her from leaving her home. The court allowed discovery of the plaintiff's Facebook and Myspace accounts. Why, you ask? Facebook pictures revealed the plaintiff standing happily outside of her home and were detrimental to her allegations.

In that case, the defendant contended, contrary to the plaintiff's claims of injury, a review of the public portions of the plaintiff's Myspace and Facebook pages revealed that the plaintiff had an active lifestyle and had traveled to Florida and Pennsylvania during the time period within which she claimed that her injuries prohibited such activity. The court determined that there was a reasonable likelihood that the private portions of the plaintiff's pages might then contain further evidence relating to her activities and enjoyment of life, all of which were material and relevant to the defense. Further, production of the plaintiff's entries in her Facebook and Myspace accounts did not violate any right of privacy because the plaintiff had no legitimate reasonable expectation of privacy, given the nature and purpose of such social networking sites. And any such concerns were outweighed by the defendant's need for the information. *See also Nucci v. Target Corp.*, 2015 WL 71726 (Fla. Dist. Ct. App. Jan. 7, 2015) (involving similar discovery in a slip and fall case).

Likewise, in *Mai-Trang Thi Nguyen v. Starbucks Coffee Corp*, 2009 U.S. Dist. Lexis 113461 (N.D. Cal. Dec. 7, 2009), a Starbucks employee was fired for inappropriate conduct and threatening violence to fellow employees. The employee then sued Starbucks for sexual harassment, religious discrimination, and retaliation. The employee's Myspace page was submitted as evidence by Starbucks, where the plaintiff stated:

> Starbucks is in deep s**t with GOD!!! ...I will now have 2 to turn 2 my revenge side (GOD'S REVENGE SIDE) 2 teach da world a lesson about stepping on GOD. I thank GOD 4 pot 2 calm down my frustrations and worries or else I will go beserk and shoot everyone.

Based on the evidence submitted by Starbucks, the court granted summary judgment in Starbucks' favor and dismissed all claims with prejudice.

Not all courts are so keen to allow discovery of social media accounts. In addition, remember to tailor your discovery requests narrowly to the scope of information truly relevant to the claims and defense of the parties. Even the most liberal courts will still use a traditional relevance analysis in assessing such discovery requests.

Juror Investigation

Lawyers are now using social media to investigate potential jurors. This should not be an optional technique: lawyers should be using these advantages in every case in 2018 and beyond. Hundreds of jurors have been documented posting comments on Twitter with "#juryduty." Jurors often check in on Foursquare and will even upload video footage to YouTube. If you are not vetting prospective jurors and ensuring that the chosen jurors are abiding by the court's instructions, you are already far, far behind.

Missouri has gone so far as to impose an affirmative duty on lawyers to conduct internet background searches on potential juror litigation history if a lawyer plans to later argue juror bias related to a juror's litigation history. *Johnson v. McCullough*, 306 S.W.3d 551 (Mo. 2010). New York County Opinion 2012-2 states, "the standards of competence and diligence may require doing everything reasonably possible to learn about jurors who will sit in judgment on a case."

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For example, Amber Hyre, a juror in a West Virginia case in 2008, did not disclose that she was Myspace friends with the defendant, a police officer being tried on criminal charges. After the relationship came to light, a state appeals court threw out the defendant's conviction and ordered a new trial.

Likewise, in March 2009, Stoam Holdings, a building products company that was sued for allegedly defrauding two investors, asked an Arkansas court to overturn a $12.6 million judgment, claiming that a juror used Twitter to send updates during the civil trial. The juror, Jonathan Powell, sent Twitter messages, including, "oh and nobody buy Stoam. Its bad mojo and they'll probably cease to Exist, now that their wal-

let is 12m lighter," and "So Jonathan, what did you do today? Oh nothing really, I just gave away TWELVE MILLION DOLLARS of somebody else's money."

The trial court in the Stoam Holdings case denied the motion seeking to overturn the verdict. The appellate court affirmed the lower court verdict, finding that the defendants failed to demonstrate that outside information was brought into the deliberations and influenced the verdict. The same juror later tweeted, "the courts are just going to have to catch up with the technology."

In a Michigan case, a 20-year-old juror disclosed her verdict opinion on her Facebook page: "Gonna be fun to tell the defendant they're GUILTY." The juror was charged with contempt, fined $250.00, required to write a five-page essay on the Sixth Amendment, and removed from the jury. The violation was discovered by the defendant's son, who just happened to be searching for the jurors on Facebook.

