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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

FILED DATE: 6/16/2025 12:30 PM 2024CH06875

<p>CITY OF CHICAGO, an Illinois municipal corporation,</p> <p>Plaintiff,</p> <p>v.</p> <p>GLOCK, INC., a Georgia corporation; GLOCK Ges.m.b.H., an Austrian company; EAGLE GUN CLUB LLC f/d/b/a EAGLE SPORTS RANGE, an Illinois company; RANGE PLUS LLC f/d/b/a EAGLE SPORTS RANGE, an Illinois company; 5900 LLC d/b/a EAGLE SPORTS RANGE, an Illinois company, and MIDWEST SPORTING GOODS CO., an Illinois corporation,</p> <p>Defendants.</p>	<p>Civil Action No. 2024CH06875</p>
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**GLOCK, INC.’S MOTION FOR LEAVE TO FILE
NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendant Glock, Inc. respectfully requests leave to file this notice of supplemental authority to bring two issues to this Court’s attention. First, a decision issued last week by the U.S. Supreme Court regarding the Protection of Lawful Commerce in Arms Act 15, U.S.C. §§ 7901-03 (“PLCAA”). Second, the certification of interlocutory appeal of several questions relevant to the decision denying defendants’ motions to dismiss in the *Roberts v. Smith & Wesson Brands, Inc.*, No. 22 LA 00000487, case which was the subject of the City’s April 11, 2025 notice of supplemental authority.

Unanimous Supreme Court Decision on the PLCAA

In *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, the Supreme Court unanimously recognized that the PLCAA is an immunity statute, the “PLCAA’s core purpose” of which was to:

halt a flurry of lawsuits attempting to make gun manufacturers pay for the downstream harms resulting from misuse of their products. In a “findings” and “purposes” section, Congress explained that PLCAA was meant to stop those suits—to prevent manufacturers (and sellers) from being held “liable for the harm caused by those who criminally or unlawfully misuse firearm[s].”

605 U.S. ___, No. 23-1141, 2025 WL 1583281, *9 (June 5, 2025) (internal citation omitted). It held that because Mexico’s claims at the pleading stage did not satisfy the predicate exception, the “defendant manufacturers retain their PLCAA-granted immunity.” *Id. See also id.* at *10 (describing the PLCAA as providing a “general grant of immunity”) (Jackson, J., concurring).

The Court summarized Mexico’s claims against firearm manufacturers, including Glock, Inc., as follows:

- the manufacturers supply firearms to retail dealers whom they know illegally sell to Mexican gun traffickers;
 - A small minority of the dealers are responsible for most of the sales to Mexican traffickers; and those sales often violate federal gun laws—by, for example, involving straw purchasers or proceeding without background checks;
 - The manufacturers know who those bad apple dealers are. **** Yet the manufacturers continue to supply those dealers, as they do legitimate ones, in order to boost their own profits;
- manufacturers have failed to impose the kind of controls on their distribution networks that would prevent illegal sales to Mexican traffickers;
 - they could prohibit dealers from making bulk sales to individual customers, because guns sold in that way (Mexico says) are likely to be diverted to the illegal market;

- they could bar dealers from selling their firearms at gun shows or out of their homes, because those sales (Mexico again says) often ignore regulatory requirements like background checks;
- manufacturers could implement processes for monitoring or supervising their dealers' sales practices, so as to minimize illegal sales to traffickers;
- manufacturers make design and marketing decisions intended to stimulate cartel members' demand for their products;
 - manufacturers have increased production of military-style assault weapons, with an eye toward cultivating the criminal market;
 - manufacturers make guns whose serial numbers can be obliterated or defaced, thus hindering police tracing efforts;
 - manufacturers produce firearms whose names or aesthetic features appeal to cartel members.

Id. at *4-*5 (cleaned up).

