

Exploring Legal Trends in Social Media Liability

Anders Sleight: Welcome back to the Litigators Lounge, devoted to exploring timely litigation news with Offit Kurman's Commercial Litigators. I'm Anders Sleight and joining me today as my partner Niall McMillan. Niall, welcome. How you doing?

Niall McMillan: Anders, it's good to join. Doing well. How about yourself?

Anders Sleight: Very well, thank you. Thank you. So, recently we've heard in the news about a jury verdict out in California holding Google and Meta liable for injuries caused by their social media platforms. Can you give us the download on that jury verdict and what it might mean going forward?

Niall McMillan: Yeah, so there's several

thousands actually pending cases out there. But there's two main cases that have decided now. There's one in California, one in New Mexico. They're pretty similar. So their claims brought against Meta. It's Facebook, Instagram, and Alphabet, [00:01:00] Google's and YouTube's parent owner. And they're essentially alleging that the design features of their algorithms, the never ending feeds. It is stuff designed to keep you on the spaces were actually causing emotional distress and harm to people's mental health, especially children. So what these claims were is that they were saying that they were either negligent in doing so and making those design choices, or they're violating consumer protection acts, things like that.

So these are consumer actions brought in against them, they actually resulted in multimillion dollar judgments. But there's a lot of legal issues out there and these aren't precedent yet that these claims can be brought.

Anders Sleight: Yeah, it really interesting. Typically we look at claims of emotional distress and those claims are typically looked at with skepticism, for the most part. It's difficult to prove, particularly where you have a social media platform such as Google and Meta here. But interesting that these juries return verdicts [00:02:00] notwithstanding that skepticism we usually see.

Niall McMillan: Yeah, Meta and Google, they both moved for motion dismiss and those were denied in these cases.

So they did get the jury verdicts there with the finding of facts. But on the appeal it's gonna go to the legal issues and the legal issues they brought up. One of them is there a proximate cause here? So is the actions that they took, did that actually cause the harm there or were these damages, these injuries, were they foreseeable results of the decisions they're making? But one of the more interesting ones is coming up too, there's a law out there that people are probably familiar with a little bit. Section 230, it's a federal statute, and that essentially says that the content that other people post on a internet user or internet provider's website, the internet provider is not liable for that.

Now, they did a workaround. Here is what the plaintiffs are doing is they say that it's not challenging the content on the site, but actually the design features. [00:03:00] And so that has

not been decided by the higher courts. And that's something that's gonna be definitely worked around and probably some conflicting decisions that the Supreme Court will have to decide eventually. There are, in California alone, I looked it up, there's 1,300 similar cases to this. So it's definitely a trend that's gonna keep on coming.

Anders Sleight: Wow, that's amazing. And you can expect that will be proliferate to other states as well. Will you anticipate appellate courts weighing in on these issues as well as we move forward?

Niall McMillan: I do. Yeah, so the state courts, they got California Supreme Court, this could go up to them as well. But there are federal issues here. I have a Section 230 and other internet provider protections that are gonna be at issue. The Supreme Court has punted a few times on putting exact definition of what is covered under Section 230, and I think eventually they're gonna have to recognize that.

And something to make clear too, is that this Section 230 issue and these claims by the plaintiffs [00:04:00] here, they aren't actually just for social media companies. There's a wide range of companies. All internet companies are at risk here of claims for the design. So it's something that everyone, if you're operating especially consumer facing on the internet, then this is something you need to keep in mind and, review your practices and follow the law 'cause there's gonna be some updates here.

Anders Sleight: And you never know, who may be using your product or your feature or your design in unanticipated ways. Right? We've heard a lot about AI platforms, people engaging with chatbots in ways that were not necessarily designed or anticipated.

So I think your point is well taken that this has ramifications broader than just for social media companies that we're all familiar with.

Niall McMillan: Yeah, exactly. I think it's a area that we're gonna be finding out a lot of surprises and that we didn't anticipate ourselves.

Anders Sleight: Well, thank you, Niall. I think that's really important. So if you find yourself facing these issues or you're grappling with how to address updates from these [00:05:00] rulings and these verdicts, please reach out to us. Let us know. As a reminder, Offit Kurman is a full service law firm. We've got offices and litigators from coast to coast, providing litigation services regarding employment, financial services, obstruction, government contracting, and business dispute matters. So please reach out to Niall or myself if you have a litigation matter or a question that we can help address. Thank you.

Niall McMillan: Thank you.