In December 2009, Baltimore Mayor Sheila Dixon was convicted by a jury of embezzlement for stealing gift cards. After the verdict, her lawyers initially asked for a new trial, in part because five of the jurors were communicating among themselves on Facebook during the deliberation period, and at least one of them received an outsider's online opinion regarding how the jury should decide the case.

In the United Kingdom, a juror sitting on a child abduction and sexual assault trial, conducted an online poll seeking her friends' opinions on the defendant's guilt or innocence. The juror posted, "I don't know which way to go, so I'm holding a poll." The judge dismissed the juror upon learning this information.

Indeed, jurors' inappropriate use of the internet, including postings on Facebook and Twitter, has led to over 20 mistrials in the past several years and an endless amount of appeals and problems in the civil context. Several states, including both California and Florida, have implemented new jury instructions to advise jurors not to discuss an active case through social media. After these changes, when jurors were chosen for the perjury trial of baseball star Barry Bonds, they were barred from using social media as they considered the case.

Service of Process via Facebook—It's Happening!

Believe it or not, service of process is also a possibility through social media. Eight countries outside of the United States already permit service of process through social networking platforms, including Canada. State courts in Minnesota, Texas, Utah, and New York have held that service of a complaint via Facebook is acceptable. Federal courts have likewise found social media service of process acceptable. *See, e.g., Fed. Trade Commn. v. PCCare247 Inc.*, 2013 U.S. Dist. Lexis 31969 (S.D. N.Y. March 7, 2013).

Most notably, on March 27, 2015, in *Baidoo v. Blood-Dzraku*, the New York County Supreme Court issued an opinion permitting Facebook private-message service in a divorce case. 48 Misc. 3d 309, 5 N.Y.S.3d 709 (N.Y. Sup. Ct. 2015). Despite efforts of counsel, and even a private investigator, the defendant-husband could not be located and served with the complaint. Evidence indicated that the husband was not employed and did not have a permanent address. The court noted the plaintiff-wife recently posted photographs that had been "liked" by the husband, thus demonstrating that the Facebook account was actively used by the husband.

According to the court:

> In this age of technological enlightenment, what is for the moment unorthodox and unusual stands a good chance of sooner or later being accepted or standard, or even outdated or passé. And because legislatures have often been slow to react to these changes, it has fallen on courts to ensure that our legal procedures keep pace with current technology.

Id. at 313–14.

In considering publication in a newspaper as a possible option, the court also pointed out the concerns associated with such substitute service.

> The problem, however, with publication service is that it is almost guaranteed *not* to provide a defendant with notice of the action for divorce, or any other law suit for that matter. * * * If that were to be done here, the chances of defendant, who is neither a lawyer nor Irish, ever seeing the summons in print, either in those particular newspapers or in any other, are slim to none. The dangers of allowing somebody to be divorced and not know it are simply too great to allow notice to be given by publication, a form of service that, while neither novel or unorthodox, is essentially statutorily authorized non-service. This is especially so when, as here, there is a readily available means of service that stands a very good chance of letting defendant know that he is being sued.
>
> Moreover, the court will not require publication in any newspaper even as a backup method to Facebook. Although a more widely circulated newspaper, like the New York Post or the Daily News, might reach more readers, the cost, which approaches $1,000 for running the notice for a week, is substantial, and the chances of it being by seen by defendant, buried in an obscure section of the paper and printed in small type, are still infinitesimal.

Id. at 316–17.

In the technology-based world of 2017, social media is a much more reasonable alternative to the more traditional newspaper publication option. While service of process via social media should never be your first choice, if the circumstances make it impossible to reasonably assure notice and service to a defendant, remember to consider service by social media as an option. Even if the defendant is not a so-called "millennial," such alternative service may very well be permitted by your local court. Indeed, 72 percent of all adult Americans have at least one social networking account.

A Word of Caution—Ethical Rules and Considerations

When access to a party or witness's information is unlimited and unrestricted, there are no ethical issues in viewing the page's contents. *State ex. Rel. State Farm & Cas. Co. v. Madden*, 451 S.E.2d 721, 730 (W.Va. 1994). Social media information is publicly available in much the same way as materials on a publicly available website. New York State Bar Assn. Op. 843 (2010). For instance, Oregon State Bar Formal Ethics Opinion No. 2005-164 (2005), determined that an attorney could access publicly available social media posts because "a lawyer who reads information posted for general

public consumption is simply not communicating with the represented owner of the web site." "Accessing an adversary's Public Web site is no different from reading a magazine article or purchasing a book written by that adversary," the opinion explains. *Id.*

However, the situation becomes much trickier when social media account settings are changed, and the user increases his or her desired privacy. Most people change the privacy settings so that you must "friend" a person to see that person's page. In some circumstances, lawyers have created false profiles to solicit a "friend request" to a target. In others, lawyers have used investigators or third parties to become "friends" with a target and solicit information. Do not do this!

