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SC Court of Appeals

The State Of South Carolina
In The Court of Appeals

Appeal from Spartanburg County
Court of Common Pleas
Hon. J. Mark Hayes, Circuit Court Judge

Consolidated Civil Action No. 2018-CP-42-04297
Appellate Case No. 2023-001094

Cindy Coxie, as Special Administrator for the Estate of
Johnny Coxie,Respondent,

v.

Academy, Ltd., d/b/a Academy Sports and Outdoors; and
Dustan Lawson..... Defendants,

and

Academy, Ltd. d/b/a Academy Sports + Outdoors,Appellant,

v.

Dustan Lawson and Todd Christopher Kohlhepp,Cross-Defendants,

**Appellant’s Notice Withdrawing Emergency *Ex Parte* Verified
Petition for Writ of Supersedeas**

Defendant-Appellant Academy, Ltd. d/b/a Academy Sports + Outdoors (“Academy”) files this notice withdrawing its petition for supersedeas. The writ is not necessary as the Circuit Court granted a stay pending appeal.

In the above pending appeal, the Circuit Court filed the attached order staying its prior final rulings pending the resolution of Academy’s appeal. See **Exhibit 1**, Stay Order (July 18, 2023). Specifically, the Circuit Court ordered that, “[b]ased upon the unique circumstances of the present motion, this Court grants the Stay from the production of document previously

discussed.” *Id.* at 9. Communications with the trial court since its rulings confirm that it applies to all aspects of the ordered production. *See Exhibit 2*, Emails with Trial Court (July 20, 2023). Thus, the request for supersedeas is now moot and the stay pending appeal is in place. Therefore, Academy withdraws its petition for supersedeas.

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Attorneys for Academy, Ltd. d/b/a Academy Sports + Outdoors

Columbia, South Carolina
July 25, 2023

Exhibit 1

Circuit Court's Stay Order
(July 18, 2023)

For the reasons stated herein and as outlined herein, the Motion to Stay is granted. As ordered herein, the parties shall reconvene virtually with this Court on August 17, 2023 at 1:00 p.m., for further review.

BACKGROUND

The above captioned matter (2018-CP-42-04297) is a consolidated case of three (3) separate lawsuits filed by the personal representative of three (3) gun shot victims murdered by cross-defendant Todd Christopher Kohlhepp.¹ Prior to consolidation, the three (3) cases were styled as: Cindy Coxie as Special Administrator of the Estate of Johnny Coxie v. Academy, Ltd, d/b/a Academy Sports and Outdoors, Dustin Lawson and Kohlhepp, Civil Action No. 2018-CP-42-04397; Carl Muller, solely as the Personal Representative for the Estate of Charles David Carver and not individually v. Academy, Ltd, d/b/a Academy Sports and Outdoors, Dustin Lawson, and Todd Kohlhepp, 2019-CP-42-02962; and Mary McCraw, as Special Administrator for the Estate of Megan Leigh Coxie v. Academy, Ltd., d/b/a Academy Sports and Outdoors, Dustin Lawson, and Todd Kohlhepp, Civil Action No. 2019-CP-42-02965.²

Generally, and broadly, the allegations central in all three cases are that the murders of Johnny Coxie, Megan Leigh Coxie, and Charles David Carver were the result of Kohlhepp shooting the three (3) victims with gun(s) unlawfully provided to him by cross-defendant Lawson who was a straw purchaser of the guns from defendant Academy. Plaintiffs allege that Academy should have known Lawson was a straw purchaser when he was purchasing firearms from November 2012 to July 2016.³ Defendant Academy has denied all factual allegations and

¹ Joint Motion for Complex Designation, paragraph (3)a.

² As alleged in the complaints, the murders of the three (3) victims occurred between December 2015 to November 2016. The body of the deceased, Megan Leigh Coxie, was discovered in November 2016 after she had been missing since December 2015.

³ Academy, Ltd.'s Memorandum In Opposition to Plaintiff's Motion to Compel filed June 22, 2023.

the application of the legal theories asserted by the plaintiffs to establish liability against Academy.⁴

Cross-defendant Kohlhepp is incarcerated in the South Carolina Department of Corrections and has not made an appearance in these lawsuits. This Court has been informed that cross-defendant Lawson is incarcerated in a federal prison and is representing himself pro se. All of the plaintiffs and Defendant Academy have been represented by numerous attorneys, including out-of-state attorneys admitted pro hac vice to represent both the plaintiffs and Academy.

After extensive briefing and arguments, Academy's SCRCP 12(b)(6) Motion to Dismiss was denied in July of 2019.⁵ Thereafter, a consent Joint Scheduling Order was issued in December 2019. Consolidation of the cases for purpose of scheduling and confidentiality orders occurred in April 2020. A separate consent Confidentiality Order was entered in April 2020.⁶ In the Confidentiality Orders, the parties agreed to detailed and stringent rules and procedures for

⁴ In its Answer, Academy asserts, among other things, certain provisions of PLCAA (15 U.S.C. section 7901, et. seq.) as a defense/immunity from the allegation made by Plaintiff.