These types of allegations are essentially identical to the claims that the City makes against Glock, Inc. in this case. Specifically, in the City's own "Summary of the Action," it makes essentially similar allegations:

- [T]he machine gun has returned as a weapon of choice for criminals in Chicago—this time in the form of a Glock pistol, which can be easily modified into a machine gun using a simple, quarter-sized device called an auto sear.
- Glock further aggravates this problem by utilizing some of the most irresponsible gun stores in the country, like Defendants Eagle Sports Range and Midwest Sporting Goods, to distribute its pistols, even though it knows or has reason to know that these stores are catering to criminals.
- Glock pistols are the most popular firearm in America. They are also the firearm most favored by criminals, particularly in Chicago.
- The ease with which Glock pistols can be converted into machine guns and Glock's sales of its products through guns stores that are well-known suppliers of crime guns have increased Glock's popularity within the criminal market.
- Glock has known about its dangerous design for years. Instead of making the

simple change that would prevent the uniquely easy modification of Glock pistols into illegal machine guns, Glock has made the business decision to continue profiting from the sales of its easily modified guns to the civilian market.

- Glock exacerbates this problem by selling its easily modified pistols through irresponsible stores that are disproportionate suppliers to the criminal gun market.
- By choosing to continue selling and marketing its easily modified pistols to Chicago non-law-enforcement consumers, including through irresponsible dealers, and refusing to implement simple changes to its pistol design, Glock has violated numerous obligations under municipal law.

Compl. ¶¶ 1, 3, 7, 8, 14.

The provisions in Section 2-25-090 of the Municipal Code of Chicago (“MCC”) and the Illinois Firearms Industry Responsibility Act, 815 ILCS 505/2BBBB(b)(1) & (4) (“FIRA”) on which the City relies, seek to impose liability on Glock, Inc. based on the same theory that the Supreme Court just unanimously rejected. Specifically, “‘passive nonfeasance’—a ‘failure to stop’” criminals from illegally converting Glock pistols to machineguns is insufficient to satisfy the predicate exception to the PLCAA and the “failure to improve gun design [by making it more difficult it install an MCD] (which federal [and Illinois] law do not require) cannot in the end show that [Glock, Inc. has] joined hand in with lawbreakers in the way needed to aid and abet.” *Estados Unidos*, 2025 WL 1583281, at *8. The Supreme Court concluded that because the firearms at issue are “both widely legal and bought by many ordinary consumers,” “manufacturers cannot be charged with assisting in criminal acts just because Mexican cartel members like those guns too.” 2025 WL 1583281, at *8.

The Supreme Court similarly rejected arguments that the PLCAA allowed Glock, Inc. to be held liable for the “failure to stop independent retailers downstream from making unlawful sales.” *Id.* (citation and quotation marks omitted). The Supreme Court suggested that the predicate exception can only be satisfied by the alleged violation of statutes specifically

applicable to the sale or marketing of firearms like the provisions of the Gun Control Act cited as examples in the predicate exception itself. *Estados Unidos*, 2025 WL 1583281, at *9. *See also id.* at *3 (“gun-sale violation”); *3 (“federal gun crime”); *4 (sales that “violate federal gun laws”); *7 (“unlawful sales of firearms”); *8 (“firearms violation”). The Court warned that broadly reading the predicate exception to allow other types of claims to survive would “swallow most of the rule,” and that it was doubtful that “Congress intended to draft such a capacious way out of the PLCAA.” *Id.* at 9. Accordingly, pursuant to the binding precedent from the Supreme Court in the *S&W* case, the City’s claims against Glock, Inc. must be dismissed pursuant to the PLCAA.

Certification for Interlocutory Appeal in *Roberts v. Smith & Wesson Brands, Inc.*

Even before the issuance of the Supreme Court’s decision in *S&W* cast its validity into doubt, the judge in the *Roberts* case recognized that there “there is substantial ground for difference of opinion” regarding his orders denying defendants’ motion to dismiss and certified several questions for an interlocutory appeal, including:

- Can alleged violations of either the Illinois Consumer Fraud and Deceptive Trade Practices Act (“CFA”), 815 ILCS 505/2 or the Illinois Deceptive Trade Practices Act (“DTPA”), 815 ILCS 510/2 serve as a predicate statute that could deprive [a firearm manufacturer] of PLCAA immunity?
- Does the Firearms Industry Responsibility Act (“FIRA”), 815 ILCS 505/2DDDD, qualify as a predicate statute for exemption under the PLCAA, 15 U.S.C. §7903(5)(A)(iii).
- Is the FIRA preempted by the PLCAA?
- If not preempted, is the application of FIRA to [a firearm manufacturer’s] sales and marketing mediums consistent with the U.S. Constitution, or does it infringe upon the First and Second Amendments and the Dormant Commerce Clause?

