



Attorney Discusses Impact of Social Media on Claims - Episode #107

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John Czuba: Welcome to the Insurance Law Podcast, the broadcast about timely and important legal issues affecting the insurance industry. I'm John Czuba, Managing Editor of *Best's Directory of Recommended Insurance Attorneys*.

We're pleased to have with us today Attorney Nicole Tackett from the law firm of [Vernis & Bowling](#), with 17 offices across the Southeastern US. Nicole is a North Carolina Workers' Compensation Department Head for the firm. She graduated from UNC Chapel Hill School of Law in 2000, and has exclusively practiced workers' compensation defense since that time.

Nicole handles a wide variety of occupational disease and injury by accident claims for many industries including retail, food processing, trucking, manufacturing, restaurant, nursing homes, and construction. Nicole, we're very pleased to have you with us today.

Nicole Tackett: Thank you very much.

John: Today's topic is "The Impact of Social Media on Workers' Compensation Claims." Nicole, how can social media be used to investigate and/or defend a worker's compensation claim?

Nicole: There are many ways that social media can be used to help in the defense of a worker's compensation claim. Social media is very important, because it gives you so much information about a claimant.

By accessing the social media sites that a claimant uses, you can find out a plethora of information about the claimant's location, their status, what they're feeling, where they're going, what they're doing. Of course, people post several photographs and videos of themselves on social media sites.

Importantly, too, it also shows who their friends are and their known associates. This information can be very useful, because not only can it help you investigate the mechanism of injury, particularly in a situation where you have a Monday report of a Friday claim. You can check the claimant's social media sites to see if anything may have happened over the weekend that they may have posted about.

It can also be very important in a compensable claim during the course of medical treatment. For example, if a claimant is saying they can't do certain physical activities, or perform certain things, yet they post images of themselves or they talk about activities that they're performing that contradict their reports of pain to the insurance company of the employer or to their medical providers.

John: What types of social medias do you use in your claims investigations?

Nicole: In every claim that we handle, we do a really wide social media search. We look at everything from Facebook, LinkedIn, Twitter, Instagram, Pinterest, Tumblr, and YouTube. You name it, we look at it. The other really important site we go on in every single case is called "Spokeo," which is a really neat site.

It's a social media aggregator. What you can do if you're a member of Spokeo, it's really easy to join, is that you can type in somebody's name, or their address, maybe like a user name, an email, or a phone number. What it will do is it will search multiple social media sites to find out if that person actually utilizes that site.

If you have a name and you type it in, it can show you maybe that person is on Facebook, maybe that person is on LinkedIn, maybe that person's also on Twitter. It can give you a clue on where you need to look, in terms of the specific social media sites.

That can be really helpful for things like Twitter or Instagram where, unlike Facebook where might type in John Smith, you might have to type in a user name to get access to that person's account on Twitter. By using Spokeo, it gives you an idea of what those are.

I will caution though, that that site is not always accurate. If maybe you are going to type in your girlfriend's name or your wife's name just to see what showed up, don't get freaked out if it says something that doesn't look right.

Sometimes it shows the wrong people, or the wrong user name, or something similar. It's not 100 percent accurate, but it can give you some ideas of other places that you can look to find information about a person.

John: Thanks, Nicole. When should an employer or its workers' compensation carrier begin to investigate a claimant on social media sites?

Nicole: The earlier the investigation the better. Early investigations tend to yield the best results, because people aren't expecting it yet.

In several states now the attorney's ethics rule propose that attorneys that represent individuals warn them about the ramifications of posting things on social media sites.

Oftentimes, what happens is once the claim is filed, and a claimant retains an attorney, you will see changes in the privacy settings on their social media sites where they're not visible to the public anymore, but only visible to a certain number of friends and associates.

What you want to do is you want to begin your investigations before those changes occur so that you can get the most information. Even if a claimant shuts down or changes the privacy settings on his or her, let's say, Facebook page, if you're able to get in there early and see who their friends are, that's really important.

Oftentimes, a claimant will be smart enough after an accident, maybe not to post photos of him or herself doing things that are outside of his or her restrictions, but their friends might not be that smart. You can still look at those to further the investigation of your claim.

John: Can this type of information be used in courts?

Nicole: Each state varies on its rules. We're just beginning to see how courts feel about this in recent cases that have come out, but the general consensus is yes. You can use information that you claimed from social media, if the information is public. If it's public, the court will see it as fair game.

If a claimant has their social media sites private, you can still get that information. What you have to do is you have to get permission from the court in order to do that. You have to show that the information is relevant, and you also have to be able to show specifically why you need that particular information, and that you can't get it anywhere else.

It's also really important that all the rules of evidence are followed when you try to obtain that information, in order to have it properly admitted into the court.

John: Nicole, are there any other benefits to a social media investigation, other than using it as evidence in court?

Nicole: Absolutely. In fact, I think the most benefits that I get out of doing a social media investigation is the leverage that it gives me in mediation.

Being able to present information to a claimant that he might have acted fraudulently, or is doing things that he or she is not supposed to do in the mediation gives you a really good opportunity to be able to settle claims for as low as possible.

Particularly in an arena like workers' comp, some states are more claimant-oriented than others. North Carolina is a very employee friendly state. A lot of times in workers' compensation claims in North Carolina, it's hard for defendants to get some really good leverage. A social media search that yields positive results will often provide that for us.

Also, too, it's a really good way to control medical treatment. If a doctor has issued restrictions, or a claimant has really complained of intense pain to a doctor, and you're able to show a doctor pictures of a claimant acting outside his restrictions or without pain, that can really help you direct and define medical treatment.

John: Do you have any cautionary advice for an employer and their workers' compensation carriers, with respect to social media?

Nicole: Yes I do. In fact as much as we can use social media to investigate claimants, the other side can use it to investigate us as well.

Always know that the other side is watching. If there's an employer with an HR manager that likes to say negative things on Facebook, that needs to be shut down. If you have an insurance adjuster that might be complaining about a job, that should be shut down. Whatever we put on our site, they can gather that information as easily as we can gather it from them.

Also, too, I see a trend in claimants using social media as a way to build their case. For example, if they post several posts on Twitter about how their back's hurting, they can't get out of bed, they can't do anything, that helps the claimant build their case.

Finally, to employers and insurance carriers, they really need to be careful about how they perform a social media investigation. Looking like you're somebody else, or setting up a fake profile, and then trying to befriend a claimant so that way you can have access to their private information that is not permissible. That type of evidence gained that way, will not be allowed in any type of court setting.

Again, how you get the information really does matter.

John: Nicole, thanks very much for joining us today.



Nicole: Thank you.

John: That was Nicole Tackett from the law firm of [Vernis & Bowling](#). A special thanks to our producer today, John Weber.

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If you have any suggestions for your future topic regarding an insurance law case, or issue, please email us at lawpodcast@ambest.com. I'm John Czuba, and thank you for joining us.

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