

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

John Borger and Sherri Borger

vs.

Sandbar Powersports, LLC, Does I through X,
Roe Corporations XI through XX, and Polaris
Industries, Inc.

No. 81764

DOCKETING
CIVIL APPEALS

Electronically Filed
Oct 01 2020 09:21 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District _____ Department XXV
County Clark Judge Kathleen E. Delaney
District Ct. Case No. A-17-751896-C

2. Attorney filing this docketing statement:

Attorney Chad A. Bowers Telephone 702-457-1001

Firm Chad A. Bowers, LTD

Address 3202 West Charleston Blvd
Las Vegas, NV 89102

Client(s) John Borger and Sherri Borger

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Jennifer Willis Arledge Telephone 702-727-1400

Firm Wilson, Elser, Moskowitz, Edelman & Dicker LLP

Address 300 South 4th Street, 11th Floor
Las Vegas, NV 89101

Client(s) Polaris Industries, Inc.

Attorney Matthew T. Albaugh Telephone 317-237-1359

Firm Faegre Drinker Biddle & Reath, LLP

Address 300 N. Meridan St., Ste 2700
Indianapolis, IN 46204

Client(s) Polaris Industries, Inc.

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|--|
| <input type="checkbox"/> Judgment after bench trial | <input checked="" type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input checked="" type="checkbox"/> Other (specify): <u>Forum Non Conveniens</u> |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

8. Nature of the action. Briefly describe the nature of the action and the result below:

Plaintiffs brought suit due to the crash of all-terrain vehicle near Lake Havasu, Arizona. Plaintiffs sued Sandbar Powersports, LLC, a Nevada company that rented the vehicle to the Plaintiffs. Plaintiffs also sued Polaris Industries, Inc., the Minnesota manufacturer of the vehicle. After the parties had litigated for an extended period in Nevada and engaged in substantial merits discovery, Nevada Defendant Sandbar agreed to settle with Plaintiffs. Following Sandbar's settlement, Minnesota Defendant Polaris moved to dismiss the lawsuit for forum non conveniens. The district court granted the motion, and Plaintiffs appeal from that order.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Did the district court err in dismissing a long-pending lawsuit for forum non conveniens upon the routine settlement of a forum co-defendant where there was no indication the forum co-defendant was sued as a sham or forum shopping device?

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: The Nevada appellate courts have never addressed whether the settlement of a forum co-defendant in a long-pending suit could provide a basis for a forum non conveniens dismissal. Other jurisdictions to address the question have held such a dismissal is only appropriate if the forum defendant was sued as a sham or forum shopping device, which is definitely not the case here.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

There is no presumptive assignment to the Court of Appeals because the case does fit any category under NRAP 17(b). It should be retained by the Supreme Court under NRAP 17(a) (11-12). As noted above, the case centers on a question of first impression involving the Nevada common law. Nevada has scant law on forum non conveniens to begin with, and none on this issue. This case provides an opportunity for the Supreme Court to clarify when and under what circumstances a motion to dismiss for forum non conveniens will or will not be appropriate. The effects of the decision in this appeal will not be limited to the parties, as it will potentially affect all multi-party lawsuits involving both Nevada and out-of-state defendants. The opinion in this appeal could also greatly impact settlement decisions between future parties, implicating a matter of public policy.

14. Trial. If this action proceeded to trial, how many days did the trial last? 0 _____

Was it a bench or jury trial? N/A _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from August 9, 2020

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served August 10, 2020

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed September 4, 2020

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:
Plaintiffs are appealing a final judgment dismissing the lawsuit.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

John Borger

Sherri Borger

Polaris Industries, Inc.

