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Case Number 236,2026

IN THE SUPREME COURT OF THE STATE OF DELAWARE

META PLATFORMS, INC., and INSTAGRAM, LLC,

Defendants—Below, Appellants,

v.

HARTFORD CASUALTY INSURANCE CO., and SENTINEL INSURANCE CO.,

Plaintiffs—Below, Appellees,

-and-

FEDERAL INSURANCE CO., OLD REPUBLIC INSURANCE CO., STARR INDEMNITY AND LIABILITY CO., and ZURICH AMERICAN INSURANCE CO.,

Defendants-Below, Appellees,

-and-

ACE PROPERTY AND CASUALTY INSURANCE CO., WESTCHESTER FIRE INSURANCE CO., and WESTCHESTER SURPLUS LINES INSURANCE CO.,

Third-Party Plaintiffs-Below, Appellees,

No. 236, 2026

Court Below: Superior Court of the State of Delaware

C.A. No.: N24C-11-010 SKR CCLD

-and-

ASPEN AMERICAN INSURANCE CO., ENDURANCE AMERICAN SPECIALTY, FIREMAN'S FUND INDEMNITY CORPORATION, GEMINI INSURANCE CO., GREAT AMERICAN INSURANCE CO., GREAT AMERICAN SPIRIT INSURANCE CO., INTERSTATE FIRE & CASUALTY CO., NATIONAL FIRE & MARINE INSURANCE CO., NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, STARR SURPLUS LINES INSURANCE CO., STEADFAST INSURANCE CO., and XL INSURANCE AMERICA, INC.,

Third-Party Defendants-Below, Appellees.

AMICI CURIAE BRIEF OF COMPLEX INSURANCE CLAIMS LITIGATION ASSOCIATION AND AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION IN SUPPORT OF THE APPELLEES AND AFFIRMANCE

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Progressive Nw. Ins. Co. v. Gant,
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O.C.G.A. § 33-1-2(4) 12

Ohio Rev. Code Ann. § 3901.82 18

Okla. Stat. tit. 36, § 102 12

Tex. Civ. Prac. & Rem. Code § 5.001 18

Utah Code Ann. § 31A-22-205 18

Wash. Rev. Code § 48.01.040 12

Other Authorities

Kenneth S. Abraham, *Environmental Liability & the Limits of Insurance*, 88 Colum. L. Rev. 942, 952-53 (1988) 11

7 John Alan Appleman, *Insurance Law & Practice* §§ 4492.01-02 (1981) 11

Seth J. Chandler, *The Interaction of the Tort System and Liability Insurance Regulation: Understanding Moral Hazard*, 2 Conn. Ins. L.J. 91, 93 (1996) 24

Seth J. Chandler, *Visualizing Moral Hazard*,
1 Conn. Ins. L.J. 97 (1995) 23

2 *Couch on Insurance* § 22:9 (3rd ed. 2026) 17

7 *Couch on Insuranc*e § 102:7 (3d ed. 2026).....11

Robert E. Keeton, *Basic Text on Insurance Law* § 5.4(a), at 288 (1971) 11

Alexia Brunet Marks, *Under Attack: Terrorism Risk Insurance Regulation*,
89 N.C. L. Rev. 387, 427 (2011) 24

3 M. Elizabeth Medaglia & Marc A. Peritz, *Law and Practice of Insurance Coverage Litigation* § 35:3 (2026).....11

Office of the Surgeon Gen., U.S. Dep't of Health & Hum. Servs., *Social Media and Youth Mental Health: The U.S. Surgeon General's Advisory* 4 (2023), https://www.hhs.gov/sites/default/files/sg-youth-mental-health-social-media-advisory.pdf) 7

Restatement of the Law, Liability Insurance § 12 (Am. L. Inst. 2019) 18

Victor E. Schwartz & Christopher E. Appel, *Restating or Reshaping the Law?: A Critical Analysis of the Restatement of the Law, Liability Insurance*,
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IDENTITY AND INTEREST OF *AMICI CURIAE*[1]

The American Property Casualty Insurance Association ("APCIA") is the primary national trade association for home, automobile, and business insurers. With a legacy dating back 150 years, APCIA promotes and protects the viability of private competition to benefit consumers and insurers. APCIA's member companies represent 66 percent of the U.S. property-casualty insurance market and write more than $80.7 billion in annual premiums in California.

