

No. 2-25-0274
IN THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT

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.,
Plaintiffs,
v.

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

and,

CYBEAR INTERACTIVE, LLC, et. al.,
Respondents in Discovery.

Appeal from the Circuit Court of Lake
County, Illinois;

No. 2022 LA 00000487;
Consolidated for Pretrial Purposes
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

APPELLANT SMITH & WESSON'S
MOTION TO STAY DISCOVERY PENDING INTERLOCUTORY APPEAL

Defendants Smith & Wesson Brands, Inc. (f/k/a American Outdoor Brands Corp.), Smith & Wesson Sales Company, and Smith & Wesson, Inc. (collectively "Smith & Wesson"), by their undersigned counsel and pursuant to Illinois Supreme Court Rules 201(c), 308(f), and 361, request that this Court enter an order staying discovery during the pendency of the interlocutory appeal in *Roberts v. Smith & Wesson Brands, Inc.*, Case No. 2022LA00000487, and all cases consolidated therewith. In support of this Motion, Smith & Wesson incorporates herein its supporting Memorandum of Law, filed herewith.

Date: April 10, 2026

**SMITH & WESSON BRANDS, INC., SMITH &
WESSON SALES COMPANY, AND SMITH
& WESSON, INC.**

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**APPELLANT SMITH & WESSON'S MEMORANDUM IN SUPPORT OF SMITH &
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Wesson, Inc.*

Smith & Wesson moves for a stay of proceedings in the Circuit Court in the above captioned case so that this case is not litigated before dispositive issues of whether it should be litigated are decided by this Court. On May 1, 2025, the Circuit Court entered an order dismissing certain claims against Smith & Wesson but allowed the majority of the claims to proceed to discovery, which remains intensive and ongoing as discussed in further detail below. On January 28, 2026, the Illinois Supreme Court issued a supervisory order directing the Appellate Court to allow Smith & Wesson's application for leave to appeal. On February 12, 2026, Smith & Wesson moved the Circuit Court to stay discovery based on the Illinois Supreme Court's issuance of its supervisory order directing this Court to accept Smith & Wesson's application for leave to appeal and the threshold dispositive issues soon to be decided. The Circuit Court denied that motion. *See* Exhibit 1.

A stay is necessary to preserve immunity under the Protection of Lawful Commerce in Arms Act ("PLCAA"). As Illinois courts have held, immunity becomes illusory if a party can be forced to litigate pending this threshold issue. *See Plock v. Bd. of Educ. of Freeport Sch. Dist. No. 145*, 396 Ill. App. 3d 960, 970 (2009). A stay would be consistent with the purpose of the PLCAA, which Congress passed specifically to prohibit lawsuits such as this one that seek to impose liability against covered firearms industry members for the harm caused by third-party criminal or unlawful misuse of firearm products. Congress found that such lawsuits, in addition to being an abuse of the legal system, also imposed "unreasonable burdens on interstate and foreign commerce." 15 U.S.C. § 7901(b)(4). Permitting discovery to proceed in 25 separate cases, involving 79 separate plaintiffs, where the issue of whether the cases may even be brought is yet to be resolved unquestionably constitutes an "unreasonable burden."

This case has many other threshold shortfalls, including the admitted failure of Plaintiffs to plead the crux of their case. This case stems from a criminal and senseless shooting by Robert Crimo, III (the “Shooter”) using a lawfully manufactured and sold Smith & Wesson M&P Sport II rifle. Plaintiffs’ claim that Smith & Wesson’s advertisements are what caused the Shooter to act criminally. Yet, Plaintiffs’ complaints do not identify any advertisement that the Shooter saw, much less what in that advertisement caused the Shooter to act as he did. And despite representing to the Illinois Supreme Court that the Shooter did see a Smith & Wesson advertisement (*Roberts v. Smith & Wesson Brands Inc.*, No. 132414, Answer to Petition for Leave to Appeal, at p. 1 (Ill. Sup. Dec. 12, 2025)), Plaintiffs have refused to identify any such advertisement in response to interrogatories, incorrectly asserting that the request for such central facts constitutes a contention interrogatory.

Smith & Wesson’s motion to dismiss, which is now before this Court, sought to dismiss on a number of additional grounds. The issues include the lack of proximate causation (including the fact that Plaintiffs had plead several intervening causes), Plaintiffs’ lack of standing to assert consumer fraud act claims, the constitutionality and application of the recently enacted Firearms Industry Responsibility Act (“FIRA”), 815 ILCS 5/2DDDD, and whether Smith & Wesson could knowingly violate a statute that *did not even exist when the complained of acts occurred*. As all the issues presented address whether this case may even be brought, a stay is appropriate.

