

MEMORANDUM

To: Donatella Dewey, Esq.

From: Sandra Student

Date: December 17, 2019

Re: Sharice Williams Social Media Postings Production

QUESTION PRESENTED

Whether, under New York law, Sharice Williams, plaintiff, is required to produce to Peter Kim, defendant, all the private, public and deleted photographs she posted on her Facebook page after asserting claims of great pain and suffering and loss of enjoyment of life as a result of the car accident between Williams and Kim, that was caused by Kim's reckless driving?

BRIEF ANSWER

Most likely yes. Williams will most likely be required to produce all the private, public and deleted photographs she posted on her Facebook page after asserting claims of great "pain and suffering" and "loss of enjoyment of life" against Kim, that Kim alleges are material and necessary to his defense against Williams. Under New York law, a plaintiff that places their physical condition in controversy may be required to produce any material that is significant to the defense of a party.

FACTS

Our client, Williams, is the plaintiff in a case against Kim, the defendant. Kim claims to have suffered significant pain and suffering and loss of enjoyment of life as a result of a car accident between Williams and Kim in October 2017, allegedly caused by Kim's negligent and reckless driving. Since these allegations, Williams has posted photographs on her Facebook

page where she appears happy, enjoying life and involved in physical and recreational activities. Kim has seen the pictures and considers them useful in his defense against Williams' claims.

DISCUSSION

Under CPLR 3101, "there shall be full disclosure of all nonprivileged matter which is material and necessary to the defense or prosecution of an action." In *Romano v. Steelcase Inc.*, 30 Misc.3d 426 (Sup. Ct. Suffolk Co. 2010), defendant Steelcase brought a motion to the court asking to gain access to Romano's plaintiff, private, public and deleted material posted on her Facebook and Myspace accounts. Defendant argued that while Plaintiff claimed to have "loss of enjoyment of life" and that she "sustained permanent injuries" which forced her to be mostly inside her house, her Facebook and Myspace account photographs revealed that during this time she actually traveled to Pennsylvania and Florida, and had an active lifestyle, which contradicted her claims and were necessary to the defense in this action. The court held that a "Plaintiff who places their physical condition in controversy may not shield from disclosure material which is necessary to the defense of the action." *Walker v. City of New York*, 205 A.D.2d 755 (2d Dep't 1994).

In our case, Williams has posted photographs of herself since the accident where she engaged in physical activity like hiking, dancing, and riding a motorcycle, and she generally looks happy. Similar to *Romano*, Williams has placed her physical condition in controversy. Defendant considers the photos on Williams' social media pages to be "necessary and material" to his defense because the photographs are contradictory to the plaintiff's claims. Therefore, the Court will likely order Williams to produce them.

CONCLUSION

A court will generally allow the production of any non-privileged matter when what is in controversy is alleged to be "necessary and material" to the defense of an action. In our case, Williams posted photographs of herself engaging in physical activities after the accident, which Kim alleges are needful to his defense. Therefore, Williams might be required to produce all her Facebook postings, private, public and deleted, that show she has been engaging in any physical activities during the accident's recovery time period.