Sandbar Powersports, LLC

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Defendant Sandbar Powersports, LLC settled with Plaintiffs.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiffs brought product liability claims against Polaris Industries, Inc. There are no cross-claims or third-party claims.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☒ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☒ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

John Borger and Sherri Borger
Name of appellant

Chad A. Borger
Name of counsel of record

October 1, 2020
Date

s/ Chad A. Borger
Signature of counsel of record

Nevada, Clark County
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 1st day of October, 2020, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

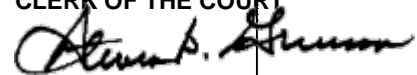
Jennifer Willis Arledge
300 South 4th Street, 11th Floor
Las Vegas, NV 89101

Matthew T. Albaugh
300 N. Meridan St., Ste 2700
Indianapolis, IN 46204

Judge Stephen Haberfield
8224 Blackburn Avenue #100
Los Angeles, Ca 90048

Dated this 1st day of October, 2020

s/ Chad A. Borger
Signature



CHAD A. BOWERS, Esq.
CHAD A. BOWERS, LTD.
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Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JOHN BORGER and SHERRI BORGER,

Plaintiffs,

v.

SANDBAR POWERSPORTS LLC., DOES I
through X; ROE CORPORATIONS XI
through XX, inclusive, and POLARIS
INDUSTRIES, INC.

Defendants.

Case No.: A-17-751896-C
Dept.: XXV

**PLAINTIFFS' AMENDED
COMPLAINT**

Come now the Plaintiffs, John Borger and Sherri Borger, by and through counsel, and hereby file this Complaint for Damages and respectfully state their causes of action against Defendants Sandbar Powersports, LLC and Polaris Industries, Inc. as follows:

PARTIES

1. Plaintiffs John Borger and Sherri Borger are a married couple who are residents of Owatonna, Minnesota.

2. Defendant Sandbar Powersports LLC ("Sandbar") is a domestic business entity with its principal place of business located at 5135 Camino Al Norte, Suite 250, Las Vegas, Nevada, 89031. Sandbar has been served and appeared in this case.

1 3. Plaintiff is unaware of the true names and legal capacities, whether individual,
2 corporate, associate, or otherwise, of the Defendants sued herein as DOES I-X, and ROE
3 CORPORATIONS, XI-XX, inclusive, and therefore sue said Defendants by such fictitious
4 names. Plaintiffs, pray leave to insert said Defendants' true names and legal capacities when
5 ascertained. Plaintiffs are informed, believe and thereon allege, that each of the Defendants
6 designated herein as a DOE and ROE are in some way legally responsible and liable for the
7 events referred to herein, and proximately caused the damages alleged herein.
8

9 4. Defendant, Polaris Industries, Inc. ("Polaris"), is a foreign business entity
10 (Delaware Corporation) with its principal place of business in Medina, Minnesota, but doing
11 business in and throughout the State of Nevada. It may be served via its registered agent, CS
12 Services of Nevada located at 2215-B Renaissance Drive, Las Vegas, Nevada, 89119.
13

14 5. At all times relevant, and in doing the acts and omissions alleged herein, the
15 Defendants, and each of them, including the DOE Defendants, and ROE Defendants, acted by
16 and through their officers, agents, employees, and co-conspirators, including the fictitious
17 Defendants named herein, each of whom was acting within the purpose and scope of that agency,
18 employment and conspiracy, and said acts and omissions were known to, and authorized and
19 ratified by, each of the other Defendants.
20

21 FACTS

22 6. On October 18, 2016, Plaintiffs John and Sherri Borger rented a Polaris RZR
23 from Defendant Sandbar Powersports, LLC near Lake Havasu, Arizona. While driving on areas
24 designated by Sandbar, the vehicle unexpectedly rolled onto its right side. Sherri Borger was the
25 properly belted right front passenger at the time. Sherri's arm was trapped underneath the
26 vehicle and sustain significant injuries, ultimately leading to an amputation of her right arm.
27
28

1 7. At the time of the incident, the RZR was being operated in a foreseeable and
2 prudent manner. Further, the RZR was being used for the purpose for which it was reasonably
3 and foreseeably intended and in a manner reasonably foreseeable to Defendants.

