

No. 133338

IN THE
SUPREME COURT OF ILLINOIS

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

Defendants-Petitioners,

v.

THE HONORABLE JUDGE JORGE L.
ORTIZ, Judge of the Circuit Court of Lake
County, Illinois,

Respondent,

and

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-Respondents.

On Appeal from the Circuit Court of
Lake County, Illinois, County
Department, Law Division, before the
Illinois Appellate Court, Second
Judicial District, No. 2-25-0274Cir. Ct. No. 22 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 00000481The Honorable Judge Jorge L. Ortiz,
Presiding

**PLAINTIFFS' OPPOSITION TO
SMITH & WESSON'S MOTION FOR SUPERVISORY RELIEF
TO STAY DISCOVERY PENDING INTERLOCUTORY APPEAL**

Plaintiffs-Respondents, who are 76 victims of the 2022 mass shooting at the Highland Park Fourth of July parade and their families, respectfully request that the Court deny Defendants-Petitioners' Smith & Wesson Brands, Inc., Smith & Wesson Sales Company, and Smith & Wesson Inc. (together, "Smith & Wesson") motion to stay discovery pending interlocutory appeal under Illinois Supreme Court Rule 308.

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CYNTHIA A. GRANT
SUPREME COURT CLERK

On the eve of the four-year anniversary of the massacre at the center of these cases, Smith & Wesson has taken the extraordinary step of asking this Court to stay discovery. This request comes after Smith & Wesson frivolously delayed the start of these cases by 18 months through its since-sanctioned attempts to remove them to federal court; 13 months into discovery; and 70 days since the appellate court rejected Smith & Wesson's nearly identical arguments for a stay. Perhaps most notably, Smith & Wesson made this stay request, with no notice to Plaintiffs, just *three days after* it had reached a significant discovery compromise by agreeing to search terms and custodians for the review and production of Smith & Wesson documents by an August 28, 2026, discovery deadline.¹ Filing this motion on the heels of a long-sought discovery compromise raises questions about whether Smith & Wesson was truly negotiating in good faith. Smith & Wesson's belated attempt to stay discovery should be denied for several reasons.

First, Smith & Wesson's Rule 308 appeal does not present an exceptional case warranting this Court's supervisory authority, which is used sparingly. None of the typical reasons for supervisory relief are present here, where there is no change in controlling law, the circuit court and appellate court acted well within their discretion in denying a stay of discovery, and Smith & Wesson chose not to avail itself of the typical appellate process for review of those denials under Rule 307.

¹ Smith & Wesson's attempt to justify its two-month delay in filing this motion, Mem. 2 n.1, rings hollow. It suggests that it did not ask this Court for a stay immediately after the Second District denied a stay on April 23 because (1) it sought to compel Plaintiffs' response to its premature contention interrogatories, and (2) there were long-pending issues related to law enforcement discovery. But Smith & Wesson's motion to compel was briefed in April and May and decided on June 4, Pls. Ex. 1, a full month before it moved for supervisory relief. Smith & Wesson also does not explain why third-party law enforcement discovery, which has progressed substantially, is relevant to the timing of this motion. Smith & Wesson's reference to the Highland Park Police Department's discovery is especially suspect because, when seeking a stay before the circuit court, Smith & Wesson stated that it "makes sense" to allow discovery to proceed against third parties, "particularly as it addresses law enforcement and governmental entities." Pls. Ex. 2, Tr. 22.

Second, Rule 308 establishes a default rule that an interlocutory appeal “shall not stay proceedings in the trial court unless the trial court or the Appellate Court or a judge thereof shall so order.” Ill. S. Ct. R. 308(f). Smith & Wesson fails even to acknowledge this default rule, and in any event cannot overcome it.

Third, Smith & Wesson is not entitled to a stay simply because it has argued (unsuccessfully thus far) that Plaintiffs’ actions are precluded under federal law. Contrary to Smith & Wesson’s distorted description of the relevant statute, the Protection of Lawful Commerce in Arms Act (“PLCAA”) in broad outline only prohibits actions against firearm manufacturers where they acted *lawfully*, and Plaintiffs allege that Smith & Wesson acted *unlawfully*. Further, in enacting PLCAA, Congress conspicuously omitted a provision mandating a stay of discovery while courts determine whether the statute bars a lawsuit. Moreover, Smith & Wesson’s argument that it is entitled to a stay based on “immunity” under PLCAA rests on a host of inapposite cases concerning, for example, governmental immunity, and other authority that Smith & Wesson blatantly mischaracterizes.