The Complex Insurance Claims Litigation Association ("CICLA") is also a trade association of major property and casualty insurance companies. Through *amicus curiae* briefs, drawing on its deep experience with insurance law issues and the insurance marketplace, CICLA helps courts understand and resolve the issues of greatest importance to insurers today.

Amici have participated as *amici curiae* in cases in state and federal appellate courts across the United States, including before the U.S. Supreme Court[2] and

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[1] No party's counsel authored the brief in whole or in substantial part; no party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person—other than the *amici curiae*, their members, or their counsel—contributed money that was intended to fund preparing or submitting the brief.

[2] *See, e.g., Truck Ins. Exch. v. Kaiser Gypsum Co*., 602 U.S. 268, 281-82 (2024) (citing APCIA and CICLA *amicus* brief explaining insurer interests in bankruptcy standing).

California courts,[3] on important insurance coverage issues and factors affecting the insurance system. Through their amicus efforts, *Amici* seek to help courts understand insurance issues and the insurance market when relevant to cases that will shape and develop the law.

The questions before the Court are critical to the liability insurance market.

[3] *E.g., Fox Paine & Co., LLC v. Twin City Fire Ins. Co.,* 593 P.3d 832 (Cal. 2026); *Hartford Cas. Ins. Co. v. J.R. Marketing L.L.C.*, 353 P.3d 319 (Cal. 2015); *Liberty Surplus Ins. Corp. v. Ledesma & Meyer Constr. Co.,* 418 P.3d 400 (Cal. 2018); *AIU Ins. Co. v. McKesson Corp.,* 2024 WL 302182 (9th Cir. Jan. 26, 2024) (California law).

SUMMARY OF THE CASE AND FACTS

This case arises out of thousands of lawsuits against Meta, formerly TheFacebook Inc., and Instagram LLC (collectively, "Meta"), alleging that their social media platforms cause harm to children (the "Social Media Lawsuits"). Opinion ("Op.") 4. The complaints allege that Meta designed its platforms to maximize youth engagement by exploiting psychological vulnerabilities and embedding addictive features into the platforms and intentionally targeting minors with design choices. *Id.; see also* A01034; A01596. Those design choices, the suits allege, resulted in harm to children's mental health. Op. 5. The individual plaintiffs seek recovery for the psychological harms the children allegedly experienced, such as addiction and depression. *Id*. The governmental entity plaintiffs seek recovery for the resources they expended to respond to the widespread youth mental health crisis in their communities. *Id*.

Facebook and Meta were insured under occurrence-based commercial general liability ("CGL") policies issued from 2004 to 2023. *Id*. 2-3. At issue is whether the Social Media Lawsuits allege an "occurrence," which is defined as an "accident." *Id*. 34.[4] The Superior Court held they do not, concluding that the underlying actions allege harms exclusively resulting from deliberate conduct and were not fortuitous

[4] This brief addresses only the fortuity-related issues before the Court in this appeal. There are other reasons why coverage does not, or may not, apply which the Superior Court did not reach. Op. 34.

from Meta's perspective. *Id*. 49. It found that the complaints "adequately allege that it was not 'mere fortuity' that youth-oriented platforms—deliberately designed to maximize engagement through algorithmic consumption—would result in children becoming addicted or otherwise suffering the alleged harms." *Id*.

SUMMARY OF ARGUMENT

This appeal concerns whether harm from an insured's intentional business decisions, operating precisely as intended, is insured under general liability policies and California law. The Social Media Lawsuits allege that Meta deliberately designed its social media platforms to exploit the psychological vulnerabilities of minors for economic gain, that Meta's design was highly successful in doing so, and that psychological harm to adolescent users resulted. These claims fall outside the scope of CGL coverage for at least four separate reasons:

1. Liability insurance depends on the concept of fortuity. Where the intended result of the insured's deliberate conduct is harmful, the resulting harm is no longer a "risk." Meta is alleged to have designed a product to target and exploit the psychological vulnerabilities of the nation's youth for profit. These losses are not fortuitous, and they are not insured.

2. Consistent with the fortuity requirement, settled policy terms, like the meaning of "occurrence" and "accident," make clear that harm that is not accidental is not insured. California has long established and enforced the meaning of these contract terms.

3. California's strong policy against coverage for the intended results of intentional acts, reflected in California Insurance Code § 533, provides that "[a]n insurer is not liable for a loss caused by the willful act of the insured." Cal. Ins. Code

§ 533. As a matter of statutory law, California has determined that Meta's insurers are not responsible for harm designed to result from its intentional acts.

