



How Social Media is Changing Insurance Claims Subrogation - Episode #141

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Guest Attorneys: Jason Sullivan and Rebecca Wright of [Rathbone Group, LLC](#)
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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 Recommended Insurance Attorneys*.

We're pleased to have with us today attorneys Jason Sullivan and Rebecca Wright from the [Rathbone Group LLC](#) law firm in Cleveland, Ohio, which covers the entire United States and Canada for subrogation.

Jason Sullivan is a founding member and manages Rathbone Group's national network of subrogation counsel. He is admitted to the state bars in Ohio and Indiana. He has spent his entire legal career handling subrogation claims, and has actively managed a network of counsel in all of the United States, Canada, Puerto Rico, and Guam since 2011.

Jason is a frequent speaker at the National Association of Subrogation Professionals' annual conference and local Ohio chapter meetings.

Rebecca W. Wright is a founding member of Rathbone Group LLC, where she manages the firm's attorneys and litigation processes. She is admitted to the state bars of Ohio, Kentucky, West Virginia, and Texas, and to the federal bars of the southern district of Ohio, eastern and western districts of Kentucky, northern district of Texas, and southern district of West Virginia.

She has devoted her law practice to subrogation since 2006, litigating everything from auto cases to large auto property cases in multiple jurisdictions.

Ms. Wright has been an active member of the National Association of Subrogation Professionals since 2011. Her speaking engagements have included presentations on topics ranging from third party liability in subrogation cases to negative inference property damage claims to autonomous vehicles.

We are very pleased to have you both with us today.

Rebecca Wright: Thank you, John. Happy to be here.

Jason Sullivan: Thank you very much.

John: Today's topic is the use of social media in subrogation claims. Rebecca, you'll start off with our first question. Can you define for us social media?

Rebecca: It's getting harder and harder, but I can. In general, the term social media refers to websites and applications that allow users to create and share content for the purpose of networking. When we think of social media sites, we tend to think of sites like Facebook and Twitter, photo sharing sites like Instagram and Snapchat, but even more business oriented sites like LinkedIn constitute social media.

To be sure, though, the lines are blurring. For instance, think of Waze, the crowdsourcing traffic monitoring app. Is that a social media app? Users are able to add content in the form of traffic alerts that are shared publicly with other users so the answer is probably. That probably does constitute a social media site or app.

John: Jason, what can be found on social media?

Jason: Really, everything can be found on social media. If you think about...they report people spend an average of two hours a day on social media sites. Teens are spending up to nine hours a day. Every time someone is on a site they are giving information and data to that site.

As Rebecca just mentioned, for people who use Waze, the mapping service that gives you up to date directions, all of your information, including your vehicle location, as well as everything that you're affirmatively providing to them is data that they receive.

Whether or not the application has a privacy agreement or a privacy option or setting that you can protect that or limit who has access to it, the reality is everything about most people's daily lives is on social media, unless they're not on the media, or they have taken very specific steps to try and restrict that through the service's privacy agreements.

I think we've seen recently that's very difficult for those companies to control. Even if it's not clear that the privacy settings apply people are finding out that some of their information that maybe they didn't intend to be out there is out there.

Everything that people do on social media, it's there whether you can see it as public, or whether that information is available to third party companies that are basically scraping the information.

Rebecca: I think that your reference there to the recent events is a really good one, too. If we think about the Cambridge Analytica issue, the issue there was not just the people who were providing the information. It was the fact they were providing information about people to whom they were connected.

While you may have taken care to "lock down" your Facebook profile, if one of your friends had been involved in that then they may have made your otherwise "private" information available through that system.

John: Rebecca, based on that, how could someone actually know that they have the right person in their reach out efforts?

Rebecca: This is an important question because there's a lot of information out there. There's a lot to find.

According to a recent Pew Research Center survey, in 2018, 88 percent of people age 18 to 29 years old report using some sort of social media. That number drops a little bit as you get into the older ages, but it doesn't drop that much. It's fair to say that most people in the United States are on social media.