Fourth, Smith & Wesson’s attempt to wish away the severe prejudice that a discovery stay would cause Plaintiffs is divorced from reality and misrepresents the status of discovery. If discovery is stayed now, much of the progress that the parties have made will be lost, witnesses’ memories will fade, and, more fundamentally, the victims of the Highland Park shooting will be further denied even a hope of timely justice in their cases.

BACKGROUND

On July 4, 2022, Robert Crimo, III (the “Shooter”) used a Smith & Wesson Military & Police (“M&P”) assault rifle to murder seven people and injure dozens of others. Plaintiffs then sued Smith & Wesson and other defendants, bringing statutory and negligence claims against Smith & Wesson based on violations of Illinois consumer protection statutes. Smith & Wesson

halted these cases for 18 months by removing them to federal court based on arguments so frivolous that the Seventh Circuit recommended, and the district court imposed, sanctions. Order, *Roberts v. Smith & Wesson Brands, Inc.*, 1:22-cv-6169 (N.D. Ill. Mar. 21, 2025), ECF No. 102. Following remand, Smith & Wesson moved to dismiss in September 2024. On April 1, 2025, the circuit court largely denied Smith & Wesson's motion to dismiss. Discovery began shortly thereafter, and over a year ago.

Plaintiffs have been producing responsive documents and have either answered or are in the process of timely answering Smith & Wesson's interrogatories. For instance, Smith & Wesson has requested production of advertisements that Plaintiffs contend were unfair and deceptive under Illinois law and that were seen by the Shooter. Plaintiffs have not avoided these questions. For example, they produced a Smith & Wesson video highlighting the M&P rifle series that was hosted on defendant Budsgunshop.com's ("Buds") website when the Shooter purchased his assault rifle from that website. *See also* Pls. Ex. 6 ¶¶ 124, 126 (Plaintiffs' complaint featuring the same advertisement).² Plaintiffs have also produced other examples of Smith & Wesson's unfair marketing and advertisements that are repeatedly referenced in their complaints.³ Nevertheless, Smith & Wesson complains that Plaintiffs have not responded to its contention interrogatories

² Complaint citations refer to the First Amended Complaint filed in *Roberts v. Smith & Wesson Brands, Inc.*, No. 22-LA-00000487, which sufficiently represents all Plaintiffs' allegations for purposes of this opposition.

³ This includes (but is not limited to): Smith & Wesson's marketing of assault rifles through "Military & Police" branding; first-person-shooter-style "Get the Experience" advertising; advertising promising "[a]n Experience You Have to Feel to Believe;" "Kick Brass" campaigns encouraging consumers to "burn through all the ammunition you want" while promising "Pure Adrenaline"; a video advertisement titled "Get the Experience" that shows a shooter loading an M&P rifle from the first-person shooter perspective, mimicking video games; and Smith & Wesson's leverage of military associations to enhance the credibility and thus the sales of its M&P rifles to the civilian market, despite the fact that Smith & Wesson has no military contracts for M&P rifles. Pls. Ex. 6 ¶¶ 8-9, 60-89.

regarding the advertisements the Shooter saw. Plaintiffs objected to those interrogatories because Plaintiffs had in fact identified such advertisements (as discussed above), and any further response was premature because it required discovery from Smith & Wesson, Buds, and third-party law enforcement entities. The circuit court agreed and ordered Plaintiffs to file a timeline for supplementing their responses by August 3, to be discussed at a conference on August 12, allowing Plaintiffs time to receive and review additional discovery from Defendants and law enforcement. *See* Mem., Ex. 4. In the meantime, Plaintiffs are responding to Smith & Wesson's other contention interrogatories and will provide many of those responses next week and later this month. In sum, rather than avoid Smith & Wesson's interrogatories, Plaintiffs have either answered or are in the process of answering them.

Smith & Wesson, for its part, has produced around 33,000 documents in response to Plaintiffs' first set of document requests, although it vastly overstates the burden of its productions.⁴ Additionally, over the past several months, the parties have extensively negotiated various discovery disputes, including regarding Plaintiffs' second set of discovery requests, search terms, and custodians. Plaintiffs have also begun receiving productions from some of the third-party subpoenas they issued, including critical documents from law enforcement agencies.