- If the FIRA is ‘declarative of existing law’ but applies to “actions commenced or pending on or after August 14, 2023”, can a violation of the FIRA’s provisions be “knowingly” committed before the FIRA was enacted?
- Whether a municipal ordinance banning the possession of certain firearms within the geographic boundaries of the enacting municipality is a “statute applicable to the sale or marketing of” firearms that takes place entirely outside of the municipality for purposes of 15 U.S.C. §7903(5)(A)(iii)?

Copies of the June 5, 2025 Orders certifying the above questions for interlocutory appeal are attached hereto as Exhibit A and B. Unless the Illinois Appellate Court declines to accept an appeal based on the questions certified in the *Roberts* case, there will be binding state court authority specifically addressing the viability of using FIRA and the DTPA (which are mirrored in MCC § 2-25-090) to satisfy the predicate exception to the PLCAA.

Dated: June 16, 2025

Respectfully submitted,

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Attorneys for Glock, Inc.

EXHIBIT A

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

Erin Cartwright Weinstein
Clerk of the Court
Lake County, Illinois

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

KEELY ROBERTS, individually and as parent)
and next friend of C.R. and L.R., and JASON)
ROBERTS, individually and as parent and next)
friend of C.R. and L.R.,)

Case No. 22 LA 00000487

Plaintiffs,)

Consolidated with Case Nos.
22 LA 00000488, 22 LA 00000489,
22 LA 00000490, 22 LA 00000491,
22 LA 00000492, 22 LA 00000493,
22 LA 00000494, 22 LA 00000495,
22 LA 00000496, 22 LA 00000497,
22 LA 00000532, 24 LA 00000201,
24 LA 00000203, 24 LA 00000206,
24 LA 00000466, 24 LA 00000471,
24 LA 00000474, 24 LA 00000475,
24 LA 00000476, 24 LA 00000477,
24 LA 00000478, 24 LA 00000479,
24 LA 00000480, 24 LA 00000481

v.)

SMITH & WESSON BRANDS, INC., et al.,)

Defendants.)

And)

CYBEAR INTERACTIVE, LLC, et al.,)

Respondents in Discovery)

ORDER ON BUDSGUNSHOP.COM AND RED DOT ARMS' MOTION FOR
CERTIFICATION OF ISSUES FOR INTERLOCUTORY APPEAL

This matter comes before the Court on Defendants', Budsgunshop.com and Red Dot
Arms, Motion for Certification of Issues for Interlocutory Appeal. Having heard arguments on
this Motion, considered the statutory authority and case law, and being fully advised in the
premises, the Court now FINDS AS FOLLOWS:

Defendants Budsgunshop.com and Red Dot Arms ("Gun Store Defendants") brought
Motions to Dismiss Plaintiffs' Complaints pursuant to 735 ILCS 5/2-615 and 2-619. On April 1,
2025, the Court entered its Order denying the Gun Store Defendants' motions with respect to all
Counts. Now, the Gun Store Defendants bring a Motion for Certification of Issues for
Interlocutory Appeal. They allege the following questions of law are appropriate for
interlocutory appeal under Supreme Court Rule 308(a):

