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AICP Gulf States Chapter Education Day



Social Media in the Insurance Industry

June 24, 2011

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Partner, Co-Chair, Corporate Insurance Practice
Group



What is Social Media/Networking?



What is Social Media/Networking?

Find us on Facebook

SA SAFEAUTO INSURANCE

Ullico

Aflac
We've got you under our wing.™

Social Media

- twitter
- facebook
- Play It Safe Blog
- YouTube

Horace Mann
Founded by Educators for Educators

STATE FARM
Auto
Life Fire
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myspace

Insurance
insurance insurance
Male
31 years old
United States

FARMERS
Last Login: 4/27/2009

Mood: mellow
View My: Pics | Gifts

Contacting Insurance

- Send Message
- Add to Friends
- IM / Call
- Add to Group
- Forward to Friend
- Add to Favorites
- Block User
- Send Gift

MySpace URL:
www.myspace.com/farmersinsuranceusa

Insurance's Interests

Insurance's Details

- Status: Single
- Zodiac Sign: Sagittarius

Insurance's Schools

- San Diego State University San Diego, CA Graduated: N/A
- 1997 to 2001

Insurance's Latest Blog Entry (Subscribe to this Blog)
[View All Blog Entries]

Insurance's Blurbs

About me:
We are you local Commercial Insurance and Financial Services firm. We cater to large accounts and assist our owners with other services in the personal lines market. Our years of experience and reputation in the market have awarded us some of the most demanding clients. Our company has a preferred carrier A+ Standard and Poor rating and we hold over 20% of the restaurant business insurance in California. We are the largest California based Commercial insurance company in the United States!!! Farmers Insurance has named our office two times as Agency of the year and we have received prestige's awards from the Temecula Valley chamber of commerce. Members of our staff have over 35 years in the trade, and are members of many elite insurance honor societies. If you are looking for an office to work on your terms and get it done right were it.

Who I'd like to meet:
Right now we are having open calls for Agents and are offering a sign up bonus if you meet our requirements. WE ARE JUST LOOKING TO SPREAD THE WORD, SO WE WOULD LIKE TO MEET ANY ONE IN THE TEMECULA AREA.

Insurance's Friend Space (Top 4)
Insurance has 25 friends.

- THOMAS
- Juice Tiger
- noone
- Aloe Blacc

Feeling social?
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What is Social Media/Networking?

- **Web 2.0** – web-based interactive and collaborative information sharing
- **Web Log or Blog** – individually maintained website with regular content entries
- **Microblog** – form of web log with very short content statements
- **Audio Content Sharing and Podcasts**
- **RSS (really simple syndication) Feed**
- **Social Calendars**
- **Social Networks**
- **Trackbacks**
- **Video Content Sharing or Vlogs or Internet Television**
- **Wiki** – web site allowing creation and editing of interlinked web pages



What is Social Media/Networking?

- Fusion of sociology and information technology
- Socialization, democratization or communitization of information via virtual communities
- Mainly in real time, dialogue (many-to-many) format
- Increasing the Value of Relationship Currency
- Counter-trend to consumers saying do not contact me, e.g., telemarketing and anti-spam laws
- Grassroots oriented communications
- Customer “word of mouth” marketing like using Facebook’s “Like” feature and Google’s “+1” button extend to user’s social graph
- Extension of e-commerce to mobile-commerce



Corporate Uses of Social Media/Networking

- Company-Sponsored Social Media
 - Advertising campaigns for its products/services
 - Community usually receives access to special content requiring them to unlock it
 - Customer forums for product/service feedback, testimonials and endorsements
 - Employee and Agent forums
 - Employee and Agent recruitment
- Agent-Sponsored Social Media
 - Marketing and customer lead generation
 - Customer forums for product/service feedback, testimonials and endorsements
 - Subagent recruitment
- Customer-Sponsored Social Media
 - Product/service reviews (positive and negative)
 - Agent service reviews (positive and negative)
- Business Intelligence About Competitors