Only after discovery was significantly underway did Smith & Wesson decide that it needed a stay. Smith & Wesson waited until February 2026 to seek a stay of discovery in the circuit court, which was almost ten months after it first moved for certification of issues under Rule 308 in April 2025. The circuit court denied Smith & Wesson's stay request on March 12, 2026, reasoning that:

⁴ Over 15,000 of those documents were merely reproduced from prior litigation with minimal additional burden. Moreover, Plaintiffs' analytics show that over half of Smith & Wesson's production contains near duplicates, significantly overstating the actual volume of distinct responsive material.

(1) the potentially dispositive nature of the appeal did not justify the stay; (2) the cases on which Smith & Wesson relied were inapposite; and (3) Plaintiffs would suffer “substantial burdens and prejudice” if these cases were delayed any further. Pls. Ex. 2, Tr. 54-57. Nearly one month later, on April 10, 2026, Smith & Wesson made the same stay request to the Second District. That request was summarily denied on April 23, 2026. Mem., Ex. 3. Smith & Wesson did not appeal that order, and, instead, continued with discovery. Indeed, just last week, Plaintiffs and Smith & Wesson reached an agreement regarding custodians and search terms (after over six months of negotiations). Surprisingly then, on July 2, 2026—on the brink of the four-year anniversary of the Highland Park massacre, and two months after the Second District denied relief—Smith & Wesson moved this Court for a stay.

ARGUMENT

Under Rule 308, a circuit court may certify questions for interlocutory appeal only when its underlying order “involves a question of law as to which there is substantial ground for difference of opinion and . . . an immediate appeal from the order may materially advance the ultimate termination of the litigation.” Ill. S. Ct. R. 308(a). The rule establishes a clear default: an order granting an application for leave to appeal “shall not stay proceedings in the trial court unless the trial court or the Appellate Court or a judge thereof shall so order.” Ill. S. Ct. R. 308(f). In other words, even though Rule 308 appeals necessarily involve pure questions of law that may end the litigation, “[n]ormally the interlocutory appeal will not stay proceedings in the trial court.” Ill. S. Ct. R. 308, Committee Comments (revised 1979).

“A party seeking a stay bears the burden of proving adequate justification for the stay.” *Marzouki v. Najar-Marzouki*, 2014 IL App (1st) 132841, ¶ 17. If “there is even a fair possibility that the stay . . . will work damage” to the opposing party, the movant must establish “a clear case of hardship or inequity.” *Id.* (citation omitted). Accordingly, in deciding whether to grant a stay, a

court balances the rights of the parties and considers all relevant circumstances bearing on the equitable nature of the relief. *See Stacke v. Bates*, 138 Ill. 2d 295, 308-09 (1990).

I. There Are No Exceptional Circumstances Warranting the Exercise of This Court's Supervisory Authority.

Smith & Wesson requests a stay of discovery pursuant to this Court's supervisory authority. The Illinois Supreme Court is "vested by the Illinois Constitution with supervisory authority over the lower courts in the state." *People v. Dobbins*, 2026 IL 131187, ¶ 32. Although the Court's supervisory authority is unquestionably broad, it "is not exercised at any time or for any reason—[the Court] exercise[s] restraint and invoke[s] this authority under exceptional circumstances." *Id.* In fact, supervisory orders are "disfavored." *In re J.T.*, 221 Ill. 2d 338, 347 (2006). The "most typical example" of the Court's use of its supervisory authority is "when a new opinion is released by this court or by the Supreme Court of the United States which appears to be dispositive of other cases pending before [this Court] on petitions for leave to appeal." *Dobbins*, 2026 IL 131187, ¶ 32 (citation omitted). "Additionally, a supervisory order is appropriate when the normal appellate process will not afford adequate relief and the dispute involves a matter important to the administration of justice or intervention is necessary to keep an inferior tribunal from acting beyond the scope of its authority." *Id.* (cleaned up). Consistent with these principles, the Court has declined to manage discovery via a supervisory order, explaining that "[j]ust as *mandamus* will not lie under ordinary circumstances to regulate discovery or even to correct abuses of discretion by trial courts in matters of discovery, supervisory relief is not available in such circumstances either." *People ex rel. Birkett v. Bakalis*, 196 Ill. 2d 510, 515 (2001) (denying request for supervisory order to prohibit a witness's deposition in a capital case).

