CASE NO: 24-CI-000518
(C/W CASE NO. 24-CI-002451 and 24-CI-002351)

JEFFERSON CIRCUIT COURT
DIVISION: SEVEN (7)
JUDGE MELISSA LOGAN BELLOWS

ELECTRONICALLY FILED

DANA MITCHELL, et al. PLAINTIFFS

vs.

REPLY IN FURTHER SUPPORT OF DEFENDANT MAGPUL'S MOTION FOR JUDGMENT ON THE PLEADINGS

RIVER CITY FIREARMS, INC., et al. DEFENDANTS

****

COMES NOW, Magpul Industries Corporation ("Magpul"), and for its Reply in Further Support of Motion for Judgment on the Pleadings, respectfully states as follows:

I. ARGUMENT

According to Plaintiffs, this Court should rubber stamp an earlier interlocutory decision from a previous stage of proceedings that a different judge described as tentative. And, according to Plaintiffs, this Court should bury its head in the sand and ignore an intervening statute, probative developments in discovery, and federal law that has always and *continues* to bar this suit. But an interlocutory decision from a different stage of proceedings in no way binds this Court, and the Plaintiffs' urging to ignore relevant developments in law and fact must be rejected.

There is nothing untoward about a Judge not following a prior interlocutory order made at an early stage of a case. In fact, it is exactly what Kentucky law and the judicial role require.

Properly analyzing the issues, the only conclusion is that the PLCAA and ordinary tort principles bar Plaintiffs' suit against Magpul, a federally regulated and licensed manufacturer that Plaintiffs acknowledge did nothing more than manufacture legal products, sell them to a federally regulated, licensed third-party distributor in the ordinary course of business, which in turn sold them to a federally regulated, licensed third-party retailer. Magpul should be dismissed promptly from this suit.

1. To avoid the straightforward conclusion that the PLCAA bars their claims against Magpul, the Plaintiffs spill much ink urging this Court to ignore the substantive issues and simply regurgitate Judge Perry's motion to dismiss denial from over a year prior. This approach is misguided—and contrary to Kentucky law and procedure—for several reasons.

At the outset, the denial of a motion to dismiss is "interlocutory" in Kentucky, meaning that it may be revisited *at any time* before final judgment on all claims. *Halle v. Banner Indus. of N.E., Inc.*, 453 S.W.3d 179, 184 (Ky. Ct. App. 2014). Because "orders denying motions to dismiss . . . are not final," they do not bind. *Breathitt Cnty. Bd. of Educ. v. Prater*, 292 S.W.3d 883, 885 (Ky. 2009). Simply put, the earlier order is not binding on any Judge or any Court—not Judge Perry, and not this Court. Thus, it is simply wrong for Plaintiffs to assert that Magpul asks this Court to "reverse" or "overturn" any existing decision. *See* Zurich Resp. at 2; Elliott & Mitchell Resp. at 6–7.

This is even more true here where the motion to dismiss denial was specifically described by Judge Perry as limited to the early stage of the case before discovery had begun. Judge Perry caveated his interlocutory order with a guardrail: "It is important at the outset to note the procedural posture of the case." Op. & Order at 2 (May 19, 2025). That stage was "a Motion to Dismiss brought before *any* discovery has been completed." *Id.* (emphasis added). As discussed further *infra*, the premise of Judge Perry's decision is no longer true. Discovery has now been well underway at great expense and burden to Magpul—one of the harms Congress and the President passed the PLCAA to prevent. Although Plaintiffs argue that Magpul does not base its motion on any facts unearthed in discovery, it is the onset of discovery itself that is critically important to the PLCAA issue since immunity must be granted at the earliest possible opportunity to *avoid* the burdens of discovery, discussed further *infra*. For this reason, it cannot fairly be said that a decision dismissing Magpul now would "reverse a judgment of a fellow judge," Mitchell & Elliott Resp. at

6–7 (quoting *Herring v. Moore*, 561 S.W.2d 95, 97 (Ky. Ct. App. 1977)), or "do disservice to the law and create disrespect for it," *id.*, because the key premise underlying the earlier decision is no longer true.