Corporate Uses of Social Media/Networking

- Rapidly becoming a significant medium for business communications
- Insurance companies and agents have begun to utilize this format
- Blurs the line between company and personal communications
- Current laws generally do not specifically address the technology of social media
- Presents a host of legal and business risks

Litigation and Electronic Discovery

- Use of social media expected to be a boon for litigation discovery
- Real time, “in-the-moment” aspect leaves the door open to extremely valuable or extremely damaging comments
- “It’s permanent. It’s indexed. It’s searchable. If it’s inappropriate or even illegal you’ve shot yourself in the foot.” *Social Media Explorer, March 30, 2009*
- Adds a new dimension to the already very expensive process of e-discovery

Litigation and Electronic Discovery

- Records from a company's business conducted through alternative channels like social media, using company supplied computers or hand-held devices is discoverable evidence.
- Companies must consider these communications in their litigation hold order forms, which force the company to prevent such records from being lost or destroyed.

Market Conduct and Insurance Trade Practices Laws

- Many state insurance trade practices and advertising laws arguably apply to social media communications (“tweets,” blogs, photos, videos)
- Trade practice laws proscribing misleading and false statements, defamation and unfair claims practices most likely to be applied
- State insurer marketing/advertising laws likely require companies to monitor company-sponsored social media pages, including agent/broker media pages

Limited Insurance Regulatory Guidance on Social Media

- New York DOI Office of General Counsel Opinion 10-11-07 (Nov. 22, 2010)
 - Use of a Linked-In profile page or similar website for promotion of insurance, insurers or insurance agents is an advertisement under NY insurance law
- Virginia's Insurance Reg. on Life Insurance and Annuity Advertisements (14 VAC5-41-10)
 - Printed or published material, audiovisual material, mailing envelopes, or descriptive literature of an insurer or agent used in direct mail, newspapers, magazines, radio, telephone and television scripts, billboards or similar displays, websites and other Internet displays or communications, **social media**, or other forms of electronic communications

FINRA Regulatory Notice 10-06

- Social Media Web Sites / Guidance on Blogs and Social Networking Web Sites
- Recordkeeping
- Suitability
- Interactive Electronic Forums
 - Entanglement Theory
 - Adoption Theory
- Supervision of Social Media Sites
- Third Party Content Posts
- Social Media Task Force reconvened in March to reevaluate 10-06 and is expected to issue further guidance in 2011



National Futures Association

Notice I-10-01

- Similar guidance to FINRA's Social Media Web Sites / Guidance on Blogs and Social Networking Web Sites
- Supervise Social Media Sites hosted by member firm or its associates and regularly monitor content and remove misleading or fraudulent statements and ban users who engage in egregious or repeat violations
- Audio and Video posts are treated as radio or television advertisements that must be submitted to NFA for prior approval
- Establish employee policies for use of online trading or financial forums to notify employer of such use, or employer could ban such use
- Must supervise use of content hypertext links and, while not responsible for the third party content, the firm must remove a hypertext link that firm has reason to believe is misleading

FTC's Updated "Guides Concerning Use of Endorsements and Testimonials in Advertising"

- Addresses Endorsements and Testimonials in Advertising to FTC's power to determine what are unfair methods of competition or deceptive acts or practices
- Both advertisers and endorsers can be liable for endorser's statements
- Endorsements must disclose "material connections" between advertising company and endorser
- Social Media blogger examples

FTC's Updated "Guides Concerning Use of Endorsements and Testimonials in Advertising"