There is no extraordinary circumstance warranting the exercise of this Court's supervisory authority here, where both the circuit court and Second District have declined to stay discovery.

Smith & Wesson has not argued that there is any intervening change in controlling law. Further, the ordinary appellate process would have been sufficient, but Smith & Wesson chose not to avail itself of the procedure: “Under established Illinois law, the denial of a stay of trial court proceedings is treated as a denial of a request for a preliminary injunction and is appealable as a matter of right under Illinois Supreme Court Rule 307(a)(1).” *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 39. Instead of appealing the Second District’s denial of its stay request under Rule 307, Smith & Wesson waited to file this motion until (1) two months after the Second District’s denial and (2) three days after it had entered into a significant discovery compromise (after not producing any documents since February). Given this unexcused delay and the questionable timing of this motion, Smith & Wesson should not be “reward[ed] . . . for circumventing the normal appellate process.” *Carmichael v. Union Pac. R.R. Co.*, 2019 IL 123853, ¶ 37. Finally, there is no dispute that the circuit court and Second District both acted within the scope of their discretion, and, indeed, as explained below, Rule 308 has a clear default presumption that discovery will continue. There is thus no harm to the administration of justice in permitting discovery to continue.

The cases that Smith & Wesson cites are readily distinguishable. *See* Mem. 4. In two of the cases, the Court relied on its supervisory authority to reach aspects of the lower court’s judgment that the parties had not addressed but that were important and needed correction. *See In re Estate of Funk*, 221 Ill. 2d 30, 97-98 (2006); *City of Urbana v. Andrew N.B.*, 211 Ill. 2d 456, 470 (2004). Indeed, the issues in *City of Urbana*, 211 Ill. 2d at 470, 475-76, involved “grave concerns” about erroneous procedures that caused juvenile defendants to face detention. *People ex rel. Carey v. Strayhorn*, 61 Ill. 2d 85 (1975), is likewise inapposite. There, this Court struck down an Illinois statute on reciprocal criminal discovery that conflicted with United States Supreme Court precedent and vacated the trial court’s order prohibiting discovery into a defendant’s alibi

defense because its order was inconsistent with Illinois Supreme Court rules. *Id.* at 90-92. The case was therefore far from the ordinary discovery issue present here and did not involve the pendency of an interlocutory appeal.

Further, in its effort to obtain this Court's intervention, Smith & Wesson overstates the issues before the Second District. *See* Mem. 1, 6. The circuit court certified six questions for interlocutory review under Rule 308, none of which involves issues of proximate cause or standing. Pls. Ex. 3, at 6. Smith & Wesson has briefed both the certified questions and these uncertified issues on appeal even though the Second District lacks jurisdiction to reach the latter. *See Combs v. Schmidt*, 2015 IL App (2d) 131053, ¶ 6. Therefore, many of the case-dispositive issues Smith & Wesson references are not properly before the appellate court. This includes the adequacy of Plaintiffs' pleading that the Shooter was exposed to Smith & Wesson marketing and the court-ordered timeline for responding to premature contention interrogatories on that issue. *See* Mem. 1, 3. In any event, the number of issues before the Second District is not an exceptional circumstance warranting supervisory relief.

Accordingly, there is no extraordinary circumstance meriting the exercise of the Court's supervisory authority.

II. There Is No Reason to Depart from Rule 308's Default Rule That Discovery Will Continue.

As explained, Rule 308(f) provides for a clear default rule that discovery will not be stayed pending interlocutory appeal. Smith & Wesson has not provided any reason to depart from that default presumption. To begin, Smith & Wesson's assertion that its Rule 308 appeal is "potentially case-dispositive" does not warrant a stay. Mem. 9. As the circuit court pointed out, "by definition all appeals under Rule 308 involve important questions of law which may terminate the litigation, including immunity. But the presumption is that discovery proceeds." Pls. Ex. 2, Tr. 54-55; *see* Ill.

S. Ct. R. 308(a) (referring to “question[s] of law,” the resolution of which “may materially advance the ultimate termination of the litigation”). Smith & Wesson notably fails to acknowledge this default presumption in its motion.

