

**NO. 81764**

**IN THE SUPREME COURT OF NEVADA**

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Clerk of Supreme Court

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JOHN BORGER and SHERRI BORGER  
*Appellants*

v.

POLARIS INDUSTRIES, INC.  
*Respondent*

SANDBAR POWERSPORTS, LLC, DOES I through X;  
and ROE CORPORATIONS XI through XX, inclusive  
*Defendants*

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On Appeal from the Eighth Judicial District  
Clark County, Nevada, Dept. No. XXV  
No. A-17-751896-C

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**APPELLANTS' APPENDIX**  
**VOLUME 2**

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Nevada Bar No. 007283  
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3202 W. Charleston Blvd.  
Las Vegas, NV 89102  
702-457-1001

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(*Pro Hac Vice*)  
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1117 Herkimer  
Houston, TX 77008  
713-221-8300

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1 **MDSM**  
2 **JENNIFER WILLIS ARLEDGE**  
3 Nevada Bar No.: 8729  
4 **WILSON, ELSE, MOSKOWITZ,**  
5 **EDELMAN & DICKER LLP**  
6 300 South 4th Street, 11<sup>th</sup> Floor  
7 Las Vegas, NV 89101  
8 (702) 727-1400; FAX (702) 727-1401  
9 Jennifer.Arledge@wilsonelser.com  
10 Attorneys for Defendant/Cross-Defendant  
11 **POLARIS INDUSTRIES, INC.**

12 **DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

14 JOHN BORGER and SHERRI BORGER,  
15  
16 Plaintiffs,  
17  
18 vs.

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

19 SANDBAR POWERSPORTS, LLC, DOES I  
20 through X; ROE CORPORATIONS XI through  
21 XX, inclusive, and POLARIS INDUSTRIES, INC.,  
22  
23 Defendants,  
24  
25 And Related Claims.

**AFFIDAVIT OF BLAKE ANDERSON IN  
SUPPORT OF DEFENDANT POLARIS  
INDUSTRIES, INC.'S MOTION TO  
DISMISS FOR FORUM NON  
CONVENIENS**

26 **AFFIDAVIT OF BLAKE ANDERSON**

27 I, Blake Anderson, duly sworn according to law, hereby depose and state of my own personal  
28 knowledge that:

1. I am a Senior Project Engineer at Polaris Industries, Inc. I have been employed in  
this position for 10 (ten) years.

2. I submit this Affidavit in support of Defendant Polaris Industries, Inc.'s Motion to  
Dismiss for *Forum Non Conveniens*.

3. All statements in this Affidavit are based on my personal knowledge and  
understanding, based on information that I have acquired in my experience working at Polaris

1 Industries, Inc., or based on information that I obtained through review of records or conversations  
2 with other Polaris Industries, Inc. personnel who have personal knowledge.

3 4. Polaris Industries, Inc.'s headquarters are in Medina, Minnesota.


4 5. The product at issue in this case is a 2017 Polaris RZR 4 900 EPS.

5 6. Polaris designed, tested, and manufactured the vehicle at issue in Minnesota.

6 7. All Polaris employees with knowledge and information about the Polaris RZR and all  
7 relevant Polaris documents are located in Minnesota.

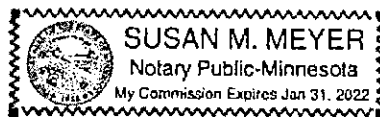
8 8. Polaris sold the vehicle to an Arizona dealership.

9  
10  
11 I declare under penalty of perjury that the foregoing is true and correct.

12  
13   
14 Blake Anderson  
15 Representative of Polaris Industries, Inc.

16 Subscribed and sworn to before me this  
17 31 day of January, 2019.

18   
19 NOTARY PUBLIC



20 My commission expires 1-31-2022

1 **SECCL**  
2 **JENNIFER WILLIS ARLEDGE**  
3 Nevada Bar No.: 8729  
4 **WILSON, ELSE, MOSKOWITZ,**  
5 **EDELMAN & DICKER LLP**  
6 300 South 4th Street, 11<sup>th</sup> Floor  
7 Las Vegas, NV 89101  
(702) 727-1400; FAX (702) 727-1401  
Jennifer.Arledge@wilsonelser.com  
Attorneys for Defendant  
**POLARIS INDUSTRIES, INC.**

8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 JOHN BORGER and SHERRI BORGER,  
11 Plaintiffs,  
12 vs.