4. Finally, public policy also compels this same result. Finding coverage for injuries arising from conduct operating exactly as intended would create a substantial moral hazard, undermining the public interest. If an insured doesn't bear the financial responsibility for the harm resulting from its deliberate business choices, that insured is more likely to engage in injurious conduct. Moreover, enforcing the plain language of the contract, as California law requires, is consistent with the public interest and important to the insurance system. Insurers' actuarial projections of expected loss experience and premium calculations rely on the expectation that courts will enforce plain policy terms as written. Failing to do so would undermine the risk assessment process. Thus, overriding the meaning of "occurrence" and "accident" to afford coverage for the intended results of deliberate business choices would do more than rewrite the parties' bargain. It would undermine the economic foundations of liability insurance, convert coverage for fortuitous risks into a guarantee against the consequences of intentional conduct, and require insurers to pass added costs on to their policyholders in the form of increased premiums. That shift would impair the affordability and availability of insurance, harming both the policy-buying public and injured third parties who depend on a stable and properly functioning insurance market for compensation.

ARGUMENT

I. THE META SUIT ALLEGES NON-FORTUITOUS, UNINSURED HARM

The Social Media Lawsuits allege that Meta purposely designed its social media platforms to be addictive and to promote excessive use in the pursuit of profit. For example, they allege that:

- "Meta has invested its vast resources to intentionally design Facebook and Instagram to be addictive to adolescents, all the while concealing these facts from its users." A01111; A01692; A00542; A00851; *see also* A01110, A01671.

- Meta deliberately designed and implemented its social media platforms to maximize youth engagement, purposely choosing features "to induce young people to compulsively use their products" while knowing that "children are in a developmental stage that leaves them particularly vulnerable to the addictive effects" of the those features. *E.g.*, A01034; A01596; see also A00417; A01113; A07804.

- Meta was aware of research on various harms from extensive use of social media, but "chose to ignore or brush it off." A01060. [5]

- Allegedly in a "bid for higher profits, Meta ignored the harms resulting from its overuse-oriented business model, which are widespread, serious, long-term, and in tragic instances fatal." *Id*.

None of these allegations describe an accident in any legal or colloquial sense.

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[5] In its brief to this Court, Meta cites a Surgeon General's Advisory that describes multiple studies linking social media use to increased mental health issues in adolescents. *See* Appellant's Opening Brief ("Meta Op. Br.") at 23 (citing Office of the Surgeon Gen., U.S. Dep't of Health & Hum. Servs., *Social Media and Youth Mental Health: The U.S. Surgeon General's Advisory* 4 (2023), https://www.hhs.gov/sites/default/files/sg-youth-mental-health-social-media-advisory.pdf).

While it may be Meta's litigation position, it is simply not credible for Meta to argue that the underlying plaintiffs allege a fortuitous "accident." The Social Media Lawsuits allege Meta's design choices were purposefully engineered to bring about the compulsive, addictive use of its platforms that harmed adolescents. *E.g.*, A01034; A01060. Meta cannot change the nature of the plaintiffs' allegations by claiming that the harm was linked to the conduct of third parties, including the users themselves, or arguing that it did not intend the exact injuries alleged. *See* Meta Op. Br. at 21-23.

Under Meta's theory in this coverage litigation, an insured could obtain coverage for the intended consequences of its deliberate business decisions simply by claiming it did not foresee the precise injuries that resulted. But the question is not whether the insured predicted every injury. It is whether the Social Media Lawsuits allege the insured deliberately undertook the conduct and intended the result it was designed to produce.

Unequivocally, Meta is alleged to have done the very thing it intended and designed – create a product that is addictive to users, resulting in the alleged harm. Plaintiffs' allegations follow other prominent cases where Meta was found to have intentionally harmed the public. For example, the New Mexico Attorney General won a final judgment finding that "Meta knowingly designed its platforms to maximize engagement, including in ways that are harmful to teenagers, and does not

adequately disclose the risks of harm to its users."[6] This followed a previous judgment finding Meta had engaged in 75,000 unfair practices act violations,[7] and a recent jury finding of 43,899,725 Unfair Practices Act violations – including finding Mark Zuckerberg's statements – such as "We [Meta] do not profit from misinformation or hate, and we do not want this content on our platforms." – to be willfully deceptive.[8] Likewise, the jury verdict Meta raises in this appeal included an express finding of punitive damages under California law, requiring proof of oppression, malice, or fraud. Cal. Civ. Code § 3294.