Further, Smith & Wesson wrongly assumes that it will prevail on interlocutory appeal, but the mere fact that a Rule 308 appeal is pending does not mean that Smith & Wesson will prevail. The circuit court certified certain questions for review because they had not been previously addressed by an Illinois appellate court, Pls. Ex. 3, at 5—not because it was persuaded by Smith & Wesson’s merits arguments, which it had rejected in its thorough motion-to-dismiss order. Indeed, the circuit court denied the very discovery stay that Smith & Wesson seeks from this Court, further demonstrating its continued belief that Plaintiffs are correct on the merits.

Nor does the fact that this Court directed the Second District to allow the appeal signify that Smith & Wesson will succeed on the merits. “The granting of leave to appeal . . . does not necessarily call into question a decision, especially one well-reasoned.” *People v. Davis*, 403 Ill. App. 3d 461, 467 (1st Dist. 2010) (citing *People v. Harris*, 123 Ill. 2d 113, 129 (1988)). Indeed, it is not unusual for this Court to direct the appellate court to allow an appeal under Rule 308, and then—after the appellate court upholds the circuit court’s underlying ruling—either affirm or decline to review the appellate decision. *See, e.g., Sproull v. State Farm Fire & Cas. Co.*, 2021 IL 126446, ¶¶ 14, 55 (directing appellate court to allow Rule 308 appeal and affirming appellate court’s judgment that upheld circuit court decision); *State ex rel. Levenstein v. Salafsky*, 196 Ill. 2d 564, 564 (2001) (directing appellate court to grant Rule 308 application for leave to appeal), *remanded to People ex rel. Levenstein v. Salafsky*, 338 Ill. App. 3d 936, 937-38 (2d. Dist. 2003) (on remand, agreeing with circuit court on answers to certified questions), *appeal denied*, 205 Ill. 2d 647 (2003); *Holtz v. Crown*, 357 Ill. App. 3d 994, 997, 1001 (1st Dist. 2005) (allowing Rule

308 appeal pursuant to this Court’s supervisory order, and then holding that circuit court properly exercised jurisdiction), *appeal denied*, 216 Ill. 2d 686 (2005). In short, nothing justifies deviating from Rule 308’s default presumption that discovery should continue while the interlocutory appeal is pending.

III. The Protection of Lawful Commerce in Arms Act Does Not Warrant a Stay Because Plaintiffs Allege Unlawful Conduct by Smith & Wesson.

Throughout its motion, Smith & Wesson contends that this Court should exercise its supervisory authority and stay discovery because its Rule 308 appeal involves PLCAA’s protections. Mem. 4-8. Principally, it asserts that “[a] stay is necessary to preserve the express immunity conferred through the PLCAA.” *Id.* at 6-7. Smith & Wesson’s argument is premised on its incorrect view of PLCAA’s purpose and operation and is therefore wrong on numerous fronts.

A. Smith & Wesson Misrepresents PLCAA’s Text and Purpose, Both of Which Permit Lawsuits Based on a Firearm Manufacturer’s Unlawful Conduct.

Smith & Wesson misrepresents PLCAA’s scope and purpose by characterizing the law as shielding it from all lawsuits based on a third-party’s criminal or unlawful misuse of firearms. *See* Mem. 6. Congress passed the Protection of *Lawful* Commerce in Arms Act to shield firearms manufacturers from certain lawsuits only if the firearm manufacturer acted *legally*. To that end, PLCAA requires the dismissal of certain actions involving the criminal or unlawful misuse of a firearm unless the lawsuit falls within one of PLCAA’s six exceptions. 15 U.S.C. §§ 7902(a), 7903(5)(A). The exception at issue in Smith & Wesson’s appeal, the predicate exception, permits “an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought[.]” *Id.* § 7903(5)(A)(iii). Indeed, PLCAA itself notes that its purpose is to prohibit lawsuits against gun manufacturers for “harm *solely* caused by the criminal or unlawful misuse” of a firearm. *Id.* § 7901(b)(1) (emphasis added). Cosponsors of the

legislation confirmed that PLCAA permits claims like Plaintiffs’ that are premised on a firearm manufacturer’s unlawful conduct. *See, e.g.*, 151 Cong. Rec. S9089 (daily ed. July 27, 2005) (Statement of Sen. Larry Craig) (stating that PLCAA “does not protect any member of the gun industry from lawsuits for harm resulting from any illegal actions they have committed”). Smith & Wesson’s motion does not even mention the key exception at issue in this appeal (the predicate exception)—in fact, it omits that PLCAA includes exceptions at all—and it thus presents a misleading picture of PLCAA and how it functions.

