IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

HARTFORD CASUALTY INSURANCE CO. and SENTINEL INSURANCE CO. LTD.,	)	
Plaintiffs,	)	
v.	)	C.A. No. N24C-11-010-SKR CCLD
INSTAGRAM, LLC as successor in interest to Instagram a/k/a Burbn, Inc.; META PLATFORMS, INC. f/k/a TheFacebook Inc. d/b/a The Face Book, Inc.; FEDERAL INSURANCE COMPANY; OLD REPUBLIC INSURANCE COMPANY; STARR INDEMNITY AND LIABILITY COMPANY; and ZURICH AMERICAN INSURANCE COMPANY,	)	
Defendants.	)	
FEDERAL INSURANCE COMPANY	)	
Defendant and Counterclaim/Cross-Claim/Third-Party Plaintiff,	)	
and,	)	
WESTCHESTER SURPLUS LINES INSURANCE COMPANY; WESTCHESTER FIRE INSURANCE COMPANY; and ACE PROPERTY AND CASUALTY INSURANCE	)	

COMPANY,)
)
Third-Party Plaintiffs,)
)
v.)
)
HARTFORD CASUALTY)
INSURANCE COMPANY;)
SENTINEL INSURANCE)
COMPANY, LTD.; INSTAGRAM,)
LLC as successor in interest to)
Instagram a/k/a Burbn, Inc.; META)
PLATFORMS, INC. f/k/a)
TheFacebook Inc. d/b/a The Face)
Book, Inc.; OLD REPUBLIC)
INSURANCE COMPANY; STARR)
INDEMNITY AND LIABILITY)
COMPANY; ZURICH AMERICAN)
INSURANCE COMPANY;)
ALLIANZ GLOBAL CORPORATE)
& SPECIALTY SE; ARCH)
INSURANCE COMPANY; ARGO)
GROUP US; ASPEN AMERICAN)
INSURANCE COMPANY;)
CANOPIUS US INSURANCE,)
INC.; ENDURANCE AMERICAN)
SPECIALTY; FIREMANS FUND)
INDEMNITY CORPORATION;)
GEMINI INSURANCE)
COMPANY; GREAT AMERICAN)
INSURANCE COMPANY; GREAT)
AMERICAN SPIRIT INSURANCE)
COMPANY; INTERSTATE FIRE &)
CASUALTY COMPANY;)
IRONSHORE UK; LIBERTY)
MUTUAL INSURANCE EUROPE)
LTD.; THE LONDON MARKET)
INSURERS; NATIONAL FIRE &)
MARINE INSURANCE)
COMPANY; NATIONAL UNION)

FIRE INSURANCE COMPANY OF PITTSBURGH, PA; RSUI INDEMNITY COMPANY; STARR SURPLUS LINES INSURANCE COMPANY; STARSTONE SPECIALTY INSURANCE COMPANY; STEADFAST INSURANCE COMPANY; and XL INSURANCE AMERICA, INC.,

Third-Party Defendants.

Submitted: April 29, 2026
Decided: May 13, 2026

ORDER DENYING DEFENDANTS META PLATFORMS, INC. AND INSTAGRAM LLC'S MOTION FOR REARGUMENT

Upon consideration of Defendants Meta Platforms, Inc. and Instagram, LLC's Rule 59(e) Motion for Reargument of the Court's February 27, 2026, Memorandum Opinion and Order (the "Motion"),[1] the Court finds as follows:

1. Superior Court Civil Rule ("Rule") 59(e) permits a motion for reargument "within 5 days after the filing of the Court's opinion or decision."[2] Reargument will be denied unless the Court overlooked controlling precedent or legal principles, or misapprehended the law or the facts in a manner affecting the outcome of the decision.[3] Rule 59(e) motions cannot be used to rehash previously decided arguments.[4]

[1] Docket Item 206 [hereinafter "Mot."].
[2] Super. Ct. Civ. R. 59(e).
[3] *Bayer CropScience LP v. Corteva, Inc.*, 2025 WL 1504360, at *1 (Del. Super. May 5, 2025).
[4] *Id*.