⁵ The 12(b)(6) motion is the only motion filed that can be considered a merit base review. Moreover, as reflected in this Court's ruling denying the 12(b)(6) motion, the need for additional discovery was made clear.

"This case presents many novel issues of law and analysis. Defendant Academy acknowledges the novelty of this case and the arguments presented to this Court where, in its Reply in Support of the Motion to Dismiss, the defendant states that there is no binding precedent from the United States or South Carolina Supreme Courts. The defendant further advises this Court that it is free to make its own determination of how the PLCAA exceptions to immunity should be applied. Again, this is a novel case where a more-developed record will assist in evaluating the application of the PLCAA, its immunity provisions, and its predicate exception to Academy's actions. As evinced by the factual arguments made in the memoranda, it is this court's impression that many of the parties' disputes are founded largely upon factual matters that will require development and argument that goes beyond the four corners of the complaint...

...Also, this Court notes that the allegations in the complaint can reasonably be read to include allegations against Academy that involve conduct going beyond the sale of guns to the co-defendant Lawson."

⁶ The terms and provisions of the nine (9) page Amended Confidentiality Order electronically signed on June 8, 2022, and agreed to on June 6, 2022, by the attorneys for the Plaintiffs and Academy, is hereby incorporated by reference.

the protection, use and disclosure of confidential materials. The Confidentiality Orders' protections extend beyond the termination of the litigation.

Additionally, as referenced herein in making its rulings concerning the pre-trial discovery, this Court has indicated it will require additional protocols to protect sensitive confidential information if the parties present the need for such measures.

After entry of several subsequent consent scheduling orders, the parties were contacted in December of 2022 concerning a potential trial date in 2023. After receiving input from the attorneys of the need for a two (2) week and possibly a third week for trial, South Carolina Court Administration was contacted in early 2023 to set a definite trial date in the later part of 2023. This Court was informed that the trial request would not be considered for scheduling until after the general statewide circuit court terms for the second half of 2023 were assigned and published. After the general order establishing statewide circuit court terms for July to December 2023 were published, Court Administration accommodated this Court's request for a two (2) to three (3) week day certain trial assignment and restructured this Court's schedule.⁷ Thus, the potential three (3) week trial is set to begin on November 27, 2023.

The Motion to Compel that resulted in the pre-trial discovery orders was filed on March 29, 2023. The Clerk of Court noticed the parties on May 23, 2023 of the June 26, 2023 hearing. On June 22, 2023, Academy filed its response to the Motion. The initial virtual hearing on the motion was conducted on June 26. After conducting a second meeting with the attorneys on

⁷ Referencing the scheduling process is not a criticism of Court Administration. It is noted for the purpose of understanding the difficulties to the parties, lawyers (both in state and out-of-state), the lay and expert witnesses, and the judicial process of the state as a whole in attempting to schedule a case of this nature. Additionally, but for the fact that this Court was already assigned to Spartanburg County for the three (3) weeks requested for trial, this Court would have been required to consult with the Chief Administrative of any county whose schedule would be affected by the re-scheduling of this case prior to being approved by Court Administration.

June 28, 2023, a Form 4 Order was executed on July 3, 2023. The July 3, 2023 Form 4 provided the following:

The Court, having reviewed and considered Plaintiffs' Motion to Compel filed on March 29, 2023, Defendant Academy, Ltd.'s ("Academy's") responsive filings dated June 22 and June 23, 2023 and oral argument by the parties on June 26, 2023, hereby GRANTS Plaintiffs' Motion to Compel and ORDERS the parties to meet and confer as to potential compromises related to Academy's burden objections prior to returning to this Court for a status conference on July 6, 2023 at 10 A.M. Academy's objections to disclosure founded on relevance and the Tiahrt Appropriations Rider are hereby OVERRULED. This ruling is based on the following findings:

1. The information sought by Plaintiffs meets the definition of relevance under South Carolina law at the discovery stage.
2. The Tiahrt Appropriations Rider does not create a privilege for Defendant Academy, Ltd. applicable in this case. The Court notes several points in support of this conclusion. First, Plaintiffs are not seeking information from the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"). Second, privileges applicable in civil litigation are to be narrowly construed. Third, the Court believes that Congress did not intend the Tiahrt Appropriations Rider to apply in these circumstances.
3. The parties have negotiated an extensive Amended Confidentiality Order to address concerns regarding confidentiality. However, to the extent necessary to protect especially sensitive materials, the parties and the Court may consider additional protective protocols.
4. The Court does not believe that there have been sufficient discussions as to what compromises may be agreeable to alleviate Academy's burden concerns. The parties, pursuant to S.C.R.P. Rule 11, are directed to negotiate on this point outside of the Court's presence, prior to a July 6, 2023 status conference to be held by the Court at 10 A.M.