Given PLCAA’s statutory text and purpose, Smith & Wesson’s “claim that the purpose of the Act was to spare [it] litigation expenses in the case[s] at hand only assumes what it seeks to prove”—that PLCAA bars Plaintiffs’ lawsuits. *City of New York v. Beretta U.S.A. Corp.*, 401 F. Supp. 2d 244, 298 (E.D.N.Y. 2005), *rev’d in part on other grounds*, 524 F.3d 384 (2d Cir. 2008) (rejecting similar argument by firearm manufacturers).⁵ Even if Congress sought to “help private defendants avoid the expense of defending” certain actions, “the Act does not protect defendants from actions that *might turn out to be*” preempted. *Id.*

Notably, despite recognizing the possibility of burdens that accompany litigation, Congress did not provide for a stay of proceedings while courts determine whether an action satisfies a PLCAA exception. This “silence” is “significant” because “[w]hen Congress believes that litigation stays are required, it provides for them.” *Id.* at 297-98. Indeed, in other statutes, Congress has provided for automatic stays of litigation pending the resolution of certain motions. *See, e.g.*, 18 U.S.C. § 3626(e)(2)(A)(i) (Prison Litigation Reform Act); 15 U.S.C. § 77z-1(b) (Private Securities Litigation Reform Act). But Congress included no similar provision in PLCAA. Instead,

⁵ The trial court in *Beretta* did stay further proceedings pending appeal but did *not* stay discovery, which was already complete. 401 F. Supp. 2d at 251.

Congress left this discretionary decision for courts to resolve on a case-by-case basis, as they routinely do. It is thus unsurprising that, as the circuit court noted, Smith & Wesson has “not come forward with any cases saying that stays of discovery are required when an appeal challenging the denial of PLCAA immunity is pending.” Pls. Ex. 2, Tr. 55. Smith & Wesson cites *In re: Academy, Ltd.*, No. 19-0497 (Tex. S. Ct. June 21, 2019), as its sole example of an appellate court staying trial court proceedings while it decided questions regarding PLCAA’s protections. Mem. 6-7. That order, which was issued in a different jurisdiction under different circumstances, provided no reasoning for this discretionary decision, such as a discussion of the potential prejudice to each party or its view about the likelihood of the defendant’s success on the merits. Pls. Ex. 4. It certainly did not establish that discovery should be stayed whenever reviewing courts consider whether PLCAA precludes a certain action.

B. Even if PLCAA Confers “Immunity” in Some Cases, That Fact Does Not Merit a Stay of Discovery.

Even assuming that the application of PLCAA raises questions of “immunity,” no statute, court rule, or decision requires discovery to be stayed when dispositive questions of PLCAA “immunity” are under interlocutory appellate review. Smith & Wesson’s cited cases do not say otherwise.

Initially, as Plaintiffs have already pointed out in both the circuit court and Second District, Smith & Wesson fundamentally misrepresents *Plock v. Board of Education of Freeport School District No. 145*, 396 Ill. App. 3d 960 (2d Dist. 2009). See Mem. 6-9. It describes *Plock* as “affirming [the] trial court’s stay of discovery where the dispositive issue is legal and no factual development was necessary.” *Id.* at 6. But *Plock* said nothing about stays of discovery. Rather, it discussed discovery in a narrow, distinct context, holding that the circuit court did not abuse its discretion in denying a defendant’s discovery request where there were no facts in dispute and

where the defendant itself had moved for judgment on the pleadings. *Plock*, 396 Ill. App. 3d at 970-71. In doing so, *Plock* recited the standard for a judgment on the pleadings, which is that a judgment may be proper “when the outcome of the case rests on the court’s interpretation of law.” *Id.* at 970. Smith & Wesson quotes that language entirely out of context as supporting its assertion that continuing discovery here will cause it undue burden. *See* Mem. 7-8. Finally, *Plock* did not consider any questions of immunity, let alone suggest that “immunity and other dispositive issues” justify a stay of discovery, as Smith & Wesson asserts. *See id.* at 9. In short, *Plock* has nothing to do with whether a stay is appropriate here. Yet Smith & Wesson continues to mischaracterize *Plock*, even repeating some prior mischaracterizations verbatim, despite Plaintiffs pointing out its errors before the circuit court and Second District. The only logical inference to be drawn is that Smith & Wesson is intentionally misusing *Plock*.

