**Surveillance and Social Media**

If you are making any type of claim for personal injury benefits or compensation, you will be watched. Insurance companies and defense attorneys will spend hours of time and thousands of dollars searching for evidence that damages or destroys your claim. Sadly, enough people making claims for personal injury benefits are caught doing things that are inconsistent with their claimed injuries and disabilities that it is worthwhile to do surveillance in every case, including yours. To help you protect yourself, we have prepared this outline.

**What are insurance companies looking for?**

Insurance companies are looking for any photos, videos, or statements that suggest that your claim is exaggerated or false. Their goal is to decrease the amount of benefits or compensation that they must pay on your claim. For insurance companies, surveillance is a good business practice: An insurance company is happy to pay a private investigator thousands of dollars on the chance that the investigator might uncover a reason to avoid paying you tens or hundreds of thousands of dollars in compensation. You’re probably familiar with the saying “A picture is worth a thousand words.” In personal injury claims, it’s often worth thousands of dollars.

**Is surveillance legal?**

Yes. In most cases, our clients never even know that a private investigator has been watching them. As long as the private investigator does not trespass on your property or harass you, he or she is not doing anything illegal. Some of our clients get very upset when they discover that a private investigator is watching them. Do NOT try to confront a private investigator. If you have concerns about what a private investigator is doing, contact your local law enforcement agency, and let it handle the situation. Physically confronting or chasing a private investigator does not help your case and can cast doubt on your disability.

**When does surveillance happen?**

It can happen at any time during your claim, even if you have not yet filed a lawsuit. If you have filed a lawsuit, however, chances are very high that you will be put under surveillance.

One of the most common times for an insurance company to do surveillance is when you have an independent medical evaluation ordered by the insurance company. The insurance company knows when and where you will be. It also looks very bad when you complain to the doctor that you can’t do a particular activity because of an injury, but a private investigator captures a photo or video of you doing that very activity shortly before or after your appointment. For example, one man told the doctor that he couldn’t walk for more than thirty minutes at a time because his leg would “give out,” but later that day, a private investigator videotaped him walking around a mall for three hours.

**How can I protect myself?**

Follow your treating doctor’s restrictions. If a doctor tells you to avoid certain activities or to limit them in some way, follow your doctor’s advice, both for you own health and the health of your case. You do not have to be totally disabled to win your case or get a fair settlement. But if you are videotaped or photographed doing activities that are inconsistent with your disability, you will lose your case or be forced to accept a significantly reduced settlement.

Be honest about your impairments and abilities. Avoid using words like “never” and “always” when describing your impairments. If you testify at your deposition that you have never been able to rake leaves since your injury, all it takes is one photograph or a few seconds of video of you raking leaves to damage your credibility.

Never submit claims for benefits that you don’t actually need or use. This is particularly important if you have made a claim for auto no-fault benefits. All the insurance company needs is one documented instance of dishonesty by you, and it can potentially avoid paying you any further benefits. As a result, insurance companies are watching you very closely, even early in your claim.

**Do I just have to worry about private investigators?**

No. Public social networking accounts, such as Facebook, Instagram, YouTube, Twitter, LinkedIn, and similar types of sites are free surveillance for insurance adjusters and defense attorneys looking for reasons to avoid paying money on your case. In every case, they will run a computer search to try to find information about you that will embarrass you, damage your credibility, and hurt your case. For example, if you claim that a shoulder injury prevents you from doing your regular job, but you post a photo on your Facebook page of you in a tree stand on opening day of bow hunting season, that photo creates a question about how disabled you are. ***Our best advice is that you deactivate all of your social media accounts until your case is over.***

**What if I don’t want to deactivate my social networking accounts?**

The best way to protect yourself is to deactivate all of your social media accounts until your case is over. We understand that because of social networking’s importance in our society you may choose not to follow that advice. If so, we recommend that you immediately put all accounts on the highest possible privacy setting so that no photos, videos, or posts are public.

Even if you do this, however, you are not fully protected. In some cases, insurance companies have convinced judges to order injured people to disclose social media account usernames and passwords or to provide copies of all photos, videos, and postings from their social media accounts. Because social media is a relatively recent development, we do not yet have clear rules on how much information you may have to disclose as part of a lawsuit. Therefore, if you feel that you must keep your social networking accounts active, we recommend that you follow these rules:

* Do NOT accept any friend or other connection requests from people you do not know.
* Do NOT post any photos or videos of yourself or enable others to tag your photos or videos.
* Do NOT write anything online about your case, medical treatment, personal life, the defendant, or the insurance company.
* Do NOT make comments on other people’s social networking sites.
* Defriend co-workers, especially if you are involved in a workers’ compensation case. They can give your employer and its insurance company a backdoor entrance to your account.
* Do NOT email or text anyone about your case, except your attorney. Communications between you and your attorney are privileged, which means that you can never be forced to share their contents with anyone else. Communications between you and your friends or family members are not privileged. Insurance companies will subpoena your cell phone records to get transcripts of your texts.
* Do NOT participate in blogs, chats, or online message boards.
* While you should make any existing photos, videos, or posts private, you may not delete them. If you do, a court may decide that you spoiled relevant evidence, which will have bad consequences for your case.

We understand that asking you to limit your social networking is inconvenient. But your case is very important. The bigger your case, the harder the insurance company will defend it, which means that it will dig deep to try find damaging information about you. Once you post something online, you lose control over who may see it and how they may use it. We cannot fully rotect you unless you follow our warnings and instructions.

**I’m not doing any activities outside of my doctor’s restrictions. Why should I worry about any of this?**

Insurance companies love to take things out of context. A video of you doing yardwork for three hours when you claim to have significant impairment from a back injury looks bad, even if you testify that you were so sore after doing the yardwork that you couldn’t get out of bed the next day. A Facebook photo that shows you having a good time at a family party or having a few beers with friends can be used to make it seem like your pain isn’t that significant.

Especially in circuit court cases, defense attorneys want to create wedge issues. Defense attorneys know that usually the main reason that jurors award money to an injured victim is that they like the person and want to help him or her. So they search for things about you that might offend jurors and turn them against you. Examples include bumper stickers on your car, ringtone music on your phone or voicemail, and controversial groups or likes on Facebook. In our society, many people are already suspicious of anyone making a claim for personal injury compensation, no matter how deserving of compensation that person may be. Don’t give the insurance company and its attorney potential side issues that allow them to distract jurors from what happened to you and the losses that you have suffered.

**Does your firm use social media?**

Yes. Our firm has a Facebook page and our staff use social media sites. Our policy is not to friend or connect with our clients until after their case is over. We have this policy to preserve the attorney-client privilege and client confidentiality. Please do not be offended if your attorney or a staff member ignores your friend request on Facebook or your connection request on LinkedIn. Also, please do not post anything, even anonymously, on our firm’s Facebook page until after your case is over.