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

16 

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SANDBAR POWERSPORTS, LLC,  
17 Counter-Claimant,

18 v.  
19 JOHN BORGER AND SHERRI BORGER,  
20 Counter-Defendants.

21 

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SANDBAR POWERSPORTS, LLC,  
22 Cross-Claimant,

23 v.  
24 POLARIS INDUSTRIES, INC.  
25 Cross-Defendant,  
26

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

**DEFENDANT POLARIS INDUSTRIES,  
INC.'S FIFTH SUPPLEMENTAL NRC  
16.1 LIST OF WITNESSES AND  
DOCUMENTS**

1 Defendant, POLARIS INDUSTRIES, INC., by and through its attorneys of record,  
2 JENNIFER WILLIS ARLEDGE, ESQ., of the law firm of WILSON, ELSEER, MOSKOWITZ,  
3 EDELMAN & DICKER, LLP, hereby submits the following Fifth Supplemental List of Witnesses  
4 and Identification of Documents, pursuant to Nevada Rules of Civil Procedure 16.1 as follows (**new**  
5 **witnesses and documents are in bold**):

6 **I.**

7 **LIST OF WITNESSES**

- 8  
9 1. Sherri Borger  
c/o Chad Bowers, Esq.  
CHAD A. BOWERS, LTD  
10 3202 W. Charleston Blvd.  
11 Las Vegas, Nevada 89102  
(702) 457-1001  
12  
13 and  
14 Kyle W. Farrar, Esq.  
KASTER, LYNCH, FARRAR & BALL, LLP  
15 1010 Lamar, Suite 1600  
Houston, Texas 77002  
16 (713) 221-8300  
*Attorneys for Plaintiffs John Borger and Sherri Borger*

17 Plaintiff Sherri Borger is expected to testify regarding the facts and circumstances  
18 surrounding the alleged incident on October 18, 2016, that forms the basis of this litigation. She is  
19 also expected to testify as to her medical history and treatment, claimed damages, current physical  
20 condition, and all other allegations related to her Complaint.  
21

- 22 2. John Borger  
c/o Chad A. Bowers, Esq.  
23 CHAD A. BOWERS, LTD  
24 3202 W. Charleston Blvd.  
Las Vegas, Nevada 89102  
25 (702) 457-1001

26 and

27 Kyle W. Farrar, Esq.  
28 KASTER, LYNCH, FARRAR & BALL, LLP

1 1010 Lamar, Suite 1600  
Houston, Texas 77002  
2 (713) 221-8300  
3 *Attorneys for Plaintiffs John Borger and Sherri Borger*

4 Plaintiff John Borger is Sherri Borger's husband and was a passenger in the subject vehicle at  
5 the time of the alleged incident and is expected to testify regarding his knowledge of the facts and  
6 circumstances surrounding the alleged incident on October 18, 2016, that forms the basis of this  
7 litigation, including his claims arising therefrom.

8 3. Jade Borger  
9 c/o Chad Bowers, Esq.  
CHAD A. BOWERS, LTD  
10 3202 W. Charleston Blvd.  
Las Vegas, Nevada 89102  
11 (702) 457-1001

12 and

13 Kyle W. Farrar, Esq.  
14 KASTER, LYNCH, FARRAR & BALL, LLP  
1010 Lamar, Suite 1600  
15 Houston, Texas 77002  
16 (713) 221-8300

17 Jade Borger is Plaintiffs' daughter and was a passenger in the subject vehicle at the time of  
18 the alleged incident and is expected to testify regarding her knowledge of the facts and  
19 circumstances surrounding the alleged incident on October 18, 2016, that forms the basis of this  
20 litigation.

21 4. Foster Borger  
22 c/o Chad Bowers, Esq.  
CHAD A. BOWERS, LTD  
3202 W. Charleston Blvd.  
23 Las Vegas, Nevada 89102  
24 (702) 457-1001

25 and

26 Kyle W. Farrar, Esq.  
27 KASTER, LYNCH, FARRAR & BALL, LLP  
1010 Lamar, Suite 1600  
28 Houston, Texas 77002



1 (713) 221-8300

2 Foster Borger is Plaintiffs' minor son and was the driver of the subject vehicle at the time of  
3 the alleged incident and is expected to testify regarding his knowledge of the facts and circumstances  
4 surrounding the alleged incident on October 18, 2016.

