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News & Developments

November 1, 2012

Court Says No to Social-Media Fishing Expedition

Social media is becoming an ever-increasing subject of litigation discovery, and likely will be the source of disputes during pretrial conferences. In a recent New York case, the Appellate Division, Fourth Department confirmed that the state's well-settled principles of disclosure are just as applicable to social-media content as they are to any other type of disclosure material, and refused a defendant access to the plaintiff's social-media content.

In *Kregg v. Maldonado*, No. CA 11-02294 (N.Y. App. Div. Sep. 28, 2012), the appellate panel reversed a decision by Erie County trial court that granted defendant motorcycle-manufacturer Suzuki disclosure of the "entire contents" of the plaintiff's and other social-media accounts. The case stemmed from an accident in which the plaintiff's son was critically injured while driving a motorcycle manufactured and distributed by Suzuki. After learning that the injured son's family established and maintained Facebook and MySpace accounts on his behalf, Suzuki moved to compel disclosure of the "entire contents" of those and any other social-media accounts related to the injured son. Over the plaintiff's objection that Suzuki's demand for such disclosure was irrelevant and burdensome, and that it was a "fishing expedition," the trial judge granted the motion.

The appellate court unanimously reversed, reasoning that while CPLR 3101(a) allows for full disclosure of all matter material and necessary in the prosecution or defense of an action, a party need not respond to demands that are overbroad. Relying on *McMann v. Harleysvill Ins. Co. of N.Y.*, 78 A.D.3d 1524, 1525 (N.Y. App. Div. 2010), the appellate panel found that Suzuki's request lacked sufficient facts to demonstrate that any information in the social-media accounts could contradict the plaintiff's claims or impeach the allegations concerning the diminution of the injured son's enjoyment of life. The court also concluded that disclosure of social-media content must be narrowly-tailored and relate solely to the claimed injury. The court opted to vacate the entire demand rather than to modify it.

— *Zachary G. Newman and Faris Elrabie, Hahn & Hessen LLP New York, NY*

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