A second virtual conference with attorneys on July 6, 2023, a second Form 4 Order was issued on July 10, 2023. More specifically, the order required a production of limited documents. Moreover, the Order required the lawyers to continue to negotiate as to concerns related to "burden". The Court also ordered specific measures to further assure protection of private information. The second Order provided the following:

The Court, in furtherance of its Monday, July 3, 2023 Order Granting Plaintiffs' Motion to Compel, ORDERS the following:

1. Academy is ordered to produce all Excel spreadsheets relating to trace data currently in its counsel's possession as soon as possible but no later than Tuesday, July 11, 2023 at 1:30 P.M.
 2. In an effort to provide further protection of the privacy rights of non-parties beyond the extensive protections already provided for in the Amended Confidentiality Order, the Court offers Academy two options for how to produce the relevant Excel spreadsheets. First, Academy may redact the customer names and addresses and replace them with unique customer identifiers (such as "Customer 1") sufficient to allow Plaintiffs to perform their analysis of the records. Alternatively, Academy may, produce these spreadsheets with all customer information unredacted and marked "Attorney's Eyes Only."
 3. If Academy chooses to produce documents unredacted and under an "Attorney's Eyes Only" designation, Plaintiffs are entitled to insert their own unique customer identifiers prior to sharing any documents with their expert(s).
 4. Academy is ordered to produce all trace-related emails on a rolling basis, with the first batch of emails to be produced on or before Friday, July 21, 2023
 5. Academy is ordered to gather the Acquisition and Disposition books for the Greenville and Spartanburg, South Carolina stores (#219 and #215) for the time period of November 2, 2008 to November 6, 2017 and to make them available to Plaintiffs no later than Monday, August 8, 2023.
 6. In an effort to provide further protection of the privacy rights of non-parties beyond the extensive protections already provided for in the Amended Confidentiality Order, Academy may redact the customer names and addresses in the Acquisition and Disposition books and replace them with unique customer identifiers (such as "Customer 1") sufficient to allow Plaintiffs to perform their analysis of the records. If this is done, such unique numeric identifiers need to match the numeric identifiers used by Academy to identify specific customers referenced in the relevant trace-related spreadsheets (or other trace-related documents, including, but not limited to, trace-related emails).
 7. If production of the requested Acquisition and Disposition records proves too burdensome, the parties may meet and confer as to the possibility of allowing Plaintiffs a reasonable opportunity to inspect the records so as to alleviate Academy's burden.
 8. Plaintiffs are entitled to discovery of the Form 4473s in Academy's possession relating to firearm sales at the Greenville and Spartanburg, South Carolina stores (#219 and #215). The parties are ordered to meet and confer as to the issue of burden specifically as it relates to the production of Form 4473s and will provide further input to the Court at the next conference scheduled for Wednesday, July 12, 2023 at 1:30 PM.
 9. In addition to further discussion as to the Form 4473 production, the parties are ordered to meet and confer with respect to Academy's production of sales receipts relating to firearm sales at the Greenville and Spartanburg, South Carolina stores (#219 and #215) and the possibility of limiting the time frame for all documents to be produced to the period of November 2, 2008 to November 6, 2017.
-

On July 11, 2023, the Court received an email copy of Academy's Motion to Stay. Subsequently, this Court conducted a brief virtual meeting with the attorneys. Among other things, the attorneys were informed that this Court had not received a copy of the Notice of Appeal. After receiving brief comments, this Court informed the attorneys that he was inclined to grant the stay as this Court viewed an appeal as jurisdictional in nature. The attorneys were also informed of this Court's concern that certain matters asserted in the Motion for Stay were not presented previously to this Court and certain language in the motion was asking this Court to grant the motion based upon an improper reason inconsistent with this Court's ethical duties.⁸ More importantly, the Court also expressed its desire to keep the November 27, 2023, trial date. The Court's observation from the brief discussion was that the attorneys concurred with keeping the November trial date. The lawyers were also advised of this Court's concern that summary judgement motions had been filed.⁹ This Court also expressed its expectation that the lawyers continue to work towards the trial date even though the previous ordered production dates would be stayed.¹⁰

Discussion

When making its initial announcement that the Motion for Stay would be granted, this Court relied upon its understanding that the filing of an appeal deprived a trial court of further jurisdiction over the matter. In reviewing SCApp Rule 205, this Court, broadly and generally, continues to be of the same opinion.¹¹ Notwithstanding, Academy did not rely upon Rule 204 in its motion, but rather referenced other authorities as the basis for its request for the stay.

⁸ SCAppCR Rule 501, Canon 3B(2).