4 **COUNT I – NEGLIGENCE (SANDBAR)**

5 8. At all relevant times, Sandbar was engaged in the business of renting recreational
6 vehicles including the RZR at issue for use by members of the general public. As such, Sandbar
7 owed a duty to its renters as well as the general public to ensure the vehicles were safe for
8 foreseeable operation. Sandbar breached its duty by, among other things:

- 9
- 10 a. Failing to install or offer proper equipment and safeguards to protect
11 occupants during normal foreseeable driving conditions including tip-
12 overs and/or rollovers;
- 13 b. Failure to adopt known and feasible safety measures, including, but not
14 limited to, an adequate cage, structure, netting, and/or Occupant
15 Containment System to prevent occupants and/or their extremities from
16 being ejected from the RZR during a tip-over and/or rollover;
- 17 c. Failing to conduct a proper inspection of the RZR;
- 18 d. Failing to properly train all occupants on the use of the RZR;
- 19 e. Failure to warn about the propensity of the RZR to tip-overs or rollover;
- 20 e. Failure to warn about the propensity of partial ejection during tip-overs or
21 rollovers;
- 22 f. Failure to provide a safe RZR.

23 9. Sandbar's breach of its duties, including but not limited to the breaches
24 enumerated above, were the direct and proximate cause of the permanent and significant
25 damages to Plaintiffs John and Sherri Borger.

COUNT II - STRICT PRODUCT LIABILITY
DESIGN AND MARKETING DEFECTS (POLARIS)

10. The subject RZR was designed, manufactured and marketed by Defendant Polaris. The RZR was defective and unsafe for its intended purpose inasmuch as it was in a defective condition and unreasonably dangerous as designed and/or marketed. The defects existed at the time the RZR left the control of defendant Polaris, and the subject RZR was in substantially the same condition at the time of the subject incident as it was when it left the control of Polaris.

11. More specifically, but not by way of limitation, the subject RZR was defectively designed in one or more of the following particulars, which were a producing cause of the rollover event and/or injuries/damages in question:

- Deficient and Defective stability;
- Deficient and Defective occupant protection (lack of safety nets/doors)

12. More specifically, but not by way of limitation, the subject RZR was defectively marketed in one or more of the following particulars, which were a producing cause of the rollover event and/or injuries/damages in question:

- Inadequate warnings on the instability;
- Inadequate instructions on controlling speed to control instability;
- Inadequate warning on the lack of occupant protection;
- Inadequate instructions how to increase occupant protection;
- Inadequate warning on the lack of speed control (lack of governor)

13. Polaris is liable for the defective design and/or the defective marketing of the subject RZR, which constituted a producing cause of the rollover event and/or injuries/damages in question.

1 **COUNT III - BREACH OF WARRANTY (POLARIS)**

2 14. Polaris warranted to consumers, including the Plaintiffs, that the subject RZR was
3 safe and fit for the intended purposes when used under ordinary and/or foreseeable conditions.
4 Polaris's breach of warranty was a proximate cause of the rollover event and/or injuries/damages
5 in question.

6
7 15. Polaris is engaged in the business of designing, testing, manufacturing,
8 assembling, marketing, selling, distributing, and/or otherwise placing products like the subject
9 RZR into the stream of commerce.

10 16. The subject RZR failed to comply with the applicable warranties by virtue of the
11 instability and inadequate occupant protection.

12 **COUNT IV - NEGLIGENT DESIGN AND MARKETING (POLARIS)**

13
14 17. Polaris was negligent in the design and/or marketing of the subject RZR, which
15 was a proximate cause of the rollover event and/or injuries/damages in question.

16 **DAMAGES**

17 18. As a direct and proximate result of Sandbar and Polaris' conduct, Sherri Borger
18 suffered serious and severe injuries including, but not limited to the loss of her right arm. Due to
19 her injuries, she has suffered in the past, and will continue to suffer in the future the following
20 damages: medical expenses, loss of earnings and/or earning capacity, loss of household services,
21 mental anguish, pain and suffering, disability and disfigurement. As a direct and proximate result
22 of Defendants' conduct, John Borger suffered loss of consortium damages, including but not
23 limited to, loss of love and emotional support, companionship and the mutual benefits which
24 existed in their marriage.
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19. Plaintiffs seek exemplary damages caused by both Defendants' malice, gross negligence and willful acts, omissions and gross negligence.

20. Plaintiffs are entitled to recovery of pre-judgment and post-judgment interest in accordance with law and equity as part of their damages herein, and Plaintiffs here and now sue for recovery of pre-judgment and post-judgment interest as provided by law and equity, under the applicable provision of the laws of the State of Nevada.

