

## Court Gives Defense Counsel Access to Plaintiff's Private Facebook Profile

Pennsylvania Courts recently considered whether information a plaintiff posted on a social networking site such as Facebook is discoverable in a civil case. On November 8, 2011, in Largent v. Reed, et al., the Honorable Richard J. Walsh of the Court of Common Pleas of the 39th Judicial District of Pennsylvania-Franklin County Branch, issued an opinion permitting defense counsel access to plaintiff's Facebook Login information for the purpose of allowing counsel to inspect plaintiff's Facebook profile. Specifically, the Court held that a defendant in a civil action, who has a good faith belief that the plaintiff's Facebook profile contains information relevant to the defense of the matter is entitled to obtain the plaintiff's Facebook user name and password so that counsel can inspect the contents to look for information that "might prove" that the plaintiff's "injuries do not exist, or that they are exaggerated."

Plaintiff's Facebook profile was public at one point, and defense counsel was able to see that her profile contained information contradicting her claims for damages. Defense counsel was given a "21 day window in which to inspect" the profile.

There are no appellate decisions in Pennsylvania on this issue; however, Judge Walsh's opinion is consistent with two other Pennsylvania Court of Common Pleas rulings. See Zimmerman v. Weis Mkts., Inc., No. CV-09-1535, 2011 WL 2065410 (Pa. C.P. Northumberland May 19, 2011) and McMillen v. Hummingbird Speedway, Inc., No. 113-2010 CD, 2010 WL 4403285 (Pa. C.P. Jefferson Sept. 9, 2010). None of these opinions are binding on other Courts; as such, a different judge, when faced with a similar factual scenario, could come to a different decision.

According to the three Pennsylvania trial court opinions, whether information on a social networking account is discoverable hinges on whether the defendant has a good faith basis for believing that relevant information exists within the account. A good faith basis is generated when information refuting plaintiff's claims is posted on the plaintiff's public profile, indicating other information may exist within the account that is not available to the public due to privacy settings.

Interestingly, published opinions in Pennsylvania Courts have not specifically dealt with situations where defendants have sought information from a plaintiff who has only a private social networking profile, and no publicly available information. Judge Walsh suggests in a footnote that in such situations, the defendants should consider submitting discovery requests to the plaintiff. While not discussed, a good faith belief may also be elicited from the deposition testimony of the plaintiff or witness who has access to the plaintiff's private social networking page.

Discovery of information on social networking sites is a new and relatively hot topic, which we anticipate will be heavily litigated in the near future. Stay tuned...

If you have any questions or comments about this E-Flash, please contact Post & Schell, P.C. Professional Liability attorneys Sharon M. Reiss or Marcie A. Courtney. Sharon can be reached at [sreiss@postschell.com](mailto:sreiss@postschell.com) or 215-587-1047. Marcie can be reached at [mcourtney@postschell.com](mailto:mcourtney@postschell.com) or 215-587-1186.

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