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Budsgunshop.com questions

- 1) Do Plaintiffs' claims against Bud's constitute a qualified civil liability action from which the PLCAA provides it with immunity unless an exception applies?
- 2) Whether a municipal ordinance is a "State statute" for purposes of the predicate exception to the PLCAA set forth in 15 U.S.C. §7903(5)(A)(iii)?
- 3) Whether a municipal ordinance banning the possession of certain firearms within the geographic boundaries of the enacting municipality is a "statute applicable to the sale or marketing of" firearms that takes place entirely outside of the municipality for purposes of 15 U.S.C. §7903(5)(A)(iii)?
- 4) Whether an Illinois municipal ordinance banning the possession of certain firearms within the geographic boundaries of the municipality is violated by the online sale of a firearm to a resident of that municipality by a federally licensed firearms dealer located in another state when the firearm is shipped to a federally licensed firearms dealer in Illinois?
- 5) Whether a firearms dealer that sells a firearm to a customer through the internet and ships the firearm to a federally licensed firearms dealer, who in turn, transfers the firearm to the customer who purchased it, "supplies" the firearm to the customer who purchased it or the dealer to whom it shipped the firearm for purposes of 15 U.S.C. §§7903(5)(B)?
- 6) Whether a firearms dealer who transfers a firearm to another federally licensed firearms dealer can be held liable for negligent entrustment pursuant to 15 U.S.C. §§7903(5)(A)(ii) & (B) if the person to whom the other dealer transfers the firearms uses it "in a manner involving unreasonable risk of physical injury to the person or others"?
- 7) Whether liability based on aiding and abetting the violation of a state or federal statute applicable to the sale or marketing of firearms for purposes of 15 U.S.C. §7903(5)(A)(iii) can be based on anything less than acts by the defendant that seek to make the principal's violation of the statute succeed?
- 8) Whether liability based on aiding and abetting and/or in concert liability pursuant to Illinois law can be based on anything less than intentional acts or omissions specifically intended to assist the principal to commit the unlawful act?
- 9) Whether a firearms dealer that sells a firearm to a customer online and ships it to another federally licensed firearms dealer to transfer it to the customer pursuant to the requirements of state and federal law owes a duty to third parties who could be harmed if the customer to whom the firearm was sold used it to commit crimes?

- 10) Whether the online sale of a firearm that is shipped to another federally licensed firearms dealer to transfer it to the customer pursuant to the requirements of state and federal law is a proximate cause of damages sustained by plaintiffs when the purchaser of the firearm uses it to commit multiple premeditated murders?

Red Dot Arms questions

- 1) Can aiding and abetting liability apply absent allegations of knowledge and intent to assist another in breaking the law?
- 2) Can a negligent entrustment claim be based on the mere potentiality that another could later break the law?

ANALYSIS

Rule 308 permits a trial court to certify a question of law to the appellate court:

“When the trial court, in making an interlocutory order not otherwise appealable, finds that the order [(1)] involves a question of law as to which [(2)] there is substantial ground for difference of opinion and [(3)] that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the court shall so state in writing, identifying the question of law involved.” Ill. S. Ct. R. 308(a).

Where resolution of a certified question “will depend on the resolution of a host of factual predicates,” a reviewing court should typically decline to answer the question. *Combs v. Schmidt*, 2015 IL App (2d) 131053, ¶ 6; *Spears v. Ass'n of Illinois Electric Cooperatives*, 2013 IL App (4th) 120289, ¶ 15. In answering a certified question, the appellate court’s role is “to answer the specific question and return the parties to the trial court without analyzing the propriety of the underlying order.” *Combs v. Schmidt*, 2015 IL App (2d) 131053, ¶ 6; *Abrams v. Oak Lawn–Hometown Middle School*, 2014 IL App (1st) 132987, ¶ 5. Rule 308 “was not intended to be a mechanism for expedited review of an order that merely applies the law to the facts of a particular case,” and it does not “permit us to review the propriety of the order entered by the lower court.” *Id.*; *In re Estate of Luccio*, 2012 IL App (1st) 121153, ¶ 17.

The Court finds that the following questions are not appropriate for Rule 308(a) review: Budsgunshop.com questions 1, 2, 4-10 and Red Dot Arms’ questions 1, and 2. The Court agrees with Plaintiffs’ analysis of these questions finding that they are not pure questions of law and

their answers are dependent on the underlying facts of the case, thus making the questions improper. *See Rozsavolgyi v. City of Aurora*, 2017 IL 121048, ¶20. In order to answer whether the municipal ordinance has been violated, or whether the Gun Store Defendant “supplies” the firearm to the customer, the Court must resolve factual disputes and apply those facts to the law. Further, the questions as to whether the Gun Store Defendants can be held liable for negligent entrustment, or aiding and abetting, depend on applying the facts of this case to the applicable law. The causation and duty questions also rely on the application of facts to the law by asking whether allegations of fact in Plaintiffs’ Complaints adequately alleged the proper legal components of duty and causation. None of these questions are pure questions of law that are appropriate for certification under Rule 308.