21. Plaintiffs would additionally say and show that they are entitled to recovery of court costs, reasonable and necessary attorneys' fees incurred in this action.

PRAYER

WHEREFORE, Plaintiffs prays as follows:

1. For compensatory damages according to proof;
2. For punitive damages;
3. For costs of suit;
4. Reasonable and necessary attorneys' fees; and

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1 5. For such other and further relief as is proper.

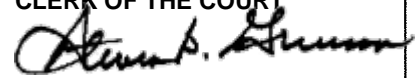
2 DATED this 10th day of November, 2017.

3
4
5 By: /s/ Chad A. Bowers
6 CHAD A. BOWERS, ESQ.
7 Nevada Bar #: 007283
8 **CHAD A. BOWERS, LTD.**
9 3202 West Charleston Blvd
Las Vegas, NV 89102
702-457-1001

10 *and*

11
12 Kyle W. Farrar
13 *(Pro Hac Vice)*
14 KASTER, LYNCH, FARRAR & BALL, LLP
15 1010 Lamar, Suite 1600
16 Houston, Texas 77002
713.221.8300
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17 *Attorneys for Plaintiffs*
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*Attorneys for Defendant/Counter-Claimant/Cross-Claimant/
Third-Party Plaintiff, Sandbar Powersports, LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

JOHN BORGER and SHERRI BORGER,
Plaintiffs,

v.

SANBAR POWERSPORTS, LLC, DOES I
through X, ROE CORPORATIONS XI through
XX, inclusive, and POLARIS INDUSTRIES,
INC.

Defendants.

SANDBAR POWERSPORTS, LLC.

Counter-Claimant,

v.

JOHN BORGER and SHERRI BORGER,

Plaintiffs.

SANDBAR POWERSPORTS, LLC.

Cross-Claimant,

v.

POLARIS INDUSTRIES, INC.,

Cross-Defendant,

Case No.: A-17-751896-C

Dept.: XXV

**NOTICE OF ENTRY OF STIPULATION
AND ORDER FOR DISMISSAL OF
SANDBAR POWERSPORTS, LLC**

1 SANDBAR POWERSPORTS, LLC.

2 Third-Party Plaintiff,

3 v.

4 FOSTER BORGER,

5 Third-Party Defendant.

6
7 **PLEASE TAKE NOTICE** that the Stipulation and Order for Dismissal of Defendant/
8 Counter-Claimant/Cross-Claimant and Third-Party Plaintiff, Sandbar Powersports, LLC was filed by
9 the Court on April 16, 2019, a copy of which is attached hereto.

10 Dated: April 17, 2019

LITCHFIELD CAVO LLP

11
12 By: 

GRIFFITH H. HAYES, ESQ.

Nevada Bar No. 7374

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19 *Attorneys for Defendant/ Counter-Claimant/Cross-*
20 *Claimant/Third-Party Plaintiff Sandbar*
21 *Powersports, LLC*
22
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11 Email: hayes@litchfieldcavo.com
12 Email: pocchi@litchfieldcavo.com

13 *Attorneys for Defendant/Counter-Claimant/Cross-Claimant/
14 Third-Party Plaintiff, Sandbar Powersports, LLC*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 JOHN BORGER and SHERRI BORGER,
18 Plaintiffs,

19 v.

20 SANBAR POWERSPORTS, LLC, DOES I
21 through X, ROE CORPORATIONS XI through
22 XX, inclusive, and POLARIS INDUSTRIES,
23 INC.

24 Defendants.

25 SANDBAR POWERSPORTS, LLC.

26 Counter-Claimant,

27 v.

28 JOHN BORGER and SHERRI BORGER,

Plaintiffs.

SANDBAR POWERSPORTS, LLC.

Cross-Claimant,

v.

POLARIS INDUSTRIES, INC.,

Cross-Defendant,

Case No.: A-17-751896-C

Dept.: XXV

**STIPULATION AND ORDER FOR
DISMISSAL OF DEFENDANT/
COUNTER-CLAIMANT/CROSS-
CLAIMANT AND THIRD-PARTY
PLAINTIFF SANDBAR
POWERSPORTS, LLC**

MAR 26 2019

1 SANDBAR POWERSPORTS, LLC.

2 Third-Party Plaintiff,

3 v.