[D]iscovery should not be allowed until threshold immunity questions are resolved. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).¹ Statutory immunity exists “to spare a defendant not only unwarranted liability, but unwarranted demands customarily imposed upon those defending a long drawn-out lawsuit.” *Siegert v. Gilley*, 500 U.S. 226, 232 (1991). Immunity is lost

¹ *See also Goshtasby v. Bd. of Trs. of Univ. of Ill.*, 123 F.3d 427, 428-29 (7th Cir. 1997) (sovereign immunity); *Apostol v. Gallion*, 870 F.2d 1335, 1338 (7th Cir. 1989) (qualified immunity).

by “having to fight costly and protracted legal battles.” *Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157, 1175 (9th Cir. 2008). Immunity alone warrants a stay because permitting discovery negates immunity as effectively as an erroneous judgment. *See, e.g., Pearson v. Callahan*, 555 U.S. 223, 232 (2009) (stating that courts “repeatedly have stressed the importance of resolving immunity questions at the earliest possible stage in litigation”) (quoting *Hunter v. Bryant*, 502 U.S. 224, 227 (1991)); *Saucier v. Katz*, 533 U.S. 1941, 201 (2001); *see also Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 254–55 (4th Cir. 2009) (immunity “is effectively lost if a case is erroneously permitted to go to trial”).

The concern for immunity being negated merely if litigation continues applies with great force here given that Congress expressly sought to “prevent the use of . . . lawsuits to impose unreasonable burdens” on members of the firearms industry. 15 U.S.C. § 7901(b)(4). And this Court has recognized that such is the exact burden imposed if a court permits sweeping discovery “when the outcome of the case rests on the court’s interpretation of the law.” *Plock*, 396 Ill. App. 3d at 970.

The balance of burdens also overwhelmingly supports the issuance of a stay. As a preliminary matter, there is no risk that evidence or witnesses will become unavailable or assets will disappear if a temporary stay is issued pending appeal. Indeed, in opposing a stay below, Plaintiffs simply argued that a stay would delay the case. But every stay involves “delay” and where the issue is whether the case may even be brought, denial of a stay requires more. That is especially true here where the delay is a function of the novel theories of Plaintiffs’ choosing for purposes of circumventing PLCAA immunity. It was entirely foreseeable that these issues would result in appellate court review, and the Illinois Supreme Court’s extraordinary order directing this Court to accept Smith & Wesson’s Application for Leave to Appeal underscores the gravity of the

issues. No one disputes Plaintiffs' right to bring such litigation, but the delay of which they complain is a function of their complaint.

Set against the inevitable delay associated with any stay in any matter is the extraordinary burden imposed by the absence of a stay in this matter on parties and non-parties alike. Smith & Wesson already has shouldered the burden of producing hundreds of thousands of pages of documents from 46 different custodians on subjects relating to Plaintiffs' claims in this litigation. This discovery has addressed a wide variety of subjects ranging from (among others) (1) Smith & Wesson's marketing and advertisements of the M&P 15 Sport II and other Modern Sporting Rifles spanning over 10 years, (2) communications with and the work of third party vendors, agencies, and contractors retained by Smith & Wesson in conjunction with the marketing and advertising of the M&P 15 Sport II and other Modern Sporting Rifles spanning over ten years, (3) documents related to the engineering and design of the M&P 15 Sport II Rifle, and (4) marketing plans, creative briefs, and creative development related to the M&P 15 Sport II Rifle and other Modern Sporting Rifle.

Despite this substantial effort and production, discovery has metastasized with Plaintiffs now demanding not only additional rounds of interrogatory responses, but that Smith & Wesson review and produce tens of thousands of additional documents on an ever-increasing breadth of topics. Indeed, by way of limited example, Plaintiffs now demand documents on such tangential matters as "canvas fingerprinting" and "cookie syncing" (RFP No. 3); applications for licenses renewals and documents concerning the "monitoring" or "training of distributors or Federal Firearm Licensed Dealers" and the "assessment and/or knowledge of the federal Firearms licenses" held by other defendants, Buds, and Red Dot, (despite the absence of any claim of licensing deficiencies) (RFP Nos. 11, 39, 40); complaints made about domain names of social

media accounts (RFP No. 15); lobbying efforts (RFP No. 22); documents dating back to 1993 (years before Robert Crimo, III (the “Shooter”) was born) (RFP No. 35); and documents related to Smith & Wesson’s stock price (RFP Nos. 43-44). In short this is exactly the kind of sweeping discovery that should be stayed pending resolution of immunity and other case dispositive issues. *See Plock*, 396 Ill. App. 3d at 970.

Plaintiffs also are imposing significant discovery burdens on scores of third parties. Plaintiffs have (and are continuing) to issue a multitude of third-party subpoenas in anticipation of scores of depositions and expert work that would be required in this set of 25 consolidated cases involving 79 plaintiffs. The burden of a temporary stay pending a potentially case-dispositive appeal is insignificant compared to the substantial burden created not only through significant additional discovery costs shouldered by the parties, all which may be for naught, but also on the literally dozens, if not hundreds of third parties who will be subject to substantial expense and inconvenience.