⁹ By prior email, the attorneys were advised of the approaching trial date and that summary judgement motions should be filed in a manner that allowed sufficient time for them to be heard and decided.

¹⁰ Again, Academy's intent of seeking an immediate and expedited review by the appellate courts is noted.

¹¹ Even though Appellate Courts shall have exclusive jurisdiction over the appeal; a trial court shall have jurisdiction to entertain petitions for writs of supersedes as provided by Rule 241. Rule 205 also provides that a trial court is

In its motion, Academy requested the Stay based upon the broad discretion vested in this Court to supervise the progression and disposition of cases before it in the interests of justice and judicial economy. This discretion included the authority to grant a Stay of a matter pending before the Court. Talley v. John-Mansville Salves Corp, 328 SE2d 621, 623 (S.C. 1985). A Stay is appropriate unless circumstances demonstrate that potential harm against whom the stay is operative outweighs the purpose of the stay. Merritt Bros. v. Marine Midland Realty Credit Corp., 414 S.E.2d 167, 169 (S.C. 1992); Capital City, 674 S.E.2d at 531.

Based on the authorities provided by Academy, this Court's original belief that the stay was determined solely through a jurisdictional lens, was not completely correct. The analysis should have also been accomplished through a discretionary lens. Again, as previously stated a "stay is appropriate unless circumstances demonstrate that the potential harm against whom the stay is operative outweighs the purpose of the stay". *Id.*

In performing the balancing test offered by Academy to the information sought to be stayed from production, this Court has examined the protections from disclosure provided by the consent Confidentiality Order to information ordered produced in the pre-trial discovery orders.¹² This Court has also considered the anticipated issues left to be addressed by this Court as determined from Academy's prior 12(b)(6) Motion to Dismiss and this Court's prior decision to not grant the motion based on the need to develop the issues through the discovery process.¹³ This Court has also considered the pending trial date which all parties wish to maintain and the limitations and responsibilities of management of the trial date. This Court has also considered

not prohibited from proceeding with matters not affected by the appeal. This Court understands that filing an appeal of a pre-trial discovery is not typical. In this Court's 20 plus years on the bench, it has not had an occasion to review an appeal of a pre-trial discovery ruling.

¹² The Court has assumed all parties desire closure.

¹³ Again, no motions for summary judgement have been filed that address the merits related to liability or defenses.

and respected the role the Appellate Court may have in addressing the issues presented by an appeal of this Court's pre-trial discovery decision.

Therefore, this Court's decision is to grant the stay of (1) the Excel spreadsheets relating to trace data currently in counsel's possession by Tuesday, July 11, 2023, and (2) all trace-related emails on a rolling basis, with first batch to be produced on or before July 21, 2023.¹⁴

Again, in examining the appropriateness of the Stay, this Court has also considered the expressed desire of the parties to maintain the November 27, 2023 start date for the trial and the effect that an indefinite Stay will have on completing discovery and the trial start date.

Based upon the unique circumstances of the present motion, this Court grants the Stay from the production of document previously discussed.

Again, the parties are ordered to reconvene virtually before this court at 1:00 p.m. August 17, 2023, to reconsider the issue of the Stay, and provide an update to this court on discovery and negotiations of the issues contained in this Court's prior discovery orders.

While this Court has noted frustration and disagreement from both sides with its rulings related to discovery issues and this Stay, the Court expects the attorneys and their clients to cooperate in good faith with the development of the case with the desire of maintaining the November 27th trial date.

¹⁴ The description of the information Academy seeks to protect by requesting the Stay, stands in stark contrast to the items ordered produced in the pre-trial discovery orders. The breath of Academy's concern is articulated on Page No. 2 of its Motion wherein it asserted the following:

[t]he subject records contain highly sensitive information related to more than 100,000 firearms purchases. In addition to the names, addresses, and other information associated with third party customers, the records would include the types and amounts of firearms sold at two Academy stores for a long period of time, as well as disclose the general buying habits of a large group of residents of the upstate of South Carolina who have shopped at these stores. Significantly, the information requested by Plaintiffs would include trace requests for firearms sold at any of the more than 260 Academy stores nationwide. Many of these traces would no doubt relate to ongoing law enforcement criminal investigations. Also requested are the 4473 forms for firearms sales at the two stores. These forms are the property of the ATF, a non-party to these actions.

If this Court can be of assistance to the attorneys prior to the next meeting, they are encouraged to reach out.

IT IS SO ORDERED.