4 FOSTER BORGER,

5 Third-Party Defendant.

6 IT IS HEREBY STIPULATED by and between Plaintiffs, JOHN BORGER and SHERRI
7 BORGER ("Plaintiffs") by and through their counsel of record, KYLE W. FARRAR, ESQ., of
8 KASTER, LYNCH, FARRAR & BALL, LLP and CHAD A. BOWERS, ESQ. of CHAD A.
9 BOWERS, LTD. and Defendant/Counter-Claimant/Cross-Claimant/Third-Party Plaintiff, SANDBAR
10 POWERSPORTS LLC ("SANDBAR"), by and through its counsel of record, GRIFFITH H. HAYES,
11 ESQ. and MARISA A. POCCI, Esq. of the law firm LITCHFIELD CAVO LLP, that:

12 Any and all complaints filed by Plaintiffs and any and all amendments thereto, and each and
13 every cause of action therein, and any counter-claims asserted by SANDBAR, are dismissed with
14 prejudice as to SANDBAR and Plaintiffs. Each party is to bear its own fees and costs.

15 Dated: 3/18, 2019

KASTER, LYNCH, FARRAR & BALL, LLP

17 By: 

Kyle W. FARRAR, ESQ.

Admitted Pro Hac Vice

1010 Lamar, Suite 1600

Houston, TX 77002

21 Dated: _____, 2019

CHAD A. BOWERS ESQ.

23 By: _____

CHAD A. BOWERS, ESQ.

Nevada Bar No. 007283

3202 West Charleston Blvd.

Las Vegas, NV 89102

Attorneys for Plaintiff

1 SANDBAR POWERSPORTS, LLC.

2 Third-Party Plaintiff,

3 v.

4 FOSTER BORGER,

5 Third-Party Defendant.

6 IT IS HEREBY STIPULATED by and between Plaintiffs, JOHN BORGER and SHERRI
7 BORGER ("Plaintiffs") by and through their counsel of record, KYLE W. FARRAR, ESQ., of
8 KASTER, LYNCH, FARRAR & BALL, LLP and CHAD A. BOWERS, ESQ. of CHAD A.
9 BOWERS, LTD. and Defendant/Counter-Claimant/Cross-Claimant/Third-Party Plaintiff, SANDBAR
10 POWERSPORTS LLC ("SANDBAR"), by and through its counsel of record, GRIFFITH H. HAYES,
11 ESQ. and MARISA A. POCCI, Esq. of the law firm LITCHFIELD CAVO LLP, that:

12 Any and all complaints filed by Plaintiffs and any and all amendments thereto, and each and
13 every cause of action therein, and any counter-claims asserted by SANDBAR, are dismissed with
14 prejudice as to SANDBAR and Plaintiffs. Each party is to bear its own fees and costs.

15 Dated: 3/18, 2019

KASTER, LYNCH, FARRAR & BALL, LLP

17 By: 

Kyle W. FARRAR, ESQ.

Admitted Pro Hac Vice

1010 Lamar, Suite 1600

Houston, TX 77002

20 Dated: 3/18, 2019

CHAD A. BOWERS ESQ.

22 By: 

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Attorneys for Plaintiff

1 Dated: March 20, 2019

LITCHFIELD CAVO LLP

2 By: Marisa A. Pocci

3 GRIFFITH H. HAYES, ESQ.

4 Nevada Bar No. 7374

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5 Nevada Bar No. 10720

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6 Las Vegas, NV 89169

7 *Attorneys for Defendant/Counter-*
8 *Claimant/Cross-Claimant/Third-Party*
9 *Plaintiff, Sandbar Powersports, LLC*

10 **ORDER**

11 Based upon the Stipulation of the parties, the Court having reviewed all pleadings and papers
12 on file herein and good cause appearing:

13 **IT IS HEREBY ORDERED** that any and all complaints filed by Plaintiffs and any and all
14 amendments thereto, and each and every cause of action therein, and any counter-claims asserted by
15 SANDBAR, are dismissed with prejudice as to SANDBAR and Plaintiffs. Each party is to bear its
16 own fees and costs.