And while Plaintiffs insist that such extraordinary discovery continue, to this day, they stubbornly refuse to respond to Smith & Wesson’s discovery request that they simply identify a Smith & Wesson advertisement which the Shooter even saw. That refusal exists despite Plaintiffs’ prior representation to the Illinois Supreme Court that such advertisements were seen by the Shooter. *Roberts v. Smith & Wesson Brands Inc.*, No. 132414, Answer to Petition for Leave to Appeal, at p. 1 (Ill. Sup. Dec. 12, 2025) (asserting that “the shooter was directly exposed to and influenced by such [Smith & Wesson] deceptive and unfair marketing, including on the website where he purchased the weapon”). Put simply, Plaintiffs should not be permitted to engage in such gamesmanship and in an endless fishing expedition while critical dispositive issues are resolved by this Court.

CONCLUSION

Wherefore, Smith & Wesson requests entry of an order staying discovery and all other proceedings pending Smith & Wesson's Rule 308 Appeal.

Date: April 10, 2026

**SMITH & WESSON BRANDS, INC., SMITH &
WESSON SALES COMPANY, AND SMITH
& WESSON, INC.**

By: /s/ Kenneth L. Schmetterer

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EXHIBIT 1

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

Erin Cartwright Weinstein
Clerk of the Court
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.,

Plaintiffs,

v.

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

Defendants,

Case No. 2022 LA 00000487

Consolidated with Case Nos.

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24 LA 00000480; 24 LA 00000481

Hon. Jorge L. Ortiz

ORDER

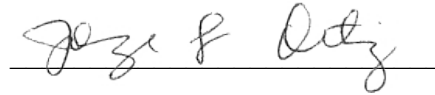
THIS CAUSE COMING TO BE HEARD on a status conference on March 12, 2026, due notice having been given, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED:

1. Defendants Smith & Wesson and Bud's Motions to Stay Discovery Pending Interlocutory Appeal are denied.
2. Defendants Smith & Wesson and Bud's oral motions for a stay pending a decision on their forthcoming request for a stay from the Second District is denied.
3. The following discovery deadlines are continued until June 30, 2026: (i) Subpoenas for treating physicians' depositions; and (ii) Oral discovery & Rule 213(f)(1) and 231(f)(2) depositions, including party depositions.

4. Plaintiffs' Petitions to Approve Minors and Wrongful Death Settlements that have been filed are entered and continued until April 10, 2026.
5. This matter is set for a case management conference on April 10, 2026 at 9:30 a.m. in courtroom 201. Other topics to be addressed at the case management conference include the following:
 - a. Plaintiffs' Petitions to Approve Minors and Wrongful Death Settlements;
 - b. Status of the State's Attorney's Office's production of documents responsive to Plaintiffs' subpoena;
 - c. The consolidated case schedule and trial sequencing; and
 - d. The status of any appearance by substitute counsel for Red Dot.

SO ORDERED, this ____ day of _____, 2026,



Judge Jorge L. Ortiz

03/19/2026

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SECOND JUDICIAL DISTRICT

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NOTICE OF FILING AND CERTIFICATE OF SERVICE

To: See attached service list

Please take notice that on April 10th, 2026, the undersigned counsel filed with the Clerk of the Court of the Second Judicial District of the Appellate Court Illinois, the attached Appellant Smith & Wesson's Motion to Stay Discovery. Copies of which are being served by the undersigned counsel via email to all counsel on the attached Service List also on this 10th day of April 2026.

Respectfully submitted,

/s/ Kenneth Schmetterer
Kenneth Schmetterer

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No. 2-25-0274
IN THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT

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.,
Plaintiffs,
v.

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

and,

CYBEAR INTERACTIVE, LLC, et. al.,

Respondents in Discovery.

Appeal from the Circuit Court of Lake
County, Illinois;

No. 2022 LA 00000487;
Consolidated for Pretrial Purposes
with Case Nos.

22 LA 00000488, 22 LA 00000489, 22
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LA 00000492, 22 LA 00000493, 22
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LA 00000474, 24 LA 00000475, 24
LA 00000476, 24 LA 00000477, 24
LA 00000478, 24 LA 00000479, 24
LA 00000480, 24 LA 00000481

ORDER

This matter comes before the Court on Defendants Smith & Wesson Brands, Inc. (f/k/a American Outdoor Brands Corp.), Smith & Wesson Sales Company, and Smith & Wesson, Inc. Motion to Stay Discovery Pending Interlocutory Appeal. The Court hereby orders:

1. Discovery is stayed in *Roberts v. Smith & Wesson Brands, Inc.*, Case No.

2022LA00000487, and all cases consolidated therewith during the pendency of the
interlocutory appeal.

Granted/Denied

ENTERED:

