

USING SOCIAL MEDIA IN TODAY'S TRUCKING CASES

Facebook, Twitter, LinkedIn, Google Plus, YouTube, Pinterest, Instagram, Tumblr Flickr, Reddit, Snap Chat, What's App, Quora, Vine, Periscope, Biz Sugar, Delicious, Digg, Viber, Stumbled Upon, and the list goes on and on.

Facebook is the biggest Social Media network on the internet with 1.59 billion monthly active users. It is estimated that more than 1 million small and medium sized businesses use this platform to advertise their business.

Twitter currently has 320 million active monthly users who make use of a 140 character limit to pass on information. Our current President has used this Social Media platform to craft diplomacy, campaign messaging, his administration and our current government.

LinkedIn is a Social Media platform available in 24 languages and has over 400 million registered users.

Instagram has more than 400 million users and *YouTube* has over 1 billion website visitors per month and is the second most popular search engine behind *Google*. What does all of this mean as it relates to trucking litigation?

We all use Social Media as a way of keeping in touch with the current world and worlds we have left behind. We use Social Media to connect with old college friends, old high school friends, current family members, current events and even get our news from Social Media. Truckers are no different and now use social media platforms more than ever to keep in touch with the world while they're out on the road.

Social Media was designed to keep people in touch with others regardless of distance. Truckers routinely spend weeks on the road in solitude. Sites like *Facebook*, *Instagram* and *Twitter* let truckers stay in touch with family and friends while they're working on the road. *Facebook*, in particular, allows truckers to message, video call and send pictures back and forth to loved ones using cellular data or Wi-Fi for free.

Social Media is a great way for truckers to meet and network with other drivers. They typically join forums or special groups made specifically for truck drivers. [Trucker Club.ig](#), [Trucker.Daily](#), and [Trucker MyLife_S2](#) are three of hundreds of *Instagram* groups for truckers to follow. [USA Truck Drivers](#) has 841,000 followers on *Facebook* and their Mission Statement reads: whatever happens in trucking, we know it first! [Truck Drivers USA](#) is one of the most visited trucking pages. We are here to help you connect."

Trucking companies are using Social Media platforms as an easy and inexpensive way to market not only their transportation services, but also to gain recruits for their companies. *Facebook*, *Twitter*, *Instagram* and *LinkedIn* accounts are all free.

A trucking company can advertise through any one of these Social Media platforms as a way to market their company. Unless they are to pay for “boosting a post”, they can advertise for free on any of these Social Media platforms. There are simply no limits to the amount of information that can be shared and accessed through Social Media.

As the percentage of Smart Phone use among truck drivers continues to increase, Social Media’s popularity among truck drivers continues to grow as well. They use Social Media to stay connected to the industry, and they use Social Media to stay connected with their families at home. With endless hours on the road and constantly being away from their family and friends, they can stay in touch from anywhere. Social Media is becoming the new “norm” in transportation. It is an efficient and cost-effective way to communicate within the industry. Truckers used to stay connected with each other on CB radios. Now, truckers can follow each other and post messages on each other’s *Instagram*, *Twitter* and *Facebook* accounts.

In recent years, there have been a decrease in professional truck drivers. The reasons are obvious: long hours, pressure on family life, health concerns and poor pay. One of the ways that trucking companies are combating the lack of new driver interest is Social Media campaigns that show support for drivers and their families. Social Media can soften the transportation industry and make the trucker life more appealing.

As a result of the ever-increasing use of Social Media in the trucking industry, we, as litigators, are now able to find treasure troves of information, which highlight trucker conduct in direct violation of the Federal Motor Carrier Safety Regulations. Starting with the obvious Federal Motor Carrier Safety Violations, consider the following:

Section 392.80 - Prohibition Against Texting and
Section 392.82 - Using a Hand-Held Mobile Device

No motor carrier shall allow or require its drivers to engage in texting while driving and no driver shall engage in texting while driving. Further, no driver shall use a hand- held mobile telephone while driving a commercial motor vehicle and no motor carrier shall allow or require its drivers to use a hand-held mobile telephone while driving a commercial motor vehicle. Id.

A simple investigation into a driver’s *Facebook*, *Instagram* or *Twitter* account, when cross referenced with their logs, could reveal violations of F.M.C.S.R. Section 392.80 and 392.92. While the Federal Motor Carrier Safety Regulations do not specifically “prohibit against Social Media posting”, the policy in Section 392.80 would clearly cover the same. Better yet, a simple investigation into a driver’s *Facebook* account post-accident could reveal a posted video while driving. A driver may very well want to post a video of a beautiful sunset in the Colorado Mountains or on the Pacific Coast Highway and not realize he or she is in direct violation of the Federal Motor Carrier Safety Regulations.

Most drivers and their trucking companies have “open to public” *Facebook* pages. Therefore, following a trucking accident, an investigation of both the driver and the trucking company’s *Facebook* pages could reveal not only facts about the accident, but also important facts leading up to the accident.

As a practice tip, be sure to read all posts within several months of the accident and all comments to those posts. Each and every post has a time stamp and you will be able to cross reference the same with the comments that follow it. Don't stop with simply doing a *Facebook* search on "People". Remember, the *Facebook* search box contains results on "posts, people photos, videos, marketplace, pages, places, groups, apps and events." Often times, people like myself hardly post, but "troll" *Facebook* to keep connected. Trolls may not post, but they comment or respond to events, or "like" group pages. While your defendant trucker may not post much under his name, he may "like" certain pages that can be helpful in your investigation.

Tag your it!- The same worry we all have about our own plaintiffs is shared by defendant trucking companies. Nothing stops a random person from "tagging" you, a loved one, your plaintiff OR the defendant trucker in a photograph on *Facebook*. Once you locate your defendant trucker's *Facebook* page, you can see his or her friends and then research their pages to see when the trucker has been "tagged". While "tags" in photographs may be unwelcome, they can be helpful in placing a truck driver in a certain location at a certain time doing a certain activity that can bolster your claim.

While it is unlikely that a truck driver or a trucking company uses a "private" *Facebook* account or *Instagram* account, it is entirely possible. It is therefore of the utmost importance that our spoliation letters, which are customarily used to preserve key pieces of evidence, such as log books, ECM data, pre-trip inspections, post-collision alcohol and drug testing results, driver employment files, etc., now be expanded to now include the following:

- **All text messages, call logs, emails, data usage, internet usage, and all Social Media usage, which specifically includes any and all postings to all Social Media platforms, comments to any and all posts, replies to comments on any and all posts, pictures from any and all posts and videos from any and all posts.**

It is imperative that drivers of trucking companies receive the spoliation demand as referenced above because there are no Federal Motor Carrier Safety Regulations regarding the preservation of such data. The Federal Motor Carrier Safety Regulations address preservation of logs for a time certain, however, there are no such regulations regarding Social Media and other specific forms of mobile device data. In our standard Discovery requests, we have traditionally asked for companies to provide cellular data for its drivers. Contained within those responses we can review text messages and various cell phone searches conducted by the driver at or near the time of the accident.

Absent a Court Order or an ongoing criminal investigation, it is unlikely you will be able to inspect the driver's actual Smart Phone. However, so long as the Social Media spoliation request has been logged, we can inspect all the drivers' Social Media usage on our own without Discovery requests. If, however, all of the Social Media postings are deleted, our search will be fruitless.

In our effortless search for evidence that proves the driver or the trucking company was in violation of the Federal Motor Carrier Safety Regulations, we need to turn over every stone. What are we to do when confronted with a trucker or trucking company private *Facebook* page? Traditionally, Courts are not going to grant carte blanche access to another party's Social Media account by requiring the responding party to turn over their user name and password. An in-depth review must be conducted into the caselaw for the State, which currently houses your trucking case. For example, in Pennsylvania, no Appellate Court has issued rulings on whether a party must turn over user names and passwords for private Social Media pages. As Social Media remains a relatively new subject, Trial Courts are constantly being asked to rule on new and novel issues.

It is unlikely that any Court will give a Plaintiff carte blanche access to a Defendant's private Social Media account, however, the chances greatly increase if Plaintiffs can prove relevancy of a particular post within those private accounts. For example, consider a truck driver's comments on his employer's "open to public" *Facebook* page at or near the time of the accident. An investigation into the trucking company's *Facebook* page could reveal a post from the Defendant truck driver. It is highly likely that if that post came at or near the time of the accident, Courts will allow the Plaintiff to obtain the private social media information of the truck driver as the same would be relevant in proving a violation of the Federal Motor Carrier Safety Regulations at or near the time of the accident.

Don't stop your Social Media investigation into drivers and companies with three or four Social Media platforms. Trucking blogs are more prevalent now than ever before. www.ezinvoicefactoring.com/best-blogs-for-truckers is a site that provides the top 15 trucking blogs, which include blogs about *Trailer Talk*, *Trucking Reports*, *Smart Trucking*, "*Truckers of Reddit*" (a blog within a Social Media platform), *Trucker to Trucker*, *Trucking Truth* and *Overdrive* (*Overdrive* is a magazine completely dedicated to serving the trucking industry"). These blogs will not give you specific information on the driver or trucking company that you are pursuing litigation against, rather, they can serve as a guide to the inside world of trucking.

One blog in particular, www.combinedexpress.com/blog/, generates content for trucking industry professionals. They routinely publish articles on a variety of trucking industry topics and have been established as a go to source of information for those in the industry.

The rise of driver and trucking company Social Media consumption has made the industry more vulnerable to evidence that proves Federal Motor Carrier Safety Violations. Now that the trucking industry and Social Media go hand in hand, Plaintiffs' lawyers around the country can now enjoy the same advantage once exclusively enjoyed by those Defense lawyers that defended trucking companies and drivers, transparency!. We now have an advantage that has been given to us by truck drivers and trucking companies. While we cannot be on the scene as quick as the defense lawyer or have the ability to interview the defendant driver before he speaks with police, we have the power of Social Media and all of its outlets. We have the power to "search" and the power to "search" in turn gives us the transparency we've been after for decades!