

# NSR Tech Policy: Meta: Here Come the Suits. And the Judges.

By [Blair Levin](#) and [Matt Perault](#) | June 14, 2022

**What's new:** Private plaintiffs filed eight product liability [lawsuits](#) against Meta last week, alleging that the company designed the Facebook and Instagram products to be “manipulative” and “addictive” for kids, despite their knowledge that these products could harm minors. Filed in eight states – Colorado, Delaware, Florida, Georgia, Illinois, Missouri, Tennessee, and Texas – the lawsuits are based on [disclosures](#) made by Frances Haugen last fall.

**Takeaway:** Plaintiffs face an uphill battle and are unlikely to receive relief that will be material to Meta’s stock price. But it is possible that some judges may reach novel decisions that give credence to new legal theories that will expand platform liability, and discovery in these cases may reveal information that proves to be harmful to Meta in the long run. These cases reinforce our view that litigation likely poses a greater threat to Big Tech than legislation, a point we emphasized in Q1 ([LINK](#)) and Q2 ([LINK](#)) presentations on regulatory risk in the tech sector.

## Key points:

- 1. Establishing liability difficult.** Product liability theories of harm are a new avenue of attack for plaintiffs seeking to hold tech companies liable for social harms. It will be difficult for them to establish liability, since it will be hard for them to establish a causal relationship between the product and the harm and, under Section 230, judges may find that platforms can’t be held [liable](#) for hosting user content. While we remain skeptical that Congressional reform of Section 230 is anywhere close to the horizon, depending on how judges rule on the meaning of the law in this context, the issue could come back to the front burner.
- 2. Discovery risks for Meta.** Discovery could be problematic for Meta, not simply because it is burdensome and expensive but because it may surface information that is damaging to the company in the press, gives momentum to legislative reform, or that it becomes the basis of future enforcement action by either state

or federal officials.

3. **Plaintiffs don't need to win everywhere.** The plaintiffs don't need to win all eight cases to score a meaningful victory. If even one judge gives credence to the product liability theory of harm, it could result in a large settlement and inspire future cases based on the theory.
4. **Protecting kids is always a salient political issue.** There is likely to be more attention on technology's impact on kids as the midterms approach. Republicans and Democrats are both troubled by the issue, and if Republicans continue to face headwinds in their efforts to impose restrictions on content moderation, they may see it as a preferable vehicle for voicing their concerns about Big Tech.
5. **Market solutions increasing but it's a two-edged sword.** Regardless of how this litigation unfolds, tech platforms are introducing their own product solutions, hoping to slow the momentum for new policy in this area. In the past several months, Instagram rolled out a chronological feed and a "take a break" feature, and TikTok introduced a similar feature last week. This, however, is something of a two-edged sword. As some in industry take action to prevent the harms alleged in the complaint, such actions become something of a "floor" both in terms of litigation (demonstrating knowledge of the problem and what would constitute "reasonable care") and policy (once one or more companies do something it is much harder to argue that such steps are impractical.) Of course, industry will argue that the private steps are the most productive way forward but some cars offering seat belts on a voluntary basis was not how that policy initiative eventually moved forward.

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