

202028545

FILED
Marilyn Burgess
District Clerk

JUN 14 2021

Time: _____
Harris County, Texas
By Cassandra Durisseau *CA*
Deputy



Judge Mark Davidson

Multi District Litigation Asbestos Judge

201 Caroline, 17th Floor

Houston, Texas 77002

June 14, 2021

Dear Counsel;

The Court has before it a Motion to Modify the Judgement of March 29, 2021. The order I signed on March 29th was, in fact, two different rulings, and each must be addressed in ruling on the Motion to Modify.

The first ruling I made was that the Communications Decency Act barred a state cause of action. I believed then, and believe today that the ruling is correct based on the case law *as it existed at the time and as it exists today*. As I said then, and reiterate now, the case law applicable to a Texas State judge is subject to change, one way or the other, when the Texas Supreme Court weighs in on the subject in the case of *In Re: Facebook*. That case was argued during the current term of the Texas Supreme Court and, if the Supreme Court of Texas continues its admirable policy of clearing its docket of all pending cases by the end of the current term, is due out in the next two weeks. I ordinarily would not set aside a ruling based on the pendency of an appellate case, but feel that the opinion could well constitute a ruling of first impression in Texas on the very issue before me. Still, I might not set the judgement aside except for a clear error that has developed on the second ruling I made.

At the hearing on the motion that led up to the March 29th ruling, the Plaintiff asked me to preserve their Federal cause of action, realizing that the effect of that would be to lead to removal of the case to Federal Court. I ruled "Given the state of the law, that would make no difference." Since then Judge Andrew Hanen's ruling on a case has, at least for the present, resulted in a change in what I think the law of the case. Sales Force's reply is that I got the ruling right (which I still think I did, according to the law *as it existed at the time*) and that they are appealing Judge Hanen's ruling. I am not in the business of ruling that a Federal Judge in the

Southern District of Texas misinterpreted the law relating to the very Federal law that will be applied in a court in the Southern District of Texas.

I have therefore signed an order setting aside my Order of March 29th, without prejudice to reconsideration of this ruling, depending upon how the Supreme Court of Texas rules in the *Facebook* case and the future history of the federal litigation. I am not reconsidering the severance I granted as to the Salesforce cases.

Respectfully submitted,



MARK DAVIDSON

JUN 14 2021

MD/ms