5 5. Company Representatives of Polaris Industries, Inc.  
6 c/o Jennifer Willis Arledge, Esq.  
7 WILSON ELSE EDELMAN MOSKOWITZ & DICKER LLP  
8 300 South Fourth Street, 11<sup>th</sup> Floor  
9 Las Vegas, Nevada 89101  
(702) 727-1400  
*Attorneys for Defendant Polaris Industries, Inc.*

10 This witness is expected to testify regarding his/her knowledge of the facts and  
11 circumstances regarding the subject vehicle's design, marketing and manufacture.

12 6. Company Representatives of Sandbar Powersports, LLC  
13 c/o Griffith H. Hayes, Esq.  
14 Marisa A. Pocchi, Esq.  
15 Keivan A. Roebuck, Esq.  
16 LITCHFIELD CAVO, LLP  
3993 Howard Hughes Parkway, Suite 100  
Las Vegas, Nevada 89169  
*Attorneys for Defendant Sandbar Powersports, LLC*

17 This witness is expected to testify regarding his/her knowledge of the facts and  
18 circumstances surrounding the purchase, sale, maintenance, instructions, warnings and the alleged  
19 incident on October 18, 2016, that forms the basis of this litigation, including the rental of the  
20 subject vehicle prior to the alleged incident.

21  
22 7. Jason Melton  
23 Sandbar Powersports, LLC  
24 c/o Griffith H. Hayes, Esq.  
25 Marisa A. Pocchi, Esq.  
26 Keivan A. Roebuck, Esq.  
27 LITCHFIELD CAVO, LLP  
3993 Howard Hughes Parkway, Suite 100  
28 Las Vegas, Nevada 89169  
*Attorneys for Defendant Sandbar Powersports, LLC*

1 This witness is expected to testify regarding his knowledge of the facts and circumstances  
2 surrounding the purchase, sale, maintenance, instructions, warnings and the alleged incident on  
3 October 18, 2016, that forms the basis of this litigation, including the rental of the subject vehicle  
4 prior to the alleged incident.

5 8. Polly Melton  
6 Sandbar Powersports, LLC  
7 c/o Griffith H. Hayes, Esq.  
8 Marisa A. Pocchi, Esq.  
9 Keivan A. Roebuck, Esq.  
10 LITCHFIELD CAVO, LLP  
3993 Howard Hughes Parkway, Suite 100  
Las Vegas, Nevada 89169  
*Attorneys for Defendant Sandbar Powersports, LLC*

11 This witness is expected to testify regarding her knowledge of the facts and circumstances  
12 surrounding the purchase, sale, maintenance, instructions, warnings and the alleged incident on  
13 October 18, 2016, that forms the basis of this litigation, including the rental of the subject vehicle  
14 prior to the alleged incident.

15 9. David Lehmitz  
16 958 North Jefferson Street  
17 Moscow, Idaho 83843

18 This witness is expected to testify regarding his knowledge of the facts and circumstances  
19 surrounding the purchase, sale, maintenance, instructions, warnings and the alleged incident on  
20 October 18, 2016, that forms the basis of this litigation, including the rental of the subject vehicle  
21 prior to the alleged incident.

22 10. Tracy Waddington  
23 c/o Griffith H. Hayes, Esq.  
24 Marisa A. Pocchi, Esq.  
25 Keivan A. Roebuck, Esq.  
26 LITCHFIELD CAVO, LLP  
3993 Howard Hughes Parkway, Suite 100  
Las Vegas, Nevada 89169  
*Attorneys for Defendant Sandbar Powersports, LLC*

1 This witness is expected to testify regarding her knowledge of the facts and circumstances  
2 surrounding the purchase, sale, maintenance, instructions, warnings and the alleged incident on  
3 October 18, 2016, that forms the basis of this litigation, including the rental of the subject vehicle  
4 prior to the alleged incident.

5 11. Company Representatives of GEI, LLC d/b/a Parker Sports Center  
6 800 S. California Ave.  
7 Parker, Arizona 85344  
(928) 669-2549

8 This witness is expected to testify regarding his/her knowledge of the facts and  
9 circumstances surrounding the purchase and sale of the subject vehicle to Jason Melton and/or  
10 Sandbar Powersports, LLC. 2.4

11 12. James Shellenback  
12 10627 Dreamy Lane  
13 Parker, Arizona 85344

14 This witness is expected to testify regarding his knowledge of the facts and circumstances  
15 surrounding the purchase of the subject vehicle from Sandbar Powersports, LLC following the  
16 alleged incident.