Further, Budsgunshop.com questions 1 and 2 do not present a substantial difference of opinion. Question 1 asks whether Plaintiffs pled a “qualified civil liability” action that is barred under the PLCAA. This question was not in dispute by any of the parties. The Court’s Order was clear that the Plaintiffs’ Complaints met the definition of a “qualified civil liability action” under the PLCAA. However, the issues to be resolved were whether the predicate statute exception under the PLCAA applied to deny Defendants’ immunity under the PLCAA. Thus, there is no substantial ground for difference of opinion concerning this question. Additionally, regarding question 2, the plain text of the PLCAA defines the word “State” and is the deciding factor. There is no difference of opinion in the appellate or supreme court as to the plain text. The Gun Store Defendants provide no authority for the construction they advance. Thus, the Court can find no substantial difference of opinion justifying the certification of these questions.

Finally, question 4 involves an issue that was not determined by the Court. The question presented by Defendants is whether an Illinois municipal ordinance banning the possession of certain firearms within the geographic boundaries of the municipality is violated by the online sale of a firearm to a resident of that municipality by a federally licensed firearms dealer located in another state when the firearm is shipped to a federally licensed firearms dealer in Illinois. However, the issue determined by the Court involved not the direct violation of a municipal ordinance banning possession of a firearm by a sale outside the municipal boundaries, but the aiding and abetting of the violation of the municipal ordinance banning possession. These are different issues and the answer to the question presented by Defendants will not materially advance the litigation in any way.

The Court does find the Budsgunshop.com question 3 appropriate for certification. This issue involves questions of law as it asks the Appellate Court to interpret the meaning of “statute applicable to the sale or marketing of” firearms for purposes of 15 U.S.C. §7903(5)(A)(iii) and whether it encompasses a municipal ordinance banning the possession of certain firearms within the geographic boundaries of the enacting municipality. The question is not dependent on resolving or applying particular facts of this case. Likewise, resolution of this question does directly affect the current matter at issue as to whether the predicate statute exception in the PLCAA applies to the Gun Store Defendants and, thus, the Court does not find it overbroad. Plaintiffs attempt to argue this question does not have substantial grounds for differences of opinion. However, the Court disagrees. “The substantial grounds for difference of opinion prong in Rule 308 has been satisfied in instances where the question of law had not been directly addressed by the appellate or supreme court. . . .” *Rozsavolgyi v. City of Aurora*, 2017 IL 121048, ¶ 32. Here, this issue has not been addressed by either court. Plaintiff implicitly admits this in stating that none of the cases cited by the Gun Store Defendants supports or addresses the question. Thus, Plaintiffs’ argument has no merit.

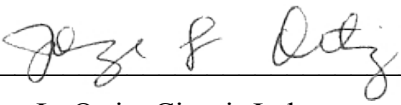
Additionally, the above question the Court agrees to certify would materially advance the litigation. Determining whether an ordinance violation satisfies the PLCAA predicate statute exception applies to most of Plaintiffs’ claims and would be definitive of whether Plaintiffs’ causes of action are allowed to move forward at all. In contrast, the questions for which the Court denies certification mainly concern whether the causes of action have been adequately pled. In which case, the Court determined the well-pled allegations were sufficient. The litigation can still materially advance and the questions presented by the Gun Store Defendants as to whether Plaintiffs have the evidence and proof needed for the duty, causation, and “aiding and abetting” elements of their claims can be answered at another stage of the litigation.

Accordingly, for the reasons stated above, the Court certifies for interlocutory appeal the following question:

Whether a municipal ordinance banning the possession of certain firearms within the geographic boundaries of the enacting municipality is a “statute applicable to the sale or marketing of” firearms that takes place entirely outside of the municipality for purposes of 15 U.S.C. §7903(5)(A)(iii)?

The Gun Store Defendants have not requested or brought forth any argument to stay these matters pending appeal. Therefore, this Court issues no stay of proceedings.

SO ORDERED.

ENTER: 
Jorge L. Ortiz, Circuit Judge

Dated this 06/05/2025, 2025, at Waukegan, Illinois.