Additionally, as the circuit court reasoned, most of Smith & Wesson’s other citations are “inapposite” because they involve “absolute or qualified immunity provided to government officials.” Pls. Ex. 2, Tr. 55. The context of such cases is materially different because denials of governmental immunity defenses are treated as final decisions, not interlocutory orders, for purposes of appeal. *See Harlow v. Fitzgerald*, 457 U.S. 800, 806 n.11 (1982) (citing *Nixon v. Fitzgerald*, 457 U.S. 731, 742 (1982) (explaining collateral-order doctrine)). That reflects the unique purpose of governmental immunity doctrines to shield public officials from the burdens of litigation (including discovery), which are “peculiarly disruptive of effective government.” *Id.* at 817-18. Smith & Wesson attempts to wave away this distinction by insisting that it, too, is burdened by this litigation. Mem. 7 n.3. But courts have consistently found that “critical” and “important” differences between private and governmental actors disfavor applying governmental immunity doctrines to private parties. *Richardson v. McKnight*, 521 U.S. 399, 409-12 (1997); *see*,

e.g., *Wyatt v. Cole*, 504 U.S. 158, 168 (1992) (recognizing that “rationales” behind qualified immunity for government officials are “not transferable to private parties”). They have done so even when defendants seek interlocutory review regarding PLCAA. *See Beretta*, 401 F. Supp. 2d at 298 (“Defendants are not government officials, and they cite no authority for the proposition that private parties should receive the same immunity benefits as government officials.”). Here, too, the governmental immunity cases that Smith & Wesson cites are inapplicable.⁶

The remaining decisions in Smith & Wesson’s motion are distinguishable because they were issued on appeal from trial court rulings that disposed of the litigation, such as a grant of summary judgment or a dismissal. In those cases, extensive discovery had already occurred or the litigation had already been resolved at the trial-court level, and, unsurprisingly, neither addressed whether discovery should be stayed. *See Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 260 (4th Cir. 2009) (appeal from dismissal of complaint); *Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157, 1161 n.1 (9th Cir. 2008) (en banc) (appeal from grant of summary judgment). Those cases offer no guidance for situations like this one, where the proceedings below remain live and discovery is incomplete.

IV. If Discovery Is Stayed, Plaintiffs Will Experience Undue Prejudice That Outweighs Any Burden on Smith & Wesson.

Although undoubtedly discovery requires Smith & Wesson to expend resources, those resources do not compare to the prejudice that Plaintiffs will experience if discovery is stayed pending this appeal. Further, Smith & Wesson’s months-long “delay in . . . seeking a stay vitiates

⁶ *See* Mem. 7 (citing *Pearson v. Callahan*, 555 U.S. 223 (2009); *Saucier v. Katz*, 533 U.S. 194 (2001); *Siegert v. Gilley*, 500 U.S. 226 (1991); *Hunter v. Bryant*, 502 U.S. 224 (1991); *Harlow*, 457 U.S. 800; *Goshtasby v. Bd. of Tr. of Univ. of Ill.*, 123 F.3d 427 (7th Cir. 1997); *Apostol v. Gallion*, 870 F.2d 1335 (7th Cir. 1989)).

much of the force of [its] allegations of irreparable harm.” *Beame v. Friends of the Earth*, 434 U.S. 1310, 1313 (1977) (Marshall, J., in chambers).

First, while Smith & Wesson argues that every stay involves a delay, Mem. 8, that does not account for the considerable delays Smith & Wesson itself has already caused. This includes waiting ten months after moving to certify questions for appeal under Rule 308 to seek a stay from the circuit court; waiting one month after the circuit court denied a stay to request one from the appellate court; and waiting more than two months after the appellate court denied a stay to file this motion, three days after reaching a significant discovery compromise with Plaintiffs. Given the passage of time and status of discovery, a stay would undo the parties’ progress and result in inefficiency, duplication of effort, and further delay when discovery resumes. Recognizing that, the circuit court denied a stay in part because of the “substantial burdens and prejudice” that could result “if discovery were halted at this juncture.” Pls. Ex. 2, Tr. 56. The circuit court has been supervising these 25 cases for two years and is therefore “in the best position to weigh the competing needs and interests of the parties.” *See Selby v. O’Dea*, 2017 IL App (1st) 151572, ¶ 115 (citation omitted).