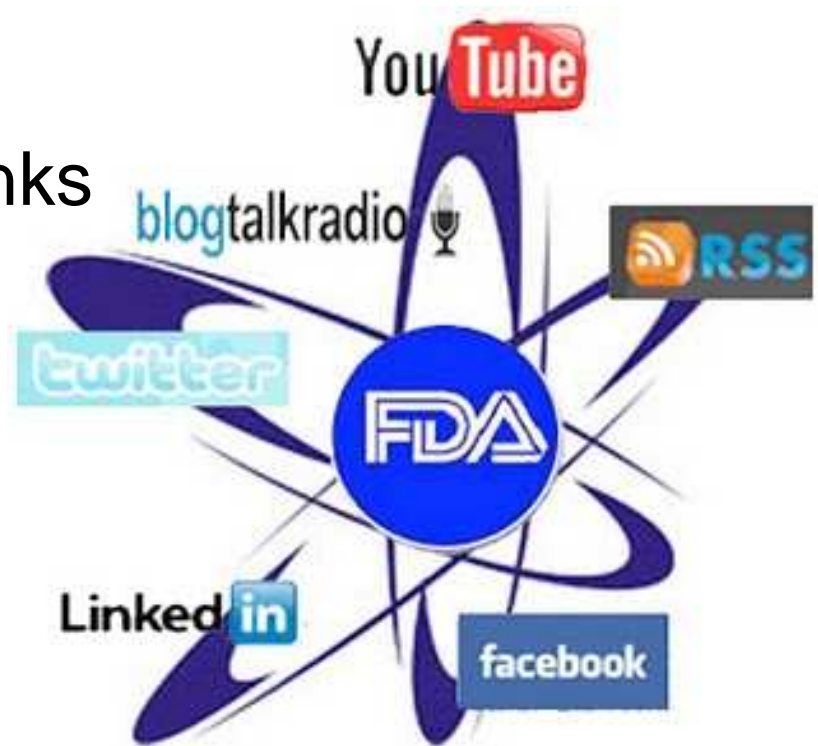
- Blogger who receives merchandise from advertiser who asks blogger to review the merchandise with no compensation paid to blogger other than free merchandise could be endorser depending on merchandise's value and frequency of reviews by blogger
- Widely-read blogger who frequently receives advertiser's products and targets same demographics as blogger's readers is likely an endorser
- Consumers who review products as part of "word of mouth" campaigns likely are endorsers
- "Pay-per-post" blogger is an endorser (aka "advocate" or "influencer")
- Blogging endorser's unsubstantiated claim creates liability for both endorser and advertiser for misleading or unsubstantiated representations
- Celebrity who promotes a product/service via Tweeting must disclose relationship with advertiser

FDA's Hearing on Promotion of Regulated Food and Drugs Using Internet and Social Media Tools

- November 2009
- General information gathering on how Web 2.0 technologies may be used to promote medical products to health care professionals and consumers and Internet adverse event reporting
- For what online communications are manufacturers, packagers and distributors liable?
- How can manufacturers, packagers and distributors satisfy regulatory requirements (fair balance, disclosure of indication and risk information and post-marketing submissions) in Internet and social media promotion?
 - Space limitations and real-time communications limitations

FDA's Hearing on Promotion of Regulated Food and Drugs Using Internet and Social Media Tools

- What parameters should apply to posting of corrective information on web sites controlled by third parties?
- When is use of hypertext links appropriate?
- Internet Adverse Event Reporting



CAN-SPAM Act and Telemarketing Laws

- Social media used to send electronic commercial messages to a phone via an address with Internet domain name, triggers CAN-SPAM Act compliance
- Social media used to send telemarketing text messages to a cell phone triggers Telemarketing (FTC and/or TCPA) Laws compliance
- Social media used to send text messages, even if not a marketing solicitation, using an Automatic Telephone Dialing System to Cell Phone without recipient's express consent is Telephone Consumer Protection Act violation



Applicability of CAN-SPAM Act to Social Media Communications

- Facebook, Inc. v. MaxBounty, Inc. (N.D. Cal.; March, 2011)
 - Facebook alleged that MaxBounty, through a network of affiliates, created fake Facebook pages intended to re-direct unsuspecting Facebook users away from Facebook.com to third-party commercial sites and spam Friends
 - Online marketer MaxBounty argued that CAN-SPAM Act does not apply when no e-mail inbox is involved
 - Court ruled that as long as internet infrastructure comes into play, CAN-SPAM Act applies

Applicability of TCPA Act to Social Media Communications

- Lusskin v. Google and Slide (N.D. Ca, May 2011)
 - Group texting (SMS) service called Disco allows a person to set up using one phone number group texting up 99 other phone numbers
 - Plaintiff claims violation of TCPA prohibiting “calls” to cell phones using an ATDS without prior consent of called person