For these reasons, the Plaintiffs' cited cases claiming that a judge should exercise "caution" before "reversing" an earlier judge are inapposite because there need be no "reversal" here. *See* Mitchell & Elliott Resp. at 6. In *Herring*, for example, which was a family law case, the successor court was presented with a decision whether to *amend* the original judge's specific order after trial. 561 S.W.2d at 98. The case did not concern, as here, a different stage of proceedings that would leave an earlier interlocutory order in place.

But even under those different circumstances of *Herring*, the Kentucky Court of Appeals *still* maintained the successor judge's authority and duty to reconsider the earlier judge's order in full. The Court explained that "Kentucky has long adhered to the prevailing view that a successor judge may, upon timely motion or sua sponte, complete the uncompleted acts of a predecessor." *Id*. This even includes "findings, conclusions and judgment . . . directly opposite to those first entered." *Id.*

So even if the Plaintiffs were right to characterize Judge Perry's decision as more definitive than it was, Kentucky law requires a successor Judge to analyze the applicable law and facts in his or her best judgment despite what a previous Judge may have decided. "[E]fficient judicial process *mandates* that a trial court correct an erroneous ruling before finality when possible." *JPMorgan Chase Bank, N.A. v. Bluegrass Powerboats*, 424 S.W.3d 902, 909 (Ky. 2014). "Certainly, if a court believes before finality that it has made an error in the law, it is incumbent upon the court to correct the matter." *Id.*; *see also Bank of Danville v. Farmers Nat. Bank of Danville*, 602 S.W.2d 160, 164 (Ky. 1980) (majority op.).

This fundamental principle of the judicial role is no different for a successor judge, whose duties and powers are coterminous with a previous judge. "The court is an entity, not a person, and when one judge is replaced by another . . . the new judge is empowered to carry on the business of the court to the same extent as his predecessor, had he remained on the bench." *Herring*, 561 S.W.2d at 98. The Kentucky Court of Appeals has been clear, even in Plaintiffs' own cited case: "We see no reasonable basis for holding that a successor judge is without power to take an action which would have been appropriate by his predecessor," including reconsidering an earlier interlocutory order. *Id*.

The Court is not bound by Judge Perry's tentative interlocutory judgment before discovery had begun—just as Judge Perry would not have been bound—and Plaintiffs are wrong to imply or assert otherwise. A tentative interlocutory motion to dismiss denial does not forever trap a case in amber or doom a Defendant never to prevail. If anything, the Court *is* bound to address this motion on its merits in light of the applicable Kentucky and federal law, despite the Plaintiffs' urging otherwise. This Court need not "reverse" or "overturn" Judge Perry's earlier order because that order was, by its own terms, interlocutory, tentative, and based on facts that have now changed. It is the Kentucky PLCAA Act and the factual reality of discovery in this matter that *now* provide further guidance supporting Magpul's dismissal.

2. Moving to the merits, Plaintiffs ask this Court to ignore the extensive and complex discovery burdens (and ongoing disputes) brought on by Plaintiffs' discovery demands in this case. But the extreme costs and burdens that Plaintiffs' discovery requests have imposed on Magpul is highly relevant to the issue of PLCAA immunity where burdensome discovery is what Congress passed the PLCAA to prevent.

Were there any doubt, the federal statute directs that claims be "immediately dismissed," establishing that manufacturers should not have to endure discovery for a suit based on harm caused by a third-party criminal. 15 U.S.C. § 7902(b). "Congress intended courts to weed out, *expeditiously*, claims the PLCAA bars." *Jefferies v. District of Columbia*, 916 F. Supp. 2d 42, 47 (D.D.C. 2013) (emphasis added). And "[t]hat intent is not served by allowing an action barred by the PLCAA to proceed to trial only to be inevitably reversed on appeal, regardless of the procedural device the defendant utilizes to seek dismissal." *In re Acad., Ltd*., 625 S.W.3d 19, 35 (Tex. 2021).