Date

J. Mark Hayes, II
Circuit Court Judge



Spartanburg Common Pleas

Case Caption: Cindy Coxie , plaintiff, et al VS Academy, Ltd. , defendant, et al

Case Number: 2018CP4204297

Type: Order/Stay

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132



***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2018CP4204297

Official File Stamp: 07-18-2023 04:48:53 PM
Court: CIRCUIT COURT
Common Pleas
Spartanburg
Case Caption: Cindy Coxie , plaintiff, et al VS Academy, Ltd. , defendant, et al
Document(s) Submitted: Order/Stay Order/Stay
Filed by or on behalf of: J. Mark Hayes, II

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

D. Lawrence Kristinik, III for Academy, Ltd.
Matthew A. Abee for Academy, Ltd.
Robert Mills Ariaail, Jr. for Cindy Coxie
J. David Standeffer for Cindy Coxie
Mary Schiavo for Cindy Coxie
Samuel W. Outten for Academy, Ltd.

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Dustan Lawson for Dustan Lawson
Todd Christopher Kohlhepp #372454 for Todd Christopher Kohlhepp #372454
Dustan Lawson
Academy, Ltd. D/B/A Academy Sports +Outdoors
Scott Charles Allan
John F Renzulli
Christopher Renzulli
Erin Davis
Dustan Lawson for Dustan Lawson
Dustan Lawson for Dustan Lawson, Dustan Lawson
Todd Christopher Kohlhepp #372454 for Todd Christopher Kohlhepp #372454
Jenna M. Tersteegen
Robert M. Cross

Exhibit 2

Emails with Trial Court
(July 20, 2023)

Matt Abee

From: Hayes, J. Mark <mhayesj@sccourts.org>
Sent: Thursday, July 20, 2023 9:47 AM
To: Robert Cross
Cc: Hayes, J. Mark Law Clerk (Joseph Hanna, III); Hayes, J. Mark Secretary (Sharyn M. Walker); edavis@bradyunited.org; jklein@bradyunited.org; mschiavo@motleyrice.com; dave@standefferlaw.com; mills@rmalawoffice.com; dmiller@motleyrice.com; Sam Outten; jrenzulli@renzullilaw.com; crenzulli@renzullilaw.com; sallan@renzullilaw.com; Matt Abee; Matt Bogan; Kelly Taylor; Kevin Werner
Subject: RE: Coxie -- Clarification Inquiry as to Scope of Stay

External Source/Sender notice

Use caution responding or clicking links/attachments.

All,

In my rush to respond yesterday to both requests, I focused on Academy's request to the exclusion of Plaintiff's.

The Order Granting the Stay did not separate its prohibition from disclosure based upon the type of document such as the A&D logs, the 4473s, the sales receipts or other documents, etc. To be candid, my desire was to write the Order Granting the Stay to be the least restrictive on the discovery process. However, based on the timing, limited information and arguments presented, I did not categorize or classify the documents.

Since the request for the Stay was limited to "production", I did not read the request for stay s asking to stop all discovery (including the meet and confer aspect related to burden).

Notwithstanding, I do not wish the parties to exclude the classification or source of the documents sought solely on my comments contained in this email as the discovery continues through the meet and confer process in addressing the "burden" aspects of my pre-trial orders. I have no opinion at this time if the classification or source may or may not be important.

I apologize for excluding Plaintiffs request for clarification form my earlier response.

Again, please reach out if I can be of further assistance.

Mark Hayes

From: Larry Kristinik <larry.kristinik@nelsonmullins.com>
Sent: Wednesday, July 19, 2023 10:57 PM
To: Hayes, J. Mark <mhayesj@sccourts.org>
Cc: Hayes, J. Mark Law Clerk (Joseph Hanna, III) <mhayesc@sccourts.org>; Hayes, J. Mark Secretary (Sharyn M. Walker) <mhayessc@sccourts.org>; Robert Cross <rcross@bradyunited.org>; edavis@bradyunited.org; jklein@bradyunited.org; mschiavo@motleyrice.com; dave@standefferlaw.com; mills@rmalawoffice.com; dmiller@motleyrice.com; Sam Outten <sam.outten@nelsonmullins.com>; jrenzulli@renzullilaw.com; crenzulli@renzullilaw.com; sallan@renzullilaw.com; Matt Abee <matt.abee@nelsonmullins.com>; Matt Bogan <Matt.Bogan@nelsonmullins.com>; Kelly Taylor

<kelly.taylor@nelsonmullins.com>; Kevin Werner <kevin.werner@nelsonmullins.com>

Subject: RE: Coxie -- Clarification Inquiry as to Scope of Stay

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Thank you for this email Judge Hayes. This provided the clarification needed by Academy. We appreciate your quick response today to the parties' inquiries.