The question is that in that context, when you find information about somebody how do you know that you have the right John Smith, let's say? In the legal context, we often use discovery tools. Think interrogatories and depositions. We can simply ask the subjects for any handles or screen names that they use.

In the insurance context, if we're talking about handling a claim pre-suit, we want to use other clues, such as related users. Like we mentioned before, who are their friends on the social media platform? Are they friends with the subject's entire family? Then you probably have that person, or at least somebody related to them.

Did they grow up in the same hometown, have the same employer? Privacy settings, though a hot topic now, are still something like a foreign concept to a lot of people so you'd be surprised at what information you can find and confirm on social media.

This should also serve as a reminder to anyone listening out there to check your privacy settings and lock down your online information to the best of your ability. [chuckles]

John: Jason, how can social media ethically be used?

Jason: I certainly think it can be ethically used. It's a tool and it's a resource out there. I think in some cases not to use it or not to be aware of it for an attorney would be even a breach of your ethical duty.

I think, overall, overriding everything is transparency and honesty. If you're an individual, and I'll talk about this a little bit, you shouldn't ethically pretend to be someone you're not in order to connect or link or gain access to another person's information that they're keeping private.

For companies, transparency and honesty is very important. If you go onto a company's website and you're clicking in information about it how they use that information, they're only going to hurt themselves if it's not clear in how they're using that information. If they're planning on selling it, that's certainly going to affect how people are going to use it. They should be open about that.

Transparency and honesty are the overriding ethical issues. There are cases out there where bar associations have come out and specifically stated lawyers and their employees cannot create fake accounts in order to friend or make a friend request to a witness in order to gain information.

You have to use your actual real name. You have to state what it is. If you're not allowed to permissibly contact that individual because of an attorney client relationship, you can't create a fake identity in order to get around those rules.

I think, as Rebecca mentioned with the Mark Zuckerberg testimony that happened just recently here, there's a deep discussion and debate about what is ethical and how the social media companies are running their businesses. But then, also, as users what we're doing and what our personal responsibility is.

John: Rebecca, how can businesses use information on social media?

Rebecca: There is an ethical requirement, as Jason was talking about, although that's a shifting rule. It's a shifting idea. We don't have a clear discussion yet on what exactly is an ethical usage but, like Jason mentioned, businesses should make sure that they're using it honestly and openly.

The most common use we hear about in the business context is in hiring decisions. A quick Google search of a candidate's name can tell you a lot about the candidate in question. To do your due diligence these days, you almost have to do so. You want to check out the various social platforms and see what people are putting up on there.

Former employers often will limit their disclosures when they're called about an employee to just a name and dates of employment, because they want to avoid getting sued. The Internet has a long memory and a big mouth. You can find all kinds of information there that the prospective candidates have posted all of their own volition.

John: Jason, are there any restrictions on social media? Any legal restrictions?

Jason: Yeah, the biggest legal restrictions that exist are the user agreement that each social media site has in place that users agree to when they click on them. That user agreement is a contract. When you sign up for a LinkedIn account, you are agreeing to certain parameters.

I know a lot of communities have neighborhood Facebook pages. There's restrictions on who can advertise, and how many times you can advertise, and what kind of content, as well as the nature of the content to be in that group. They can regulate that.

Those, honestly, are very hard to read. I, myself, have to admit that when I get that it's a quick click agree. I assume there aren't any issues. That's bad on me, but I assume I'm not the only one because those are long agreements and they're difficult to read and understand.

That's the biggest legal restriction, which honestly, a lot of people are probably just blind as to whether or not there is anything they have to do. Otherwise, beyond that, there's a lot of issues that come up with defamatory content and then infringements on intellectual property.