The entire point of immunity from *suit* rather than immunity from liability is to prevent defendants from being subjected to the burdens of discovery, motions practice, and trial. Plaintiffs' bare assertion that discovery burdens are not relevant to the consideration of statutory immunity specifically designed to spare defendants from burdensome discovery strains credulity. Magpul should not have endured discovery for so long in this case. But at the very least, consistent with the PLCAA's clear directive, Magpul must be relieved from further burden.

Further, the PLCAA's concern for judicial economy would be well served by prompt dismissal of Magpul from this case given the ongoing and highly complex discovery disputes between the parties and before this Court.

3. Magpul is clearly a manufacturer under the PLCAA, and Plaintiffs' arguments to the contrary are meritless. The PLCAA defines a covered "manufacturer" as anyone "with respect to a qualified product . . . who is engaged in the business of manufacturing the product in interstate or foreign commerce and who is licensed to engage in business as such a manufacturer under chapter 44 of Title 18." 15 U.S.C. § 7903(2). Magpul plainly meets both criteria.

The Plaintiffs admit that Magpul has a federal license to manufacture firearms. *See* Mitchell & Elliott Resp. at 16 n.6. And Plaintiffs' own allegations establish that "Magpul is a manufacturer of firearms and firearm accessories, including the large-capacity Magpul PMAG magazines and Magpul M-LOK vertical grip purchased by Sturgeon and used to kill Plaintiffs at Old National Bank." Elliott Compl. ¶ 29. Plaintiffs alleged that Magpul is a "manufacturer" that "controls the lion's share of the LCM market." *Id.* ¶ 79. Plaintiffs cannot sue Magpul on the basis of its manufacturing activities and then, in an about-face, claim that Magpul is not a manufacturer for purposes of immunity. In the end, this argument simply makes no sense. Had Magpul not manufactured relevant component parts misused by the criminal third-party, it would have made no sense for Plaintiffs to sue Magpul in the first place.

Faced with this reality, Plaintiffs are forced to raise a novel and utterly unsupported argument that the PLCAA does not immunize manufacturers of component parts because no separate license is required to manufacture component parts. Plaintiffs provide no caselaw or statutory provision to support this extraordinary proposition, which would create a massive loophole in the PLCAA.

Recall that the PLCAA explicitly covers not only firearms but any "component part of a firearm." 15 U.S.C. § 7903(4). If Plaintiffs' reading were right, the PLCAA's explicit inclusion of all component parts would be a nullity. After all, separate licenses are generally not required for the manufacturing of component parts, *see* 18 U.S.C. § 923, as Plaintiffs rightly assert (although did not allege in their Complaints). So why would the PLCAA bother protecting manufacturers of component parts only to then exclude all component parts manufacturers in this oblique, backwards manner? The answer is that Plaintiffs' tortured reading would make the PLCAA at war with itself, and Congress "does not, one might say, hide elephants in mouseholes." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001). In any case, this argument is purely academic because Magpul—a Federal Firearm Licensee—*is* a manufacturer of a qualified product for which a license is required, *see* 18 U.S.C. § 923, and would satisfy even the Plaintiffs' reading.

4. So too, the PLCAA's coverage of any "component part of a firearm" covers the Magpul parts that Connor Sturgeon allegedly used in the shooting. 15 U.S.C. § 7903(4). Taking the allegations in the Complaints as true, the relevant parts of the firearm at issue here: firearm magazines and a firearm grip. These are plainly both component parts of a firearm and thus qualified products for purposes of the PLCAA. The Plaintiffs' contrary arguments ask this Court to ignore the plain text of the PLCAA and common sense. The alleged magazines and firearm grip were both affixed to Sturgeon's rifle—literally and in the ordinary sense "component part[s]" of that firearm. *Id.*

Attempting to undermine this reality, the Plaintiffs claim that the alleged Magpul products were mere "accessories." Mitchell & Elliott Resp. at 14–15. But the PLCAA makes no exception for "accessories"—indeed, the statute does not even use that term. Instead of the statute, Plaintiffs wrap themselves in Judge Perry's earlier interlocutory decision. But as explained, this Court should not reflexively defer to that opinion under Kentucky or federal law.