Plaintiffs in the underlying suits similarly allege non-fortuitous, non-accidental conduct and harm. They do not contend that Meta's social media

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[6] Findings of Fact, Conclusions of Law, and Judgment, Order, and Decree of the Court at 18, *State ex rel. Torrez v. Meta Platforms, Inc.*, No. D-101-CV-2023-02838 (N.M. 1st Jud. Dist. Ct. Aug. 6, 2026), available at https://nmcourts.gov/wp-content/uploads/2026/08/D-101-CV-2023-02838-Final-FOFCOL-and-Judgment-of-the-Court.pdf. The statutory claims for public nuisance required a finding that the actor causing the public nuisance did so "knowingly" and "without lawful authority." *Id.* at 30 ¶ 86.

[7] Order Correcting Verdict Form, *State ex rel. Torrez v. Meta Platforms, Inc.*, No. D-101-CV-2023-02838 (N.M. 1st Jud. Dist. Ct. March 26, 2026).

[8] Special Verdict Form, *State ex rel. Torrez v. Meta Platforms, Inc.*, No. D-101-CV-2021-00132 (N.M. 1st Jud. Dist. Ct. Sept. 25, 2026), available at https://nmdoj.gov/wp-content/uploads/meta_facebook-verdict_Redacted.pdf. The Social Media Lawsuits include allegations that Meta made misrepresentations to users about its actions against, the proliferation of, and Meta's profiting from harmful content on its platforms. *E.g.*, A07878.

platforms operated in a manner beyond Meta's intended design or control; to the contrary, the complaints allege that the platforms functioned exactly as Meta intended. The allegations are not that Meta designed a product that had the *unintended* result of creating compulsive usage patterns that are harmful to users, particularly adolescents. That was its alleged purpose. As *amici* demonstrate below, that non-fortuitous result is not insured under the CGL policies here.

II. META CANNOT ESTABLISH COVERAGE BECAUSE CGL INSURANCE COVERS ONLY FORTUITOUS LOSSES.

Fortuity lies at the core of CGL insurance. Insurance responds to losses from unexpected events or risks, not to the intended result of deliberate acts. *See, e.g.*, 7 *Couch on Insuranc*e § 102:7 (3d ed. 2026) ("Implicit in the concept of insurance is that the loss occur as a result of an event that is fortuitous rather than planned, intended, or anticipated."). Fortuity is fundamental to liability insurance and a requirement that loss be accidental is read into every contract. 3 M. Elizabeth Medaglia & Marc A. Peritz, *Law and Practice of Insurance Coverage Litigation* § 35:3 (2026) (quoting Robert E. Keeton, *Basic Text on Insurance Law* § 5.4(a), at 288 (1971) ("A requirement that loss be accidental in some sense in order to qualify as the occasion for liability of an insured is implicit, when not expressed, because of the very nature of insurance.").[9]

In California, as in states across the country, insurance is defined by statute as a "contract whereby one undertakes to indemnify another against loss, damage, or liability arising from a *contingent or unknown* event." Cal. Ins. Code § 22 (emphasis

[9] *See* Kenneth S. Abraham, *Environmental Liability & the Limits of Insurance*, 88 Colum. L. Rev. 942, 952-53 (1988) ("[T]he basic purpose of nearly all insurance [is] the provision of protection against harm that is fortuitous rather than caused intentionally by the insured."); 7 John Alan Appleman, *Insurance Law & Practice* §§ 4492.01-02 (1981).

supplied).[10] As the Arizona Supreme Court recently explained: "fortuity is a requirement for insurance contracts because a non-fortuitous loss would be non-contingent and, therefore, not an insurance contract" under state law." *Indus. Park Ctr, LLC v. Great Northern Ins. Co*., 2026 WL 2577144, at *3 (Ariz. Sept. 1, 2026).