17 **IT IS SO ORDERED.**

18 DATED this 20th day of March, 2019.

19 *[Signature]*
20 DISTRICT COURT JUDGE *mk*

21 **RESPECTFULLY SUBMITTED BY:**

22 *[Signature]*
23 GRIFFITH H. HAYES, ESQ.

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MARISA A. POCCI, ESQ.

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28 *Attorneys for Defendant/Counter-Claimant/Cross-Claimant/
Third-Party Plaintiff, Sandbar Powersports, LLC*

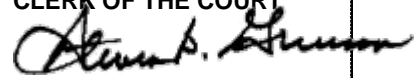
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17 day of April, 2019, that I caused to be served a true and accurate copy of the foregoing **NOTICE OF ENTRY OF ORDER FOR DISMISSAL OF DEFENDANT/COUNTER CLAIMANT/CROSS-CLAIMANT AND THIRD-PARTY PLAINTIFF, SANDBAR POWERSPORTS, LLC** by sending a copy of the same via Odyssey eFile NV, the Court's electronic filing/service program to the following:

Counsel of Record	Phone/Fax Nos.	Party
Chad A. Bowers, Esq. CHAD A, BOWERS, LTD. 3202 West Charleston Blvd. Las Vegas, NV 89102	T: (702) 457-1001 F: (702) 457-8006 E: bowers@lawyer.com	Plaintiffs
Kyle W. Farrar, Esq. CASTER, LYNCH, FARRAR & BALL, L.L.P. 1010 Lamar, Suite 1600 Houston, TX 77002 <i>ADMITTED PRO HAC VICE</i>	T: (713) 221-8300 F: (713) 221-8301 E: kyleCitibtrial.com	
Jennifer Willis Arledge, Esq. WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP 300 South 4th Street, 11 th Floor Las Vegas, NV 89101	T: (702) 727-1400 F: (702) 727-1401 E: jennifer.arledge@wilsonelser.com	Polaris Industries, Inc.
Andrew Scott Ross, Esq. James F. Sanders, Esq. NEAL & HARWELL, PLC 1201 Demonbreun Street, Suite 1000 Nashville, TN 37203 <i>ADMITTED PRO HAC VICE</i>	T: (615) 244-1713 F: (615) 726-0573 E: sross@nealharwell.com E: jsanders@nealharwell.com	



An employee of LITCHFIELD CAVO LLP



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11 Attorneys for Plaintiffs

12 jarledge@sgroandroger.com

13 tsgro@sgroandroger.com

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 JOHN BORGER and SHERRI BORGER,

CASE NO.: A-17-751896-C

17 Plaintiffs,

DEPT. NO.: XXV

18 vs.

NOTICE OF ENTRY OF ORDER

19 SANDBAR POWERSPORTS LLC, DOES I
20 through X; ROE CORPORATIONS XI
21 through XX, inclusive, and POLARIS
22 INDUSTRIES, INC.,

23 Defendants.

24 And Related Claims.

25 PLEASE TAKE NOTICE that the above-entitled court entered an Order granting
26 Polaris Industries, Inc.'s motion to dismiss forum non conveniens on the 9th day August, 2020.

27 ///

28 ///

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1 A copy of the court's order is attached hereto.

2 DATED this 10th day of August, 2020.

3 SGRO | ROGER

4 
5 JENNIFER WILLIS ARLEDGE, ESQ.,

6 Nevada State Bar No. 8729

7 ANTHONY P. SGRO, ESQ.

8 Nevada Bar No. 3811

9 720 South 7th Street, 3rd Floor

10 Las Vegas, NV 89101

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 10th day of August, 2020, I served a true and correct
3 copy of the foregoing **NOTICE OF ENTRY OF ORDER** as follows:
4

5 _____ by first class mail, prepaid, addressed to the recipients below,

6 _____ by facsimile transmission to the recipients' telephone numbers below,

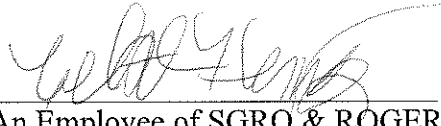
7 XX by electronic service via the Clark County District Court electronic filing
8 system,

9 _____ by hand delivery to the recipients below.
10

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27 
28 An Employee of SGRO & ROGER

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10 Attorneys for Defendant/Cross-Defendant
11 POLARIS INDUSTRIES, INC.