2. On February 27, 2026, the Court issued a Memorandum Opinion and Order (the "Opinion")[5] that (i) denied Meta's request to stay this action pending resolution of the Social Media Litigation, and (ii) held that under California law, Meta's insurers owe no duty to defend because neither the underlying allegations nor any "known extrinsic facts" support a reasonable inference of "accidental" conduct.[6]

3. In the Motion, Meta asserts four bases for reargument and alternatively requests that the Court declare the Opinion a final judgment under Rule 54(b).[7]

4. Meta first contends that the Court erroneously found that the company conceded that it deliberately developed its platforms to maximize user engagement.[8] The Court made no such finding. Rather, the Court determined that the underlying complaints *allege* exclusively deliberate conduct by Meta.[9]

5. This distinction is crucial. The present dispute concerns the Insurers' duty to defend, not Meta's ultimate liability. Under California law, which applies here, the duty to defend hinges on whether the underlying allegations or any extrinsic facts

[5] The Opinion was issued on February 27, 2026. *See* D.I. 204. It was amended on March 5, 2026, to include an insurer inadvertently omitted from a footnote. *See* D.I. 205 [hereinafter "Op."]. Capitalized terms have the meaning assigned in the Opinion, with one exception: the Court uses "Insurers" to refer to Hartford, Chubb, and the Other Insurers.
[6] Op. p. 40.
[7] Mot. p. 1.
[8] *Id.* at pp. 3–4.
[9] *See* Op. pp. 44–45 ("Meta concedes that *the plaintiffs allege* these choices were made to "maximize engagement.") (emphasis added).

known to the insurer at the time of tender indicate a possibility of coverage.[10] Accordingly, the Court evaluates only *alleged* conduct and intent, not Meta's actual intent.[11] Whether Meta factually disputes the design of its services is an issue for the underlying fact finder,[12] and does not alter this coverage determination.[13]

6. Meta's second argument—that the Court should have considered testimony and jury instructions from the Social Media Litigation as "known extrinsic facts"[14]—fails. For duty-to-defend purposes, extrinsic facts must be known or knowable to the insurer *at the time of tender*.[15] Meta does not dispute this restriction.[16] Because the Opinion already concluded that Meta's proffer fails to establish extrinsic facts

[10] *Id.* at p. 13 (citing *GGIS Ins. Servs., Inc. v. Super. Ct.*, 86 Cal. Rptr. 3d 515, 526 (Cal. Ct. App. 2008)).
[11] *Id.* at p. 40.
[12] Mot. pp. 3–4 (quoting in full Meta's Ans. Br. p. 15 n. 7) (emphasis added).
[13] Op. p. 14.
[14] *Id.* at pp. 4–8.
[15] Op. p. 16. *See GGIS*, 86 Cal. Rptr. 3d at 525 ("A liability insurer has a duty to defend its insured if facts alleged in the complaint, or other facts known to the insurer, potentially could give rise to coverage under the policy."); *Gen. Accident Ins. Co. v. West Am. Ins. Co.*, 49 Cal. Rptr. 2d 603, 607 (Cal. Ct. App. Jan. 31, 1996) ("The duty to defend is based on information available at the time of tender and cannot be adjudged on hindsight."); *see also The Upper Deck Co., LLC v. Fed. Ins. Co.*, 358 F.3d 608, 615 (9th Cir. 2004) (holding that under California law, an insurer does not have a duty to monitor a lawsuit for new claims when it does not owe a duty to defend under the allegations or facts known to the insurer at that time).
[16] Meta cites *Ghukasian v. Aegis Security Ins. Co.* for the proposition that known extrinsic facts can trigger a duty to defend. Mot. p. 8.; 292 Cal. Rptr. 3d 923, 923 (Cal. Ct. App. 2022). Although *Ghukasian* does not expressly state that facts must be known at the time of tender, that limitation remains present. *Ghukasian* cites *Cunningham v. Universal Underwriters*, 120 Cal. Rptr. 2d 162, 167 (Cal. Ct. App. 2002), which in turn relies on *Hurley Construction Co. v. State Farm Fire & Casualty Co.*, 12 Cal. Rptr. 2d 629, 631 (Cal. Ct. App. 1992), establishing that "the duty to defend depends upon facts known to the insurer at the inception of the suit."

available to the Insurers at tender that could trigger coverage,[17] the Motion provides no basis for reconsideration.[18]

