

Meta Seeks A Rally As Instagram Addiction Suit Losses Mount

By **Chris Villani**

Law360 (April 27, 2026, 10:59 PM EDT) -- After a run of litigation losses, Meta Platforms Inc. will have to rethink its strategy in and out of court in an effort to beat back suits from coast to coast claiming that it is illegally hooking kids on Instagram, experts said, with everything from aggressive litigation to a global settlement on the table.

In the company's latest setback, the Massachusetts Supreme Judicial Court unanimously ruled this month that a suit by the state is not barred by either the First Amendment or Section 230 of the Communications Decency Act.

That followed two trial verdicts in March against the company: a \$6 million finding against Meta, along with Google LLC, in Los Angeles and a \$375 million verdict in New Mexico over that state's bellwether claims.

"They are in trouble," said Jeffrey Robbins, a litigation attorney at Saul Ewing LLP.

Even the relatively small California verdict for a woman who says she got addicted to their social media platforms as a child is significant when considering that there are thousands of similar claims nationwide, Robbins said.

"You take 2,400 cases times \$6 million, and pretty soon you're talking real money," he said. "If you are them, you are looking at throwing the kitchen sink at these cases."

Scrolling in Search of a Legal Win

Meta is facing suits from state attorneys general, parents and school districts, among other plaintiffs. The factual allegations are similar: The plaintiffs claim that the company uses various features like infinite scroll, autoplay, intermittent variable reward features and ephemeral content, all aimed at keeping kids from closing the app.

Meta has argued that Section 230 should bar the claims because the company is merely acting as a publisher of content. But the suit brought by Massachusetts Attorney General Andrea Joy Campbell, like other suits, says it is Meta's own conduct that is problematic, and not the content posted by third-party users.

Robbins said one potential avenue for Meta is to try to win favorable rulings in other states.

"If you can stop some lawsuits in states by getting rulings from their highest state court, you can, at least, protect yourself in those states," he said. "Part of the strategy has to be to get rulings different from the SJC in as many states as possible to cabin your potential losses."

Meta has said it plans to appeal its losses in New Mexico and California. Generating conflicting rulings from courts of last resort could not only limit liability but also draw the attention of the U.S. Supreme Court.

The company has expressed optimism in its ability to flip the state verdicts and has argued that, fundamentally, much of the evidence introduced at trial focused on the specific content that users are exposed to, and that holding Meta liable for that would cut against what Section 230 is designed to

prevent.

Christopher Herbert, an associate in Goodwin Procter LLP's appellate and Supreme Court litigation practice, said the case to watch will be the pending Ninth Circuit ruling over whether Meta is protected under Section 230.

In that case, argued in January, parents and school districts pressed the federal court to reject Meta's immunity claims, and a group of states, led by Colorado, made many of the same arguments.

Meta and TikTok LLC asked the Ninth Circuit to flip part of an October 2024 ruling that dismissed failure-to-warn allegations relating to certain website features but allowed others in the multidistrict litigation to proceed. There is a lot hinging on that ruling for Meta, Herbert said.

"As the losses pile up, I can't imagine that they are thinking they are going to have success elsewhere in these individual state cases," he said. "I think they are banking on the Ninth Circuit to do something favorable."

Anthony Panebianco, a litigator at Davis Malm & D'Agostine PC, said the potential for a split on how Section 230 applies is the most obvious lifeline for Meta.

"That's really the big question that could give them inoculation," Panebianco said. "That argument has failed, but the facts of a particular case or the application of the law might be different."

Both Robbins and Panebianco said that disparate rulings on Section 230 immunity could give Meta a path to the pro-business Supreme Court. A ruling knocking down the Instagram suits would be a potential showstopper, bringing thousands of cases to a halt. Of course, a loss at the high court means game over for Meta, Panebianco said.

"Then it becomes the nail in the coffin," he said. "It's not just the law of a circuit, it's the law of the land."

New Approaches Before Juries

Strategy shifts are likely in court as well, attorneys said, if Meta's typical playbook of relying on federal law immunity proves fruitless. Dean Elwell, a business litigator at McCarter & English LLP, said "it's probably high time" Meta leans into the argument that the way Instagram is designed cannot meet the standard of being unfair and deceptive.

Meta says it should not be effectively punished for making a product that people like, pushing back on plaintiffs who call the elements that generate more users a "design defect" and saying that it is a stretch to suggest that people are somehow being duped by features that make Instagram more popular.