Record Retention Laws and Policies

- State insurance codes require records be kept for a period of time for examination by regulators
- Companies must assume that these laws include social media
- Regulators may be entitled access to social media communications by insurers and agents
- However, questions of ownership, custody, and control of the information are probable
- Companies should address social media communications specifically in their records management policies

Privacy Laws and Policies

- Numerous state and federal laws could apply
- Insurers should recognize that these laws are triggered when non-public personal information is transmitted unencrypted
- It follows that “tweeting,” even through a private channel like Twitter, could be subject to the law



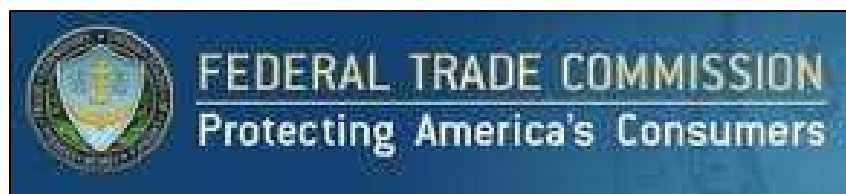
Privacy Laws and Policies

- Gramm-Leach-Bliley Act and HIPAA privacy laws
- Insurers must beware of communicating individuals' names in combination with personal information
- Privacy laws can be triggered when insurers' employees/agents use social media to communicate with insureds in sales, underwriting or claims situations
- Using unsecured web sites or unencrypted email to exchange personally identifiable data could subject insurers to violations of privacy laws



Federal Trade Commission Act

- Insurers also held accountable to their own internal privacy policies
- Failure to comply to website posted privacy policies may open risk of sanctions by Federal Trade Commission
- Failure to comply opens company to liability to consumers who rely on that posted privacy policy



Data Security Breach Laws

- Almost all states now have data security breach laws
- Unauthorized access to social media stored data will likely trigger these laws
- Huge reputational risk
- Costly to comply with addressing breaches