EXHIBIT B

Erin Cartwright Weinstein
Clerk of the Court
Lake County, Illinois

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

KEELY ROBERTS, individually and as parent)
and next friend of C.R. and L.R., and JASON)
ROBERTS, individually and as parent and next)
friend of C.R. and L.R.,)

Case No. 22 LA 00000487

Plaintiffs,)

Consolidated with Case Nos.
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22 LA 00000532, 24 LA 00000201,
24 LA 00000203, 24 LA 00000206,
24 LA 00000466, 24 LA 00000471,
24 LA 00000474, 24 LA 00000475,
24 LA 00000476, 24 LA 00000477,
24 LA 00000478, 24 LA 00000479,
24 LA 00000480, 24 LA 00000481

v.)

SMITH & WESSON BRANDS, INC., et al.,)

Defendants.)

And)

CYBEAR INTERACTIVE, LLC, et al.,)

Respondents in Discovery)

**ORDER ON SMITH & WESSON BRANDS, INC.’S MOTION FOR CERTIFICATION
OF ISSUES FOR INTERLOCUTORY APPEAL**

This matter comes before the Court on Defendant’s, Smith & Wesson Brands, Inc.,
Motion for Certification of Issues for Interlocutory Appeal. Having heard arguments on this
Motion, considered the statutory authority and case law, and being fully advised in the premises,
the Court now FINDS AS FOLLOWS:

Defendants Smith & Wesson brought Motions to Dismiss Plaintiffs’ Complaints pursuant
to 735 ILCS 5/2-615 and 2-619. On April 1, 2025, the Court entered its Order granting Smith &
Wesson’s Motion with respect to Plaintiffs’ Counts alleging violations of the Illinois Consumer
Fraud and Deceptive Practices Act-Deceptive and Unlawful Acts and alleging Negligent
Entrustment. The Court’s Order denied Smith & Wesson’s motions with respect to all other
Counts. Now, Smith & Wesson brings a Motion for Certification of Issues for Interlocutory

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Appeal. It alleges the following questions of law are appropriate for interlocutory appeal under Supreme Court Rule 308(a):

PLCAA Immunity

- 1) Did Plaintiffs plead a “qualified civil liability action” that is barred by the Protection of Lawful Commerce in Arms Act, 15 U.S.C. §7901, *et. seq.* (“PLCAA”)?
- 2) Does the PLCAA bar Plaintiffs’ common law claims?
- 3) Can alleged violations of either the Illinois Consumer Fraud and Deceptive Trade Practices Act (“CFA”), 815 ILCS 505/2 or the Illinois Deceptive Trade Practices Act (“DTPA”), 815 ILCS 510/2 serve as a predicate statute that could deprive Smith & Wesson of PLCAA immunity?
- 4) Did Plaintiffs plead facts that Smith & Wesson “knowingly” violated a predicate statute based on the allegation that Smith & Wesson “should have known” its advertisements “support, recommend, or encourage individuals to engage in unlawful paramilitary or private militia activity in Illinois”?
- 5) Did Plaintiffs plead facts that Smith & Wesson’s alleged knowing violation of a predicate statute under the PLCAA proximately caused Plaintiffs’ injury?

Firearms Industry Responsibility Act

- 1) Does the PLCAA preempt the Firearms Industry Responsibility Act (“FIRA”), 815 ILCS 5/2DDDD?
- 2) If not preempted, is FIRA unconstitutional and does its application to Smith & Wesson’s advertisements violate Smith & Wesson’s First Amendment and Due Process rights?
- 3) Could Smith & Wesson have “knowingly” violated FIRA Section (b)(2) and/or (b)(4), which were not enacted until more than a year after the shooting incident that forms the basis of Plaintiffs’ Complaints?
- 4) If Smith & Wesson could have knowingly violated FIRA before its enactment, could that knowing violation have proximately caused injuries sustained by Plaintiffs before FIRA was enacted?

Consumer Fraud Act (Unfairness)-Standing

Do Plaintiffs have standing to bring an unfairness claim under Section 10a of the CFA where Plaintiffs do not allege either that they are purchasers or consumers of the Defendant’s products or that the Defendant intended for the Plaintiffs to receive or rely upon the alleged unfair advertisements?

