

## Social Networking Sites: A Discovery Treasure Trove

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The impact of social media in litigation continues to expand. As a matter of first impression (in a case not handled by Zarwin Baum), the Superior Court of New Jersey in Blank v. FJC Security Services, Inc. (an unpublished opinion) compelled plaintiffs to disclose non-public content of social networking sites (“SNS”) including MySpace and dating websites. In accordance with the broad definition of “relevant” material under New Jersey Rule of Evidence 4:10-2 and that disputed facts be liberally construed in favor of discovery, the court granted defendants motion in part.

Where a party’s physical condition is placed at issue, SNS evidence may provide pertinent information tending to negate such claims. In this personal injury action, plaintiffs asserted a per quod loss of consortium claim as a result of injuries Mr. Blank sustained. These allegations, amongst others, were buttressed by Mr. Blank’s deposition testimony that sexual relations with his wife decreased because of his injuries. Defendants then uncovered Mr. Blank’s profile on multiple dating websites, publicly displaying his marital status as “single” or “looking to date.”

Consistent with other state and federal opinions, the Blank court denied plaintiffs a right to privacy in SNS and affirmed there is no confidential social networking privilege under New Jersey law. However, the decision does not grant litigants carte blanche to obtain private SNS information. The court limited discovery to content only where defendants made “a threshold showing that publicly available information on that particular site is inconsistent with or undermines plaintiff’s claims, or where the nature of the site itself establishes a threshold showing of relevance.” Although an unpublished opinion, the Blank decision provides guidance.

As involvement in social media increases, lawyers and investigators should research the Internet upon notice of claim and inquire about SNS involvement at deposition. SNS typically contain information establishing pre- and post-existing conditions and include date and time of posting. In cases where plaintiffs assert severe and permanent injuries, photographs of the person playing sports can discredit them. Claims for lost wages and inability to work may be undermined by continuous Twitter or Facebook posting. Companies using social media should ensure document retention policies include SNS. If an SNS is deactivated or altered after a discovery request, a party may obtain sanctions.

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