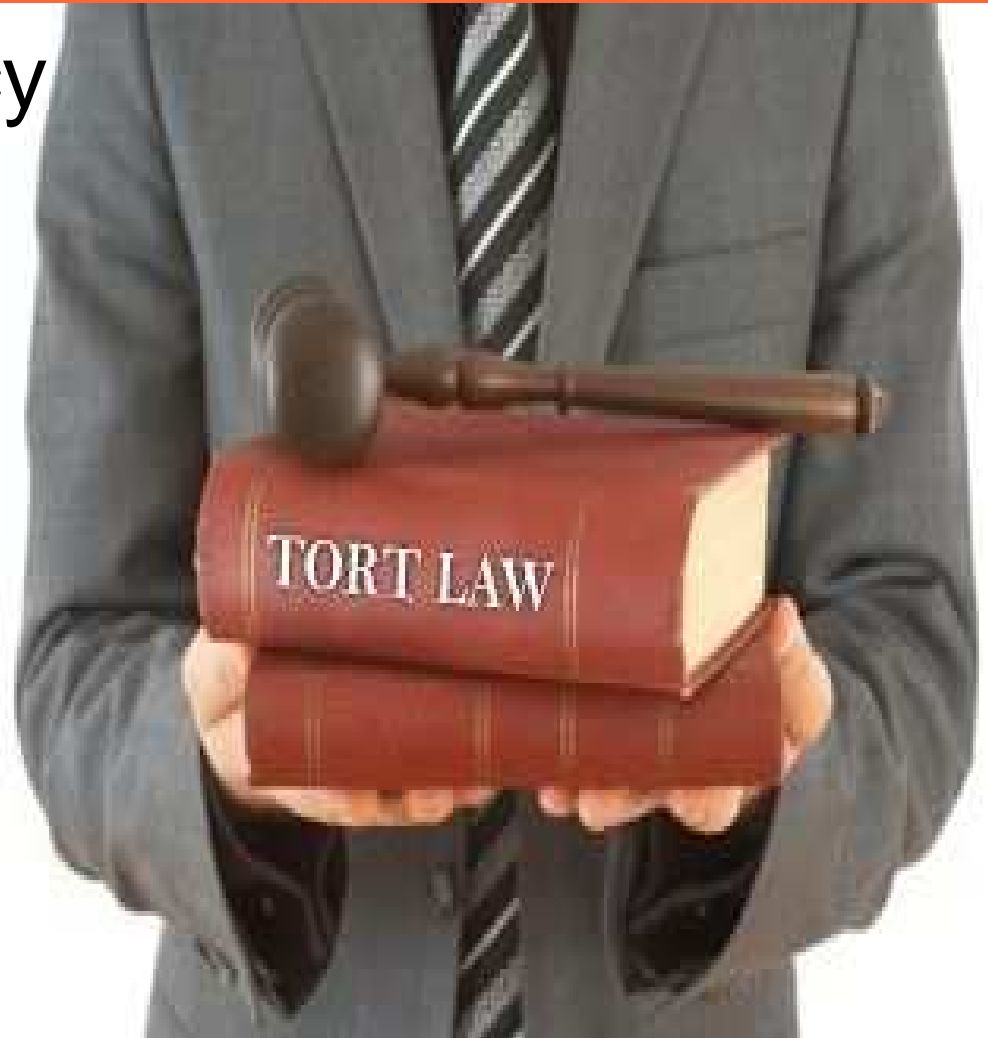
Employment Laws



- Possible exposure due to use of social media by employees to discuss company matters
- Company investigations of employees and employee applicants
- Employee posting during work
- Employee blogging about the company off hours
- Some employers prohibit and block employees' use of social media site using company communications equipment
- Employment references
- "Friending" between supervisor and subordinate
- Harassment and discrimination employee claims
- Retaliation employee termination claims
- Insurers should review/revise employee policies on electronic communications to cover social media

Tort Laws

- Invasion of privacy
- Defamation
- Libel
- Negligence
- Cyber-bullying
- Cyber-stalking



Securities Laws

- Gun-jumping for new issues of securities
- Insider trading
- Regulation FD (Fair Disclosure)
- 2011 SEC sweep of investment advisory firms to gather information on their social media policies



Intellectual Property Laws and Rights

- Issues can arise over ownership and usage rights to content material posted on social media sites by employees
- Risks involving trademarked or copyrighted material or other intellectual property posted to social media without permission can leave a company open to legal complications
- Insurers should take steps to ensure that web sites that appear to be authorized by the insurer are actually authorized and controlled by the insurer
- Adherence to confidentiality agreements
- Social media username registrations raise trademark protection issues similar to Internet domain name registrations and cyber-squatting
 - Coventry First “Tittersquatting” suit filed June 2011

Other Possible Uses of Social Media in Insurance Context

- Social Search Engine Optimization Using Social Plug-ins
- New Product Sales Opportunities
 - Announcement of marriage, death of family member or child birth on social media site
- Delivery of Insurance Quotes
 - 21st Century doing it via Facebook
- Investigation of an Applicant's Responses to an Insurance Application
 - Health/medical conditions, lifestyle, financial information disclosed on social media sites

Other Possible Uses of Social Media in Insurance Context

- Claims assistance information, e.g., recent tornado victims
- Claims Investigations
 - Fraudulent claims for auto, health or workers' compensation insurance benefits from information disclosed on social media sites
- Policy Renewal and Ongoing Risk Review
 - Disclosure of auto accident on social media site
 - Posting of vacation plans

Risk Management and Legal and Regulatory Compliance Plan

- Adopt written policies and procedures on use of social media and communicating with policyholders, insureds and the public
- Implement those policies and procedures
- Educate and train employees and agents on company's policies and procedures and risks arising from use of social media for business and quasi-business communications
- Monitor, audit and enforce compliance with those policies and procedures
- Follow development of regulatory pronouncements, judicial law and best practices as they evolve and review and revise policies and procedures accordingly
- Review liability insurance policies to address social media risks to the company

Questions? Answers!

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