

Client Alert

May 2010

CATCHING CLAIMANTS IN THE ACT - INTERNET SURVEILLANCE THROUGH POPULAR SOCIAL NETWORKING SITES

With the rapid rise of social networking through internet sites such as Facebook and Myspace, more and more people are placing personal and private information on the web. At Hall Booth Smith & Slover, we perform internet inquiries of popular social networking sites and public records databases on every claimant upon receipt of a new file. In Workers' Compensation cases, claimant's often will post pictures of themselves, or make comments about their activities. When what the claimant posts on the internet is inconsistent with their allegations or testimony, that can provide employers and insurers with tremendous leverage to limit exposure or negotiate favorable settlements. Social networking sites are a critical repository of information that should not be overlooked when defending claims.

Unfortunately, attorney's are somewhat handcuffed in their ability to access the information that may be available on a person's site. Privacy settings often restrict access only to certain approved "friends" of the profile's owner. If the claimant has hired an attorney, Rule 4.2(a) of the Georgia Rules of Professional Conduct prevents the Employer/Insurer's counsel from communicating with the claimant. An attorney sending a "friend" request to the claimant to gain access to their page would very likely constitute an unauthorized communication.

Fortunately, the Employer has an opportunity to aid their counsel in defending the claim when it comes to social networking sites. It is fairly common for fellow employees to be friends with each other on Facebook and other sites. If other employees have access to the claimant's profile before he hires an attorney, nothing prevents the representatives of the Employer or the attorney from openly requesting to view the claimant's profile through the claimant's "friend." Of course, you should take care in who you approach, to avoid possibly alerting the claimant and causing him to alter his profile. When dealing with workers' compensation claimants, always be on the lookout for potentially valuable information the claimant makes available on social networking sites.

This client alert is intended to inform clients and other interested parties about legal matters of current interest and is not intended as legal advice.

ABOUT HBSS

Hall Booth Smith & Slover is a full-service and diverse law firm with eight regional offices in Georgia, Tennessee and South Carolina. The firm's practice areas are focused and diverse, and include complex civil defense litigation, employment, mass torts, medical malpractice, healthcare, regulatory and governmental matters, and international law.

Whether it's a matter of litigation taking place in the courtroom or negotiations happening in the board room, the attorneys at HBSS will aggressively represent your interests every step of the way.

For more than twenty years, HBSS has been living up to its promise: "Serving to Achieve Excellence." This promise is alive in everything we do from strategically recruiting nationally recognized attorneys and top law students, to being among Atlanta Magazine's "Best Places to Work."

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chairs the HBSS Workers' Compensation Practice Group and is a Partner in the Atlanta office. Mr. Hubbs has been appointed to serve on the Chairman of the State Board Advisory Council for Workers' Compensation and he currently

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