7. Meta's third argument is that the recent KGM trial verdict demonstrates factual overlap with this action, necessitating a *Montrose* Stay.[19] However, as stated in the Opinion, this coverage action involves no factual determinations.[20] There is no overlap.[21] Regarding policy considerations, the Court's conclusion that the underlying complaints allege intentional conduct does not restrict Meta's ability to argue that the actual evidentiary record proves otherwise in the liability suits.[22]

8. Meta's fourth argument is that the recent KGM trial verdict proves that a reasonable jury could find that its conduct was accidental.[23] This argument fails under California law, which recognizes that a party may be liable for negligence

[17] Op. p. 17. Meta previously argued that because one insurer provided coverage under a reservation of rights, rather than issuing a blanket denial, the Court should *infer* the existence of known extrinsic facts. Meta posited that this partial coverage implied that the insurer possessed extrinsic information triggering a possibility of coverage. The Court rejected this position for the reasons stated in the Opinion.

[18] While Meta purports to have alerted the Insurers to developments in the Social Media Litigation—including the testimony and jury instructions it offered here—it provides no legal basis for the Court to reevaluate the duty to defend based on information provided *after* Insurers denied coverage. Even if such a revaluation was appropriate in certain contexts, Meta has not raised that argument.

[19] Mot. p. 8. The "KGM trial" refers to Judicial Council Coordination Proceeding No. 5255 in the Superior Court of California for the County of Los Angeles (Case No. 23SMCV03371), which ran from January 27, 2026 to March 25, 2026, and resulted in a negligence verdict against Meta. *See* Meta's Notice of Supplemental Authority (D.I. 230).

[20] Op. p. 14.

[21] *Id.*

[22] *Id.* at p. 15.

[23] Mot. p. 7.

without triggering "accident"-based insurance coverage.[24] Even if the KGM jury concluded that Meta's conduct was accidental—a point on which this Court takes no position—it did so on the factual record, not on the underlying allegations or the extrinsic facts known at tender. The KGM verdict does not invalidate the Opinion.

9. Finally, Meta requests that the Court enter final judgment on the Insurers' duty to defend pursuant to Rule 54(b).[25] The Insurers do not oppose this request.[26] The Opinion resolved all claims except for a single counterclaim by Chubb seeking reimbursement of defense costs it paid to Meta under a reservation of rights. Because this counterclaim depends entirely on whether a duty to defend exists, the parties agree that litigating it should follow appellate review. If the Delaware Supreme Court holds that the Insurers owe a duty to defend, the reimbursement issue will become moot.

10. "Pursuant to [Rule] 54(b), the Court may exercise its discretion and certify final judgment if the Court finds that: (1) the action involves multiple claims or parties; (2) at least one claim or the rights and liabilities of at least one party has been finally decided; and (3) there is no just reason for delaying an appeal."[27]

---

[24] Op. p. 41.
[25] *Id.* at p. 9.
[26] *See* Insurers' Opposition to the Motion (D.I. 208) p. 12.
[27] *Lima Delta Co. v. Glob. Aerospace, Inc.*, 2016 WL 1169125, at *2 (Del. Super. Mar. 17, 2016) (citations omitted).

11. Entry of final judgment is appropriate for Hartford's claims and Chubb's first two claims against Meta. First, the multi-page case caption confirms that multiple parties are involved. Second, the duty to defend has been "finally decided," fully resolving Hartford's liabilities, and all of Chubb's claims against Meta except for reimbursement. Third, there is no just reason for delay. The Insurers—the future appellees—endorse this approach to protect their interest in participating in Meta's defense strategy should the ruling be reversed. Delaying the appeal to litigate this minor counterclaim could deprive them of that opportunity. Appellate judicial economy also favors entry of partial final judgment; this case is unlikely to require a second appellate review, as the reimbursement issue can be resolved expeditiously on remand, if necessary.[28]

12. Meta has failed to meet the high bar for reargument, but this dispute is ripe for appellate review.

IT IS HEREBY ORDERED that the Motion for Reargument is **DENIED**, and the alternative request for Entry of Partial Final Judgment is **GRANTED**.

Sheldon K. Rennie, Judge

[28] Mot. p. 10.