The "concept of fortuity is basic to insurance law." *Waller v. Truck Ins. Exch., Inc.*, 900 P.2d 619, 626 (Cal. 1995), *as modified on denial of reh'g* (Oct. 26, 1995); *Apex Sols., Inc. v. Falls Lake Ins. Mgmt. Co.*, 319 Cal. Rptr. 3d 833, 842 (Cal. Ct. App. 2024), *as modified on denial of reh'g* (Apr. 16, 2024) ("In the field of insurance, 'occurrence' is generally defined to mean an 'accident' . . . which connotes the element of fortuity that is essential to all insurance.") (citations omitted); *Playtex, Inc. v. Columbia Cas.*, 1993 WL 390469, at *9 (Del. Super. Ct. Sept. 20, 1993) ("It is a general rule that one cannot obtain insurance for those losses which are not fortuitous, in other words, for those losses of which the insured knows, plans, intends, or is aware.") (collecting cases); *E.I. du Pont de Nemours & Co. v. Admiral Ins. Co.*, 1996 WL 111133, at *1 (Del. Super. Ct. Feb. 22, 1996) ("I do not

[10] Other states have similar formulations. *E.g*., Ala. Code § 27-1-2(1); Ariz. Rev. Stat. § 20-103(A); Ark. Code § 23-60-102(1)(A)(i); 18 Del. C. § 102(9); Fla. Stat. § 624.02; O.C.G.A. § 33-1-2(4) (Georgia); Idaho Code § 41-102; Ky. Rev. Stat. § 304.1-030 (Kentucky); Mont. Code Ann. § 33-1-201(6)(a); N.M. Stat. § 59A-1-5; N.D. Cent. Code § 26.1-29-01; N.Y. Ins. Law § 1101(a)(1); Okla. Stat. tit. 36, § 102; Wash. Rev. Code § 48.01.040.

find the concept of fortuity of occurrence to be simply an issue of location within a policy. Rather, fortuity is a 'parameter of the insurance' within which [the insured] must place itself.") (citation omitted).

Allowing an insured to obtain coverage for the very outcome it intentionally set out to achieve by arguing that it failed to foresee the precise injuries that followed would nullify the fortuity requirement that is a foundation of liability insurance. An insurer is economically able to sell insurance because the events that it insures are fortuitous or unplanned. The insurer is able to calculate the likely number of insured losses among a large number of policyholders and, therefore, it can spread the risk of unforeseen large losses from unknown events or accidents among that large class of insurance buyers. This risk-spreading is the primary function of insurance, and the concept of fortuitous loss is critical because it permits the market to function properly, which benefits the public interest.

III. THE POLICY TERMS "OCCURRENCE" AND "ACCIDENT" FORECLOSE COVERAGE FOR THE CLAIMS AGAINST META.

Liability policies do not cover the intended results of deliberate acts. Policy terms requiring an "occurrence" or "accident" reflect this bedrock principle of insurance law. Thus, the insurance policy terms "occurrence" and "accident" bar coverage for the Social Media Litigation, which alleges that Meta intentionally designed its social media platforms to exploit minors' psychological vulnerabilities for profit, successfully did so, and thereby caused psychological harm to adolescent users.

A. Under California Law, "Occurrence" and "Accident" Require Fortuity.

Meta's policies require an "occurrence," which is defined as an "accident." The term "accident" has a clear, well-established meaning in California law, which includes the concept of fortuity.

The California Supreme Court has repeatedly stated that the meaning of the term "accident" is settled in California. Fundamentally, under California law (and the law elsewhere) an "accident" requires fortuity. *E.g., Delgado v. Interinsurance Exch. of Auto. Club of S. Cal.*, 211 P.3d 1083, 1092 (Cal. 2009) (purposeful and intentional act is not "an accident"); *Liberty Surplus Ins. Corp. v. Ledesma & Meyer Constr. Co., Inc.*, 418 P.3d 400, 406 (Cal. 2018) (an injury is not "accidental" where the insured intended the acts that caused the injury and the injury was not an "unexpected, independent and unforeseen happening"). Further, "[t]his common law

construction of the term 'accident' becomes part of the policy and precludes any assertion that the term is ambiguous." *Delgado*, 211 P.3d at 1086.

A deliberate act that has its intended consequence is not an "accident." This remains true even if the insured did not intend the precise injury, the severity of the injury, or the specific mechanism by which it occurred. *Ghukasian v. Aegis Sec. Ins. Co.,* 292 Cal. Rptr. 3d 923, 928 (Cal. Ct. App. 2022) (intentional acts are not "accidents" merely because the insured did not intend to cause injury); *Delgado*, 211 P.3d at 1092 (purposeful and intentional acts that harm the victim are not the product of an accident); *Hogan v. Midland Nat'l Ins. Co*., 476 P.2d 825 (Cal. 1970) (the consequences that the policyholder expects to result from its conduct do not qualify as an accident).

