

Client Alert

June 2016

Broad Social Media Discovery Can Be Proportional

Information posted to social media accounts can be highly relevant in suits brought by individuals, but too often requesting parties ask for “any and all” content, rendering their requests overly burdensome and subject to objection. Especially now, with the December 2015 changes to the Federal Rules of Civil Procedure, courts are grappling with how social media discovery fits into this new world of proportional discovery. In the recent case of *Rhone v. Schneider Nat'l Carriers, Inc.*, No. 4:15-cv-01096-NCC, 2016 WL 1594453 (E.D. Mo. Apr. 21, 2016), the court settled this question with a unique approach.

Rhone involved a personal injury action where the plaintiff claimed “severe physical injuries” after she was the passenger in a car struck by a truck owned by Schneider National Carriers. The plaintiff claimed her injuries would cause “great physical pain” in the future, and were “permanent and progressive.” After investigating what information was publicly available on the Internet, the defendant identified relevant content on the plaintiff’s Facebook account, and then made a broad request for copies of any postings, photos or videos made by the plaintiff to social media websites since the date of the accident. The plaintiff objected to the request (using an outdated “irrelevant and not reasonably calculated to lead to the discovery of admissible evidence” objection) and further said there was no relevant content related to the incident. Notably, the plaintiff failed to engage the defendant on whether there was a more tailored request it could respond to, or alternative method for disclosure.

The court, considering a motion to compel, evaluated whether the defendant’s request was too broad and burdensome. As part of this analysis the court relied on Federal Rule of Civil Procedure 26(b)(1), which was amended in December of 2015 to confine discovery to that which is “proportional to the needs of the case” and provided five proportionality factors to consider. After undertaking the proportionality analysis the court mandated a unique alternative to provide the defendant with relevant information without causing disproportional burden to the plaintiff. The court ordered the plaintiff to obtain and deliver a “Download Your Info” report from her Facebook account from the date of the accident to the present. Per Facebook’s Help Center, this report contains over 75 categories of information, including: About Me, Chat (history), Friends, Logins, Messages, Photos, Photos Metadata, Posts by You, Posts by Others, Post to Others, Removed Friends, Searches, Shares, Status Updates and Videos. In coming to this decision, the court conducted a proportionality analysis and determined that obtaining this report was relatively easy — it only required execution of “several simple commands while logged into her Facebook account.” The court acknowledged the plaintiff did have privacy considerations, but noted that the defendant had already uncovered relevant information, and that the plaintiff failed to explain how the request was unduly broad or overly burdensome, particularly in light of the relative ease of providing the requested report. As to benefit, based on the defendant’s earlier investigation showing relevant content, and that the publicly available content for the plaintiff’s social media account shrank in volume between January 2016 and March 2016, the “Download Your Info” report seemed likely to contain information relevant to two issues: (1) whether the plaintiff had spoliated evidence and (2) if plaintiff was as disabled from the accident as she claimed.

Finally, what may be most interesting, and in furthering the decision based on proportionality, the court ordered that while the plaintiff had to produce a summary of her entire Facebook information, the defendants were obligated to produce back to the plaintiff the content from the plaintiff’s download that it intended to rely on for its case.

This case is a reminder that courts now routinely recognize that social media can provide valuable relevant information. While courts will normally require targeted discovery requests, courts may find that broader requests are proportionate to the needs of the case if the requesting party can provide evidence supporting their need for the discovery sought.

Contacts

Corey Lee

leec@hunton.com

Meghan A. Podolny

mpodolny@hunton.com