Meta argues that it is a high-tech version of what legacy media and other means of publication have done for centuries: making decisions about which content to highlight and which content not to. During oral arguments before the Massachusetts high court, one justice likened Meta boosting its users' content to a book publisher putting an enticing cover on the 1928 D.H. Lawrence novel, "Lady Chatterley's Lover."

"I think they have good arguments," Elwell said. "Designing a product or service to be used often, or very often, may not fit within those traditional notions of unfairness. After all, isn't that what all companies do? They design their products to be used."

Star Kashman, a plaintiff-side tech lawyer and founder of Cyber Law Firm PLLC, said that big tech companies have rarely felt the need to change strategies in the past, as Section 230 and the First Amendment have provided strong liability shields.

"We're beginning to see some creativity from these platforms and their legal strategies as well," Kashman said, citing the recent California trial in which the plaintiff claimed her mental health suffered as a result of her addiction to social media. Meta argued she could not tie her mental health struggles specifically to Instagram.

"Increasingly, I'm seeing them push a narrative that mental health is complex and there are other potential contributing factors when individuals struggle," Kashman said. "It no longer seems possible to ignore that there is a mental health epidemic, so they're trying to place blame elsewhere."

Kashman said that breaking causation and shifting blame can be more than a legal strategy; it can also deter other plaintiffs from bringing similar lawsuits.

A Verdict Worth Posting

The eye-popping \$375 million verdict in New Mexico shows the threat Meta faces from state attorney general suits, Kashman said, noting that states can often overcome some of the evidentiary challenges that private litigants face.

"These cases are traditionally dismissed due to Section 230 or free speech, which throws a private case out before evidence can even be produced, or an investigation can begin," Kashman said. "In these cases, evidence is everything. Because of this, AGs have a better time handling cases because they can obtain information and investigate beforehand, which might reveal the information necessary to succeed in these cases."

Citing her suit against Meta at the American Bar Association Litigation Section's annual conference in Boston on Friday, Massachusetts' Campbell said that "these are the issues of our generation and our time."

"When you think about the mental health epidemic, not just in Massachusetts, but in this country, as a mom engaging with other parents, you have tech companies that obviously designed a product that they had to sell to somebody to make a profit — kudos to them, I'm all for profit — but they didn't go after our seniors, who are lonely, and I think would love an app, or something to engage with," Campbell said. "They went after young people."

Following the Massachusetts Supreme Judicial Court's opinion, a Meta spokesperson said the ruling "is procedural and doesn't address the merits of the case." The company also announced its plans to appeal the trial verdicts.

"Reducing something as complex as teen mental health to a single cause risks leaving the many, broader issues teens face today unaddressed and overlooks the fact that many teens rely on digital communities to connect and find belonging," a Meta representative said. "We remain committed to building safe, supportive environments for young people and will defend our record vigorously."

Even a Settlement May Not Delete All Claims

As the momentum in court continues to swing against Meta, Panebianco said the company should be looking for some sort of an off-ramp.

"You're definitely smelling blood in the water if you're a plaintiff's counsel," he said. "But if I am counsel for Meta, I would try to see if I could consolidate this into some kind of global restitution and resolution for all of the different cases."

But even a wide-ranging settlement may not end Meta's legal problems. Goodwin Procter's Herbert noted that the platform itself is always being updated, and every change could bring with it a new wave of litigation if there are not more controls within the platform to make it less addictive.

"It's not going to be as simple as it was in the tobacco cases where you get these warnings on there, everyone really knows the problems, tobacco is what it is and it's not changing all of the time, so you know what you're getting into this day and age," Herbert said. "For Meta to get to a place like that, they are going to have to do more."

McCarter & English's Elwell noted that big settlements in tobacco and other toxic tort cases did not end that litigation. Dozens of suits over cigarettes or asbestos continue to be filed in Massachusetts alone.

"How do they get a definitive end? Section 230 would be a good one, and maybe they can find a path to the Supreme Court," Elwell said. "Otherwise, you're in the nitty-gritty of class action releases and settlements with dozens of state AGs at the same time. But we saw all that with tobacco, and those cases are still going on."

Saul Ewing's Robbins said Meta would be wise to press Congress to clarify and expand protections under Section 230, which could bring a sweeping end to the litigation. Elwell echoed the thought, saying a full-scale lobbying effort could allow Meta to turn the page in a way that litigation cannot.

"Case by case is not the way," Elwell said, "with no end in sight."

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