The interlocutory decision's premise that a component part must be "necessary" for a firearm to actually function likewise finds no support in the statute. The PLCAA could have said "component parts necessary to the function of a firearm" or the more subtle "essential component parts." But it did not. The federal statute says: "a component part of a firearm or ammunition." 15 U.S.C. § 7903(4). Full stop, no qualifiers. That is the text this Court is bound to apply.

Nor does it help Plaintiffs to argue that the Second Amendment question is "distinct" from the PLCAA. That is true, but it undermines Plaintiffs' case. The Second Amendment protects "Arms" themselves. U.S. CONST. amend. II ("[T]he right of the people to keep and bear Arms, shall not be infringed."). The PLCAA, it bears repeating, provides *broader* support for all "component part[s]" of Arms and ammunition which, in some cases, may not rise to the level of Second Amendment "Arms" themselves. 15 U.S.C. § 7903(4). So if Magpul's products are considered Arms for purposes of the Second Amendment, surely they must be considered "component parts" of Arms for purposes of the PLCAA.

Finally, Plaintiffs' suggestion that the Court should disregard the Kentucky Act's definitional provision is circular. The Plaintiffs claim that the Kentucky statute is more "expansive" than the federal law. Mitchell & Elliott Resp. at 8, 14. But that is *only* true if one accepts Plaintiffs' tortured misreading of the federal PLCAA to exclude a vast array of component parts in spite of the statute's plain text covering all component parts. Otherwise, the Kentucky statute is entirely consistent with the federal PLCAA, which covers all component parts and makes no exclusion for some undefined category of "accessories," as Plaintiffs would prefer.

5. The Kentucky PLCAA Clarification Act is relevant and persuasive, and the Court should deny Plaintiffs' invitation to ignore a recently enacted statute of the Commonwealth. The people of the Commonwealth have spoken with a clear voice to echo what the federal PLCAA already declared: plaintiffs should not be permitted to sue firearm manufacturers for harm caused by criminal third parties misusing component parts like Magpul's alleged magazines and vertical grip. To be sure, Magpul has already acknowledged that the Kentucky Act does not apply retroactively, and it does not here claim the benefit of the Kentucky Act's new procedural provisions. But Magpul need not rely on the Kentucky Act's substantive provisions to prevail, as the PLCAA already provides Magpul full substantive immunity. Still, the Commonwealth's statute provides further and highly persuasive support for the proper reading of the PLCAA, and the Court may heed the statute's interpretative guidance.

Plaintiffs mischaracterize Magpul's argument (and the Commonwealth's statute) by arguing that the PLCAA Clarification Act cannot "override" or "amend" the PLCAA. Mitchell & Elliott Resp. at 9–10. The Clarification Act seeks to do no such thing, as should be plain from the statute's title alone. Nor would the Act's interpretive guidance require that the PLCAA have different meanings in different States. *See id.* Quite the opposite—the Act attempts to make interpretations in this Commonwealth consistent with the prevailing federal standard. The

Kentucky PLCAA Clarification Act simply reiterates—with the overwhelming support of the people's representatives—what the PLCAA has already long declared. This Court should follow the Act's guidance and avoid an outlier decision inconsistent with the PLCAA's plain text.