Among the jurisdictions that have addressed this issue, the consensus appears to be that a lawyer may not attempt to gain access to non-public social media content by using subterfuge, trickery, dishonesty, deception, pretext, false pretenses, or an alias. Two key Model Rules of Professional Conduct are implicated in this situation.

- Rule 8.4(c): A lawyer cannot "engage in conduct involving dishonesty, fraud, deceit, or misrepresentation."
- Rule 4.1(a): A lawyer shall not knowingly "make a false statement of material fact or law to a third person."

In Philadelphia Bar Association Ethics Opinion 2009-02 (2009), a lawyer asked a third party, whose name that a key witness would not recognize, to contact the witness through her Facebook page. The third party did not misrepresent who he was, but he did not reveal his association with the lawyer. The Philadelphia Bar Association Professional Guidance Committee found that the lawyer's activities violated Rules 4.1 and 8.4, reasoning that the lawyer's use of the third party was deceptive. The third party's failure to disclose his association with the lawyer constituted the omission of a highly material fact, which if known to the witness, may have led to the denial of a friend request. *Id.*

Whether you are on the claims-side conducting internet research of a claimant or party, conducting an SIU investigation, or you are counsel, if the information is not publicly viewable, do not use deceit to trick the account holder into disclosing the information. Not only do you face the possibility of such improperly obtained information being excluded from your trial, you may also face a lawsuit. Such circumstances could give rise to invasion of privacy tort claims against an insurer or counsel, and they could also result in bad-faith allegations. Indeed, a Cleveland, Ohio, insurance defense law firm, the insurer that retained it, and the investigator that it hired were sued for invasion of privacy in 2012. The investigator gained access to a minor plaintiff's Facebook page in a dog-bite case after the investigator posed as one of the minor's friends. Such "false friending" is simply a bad idea all around.

But Is It Admissible?

Even if it is obtained, not all social media evidence may necessarily be admissible at trial. Several courts have offered various factors to consider in evaluating whether to admit social media evidence. *Lorraine v. Markel Am. Ins. Co.*, 241 F.R.D. 534, 555 (D. Md. 2007), lists the following factors for courts to consider in ruling whether to admit internet postings:

1. the length of time that the data was posted on the site;
2. whether others report having seen it;
3. whether it remains on the website for the court to verify;
4. whether the data is of a type ordinarily posted on that website or websites of similar entities (*e.g.*, financial information from corporations);
5. whether the owner of the site has elsewhere published the same data, in whole or in part;
6. whether others have published the same data, in whole or in part; and
7. whether the data has been republished by others who identify the source of the data as the website in question.

Likewise, *Griffin v. State*, 2011 Md. Lexis 226, at *34–35 (Md. Apr. 28, 2011), suggested the following methods of authenticating social media postings.

1. Ask the purported creator if he or she indeed created the profile and also if he or she added the posting in question, i.e., "[t]estimony of a witness with knowledge that the offered evidence is what it is claimed to be."
2. Search the computer of the person who allegedly created the profile and posting and examine the computer's internet history and hard drive to determine whether that computer was used to originate the social networking profile and posting in question.
3. Obtain information directly from the social networking website that links the establishment of the profile to the person who allegedly created it and also links the posting sought to be introduced to the person who initiated it.

> When access to a party or witness's information is unlimited and unrestricted, there are no ethical issues in viewing the page's contents.

Conclusion

Although this article just scratches the surface, social media is here to stay and is especially helpful in the world of construction claims and litigation. We are not just talking about Facebook, folks. New social media platforms are created every single day. Remember to evaluate all forms of social media in both the claims phase and subsequent litigation.

Whether you are conducting basic background research about a witness or trying to gain an edge selecting jurors in voir dire, social media information is crucial. You must also remember to update your search efforts. Posts change and new information can be uploaded in seconds. Do not simply conduct a single, one-time social media search when a claim is created or the file arrives in your office.

Although social media can break a case wide open, do not use deceitful or fraudulent methods to obtain the information. This is especially true as courts continue to grant discovery requests related to social media more openly. Social media can indeed be a double-edged sword, as Mr. Roberts references in his comments, above.

So, how exactly are you using social media evidence to evaluate your claims and defend your case? Are you turning over every e-rock possible? FD