



## ACORD Knowledge Center

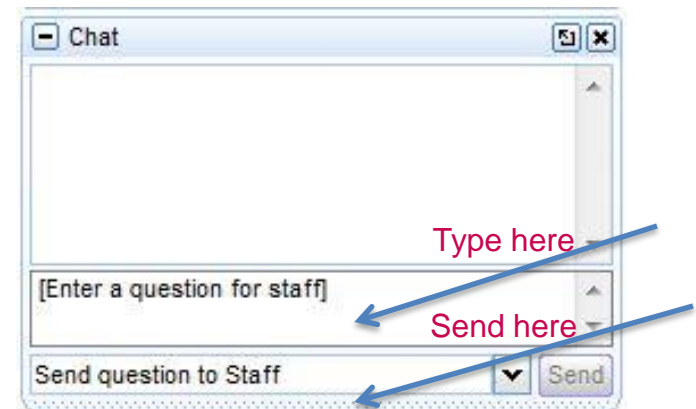
# BEST PRACTICES FOR USING SOCIAL MEDIA IN THE INSURANCE INDUSTRY



# Questions



To ask a question, please use the Chat feature.



If we cannot answer all questions during the webinar, we will respond to attendees' questions by email.

# Presenters

- **Fred E. Karlinsky, Esq., Shareholder**
  - Mr. Karlinsky represents insurers and reinsurers throughout the United States and internationally in all aspects of insurance and reinsurance law, as well as advises on operational issues ranging from start-up activities, structuring and financing, vendor relationships and a complete array of regulatory issues including licensure, compliance, expansion, solvency, rate and form filings and financial and market conduct examinations.
- **Richard J. Fidei, Esq., Partner**
  - Mr. Fidei assists clients with the formation, financing and licensure of insurers, he handles matters such as expansion activities, financial, reinsurance, market conduct, rate and rule filings and administrative and court proceedings, including administrative supervision and insolvency issues.

# Disclaimer

The materials in this presentation are intended to provide a general overview of the issues contained herein and are not intended nor should they be construed to provide specific legal or regulatory guidance or advice. If you have any questions or issues of a specific nature, you should consult with appropriate legal or regulatory counsel to review the specific circumstances involved.

# Talking Points

- Introduction to Social Media
- Regulatory Issues
- Liability Issues
- Examples of Social Media Issues
- Social Media Best Practices



# Social Media

- Social media are a group of internet-based applications that allow for the use and exchange of user-generated content (NAIC White Paper).



# Insurance Industry Use of Social Media

- Social media provides the insurance industry with the capability of establishing channeled communications with thousands of existing insureds and potential customers to promote overall customer satisfaction



# Carrier Uses of Social Media

- Create brand awareness
- Receive market and customer feedback
- Service current policyholders
- Recruit new customers
- Investigative tool





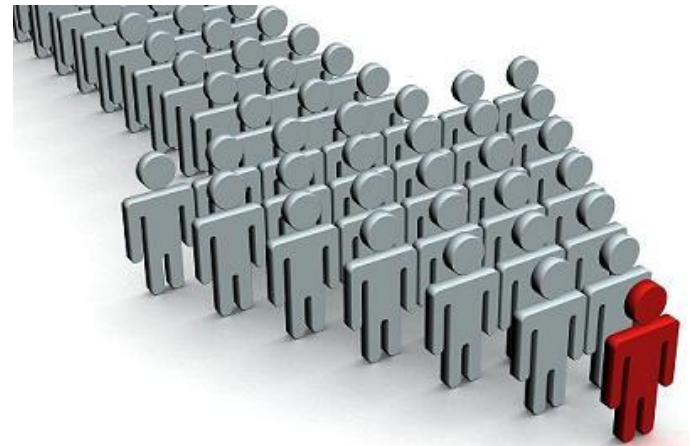
# Producer Uses of Social Media

- Relationship building
- Serving current clients
- Marketing
- Networking with other professionals



# Consumer Uses of Social Media

- Complaints
- Recommendations
- Provide feedback
- Communicate about existing policies
- Submit claims information



# Social Media Pitfalls

## Potential Compliance and Liability Issues Associated with Social Media Use



# NAIC White Paper on Social Media

- The Market Regulation and Consumer Affairs Committee of the NAIC charged the Social Media Working Group to research and examine the role of social media within insurance.
- The working group concluded that licensee's policies, procedures and controls relating to social media must comply with existing statutes and regulations relating to a variety of issues, such as advertising and marketing, record retention, consumer privacy and consumer complaints.

# Compliance with Existing Laws and Regulations

- Compliance becomes a big issue when considering insurance is primarily a state-based regulatory system and social media is pervasive throughout.

# Compliance with Existing Laws and Regulations

## Static v. Interactive Social Media Content

- **Static content** can only be altered by the original poster or with permission from the original poster.
- **Interactive Content** allows third parties to post responses to the original post, including links to other websites.

# Compliance with Existing Laws and Regulations

## Static Social Media Content

- Static content will be subject to regulatory compliance relating to communications with consumers, including advertising (when meeting that definition) and marketing.

# Compliance with Existing Laws and Regulations

## Interactive Social Media Content

- The ability for third parties to post content to interactive posts makes determining the need for regulatory compliance difficult.
- A more nuanced analysis is required to determine if interactive content will be subject to regulatory compliance.



# Compliance with Existing Laws and Regulations

## Trade Practices

- Carriers and producers are prohibited from disseminating any statement or advertisement that is untrue, deceptive or misleading.
- Trade practice statutes are broad and intended to regulate most, if not all, communications from an insurer to the public.