6. Independent of PLCAA immunity, Plaintiffs' suit based on harm caused entirely by a deranged criminal with whom Magpul had no interaction does not sufficiently establish duty or causation. Duty is a question of law. *Howard v. Spradlin*, 562 S.W.3d 281, 286 (Ky.Ct.App. 2018). Plaintiffs' entire assertion of duty hinges on the fact that fewer than a dozen mass shootings were committed with an AR-style rifle. *See* Mitchell Compl. ¶¶35-38; Elliott Compl. ¶¶34-37. But the AR-15 is "both widely legal and bought by many ordinary consumers." *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025). It is the most popular rifle in the United States, with studies suggesting at least 16 million Americans own an AR-15.[1] *Id*. The fact that eleven of 16 *million* AR-15s (0.00006873%) have been used in mass shootings is not enough to create a legal duty or foreseeability on the part of a manufacturer which is accused of nothing more than legally selling magazines to a similarly licensed and federally regulated distributor.

It is hard to imagine a more obvious superseding, intervening act than Sturgeon's mass murdering spree. Magpul could not have reasonably foreseen the tragic turn of events such that a court could attribute Sturgeon's harms to Magpul, an ordinary manufacturer who makes legal products in a legal manner. Plaintiffs tie themselves in knots arguing that Magpul had sufficient market power to somehow control the sales techniques of a third-party retailer two steps removed from Magpul's legal sale to a distributor, RSR. But, even if true, the law requires far more than that. As the Supreme Court of the United States recently clarified: "an ordinary merchant does not become liable for all criminal misuses of his goods, even if he knows that in some fraction of cases

[1] https://www.washingtonpost.com/nation/interactive/2023/american-ar-15-gun-owners/

misuse will occur." *Smith & Wesson*, 605 U.S. at 292. Rather, "[t]he merchant becomes liable only if, beyond providing the good on the open market, he takes steps to promote the resulting crime and make it his own." *Id.* There is no allegation that Magpul did any such thing.

In the end, Zurich's only recourse is to misrepresent the Complaints. The Zurich Plaintiffs base their response on the repeated claim that "Magpul knew River City was problematic." Zurich Resp. at 13. Yet despite making this representation to the Court *repeatedly* throughout its response, *see id.* at 5 ("The complaints allege that Magpul knew River City had a demonstrable history of compliance problems with the ATF, knew that River City had disproportionate numbers of firearms recovered from crime scenes, knew that River City engaged in inadequate screening of purchasers, and yet continued supplying River City with high-capacity magazines and tactical accessories."); *id.* at 6, 8, 9, 13, Zurich never cites *any* part of any of the multiple Complaints in this case to support this bald claim. Little wonder why—no Complaint in this case contains *any* allegation that Magpul had actual knowledge of alleged problems with River City Firearms. After all, Magpul allegedly sold its products to RSR, a third-party distributor, not to the retailer River City Firearms.

Finally, it bears mentioning that this Court's dismissal of Magpul would not mean the end of Plaintiffs' suit. Indeed, granting this motion need not have any impact on whether claims against River City Firearms, which has not moved for judgment on the pleadings, will continue. Magpul is a manufacturer who routinely sells its products in the ordinary course of business to RSR, a wholesale distributor, who in turn sells products to River City Firearms, who in turn sold products to Connor Sturgeon. The Defendants are all differently situated, with Magpul the most removed—indeed, *several* critical steps removed—from any interaction with Connor Sturgeon or River City Firearms or the events that gave rise to Plaintiffs' harm. However else this case may proceed, Magpul should be promptly dismissed.

Respectfully submitted,

/s/ Michael P. Foley
Michael P. Foley (KBA# 85668)
W. Jonathan Sweeten (KBA# 87338)
RENDIGS FRY KIELY & DENNIS, LLP
600 Vine Street, Suite 2650
Cincinnati, Ohio 45202
Telephone: (513) 381-9200
Facsimile: (513) 381-9206
mfoley@rendigs.com
jsweeten@rendigs.com

- And -

/s/ Anthony G. Raluy
Anthony G. Raluy (KBA # 85728)
RENDGIS FRY KIELY & DENNIS, LLP
101 Bullitt Lane, Suite 200
Louisville, Kentucky 40222
Telephone: (502) 814-1121
Facsimile: (502) 371-2299
traluy@rendigs.com