Causation

- 1) Do Plaintiffs' allegations of intervening causal acts, including intentional, volitional, and criminal conduct, by other parties preclude a finding that Smith & Wesson proximately caused Plaintiffs' injuries and damages as a matter of law?
- 2) Did Plaintiffs plead facts that "the shooter saw one or more of Smith& Wesson's advertisements;" the advertisements "motivated or inspired" the shooter to commit his alleged crimes;" and that Smith & Wesson's advertising "created a condition conducive to a foreseeable intervening criminal act?"

Duty

Did Plaintiffs plead facts demonstrating that Smith & Wesson owed a cognizable duty to Plaintiffs, necessary to plead negligence-based claims, because advertisements portrayed in their Complaints created a foreseeable risk of injury, and the magnitude and consequence of placing a burden on Smith & Wesson to guard against criminal misuse of firearms is "minute?"

First Amendment

Was the correct constitutional analysis applied to Smith & Wesson's First Amendment defense?

ANALYSIS

Rule 308 permits a trial court to certify a question of law to the appellate court: "When the trial court, in making an interlocutory order not otherwise appealable, finds that the order [(1)] involves a question of law as to which [(2)] there is substantial ground for difference of opinion and [(3)] that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the court shall so state in writing, identifying the question of law involved." Ill. S. Ct. R. 308(a).

Where resolution of a certified question "will depend on the resolution of a host of factual predicates," a reviewing court should typically decline to answer the question. *Combs v. Schmidt*, 2015 IL App (2d) 131053, ¶ 6; *Spears v. Ass'n of Illinois Electric Cooperatives*, 2013 IL App (4th) 120289, ¶ 15. In answering a certified question, the appellate court's role is "to answer the specific question and return the parties to the trial court without analyzing the propriety of the underlying order." *Combs v. Schmidt*, 2015 IL App (2d) 131053, ¶ 6; *Abrams v. Oak Lawn-Hometown Middle School*, 2014 IL App (1st) 132987, ¶ 5. Rule 308 "was not intended to be a mechanism for expedited review of an order that merely applies the law to the

facts of a particular case,” and it does not “permit us to review the propriety of the order entered by the lower court.” *Id.*; *In re Estate of Luccio*, 2012 IL App (1st) 121153, ¶ 17.

The Court finds that the following questions are not appropriate for Rule 308(a) review: PLCAA Immunity questions 1, 4, 5; Firearms Industry Responsibility Act question 4; Consumer Fraud Act (Unfairness)-Standing question; Causation questions 1, 2; Duty question; and First Amendment question. The Court agrees with Plaintiffs’ analysis of these questions finding that they are not pure questions of law and their answers are dependent on the underlying facts of the case, thus making the questions improper. *See Rozsavolgyi v. City of Aurora*, 2017 IL 121048, ¶20. The PLCAA Immunity questions 4, and 5 seek answers that are dependent on facts that the Plaintiffs pled in their causes of action. In order to answer whether a “knowing” violation of a predicate statute was committed, the Court must resolve factual disputes and apply those facts to the law. The Causation and Duty questions also rely on the application of facts to the law by asking whether allegations of fact in Plaintiffs’ Complaints adequately alleged the proper legal components of duty and causation. Further, the Consumer Fraud Act-Standing question also requires facts of this particular case to be applied to law in regard to whether Plaintiffs adequately pled the necessary requirements of an Unfairness claim under the CFA. The First Amendment question specifically asks whether the court correctly applied the facts regarding the nature of the advertising and marketing of Smith & Wesson to First Amendment law. None of these questions are pure questions of law that are appropriate for certification under Rule 308. Further, PLCAA Immunity question 1 asks whether Plaintiffs pled a “qualified civil liability” action that is barred under the PLCAA. This question was not in dispute by any of the parties. The Court’s Order was clear that the Plaintiffs’ Complaints met the definition of a “qualified civil liability” action under the PLCAA. However, the issues to be resolved were whether the predicate statute exception under the PLCAA applied to deny Defendants’ immunity under the PLCAA. Thus, there is no substantial ground for difference of opinion concerning this question.