D. LARRY KRISTINIK, III PARTNER

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From: Hayes, J. Mark <mhayesj@sccourts.org>

Sent: Wednesday, July 19, 2023 4:37 PM

To: Larry Kristinik <larry.kristinik@nelsonmullins.com>; Robert Cross <rcross@bradyunited.org>

Cc: Hayes, J. Mark Law Clerk (Joseph Hanna, III) <mhayeslc@sccourts.org>; Hayes, J. Mark Secretary (Sharyn M. Walker) <mhayessc@sccourts.org>; edavis@bradyunited.org; jklein@bradyunited.org; mschiavo@motleyrice.com;

dave@standefferlaw.com; mills@rmalawoffice.com; dmiller@motleyrice.com; Sam Outten

<sam.outten@nelsonmullins.com>; jrenzulli@renzullilaw.com; crenzulli@renzullilaw.com; sallan@renzullilaw.com; Matt

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<kelly.taylor@nelsonmullins.com>; Kevin Werner <kevin.werner@nelsonmullins.com>

Subject: RE: Coxie -- Clarification Inquiry as to Scope of Stay

All

Thank you for your questions.

I read the request contained in the Motion For Stay as a request to stop the "production" of documents contained in the pre-trial discovery orders.

As both of you noted, the Stay is in place for the materials that were to have been produced on July 11, 2023, and on July 21, 2023.

After reading your emails, I agree with both attorneys for the need of clarity as to the Acquisition and Disposition (A&D) books that were to be made available to the Plaintiffs by August 8, 2023. I did not read the A&D books being made "available" as requiring production in the same manner as the other two items. My reading was that the A&D books being made available was part of the discovery negotiation process when the parties were required to meet and confer. I did not read the request for Stay as asking that the discovery process to be completely stopped. Also, based on my belief that the parties desired to keep the November trial date, if possible, a narrower reading of the Stay's request

seemed appropriate. Also, in preparing the Order, I examined the case law and exhibits that have been provided in the past for my justification of not stopping all discovery.

Notwithstanding my explanation, it appears that Academy believes that making the A&D book “available” was within their original request seeking to stop the “production” so I will extend the Stay to include the requirement of making the A&D documents “available” on August 8, 2023.

Note that I have not been served with the Notice of Appeal and have not considered the subject matter of the Appeal other than what was referenced in the Motion to Stay. Given what is in the Motion, I am sure the subject matter of the Appeal is very broad and maybe the same as is in the Motion. I respect the Appeal but neither side asked me to consider it other than what was referenced in the Motion to Stay.

I hope the above provides the clarity that is needed.

Since I prepared the Order without input from either side, I am sure other ambiguities may arise. Again, please feel free to reach out if I can be of further assistance in your preparation of the appellate issues or understanding my intent with continuing the discovery process in an effort to keep the trial date.

Thank you all for your continued attention and cooperation

Mark Hayes

From: Larry Kristinik <larry.kristinik@nelsonmullins.com>

Sent: Wednesday, July 19, 2023 2:42 PM

To: Hayes, J. Mark <mhayesj@sccourts.org>

Cc: Hayes, J. Mark Law Clerk (Joseph Hanna, III) <mhayeslc@sccourts.org>; Hayes, J. Mark Secretary (Sharyn M. Walker) <mhayessc@sccourts.org>; Robert Cross <rcross@bradyunited.org>; edavis@bradyunited.org; jklein@bradyunited.org; mschiavo@motleyrice.com; dave@standefferlaw.com; mills@rmalawoffice.com; dmiller@motleyrice.com; Sam Outten <sam.outten@nelsonmullins.com>; jrenzulli@renzullilaw.com; crenzulli@renzullilaw.com; sallan@renzullilaw.com; Matt Abee <matt.abee@nelsonmullins.com>; Matt Bogan <Matt.Bogan@nelsonmullins.com>; Kelly Taylor <kelly.taylor@nelsonmullins.com>; Kevin Werner <kevin.werner@nelsonmullins.com>

Subject: RE: Coxie -- Clarification Inquiry as to Scope of Stay

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Dear Judge Hayes,

On behalf of the Defendant, Academy Sports, we also wanted to request clarification of your recent Order for the same reason articulated by Mr. Cross in his below email.

At the top of page 2, the Order states that the Motion for Stay is granted. On page 9 of the Order, as referenced by Mr. Cross, Your Honor states that “this Court’s decision is to grant the stay” and then specifically references the July 11 and July 21 deadlines.

There is a third deadline in Paragraph 5 of the July 10th Order that you did not mention in the recent Order. Per the July 10th Order, Academy is required to gather and make available to Plaintiffs by no later than August 8th the Acquisition and Disposition books for the Greenville and Spartanburg stores.

We wanted to ask Your Honor if you also intended to include the August 8 deadline along with the other two deadlines listed in the first full paragraph of page 9 of the Order entered yesterday. Consistent with Plaintiffs' understanding, it was also our understanding from the hearing on July 11th that all deadlines in the July 10th discovery order would be stayed. Academy would ask that the August 8 deadline be included in the stay because the discoverability of the Acquisition and Disposition books is also part of the pending appeal and, for this reason, needs to be included in the stay.

Thank you for Your Honor's attention to the parties' requests for clarification.