Meta contends it meets the "accident" requirement on the grounds that, while its conduct in designing its platforms was deliberate, the harm alleged in the Social Media Litigation was not its objective. Critically, the Social Media Litigation alleges that Meta intentionally designed its platforms *to be addictive* to adolescents[11] – in other words, that Meta's objective was precisely to achieve the harmful result at issue in the Social Media Lawsuits. Thus, Meta's "speeding driver" analogy is

[11] *E.g.*, A01060.

inapposite.[12] That analogy was cited in *Delgado* (211 P.3d at 1091), and in *Merced Mut. Ins. Co. v. Mendez*, 261 Cal. Rptr. 273, 279-80 (Cal. Ct. App. 1989), to distinguish a situation where an insured's deliberate act does *not* occur as intended – from one that does.

The *Mendez* court stated:

> When a driver intentionally speeds and, as a result, negligently hits another car, the speeding would be an intentional act. However, the act directly responsible for the injury—hitting the other car—was not intended by the driver and was fortuitous. Accordingly, the occurrence resulting in injury would be deemed an accident.

Id., 261 Cal. Rptr. 273 at 279. Unlike the speeding driver that did not intend to hit another car in *Mendez*, in *Delgado* and here "[a]ll of the acts, the manner in which they were done, and the objective accomplished occurred *exactly as [the insured] intended*." *Id*. (emphasis added). There is no "accident' under California law when an insured intentionally designs and implements conduct to achieve a particular objective, and the alleged harm arises from that conduct operating as intended.

B. Meta's *Amici* Cannot Erase the Fortuity Requirement From "Accident."

Perhaps recognizing that Meta cannot meet the fortuity requirement inherent in the policy terms "accident" and "occurrence," Meta's *amici* take a different tack.

[12] *See* Meta Op. Br. at 2, 20, 32 (*citing Delgado*, 211 P.3d at 1091).

Meta's *amici* advocate that "fortuity" should be eliminated from the meaning of "accident." This is a remarkable proposition.

A "non-fortuitous accident" is a contradiction in terms. As demonstrated above, California law and fundamental rules of contract interpretation have long established the meaning of "accident" under California law. The California Supreme Court has made clear: the term "accident" is not ambiguous and has a settled meaning. There is no support for the oxymoron of a "non-fortuitous accident" invented by Meta's *amici*.

The suggestion of the Meta *amici* that the plain meaning of a settled term in an insurance policy should be overridden, and the term can be viewed only as a "mechanism" for the policy's operation without any intrinsic meaning violates fundamental contract interpretation principles and has no support under California law. Where contract terms are unambiguous when applied, a court should not look beyond those terms to divine a contradictory interpretation. *E.g., Dore v. Arnold Worldwide, Inc.*, 139 P.3d 56, 60 (Cal. 2006); *see also* Cal. Code Civ. Proc. § 1856(a); 2 *Couch on Insurance* § 22:9 (3rd ed. 2026) ("If words in the policy are plain and unambiguous, established rules for construction of contracts apply and the language, from which the intention of the parties is to be deduced, must be accorded its natural and ordinary meaning."). *See also JJD-HOV Elk Grove, LLC v. Jo-Ann Stores, LLC*, 560 P.3d 297, 307 (Cal. 2024) (general rule for interpreting contracts

is that "the parties' contractual intent when reduced to writing should be controlling and enforced") (citation omitted).

Nor can the *amici*'s argument be salvaged by pointing to the American Law Institute's ("ALI") Restatement of the Law, Liability Insurance ("RLLI"). The RLLI is not law and cannot override settled California law. Courts,[13] commentators,[14] and state insurance regulators and legislators[15] agree that courts should not adopt the RLLI in the place of existing state law.

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[13] *Nautilus Ins. Co. v. Access Med., LLC*, 482 P.3d 683, 689 n.7 (Nev. 2021) (rejecting RLLI provision on recoupment as inconsistent with Nevada law); *Catlin Specialty Ins. Co. v. CBL Assocs. Props., Inc.*, 2018 WL 3805868, at *3 & n.24 (Del. Super. Ct. Aug. 9, 2018) (rejecting RLLI provision as inconsistent with Tennessee law); *Progressive Nw. Ins. Co. v. Gant*, 2018 WL 4600716, at *6 (D. Kan. Sept. 24, 2018) ("("[T]his Court is not . . . inclined to use a nonbinding Restatement as a means to overturn . . . or expand Kansas law.") (citing *Restatement of the Law, Liability Insurance* § 12 (Am. L. Inst. 2019)).