17 13. Sergeant John Kole  
18 L. Tarkowski  
19 R.J. McEuen  
20 D. Shelby  
21 Mohave County Sheriff's Office  
22 600 West Beale Street  
Kingman, Arizona 86402  
(928) 753-0753  
*Investigating Officers*

23 These witnesses is expected to testify regarding his/her knowledge of the facts and  
24 circumstances surrounding the alleged incident on October 18, 2016, that forms the basis of this  
25 litigation, including the investigation of the alleged incident.

26 14. Officer Murdock  
27 Lake Havasu City Police Department  
28 2360 McCullough Boulevard

1 N. Lake Havasu City, Arizona 86403  
2 (928) 855-1171

3 This witness is expected to testify regarding his/her knowledge of the facts and  
4 circumstances surrounding the alleged incident on October 18, 2016, that forms the basis of this  
5 litigation, including the response to the alleged incident.

6 15. Lake Havasu City Fire Department  
7 Employees, agents and representatives and/or custodian of records  
8 2330 McCullough Boulevard  
9 N. Lake Havasu City, Arizona 86403  
10 (928) 855-1141

11 This witness is expected to testify regarding his/her knowledge of the facts and  
12 circumstances surrounding the alleged incident on October 18, 2016, that forms the basis of this  
13 litigation, including the response to the alleged incident.

14 16. Havasu Regional Medical Center (Cancer Care of Western Arizona)  
15 Employees, agents and representatives and/or custodian of records  
16 101 Civic Center Lane  
17 Havasu, Arizona 68403  
18 (928) 855-8185  
19 *Plaintiff Sherri Borger's Treatment Facility.*

20 This witness is expected to testify regarding his/her knowledge of Plaintiff Sherri Borger's  
21 condition, injuries, diagnoses, prognoses, courses of treatment and the need for future medical care  
22 and/or treatment, if any.

23 17. University Medical Center  
24 Employees, agents and representatives and/or custodian of records  
25 1800 W. Charleston Blvd.  
26 Las Vegas, Nevada 89102  
27 (702) 383-2000  
28 *Plaintiff Sherri Borger's Treatment Facility.*

29 This witness is expected to testify regarding his/her knowledge of Plaintiff Sherri Borger's  
30 condition, injuries, diagnoses, prognoses, courses of treatment and the need for future medical care  
31 and/or treatment, if any.

32 ///

1           18.     United Hospital  
2                 Employees, agents and representatives and/or custodian of records  
3                 333 Smith Avenue N  
4                 St. Paul, Minnesota 55102  
5                 (651) 241-8000  
6                 *Plaintiff Sherri Borger's Treatment Facility.*

7           This witness is expected to testify regarding his/her knowledge of Plaintiff Sherri Borger's  
8           condition, injuries, diagnoses, prognoses, courses of treatment and the need for future medical care  
9           and/or treatment, if any.

10           19.     Allina Health  
11                 Employees, agents and representatives and/or custodian of records  
12                 167 Grand Avenue  
13                 St. Paul, Minnesota 55102  
14                 (651) 241-4400  
15                 *Plaintiff Sherri Borger's Treatment Facility.*

16           This witness is expected to testify regarding his/her knowledge of Plaintiff Sherri Borger's  
17           condition, injuries, diagnoses, prognoses, courses of treatment and the need for future medical care  
18           and/or treatment, if any.

19           20.     Advanced Arm Dynamics  
20                 Patt Prigge  
21                 Employees, agents and representatives and/or custodian of records  
22                 11671 Fountains Dr. #220  
23                 Maple Grove, Minnesota 55369  
24                 (763) 420-2767  
25                 *Plaintiff Sherri Borger's Treatment Facility.*

26           This witness is expected to testify regarding his/her knowledge of Plaintiff Sherri Borger's  
27           condition, injuries, diagnoses, prognoses, courses of treatment and the need for future medical care  
28           and/or treatment, if any.