DISTRICT COURT

CLARK COUNTY, NEVADA

12 JOHN BORGER and SHERRI BORGER,

13 Plaintiffs,

14 vs.

15 SANDBAR POWERSPORTS, LLC, DOES I
16 through X; ROE CORPORATIONS XI through
17 XX, inclusive, and POLARIS INDUSTRIES, INC.,

18 Defendants,

19 And Related Claims.

CASE NO: A-17-751896-C
DEPT NO: XXV

ORDER GRANTING POLARIS
INDUSTRIES, INC.'S MOTION TO
DISMISS FOR FORUM NON
CONVENIENS

20 The above-described action came before this Court for hearing on February 19, 2019 upon
21 the motion by Defendant Polaris Industries, Inc. ("Polaris") to dismiss this case pursuant to NRCP
22 7(b) on the grounds of *forum non conveniens* (the "Motion").

23 The Court, having considered the submissions of the parties, having considered all of the
24 files, records, and proceedings in the action, having considered the arguments of counsel during the
25 February 19, 2019 hearing on Defendant Polaris Industries, Inc.'s Motion to Dismiss for Forum
26 Non Conveniens, and being otherwise fully advised,

27 IT IS ORDERED that Polaris Industries, Inc.'s Motion to Dismiss for Forum Non
28 Conveniens is Granted. The above-described action is hereby dismissed under NRCP 7(b) on the
grounds of *forum non conveniens* for the following reasons: (1) the Plaintiffs' choice of forum is

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1 entitled to lesser deference because it is not the Plaintiffs' residence; (2) Arizona is an adequate
2 alternative forum because of the amount of evidence and the number of witnesses located in
3 Arizona; and (3) the public and private interest factors weigh in favor of dismissing this case.

4 **IT IS FURTHER ORDERED** that Plaintiffs may refile this action in the adequate alternative
5 forum of Arizona; that Polaris waives any statute of limitations defense, *forum non conveniens*
6 argument, or jurisdictional argument that may be available to it in Arizona; that interrogatories,
7 request for admission, and depositions taken and documents produced during the pendency of this
8 case in Nevada may be used by the parties in the re-filed case; and that Polaris waives formal service
9 of process requirements for the re-filed case—Polaris's counsel can and will accept service of the
10 new complaint, should Plaintiffs choose to refile.
11

12 **IT IS SO ORDERED.**

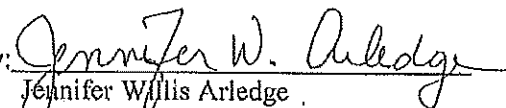
13 Dated:; this _____ day of _____, 2019

14 
15
16 DISTRICT COURT JUDGE

17 Respectfully Submitted By:

18 **WILSON, ELSE, MOSKOWITZ,**
19 **EDELMAN & DICKER LLP**

E79 7CC E946 E8DA
Kathleen E. Delaney
District Court Judge

20 By: 
21 Jennifer Willis Arledge
22 Nevada Bar No. 8729
23 300 South 4th Street, 11th Floor
24 Las Vegas, NV 89101
Attorneys for Defendant
POLARIS INDUSTRIES, INC.

25 ///

26 ///

27 ///

FAEGRE BAKER DANIELS, LLP

By: per authority - GWA
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Lexi C. Fuson - *pro hac vice*
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Indianapolis, IN 46204
Attorneys for Defendant
POLARIS INDUSTRIES, INC.

Approved as to form and content

KASTER, LYNCH, FARRAR & BALL, LLP

By: declined to sign - GWA
Kyle W. Farrar - *pro hac vice*
1010 Lamar, Suite 1600
Houston, TX 77002
Attorneys for PLAINTIFFS

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA
4

5
6 John Borger, Plaintiff(s)

CASE NO: A-17-751896-C

7 vs.

DEPT. NO. Department 25

8 Sandbar Powersports LLC,
9 Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order Granting was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 8/9/2020

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