[14] *E.g.*, Victor E. Schwartz & Christopher E. Appel, *Restating or Reshaping the Law?: A Critical Analysis of the Restatement of the Law, Liability Insurance*,22 U. Pa. J. Bus. L. 718 (2020).

[15] *E.g.,* N.D. Cent. Code § 26.1-02-34 (West 2019) (the RLLI should not be used "as an authoritative reference regarding interpretation of North Dakota laws, rules, and principles of insurance law. "); Mich. Comp. Laws Ann. § 500.3032 (2020) ("court shall not apply a principle from the American Law Institute's 'Restatement of the Law, Liability Insurance' in ruling on an issue in the case unless the principle is clearly expressed in a statute of this state, the common law, or case law precedent of the state"). *See also, e.g.,* Ark. Code Ann. § 23-60-112; Ohio Rev. Code Ann. § 3901.82; Tex. Civ. Prac. & Rem. Code § 5.001; Utah Code Ann. § 31A-22-205.

California law controls here. Under that settled law, the Meta *amici*'s "non-fortuitous accident" theory rests on a legal impossibility. California contract interpretation rules and settled authority provide that an accident must be fortuitous. The policy terms requiring an "occurrence" or "accident" bar coverage here.

IV. CALIFORNIA CODE SECTION 533 BARS COVERAGE FOR LOSS RESULTING FROM AN INSURED'S WILFUL ACTS.

California prohibits coverage for losses that result from the insured's willful acts by statute, as reflected in California Insurance Code § 533. *Aspen Spec. Ins. Co. v. Miller Barondess, LLP*, 2023 WL 2523841, at *1 (9th Cir., March 15, 2023); *see also Cty. of Sacramento v. Everest Nat'l Ins. Co.,* 2023 WL 1960675, at *1 (9th Cir., February 13, 2023). Section 533 is written into every California insurance contract to affect its purpose. *B&E Convalescent Ctr. v. State Comp. Ins. Fund*, 9 Cal. Rptr. 2d 894, 904 (Cal. Ct. App. 1992). Section 533 is "an implied exclusionary clause which by statute is to be read into all insurance policies." *United States Fid. & Guar. Co. v. Am. Employer's Ins. Co.,* 205 Cal. Rptr. 460, 464 (Cal. Ct. App. 1984).[16] Through Section 533, California law provides an additional, independent basis for finding no coverage here.

Section 533 prohibits indemnity of damages payable for willful acts, which includes either "an act deliberately done for the express purpose of causing damage or intentionally performed with knowledge that damage is highly probable or substantially certain to result." *Downey Venture*, 78 Cal. Rptr. 2d at 155 (internal

[16] The statute serves a "fundamental public policy" to deny insurance coverage for willful wrongs. *Downey Venture v. LMI Ins. Co.*, 78 Cal. Rptr. 2d 142, 154 (Cal. Ct. App. 1998). *See also Cal. Amplifier, Inc. v. RLI Ins. Co*., 113 Cal. Rptr. 2d 915, 926 (Cal. Ct. App. 2001) (citations omitted). To allow indemnity for such conduct would only encourage it, which is counter to the policy behind the statute and California law.

quotation marks and citation omitted). The Social Media Litigation's allegations against Meta are uninsurable under Section 533. Plaintiffs allege Meta designed its platforms for the express purpose of causing addiction and compulsive use, and their design was intentionally chosen knowing it would bring about the compulsive, addictive use of its platforms that harmed adolescents. Consistent with Section 533, coverage is barred for these claims.

V. IMPORTANT PUBLIC POLICY INTERESTS SUPPORT AFFIRMANCE OF THE DECISION BELOW.

Meta and its *amici* would flip general liability coverage on its head, creating coverage for every intentional act unless the insured admits to intending the precise injury that results. A simple, self-serving: "That's not what I intended at all" would create coverage in every case. Such a rule would eliminate the insured's accountability for intentionally harmful conduct and elevate the pursuit of profit over harm to consumers. By failing to enforce the settled meaning of "occurrence" and "accident," Meta's arguments would also disrupt commercial reliance interests that are critical to all contracts, particularly insurance.