The Court does find the following questions appropriate for certification: PLCAA Immunity questions 2, 3; and Firearms Industry Responsibility Act questions 1, 2, and 3. However, the Court has revised some of the proposed questions to express true questions of law that are material to advance the litigation. Below are the revised questions:

Firearms Industry Responsibility Act

- 1) Does the Firearms Industry Responsibility Act (“FIRA”), 815 ILCS 505/2DDDD, qualify as a predicate statute for exemption under the PLCAA, 15 U.S.C. §7903(5)(A)(iii).
- 2) Is the FIRA preempted by the PLCAA?
- 3) If not preempted, is the application of FIRA to Smith & Wesson’s sales and marketing mediums consistent with the U.S. Constitution, or does it infringe upon the First and Second Amendments and the Dormant Commerce Clause?
- 4) If the FIRA is “declarative of existing law” but applies to “actions commenced or pending on or after August 14, 2023”, can a violation of the FIRA’s provisions be “knowingly” committed before the FIRA was enacted?

The PLCAA Immunity questions involve questions of law as each of them asks the Appellate Court to interpret the meaning of PLCAA’s predicate statute exception and whether it applies to common law claims and CFA/DTPA claims. Neither question is dependent on resolving or applying particular facts of this case to the law. Likewise, the FIRA questions 1, 2, and 3 ask the Appellate Court to resolve questions of law as to whether the FIRA is an applicable predicate statute, whether the FIRA is preempted by the PLCAA, whether the FIRA is constitutional, and whether violations of the FIRA could occur before its enactment.

Plaintiffs attempt to argue the PLCAA Immunity questions and FIRA questions do not have substantial grounds for differences of opinion. However, the Court disagrees. “The substantial grounds for difference of opinion prong in Rule 308 has been satisfied in instances where the question of law had not been directly addressed by the appellate or supreme court. . . .” *Rozsavolgyi v. City of Aurora*, 2017 IL 121048, ¶ 32. Here, these issues have not been addressed by either court. Plaintiff implicitly admits this in stating that none of the cases cited by Smith & Wesson supports or addresses the questions. This Court’s order cited support for its opinion from other jurisdictions in part due to these questions of law not being directly addressed by the Illinois appellate or supreme court. Thus, Plaintiffs’ argument has no merit.

Additionally, the above questions the Court agrees to certify would materially advance the litigation. Determining whether the PLCAA predicate statute exception applies to Plaintiffs’ claims would be definitive of whether Plaintiffs’ causes of action are allowed to move forward at all. Whether the FIRA is preempted or constitutional affects whether the PLCAA predicate

statute exception applies and also would make a material difference in whether the litigation of these matters move forward. In contrast, the questions for which the Court denies certification mainly concern whether the causes of action have been adequately pled. In which case, the Court determined the well-pled allegations were sufficient. The litigation can still materially advance and the questions presented by Smith & Wesson as to whether Plaintiffs have the evidence and proof needed for the duty, causation, and “knowing” elements of their claims can be answered at another stage of the litigation.

Accordingly, for the reasons stated above, the Court certifies for interlocutory appeal the following questions:

Does the PLCAA bar Plaintiffs’ common law claims?

Can alleged violations of either the Illinois Consumer Fraud and Deceptive Trade Practices Act (“CFA”), 815 ILCS 505/2 or the Illinois Deceptive Trade Practices Act (“DTPA”), 815 ILCS 510/2 serve as a predicate statute that could deprive Smith & Wesson of PLCAA immunity?

Does the Firearms Industry Responsibility Act (“FIRA”), 815 ILCS 505/2DDDD, qualify as a predicate statute for exemption under the PLCAA, 15 U.S.C. §7903(5)(A)(iii).

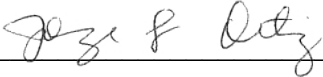
Is the FIRA preempted by the PLCAA?

If not preempted, is the application of FIRA to Smith & Wesson’s sales and marketing mediums consistent with the U.S. Constitution, or does it infringe upon the First and Second Amendments and the Dormant Commerce Clause?

If the FIRA is “declarative of existing law” but applies to “actions commenced or pending on or after August 14, 2023”, can a violation of the FIRA’s provisions be “knowingly” committed before the FIRA was enacted?

Smith & Wesson has not requested or brought forth any argument to stay these matters pending appeal. Therefore, this Court issues no stay of proceedings.

SO ORDERED.

ENTER: 
Jorge L. Ortiz, Circuit Judge

Dated this 06/05/2025, 2025, at Waukegan, Illinois.