D. LARRY KRISTINIK, III **PARTNER**

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From: Robert Cross <rcross@bradyunited.org>

Sent: Wednesday, July 19, 2023 10:51 AM

To: Hayes, J. Mark <mhayesj@sccourts.org>

Cc: Larry Kristinik <larry.kristinik@nelsonmullins.com>; Hayes, J. Mark Law Clerk (Joseph Hanna, III) <mhayeslc@sccourts.org>; Hayes, J. Mark Secretary (Sharyn M. Walker) <mhayessc@sccourts.org>; edavis@bradyunited.org; jklein@bradyunited.org; mschiavo@motleyrice.com; dave@standefferlaw.com; mills@rmalawoffice.com; dmiller@motleyrice.com; Sam Outten <sam.outten@nelsonmullins.com>; jrenzulli@renzullilaw.com; crenzulli@renzullilaw.com; sallan@renzullilaw.com; Matt Abee <matt.abee@nelsonmullins.com>; Matt Bogan <Matt.Bogan@nelsonmullins.com>; Kelly Taylor <kelly.taylor@nelsonmullins.com>; Kevin Werner <kevin.werner@nelsonmullins.com>

Subject: Coxie -- Clarification Inquiry as to Scope of Stay

Dear J. Hayes,

In Your Honor's Stay Order, you noted that '[i]f this Court can be of assistance to the attorneys prior to the next meeting, they are encouraged to reach out.' *Id.* at 10. Consistent with this directive, we respectfully ask a clarification question as to the scope of the Stay Order so that all parties can accurately represent Your Honor's ruling in our appellate briefing.

Specifically, Plaintiffs wanted to confirm our understanding, based on the hearing and the relevant briefing, that Your Honor had stayed production of all documents covered by the challenged discovery orders -- not just the trace-related emails and spreadsheets, but also the Acquisition and Disposition logs, the 4473s, the sales receipts and any other covered documents -- pending appellate review.

However, at one point in your order, Your Honor stated that "this Court's decision is to grant the stay of (1) the Excel spreadsheets relating to trace data currently in counsel's possession by Tuesday, July 11, 2023, and (2) all trace-related emails on a rolling basis, with first batch to be produced on or before July 21, 2023." *Id.* at 9. This list doesn't mention

the Acquisition and Disposition logs, the Form 4473s, the sales receipts or other covered documents. We, thus, wanted to verify that the stay applied to all documents scheduled for production under the challenged orders pending appellate review.

We greatly appreciate Your Honor's work in this complex and important case and seek simply to make sure that we have understood your wishes so that we can comply with them and can discuss them accurately on appeal. Given that our response to Academy's cert petition is due Friday, we would greatly appreciate Your Honor's response as soon as convenient for the Court. Should we be able to provide further information to help address the above concerns, we are at the Court's disposal.

Best,

Robert M. Cross
Counsel, Trial & Appellate Litigation
Brady

Robert M. Cross
Counsel, Trial & Appellate Litigation
Brady
(D) 914-714-3418
www.bradyunited.org

Every gift helps free America from the grip of gun violence. [Be part of the solution today.](#)



On Tue, Jul 18, 2023 at 1:03 PM Robert Cross <rcross@bradyunited.org> wrote:

Dear J. Hayes,

Thank you, Your Honor, for the update. We hope you are recovering well from your surgical procedure.

Best,

Robert M. Cross
Counsel, Trial & Appellate Litigation
Brady
(D) 914-714-3418
www.bradyunited.org

Every gift helps free America from the grip of gun violence. [Be part of the solution today.](#)



On Tue, Jul 18, 2023 at 12:41 PM Hayes, J. Mark <mhayesj@sccourts.org> wrote:

Everyone

I apologize for the delay in issuing the Order Granting the Stay. I have electronically signed the order and it should be available to everyone.

I hope my overall intent in speeding up the appellate process is clear. I have no idea if my comments will be helpful.

Please reach out if I can be of any assistance.

Mark Hayes

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Jul 25 2023

SC Court of Appeals

The State Of South Carolina  
In The Court of Appeals

Appeal from Spartanburg County  
Court of Common Pleas  
Hon. J. Mark Hayes, Circuit Court Judge

Consolidated Civil Action No. 2018-CP-42-04297  
Appellate Case No. 2023-001094

Cindy Coxie, as Special Administrator for the Estate of  
Johnny Coxie, .....Respondent,

v.

Academy, Ltd., d/b/a Academy Sports and Outdoors; and  
Dustan Lawson..... Defendants,

and

Academy, Ltd. d/b/a Academy Sports + Outdoors, .....Appellant,

v.