- And -

David H. Thompson*
Brian W. Barnes*
Nicole J. Moss*
Athie O. Livas (KBA# 99065)
COOPER & KIRK, PLLC
1523 New Hampshire Ave., NW
Washington, DC 20036
Telephone: (202) 220-9600
Facsimile: (202) 220-9601
dthompson@cooperkirk.com
bbarnes@cooperkirk.com
nmoss@cooperkirk.com
alivas@cooperkirk.com
**Admitted Pro Hac Vice*
Counsel for Magpul Industries Corporation

CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2026, a true and correct copy of the foregoing was filed via the Court's electronic filing system (which provides notice to all counsel of record) and was separately served upon the following counsel by email:

Dana Mulhauser
Alla Lefkowitz
Andrew Nellis
Everytown Law
450 Lexington Ave.
P.O. Box 4184
New York, NY 10017
dmulhauser@everytown.org
alefkowitz@everytown.org
anellis@everytown.org
Counsel for Mitchell Plaintiffs

Tad Thomas
Kevin Weis
Thomas Law Offices, PLLC
9418 Norton Commons Blvd., Ste. 200
Prospect, KY 40059
tad@thomaslawoffices.com
kevin.weis@thomaslawoffices.com
Counsel for Mitchell Plaintiffs

John D. Kolb
Zachary S. Holt
Kolb Clare & Arnold, PSC
11902 Brinley Ave., Ste. 202
Louisville, KY 40243
jkolb@kcalegal.com
zholt@kcalegal.com
smarsh@kcalegal.com
Counsel for Zurich American Insurance Company

Elizabeth A. Deener
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Ste. 1500
Lexington, KY 40507
P: (859) 255-8581
F: (859) 231-0851
edeener@sturgillturner.com
Counsel for RSR Group, Inc.

Antonio M. Romanucci
Patrick Huber
Romanucci & Blandin, LLC
321 North Clark Street, Ste. 900
Chicago, IL 60654
aromanucci@rblaw.net
phuber@rblaw.net
dkondos@rblaw.net
Counsel for Mitchell Plaintiffs

Hans G. Poppe
Kirk A. Laughlin
Taylor Richard
The Poppe Law Firm, PLLC
8700 Westport Road, Ste. 201
Louisville, KY 40242
hans@poppelawfirm.com
kirk@poppelawfirm.com
taylor@poppelawfirm.com
thea@poppelawfirm.com
terri@poppelawfirm.com
Counsel for Elliott Plaintiffs

Ryan L. Woody
Axepoint Law
826 N. Plankinton Avenue, Ste. 600
Milwaukee, WI 53203
woody@axepoint.com
Counsel for Zurich American Insurance Company

Christopher Renzulli
Scott Allen
William Diggs
Troy Lipp
David Massey
Renzulli Law Firm
One North Broadway, Ste. 1005
White Plains, NY 10601
crenzulli@renzullilaw.com
sallan@renzullilaw.com

Anthony Pisciotti
Danny Lallis
Ryan Erdreich
Pisciotti Lallis Erdreich
30A Vreeland Rd., Ste. 300
Florham Park, NJ 07932
apisciotti@pisciotti.com
dlallis@pisciotti.com
rerdreich@pisciotti.com
Counsel for River City Firearms, Inc.

wdiggs@renzullilaw.com
tlipp@renzullilaw.com
dmassey@renzullilaw.com
Counsel for RSR Group, Inc.

Matthew A. Taulbee
Lewis Brisbois Bisgaard & Smith LLP
250 E. Fifth Street, Suite 2000
Cincinnati, OH 45202
P: (513) 599-4643
F: (513) 808-9912
Matthew.taulbee@lewisbrisbois.com
Grace.simpson@lewisbrisbois.com
Kelly.markley@lewisbrisbois.com
Counsel for River City Firearms, Inc.

/s/ Michael P. Foley
Michael P. Foley