A. Strong Public Policy Interests Counsel Against Creating a Moral Hazard.

Public policy counsels against a policy construction that creates a moral hazard. Liability insurance is intended to protect against unexpected and unintended losses, not to underwrite the consequences of deliberate choices. When an insured intentionally adopts a course of conduct and the alleged harm results from that conduct operating as intended, allowing coverage would shift the cost of the insured's business decisions to the insurer.

Shifting the costs of deliberate business decisions by holding that injuries arising from conduct operating exactly as intended constitutes an "accident" would create a substantial moral hazard. As a California court explained, "[m]oral hazard

is the bad incentive the fact of insurance can give to an insured. The bad incentive is to increase risky or destructive behavior covered by the insurance. If the presence of insurance tempts insureds to cut corners or to take unwise risks, insurance will have created a perverse and socially undesirable incentive." *Letgolts v. David H. Pierce & Assocs., PC*, 286 Cal. Rptr. 3d 215, 222 (Cal. Ct. App. 2021). This moral hazard arises because the insured will not bear financial responsibility for the harm resulting from its deliberate business choices. And an insured is more likely to engage in injurious conduct when it knows that any resulting liability may be shifted to its insurer.

Requiring insureds to bear the risks of harmful non-accidental conduct ultimately protects the public because it creates incentives for actors such as Meta to be more circumspect about their business practices and thereby reduces moral hazard. *See, e.g.,* Seth J. Chandler, *Visualizing Moral Hazard*, 1 Conn. Ins. L.J. 97 (1995) (using game theory and computerized math modeling to demonstrate that if insurers can control the level of care their policyholders take, they lower the chances that extending insurance will result in increased loss); *see also* Seth J. Chandler, *The Interaction of the Tort System and Liability Insurance Regulation: Understanding*

Moral Hazard, 2 Conn. Ins. L.J. 91, 93 (1996) (discussing how the control of moral hazard is essential to have a successful deterrent in the way of tort remedy).[17]

B. Contract Certainty Is Critical to the Business Community and Insurance Mechanism.

Meta and its *amici* overlook the deleterious consequences to the insurance marketplace and society at large of their proposal to rewrite Meta's insurance contracts. California has long recognized the importance of enforcing written contracts in providing certainty and predictability to the business community. *E.g., Nedlloyd Lines B.V. v. Superior Court,* 834 P.2d 1148, 1171 (Cal. 1992) ("Parties enter into contracts to allocate risks and to bring certainty, order, and predictability to their mutual relations. One of the principle aims of contract law is to assist contracting parties in achieving this objective by making the outcome of legal disputes clear and predictable.").[18] Enforcing the plain language to which the parties

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[17] This dynamic has already been observed in other developing insurance contexts, such as terrorism risk insurance. *See* Alexia Brunet Marks, *Under Attack: Terrorism Risk Insurance Regulation*, 89 N.C. L. Rev. 387, 427 (2011) ("By decreasing substantially the loss they must bear from an attack, terrorism risk insurance legislation provides a disincentive to mitigate post-event insurance losses by increasing moral hazard and risk-taking by businesses.").

[18] *Erlich v. Menezes,* 981 P.2d 978, 984 (Cal. 1999) (recognizing "the importance of predictability in assuring commercial stability in contractual dealings."); *Freeman & Mills, Inc. v. Belcher Oil Co.,* 900 P.2d 669, 677 (Cal. 1995) (same); *Phillippe v. Shapell Indus.,* 743 P.2d 1279, 1291 (Cal. 1987) (describing business community's preference for written contracts as based on need for "certainty and predictability").

agreed encourages compliance with those terms and supports commercial activity by giving confidence to insurers and policyholders that their agreements will be enforced.

Moreover, the California Supreme Court has cautioned that, when insurance coverage is "created" by disregarding the express and unambiguous provisions defining the risks that the insurer agreed to cover, the underwriter must pass on the cost of this uncertainty to all insureds. Judicially-created insurance coverage leaves "ordinary insureds to bear the expense of increased premiums necessitated by the erroneous expansion of their insurers' potential liabilities." *Garvey v. State Farm Fire & Cas. Co.,*770 P.2d 704, 711 (Cal. 1989). The failure to enforce an insurance contract as written necessarily increases the price and decreases the availability of insurance coverage for all, including individuals and small businesses.

CONCLUSION

For the foregoing reasons, *Amici* CICLA and APCIA respectfully urge this Court to affirm the judgment of the Superior Court.

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Respectfully submitted,

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