Reposting music videos on YouTube, or bullying that happens on any kind of social media or Twitter account. Those are a lot trickier issues that have to do with federal constitutional law. I think professors have entire seminars that go over an entire semester trying to cover all the legal issues that are involved with that.

The legal restrictions, probably, that are most relevant to the average user is that user agreement.

John: How is social media changing or impacting business dealings?

Jason: I think it's having a tremendous impact. If you think about how quickly the environment, and commerce, and communication is changing and has changed over just the last 10 years, I think there's a lot of good to it. Companies are able to reach their target customers more effectively and more cost effectively.

I think news is spreading. It's not always good news, but news is spreading with a level of transparency. On the other side of that, there are the issues of fake news and fake information.

How it's impacting business dealings for companies is it's allowing for some blunders that can't go away. I know that, right now, if you go on Twitter, you can see fast food companies that seem to be poking at each other. It seems to be a little rivalry and certainly generating news for those companies. I think increasing their ad revenue and also their sales.

There have also been a lot of examples over just the last 12 months of companies that have posted things on social media that I think they wish they would have taken back. Videos of that product, or that company, or the behavior of that company's employees that have not been flattering and have created quite a lot of damage to the brand of those.

The impact on the business world, I think, is dramatic. It's certainly something that all companies need to be aware of, whether they're proactively engaging in a social media campaign or a buy side, dragged into the fray because of other things and other people's use of social media. It's certainly something they need to be aware of.

It's a great opportunity that if it's done effectively, can very much support and increase the brand.

John: Rebecca, can you tell us what type of effect is social media having on subrogation matters in particular or the potential impact on claims?

Rebecca: In the insurance context, social media can be very useful. Consider an insured who claims debilitating back injuries due to a fall at work. I think we all remember that old trope from TV and movies of the private investigator being hired to go out and tail the person and finding out that they weren't being truthful about their injuries.

We don't need that anymore, necessarily. Before paying out hundreds of thousands of dollars in coverage, the insurer could check social media to see if the insured has posted pictures of his weekend water skiing adventures.

It can also be useful in a legal context in terms of subrogation claims for finding witnesses to incidents. You can figure out who else has posted about this automobile collision, or this fire, whatever it may be. It can help you to locate evidence.

Lots of people have their photos either intentionally or unintentionally with the actual location at which they took the photo. That information is relatively easy to find online. It may help you to determine the chain of custody of evidence. You can, perhaps, discover patterns of behavior for the various parties that are involved.

Think of an apartment fire. If you've got one, you probably want to make sure to check social media. Show me a tenant who often smokes in his or her apartment and I will show you a neighbor who tweets about it constantly. Again, there you have that pattern of behavior, that history of behavior for the person who may be exclaiming, "Oh, no. I've never smoked in my apartment."

You will also find information about the incident posted by the actual parties who were involved in it. In this era of social media, people post about the most interesting thing that happened to them in the last five minutes. You can bet that they're going to post about the car wreck that totaled their car last year.

I had a case in which we had an individual who had burned down a shed on our insured's property. The individual was a minor. He was claiming at the time that we filed the lawsuit that it was an accident. He accidentally burned down the shed.

The problem was that in the jurisdiction in which the case was being tried if it was accidental then there was no parental responsibility for it. There was no parental liability for it, but if he had done so intentionally then parental liability would attach.

We went on social media and we were able to locate some of his friends. The friends confirmed that, in fact, he had talked about going to the shed and talked about how he disliked the people who owned it. He was planning to burn it down.



That is information that we probably would never have found without the use of social media. It was as simple as a Facebook search and somebody who had a public Facebook setting.

John: Very interesting. Rebecca and John, thank you so much for joining us today.

Jason: Thank you.

Rebecca: Thank you so much. Glad to be here.

John: That was Jason Sullivan and Rebecca Wright from the [Rathbone Group LLC](#) law firm in Cleveland, Ohio, which covers the entire United States and Canada for subrogation.

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I'm John Czuba and now this message.

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