# Compliance with Existing Laws and Regulations

## Advertising

- Advertisement – designed to create interest in insurance, carrier or producer. Intended to induce purchase, modification or retention of an insurance policy or annuity contract.
- E-advertising capable of transcending boundaries.

# Compliance with Existing Laws and Regulations

## Advertising

- Insurance carriers and producers must be aware of mandatory advertising rules when employing social media.
- Some states have guidelines to assist in understanding which e-communications fall under advertising laws.
- Ads may require pre-approval and/or pre-filing.

# Compliance with Existing Laws and Regulations

## Record Retention

- Most states specifically require maintenance of records of advertisements disseminated to the public.
- Maintenance of advertisement records posted on social media platforms is not as simple as records maintenance in a paper based world.

# Compliance with Existing Laws and Regulations

## Record Retention

- It is unclear whether just an initial post must be retained, or whether the initial post and all responses must be retained.
- Users of social media may have to retain content posted by third parties.
- Retaining posts made and received on personal electronic devices should be considered.

# Compliance with Existing Laws and Regulations

## Testimonials

- Testimonials solicited by carriers or producers through social media platforms must satisfy applicable regulations relating to testimonials.
- If unsolicited testimonials posted by 3<sup>rd</sup> parties are adopted by a carrier or producer, the post may become a “testimonial” promoted by the company.

# Compliance with Existing Laws and Regulations

## Standardized Claims Handling

- Insurers are required to settle claims in a prompt, fair, and equitable manner.
- These standards often require insurers to accept or deny a claim within a certain amount of time from the date of notice of loss.

# Compliance with Existing Laws and Regulations

## Social Media as an Investigative Tool

- Insurance carriers use social media platforms to investigate potential fraud.
- Claims investigators research social media platforms seeking evidence that claimants are violating alleged restrictions on their activities.



# Compliance with Existing Laws and Regulations

## Social Media as an Investigative Tool

- The question becomes how far can an insurance carrier go to obtain the information on a claimant's Facebook page?

# Liability Related To Social Media Use

## Consumer Privacy

- Non-public personal information (NPI) provided by consumers to insurance carriers and agents is subject to the consumer privacy protections contained in the Gramm-Leach-Bliley Act.

# Liability Related To Social Media Use

## Responsibility for Content: Adoption and Entanglement Theories

- The “Adoption Theory” holds that a social media host can be found to be responsible for the post of a third party, if the host re-posts, forwards, or, in some cases, fails to remove from their own social media platform the post of a third party.
- The “Entanglement Theory” holds that a carrier can be found to be liable for the posts of a third party, if the carrier is involved in the development of the third party’s post.

# Liability Related To Social Media Use

## Responsibility for Content

- The Communications Decency Act of 1996 provides that internet users cannot be found liable for the posts of a third party.

# Examples of Social Media Issues

## The “Adoption Theory” Tested

- Swift v. Zynga Game Network, Inc.,
  - Rebecca Swift seeks to hold Facebook and Zynga liable for content produced by a third party offered in connection with Zynga games accessed through Facebook.

# Examples of Social Media Issues

## S.E.C. Warns of “Like Button”

- A third party’s use of the “like button” on an investment adviser’s Facebook page could be deemed a testimonial.

# Examples of Social Media Issues

## S.E.C. Probes CEO Over Facebook Post

- The CEO of Netflix posted on Facebook that consumers are viewing more than 1 billion hours of video content monthly from the company website.
- S.E.C. staff will recommend action against the company because the post violated fair disclosure rules.

# Social Media

## Best Practices for Agent Activity

- Require prior approval of agent sites.
- Provide agents with approved content and training on proper website maintenance and tools.
- Require agents to maintain records of social media activity (including dates of revisions).
- Review producer websites for compliance with applicable advertising laws.



# Social Media

## Best Practices for Agent Activity

- Monitor producer websites for any unauthorized use of insurer materials.
- Review agent agreements and make sure they contain compliance responsibility, prior approval and hold harmless provisions.

# Best Practices for Social Media Policy

- Must carefully balance employees' free speech rights with the company's right to manage operations and communications.
- Designate personnel to represent the organization on social media platforms.
  - Licensure
  - Ads and marketing

# Best Practices for Social Media Policy

- Employee and Producer Notice and Training
  - Must be authorized
  - Producer contracts
  - Non-business sites vs. business sites
- Require all posts to comply with all applicable state laws and regulations.

# Best Practices for Social Media Policy

- ID type of information that needs legal review.  
Examples:
  - Product information
  - Claims/complaints
  - Competition
- Procedures for dealing with individual complaints/expressions of grief

# Best Practices for Social Media Policy

- Must include prohibition against revealing non-public personal information and confidential or proprietary company data.
- Proper Controls, including data security
- Monitor and Supervise
- Enforcement
- Record Retention

# For questions or more information ...

## Fred E. Karlinsky

Phone: (954) 332-1749

Email: [fkarlinsky@cftlaw.com](mailto:fkarlinsky@cftlaw.com)



## Richard J. Fidei

Phone: (954) 332-1758

Email: [rfidei@cftlaw.com](mailto:rfidei@cftlaw.com)

Colodny, Fass, Talenfeld, Karlinsky, Abate, & Webb, P.A.

100 S.E. 3<sup>rd</sup> Avenue, 23<sup>rd</sup> Floor

Ft. Lauderdale, Florida 33394

<http://cftlaw.com/>

954-492-4010



# ACORD Knowledge Center



**Webinars  
Recordings  
Reports, Analyses  
& Documents**

[www.acord.org/knowledge](http://www.acord.org/knowledge)