Dustan Lawson and Todd Christopher Kohlhepp,.....Cross-Defendants,

**Proof of Service**

I, the partner of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant Academy, Ltd. d/b/a Academy Sports + Outdoors, certify that I have served all parties in this action with a copy of the document(s) set forth below by the following methods:

Document(s):                   **Appellant’s Notice Withdrawing Emergency *Ex Parte* Verified Petition for Writ of Supersedeas**

Counsel/Parties Served:

**Via USPS**

Todd Christopher Kohlhepp, 00372454  
Lieber Correctional Institute  
136 Wilborn Avenue  
Ridgeville, SC 29472

**Via USPS**

Dustan Lawson  
PO Box 184  
Pauline, SC 29374

**Via Email Only**

Robert Cross, Esquire  
rcross @bradyunited.org  
Erin Davis, Esquire  
edavis@bradyunited.org  
Jenna Tersteegen, Esquire  
jtersteegen@bradyunited.org

**Via Email Only**

R. Mills Ariail, Jr., Esquire  
Law Office of R. Mills Ariail, Jr.  
11 North Irvine Street, Suite 11  
Greenville, SC 29601  
mills@rmlawoffice.com

**Via Email Only**

J. David Standeffer, Esquire  
Standeffer Law, LLC  
Post Office Box 35  
2124 N Hwy 81, Anderson, SC 29621  
Anderson, SC 29622  
dave@standefferlaw.com

**Via Email Only**

Mary F. Schiavo, Esquire  
Motley Rice, LLC  
28 Bridgeside Blvd.  
Mt. Pleasant, SC 29464  
mschiavo@motleyrice.com

**Via Email Only**

Robert D. Cook  
J. Emory Smith, Jr.  
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Columbia, SC 29211  
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NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Matthew A. Abee

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Samuel W. Outten, SC Bar No. 004295  
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2 West Washington Street, Suite 400  
Greenville, SC 29601  
(864) 250-2300

*Attorneys for Academy, Ltd. d/b/a Academy Sports + Outdoors*

Columbia, South Carolina  
July 25, 2023

## Matt Abee

---

**From:** Matt Abee  
**Sent:** Tuesday, July 25, 2023 8:44 AM  
**To:** mschiavo@motleyrice.com; Mills Ariail; dave@standefferlaw.com; 'esmith@scag.gov'; Bob Cook; 'josephspate@scag.gov'  
**Cc:** Robert Cross; Erin Davis; Jenna Klein; jtersteegen@bradyunited.org; crenzulli@renzullilaw.com; Scott Allan; Larry Kristinik; Sam Outten; Matt Bogan; Kelly Taylor; Kevin Werner  
**Subject:** Service Copy: Notice Withdrawing Petition for Writ of Supersedeas - Coxie (No. 2023-001094)  
**Attachments:** Filing Letter - Notice Withdrawing Supersedeas - Coxie (July 25, 2023).pdf; Appellant's Notice Withdrawing Petition for Writ of Supersedeas - Coxie (July 25, 2023).pdf; Proof of Service - Coxie (July 25, 2023).pdf; Exhibits 1-2 to Notice Withdrawing Petition for Supersedeas - Coxie.pdf; SC Supreme Court Filings

Counsel:

For service on you by email under Supreme Court Order No. 2022-05-06-03, please find Academy's Notice Withdrawing its Petition for Writ of Supersedeas and other filings. Please feel free to contact me should you have any questions. Thanks.

-Matt

Please note that I will be out of the office August 3-4, 2023.



---

MATT ABEE **PARTNER**  
[matt.abee@nelsonmullins.com](mailto:matt.abee@nelsonmullins.com)

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\*Licensed in South and North Carolina.

---

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July 25, 2023

**RECEIVED**

**Jul 25 2023**

**SC Court of Appeals**

Via Email

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
ctappfilings@sccourts.org

RE: Cindy Coxie v. Academy, Ltd. *et al.*  
Consolidated Civil Action No. 2018-CP-42-04297  
Appellate Case No. 2023-001094  
Our File No. 043449/01506

Dear Ms. Kitchens:


Enclosed for filing on behalf of our client Appellant/Petitioner Academy, Ltd. d/b/a Academy Sports + Outdoors, please find Appellant's Notice Withdrawing Emergency Ex Parte Verified Petition for Writ of Supersedeas.

Additionally, please find copies of the following recent filings in related proceedings before the South Carolina Supreme Court:

- Academy's Petition for Writ of Certiorari
- Academy's Motion to Certify and/or Transfer
- Respondents' Return to the Petition for Writ of Certiorari

Please feel free to contact me should you need anything in response to these filings.

Very truly yours,



D. Larry Kristinik

Enclosures

cc: Via Email Only  
J. David Standeffer, Esquire  
R. Mills Ariail, Jr., Esquire  
Mary F. Schiavo, Esquire  
Erin Davis, Esquire

The Honorable Jenny Abbott Kitchings  
July 25, 2023  
Page 2

Robert M. Cross, Esquire  
Jenna Tersteegen, Esquire

Via U.S. Mail  
Todd Christopher Kohlhepp  
Dustan Lawson