Second, Smith & Wesson’s attempt to minimize the irreparable prejudice to Plaintiffs from a discovery stay ignores the reality of litigation. Its bald claim that “there is no risk that evidence or witnesses will become unavailable” if discovery is stayed pending appeal, Mem. 3, fails to acknowledge that the appeal process—including a potential appeal to this Court—could take a year or more. As time passes, memories fade, key witnesses may leave Smith & Wesson for other jobs, and other events create further obstacles to Plaintiffs obtaining discovery to which they are entitled. *See Kove IO, Inc. v. Amazon Web Servs., Inc.*, No. 18-cv-8175, 2022 WL 683666, at *3 (N.D. Ill. Mar. 8, 2022) (noting the “possibility that a stay could compound the problems of stale

evidence, faded memories, and lost documents” (citation omitted)). It also unjustifiably delays justice for the victims of the Highland Park mass shooting.

Third, Smith & Wesson’s arguments regarding its own burdens are misleading. Smith & Wesson argues that Plaintiffs are “demanding” additional rounds of interrogatory responses and that Smith & Wesson review hundreds of thousands of additional documents. Mem. 8. But there are no outstanding interrogatories to which Smith & Wesson has not provided at least an initial response or objection. And confoundingly, Smith & Wesson **agreed** to review many of the documents about which it now complains on June 29, just three days before filing this motion. Pls. Ex. 5. Smith & Wesson also greatly exaggerates the burden of upcoming depositions on itself and third parties: the parties are set to complete oral discovery for only the two cases that will be consolidated for the first trial. Mem. 9-10. Moreover, Smith & Wesson’s projections of future discovery costs are speculative and unsupported. The parties have agreed to a case management schedule, and discovery is proceeding under close judicial supervision. That complex, multi-plaintiff litigation involves significant discovery is unremarkable and does not transform an ordinary discovery burden into an exceptional circumstance warranting this Court’s supervisory intervention.

Further, contrary to Smith & Wesson’s assertions that Plaintiffs seek documents on “tangential matters,” Mem. 9, the parties remain at odds on only a few categories of documents. These include documents relating to the development of Smith & Wesson’s advertising and marketing campaigns and to Smith & Wesson’s knowledge of and commercial response to mass shootings. Smith & Wesson has also refused to produce documents relating to its financial metrics and profitability, including after mass shootings, and whether those financial incentives influenced its marketing, distribution, and risk-mitigation decisions. These categories of documents go to the

core of Plaintiffs' claims—that Smith & Wesson knowingly employed marketing strategies designed to appeal to dangerous individuals, understood the consequences of those strategies, and chose profits over public safety.

Fourth, Smith & Wesson's argument that Plaintiffs have delayed discovery by failing to produce advertisements that influenced the Shooter to commit these crimes, Mem. 10, is both false and reflects a fundamental misunderstanding of how marketing and advertising influence consumer behavior and purchasing decisions. As discovery and expert testimony will demonstrate, marketing exposure operates through pervasive campaigns and not solely through discrete, identifiable viewing of individual advertisements. In any event, Plaintiffs have identified and produced numerous unfair and deceptive Smith & Wesson advertisements, including an advertisement highlighting the M&P rifle series posted on the website where the Shooter bought the firearm, when he bought the firearm. It is not Plaintiffs who have engaged in "gamesmanship," Mem. 10, but Smith & Wesson through its endless dilatory tactics.⁷

⁷ In the alternative, if the Court is inclined to issue a stay of any kind (which it should not), that stay should be limited to discovery involving Smith & Wesson. Defendant Buds, which has a related interlocutory appeal before the appellate court, has not moved for a stay. Smith & Wesson is therefore the only party seeking relief before this Court.

CONCLUSION

Accordingly, Plaintiffs request that this Court deny Smith & Wesson's motion to stay discovery.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I hereby certify under penalties provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure (735 ILCS 5/1-109) that, on July 9, 2026, I caused copies of the foregoing **Plaintiffs' Opposition to Motion For Supervisory Relief to Stay Discovery Pending Interlocutory Appeal** to be served electronically via Odyssey eFileIL upon counsel of record for Smith & Wesson Defendants-Petitioners as listed below. I further certify that on July 9, 2026, I caused copies of the foregoing document to be served on the presiding circuit court judge both by emailing his chambers a copy of the document and by depositing a hard copy in U.S. Postal Service First-Class Mail to the address below.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct.

/s/ Priyanka Gupta Sen
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