29           21.     Gillette Lifetime Specialty Healthcare  
30                 Employees, agents and representatives and/or custodian of records  
31                 435 Phalen Blvd.  
32                 St. Paul, Minnesota 55130  
33                 (651) 290-8707  
34                 *Plaintiff Sherri Borger's Treatment Facility.*

1 This witness is expected to testify regarding his/her knowledge of Plaintiff Sherri Borger's  
2 condition, injuries, diagnoses, prognoses, courses of treatment and the need for future medical care  
3 and/or treatment, if any.

4 22. Regions Hospital  
5 Employees, agents and representatives and/or custodian of records  
6 640 Jackson St.  
7 St. Paul, Minnesota 55101  
(651) 254-3456  
*Plaintiff Sherri Borger's Treatment Facility.*

8 This witness is expected to testify regarding his/her knowledge of Plaintiff Sherri Borger's  
9 condition, injuries, diagnoses, prognoses, courses of treatment and the need for future medical care  
10 and/or treatment, if any.

11 23. Courage Kenny Rehabilitation Institute  
12 Employees, agents and representatives and/or custodian of records  
13 2250 NW 26<sup>th</sup> Street  
14 Owatonna, Minnesota 55060  
(507) 451-3850  
*Plaintiff Sherri Borger's Treatment Facility.*

15 This witness is expected to testify regarding his/her knowledge of Plaintiff Sherri Borger's  
16 condition, injuries, diagnoses, prognoses, courses of treatment and the need for future medical care  
17 and/or treatment, if any.

18 24. Mayo Clinic – Rochester  
19 Brian Carlsen  
20 Employees, agents and representatives and/or custodian of records  
21 200 First Street SW  
22 Rochester, Minnesota 55905  
(507) 284-2511  
*Plaintiff Sherri Borger's Treatment Facility.*

23 This witness is expected to testify regarding his/her knowledge of Plaintiff Sherri Borger's  
24 condition, injuries, diagnoses, prognoses, courses of treatment and the need for future medical care  
25 and/or treatment, if any.

26 25. Medschool Associates South  
27 Employees, agents and representatives and/or custodian of records  
28

1 2040 W. Charleston Blvd. #300  
2 Las Vegas, Nevada 89102  
3 *Plaintiff Sherri Borger's Treatment Facility.*

4 This witness is expected to testify regarding his/her knowledge of Plaintiff Sherri Borger's  
5 condition, injuries, diagnoses, prognoses, courses of treatment and the need for future medical care  
6 and/or treatment, if any.

7 26. Rocky Mountain Holdings  
8 Employees, agents and representatives and/or custodian of records  
9 P.O. Box 713375  
10 Cincinnati, Ohio 45271  
11 *Plaintiff Sherri Borger's Treatment Facility.*

12 This witness is expected to testify regarding his/her knowledge of Plaintiff Sherri Borger's  
13 condition, injuries, diagnoses, prognoses, courses of treatment and the need for future medical care  
14 and/or treatment, if any.

15 27. Omniflight Helicopters – Air Methods  
16 Employees, agents and representatives and/or custodian of records  
17 3190 V. Victor Rd.  
18 Prescott Valley, Arizona 86314  
19 (928) 445-3304  
20 *Plaintiff Sherri Borger's Treatment Facility.*

21 This witness is expected to testify regarding his/her knowledge of Plaintiff Sherri Borger's  
22 condition, injuries, diagnoses, prognoses, courses of treatment and the need for future medical care  
23 and/or treatment, if any.

24 28. Chris Patterson  
25 Contact Information to be Determined

26 This witness is expected to testify regarding his/her knowledge of the facts and  
27 circumstances surrounding the alleged incident on October 18, 2016, that forms the basis of this  
28 litigation.

29 29. Person(s) Most Knowledgeable and/or Custodian of Records  
30 Mayo Clinic Rochester  
31 200 First Street SW  
32 Rochester, MN 55905

1 The Person(s) Most Knowledgeable and/or the Custodian of Records is expected to testify as  
2 to the facts and circumstances alleged in the Plaintiffs' Complaint, as to the medical care and  
3 treatment rendered to Plaintiff(s) and as to the costs associated with the services rendered to  
4 Plaintiff(s). The Person(s) Most Knowledgeable and/or Custodian of Records will also testify in  
5 regard to the completeness, accuracy and authenticity of Mayo Clinic Rochester's records and bills  
6 as they are kept and maintained in the ordinary course of business.

7 30. Person(s) Most Knowledgeable and/or Custodian of Records  
8 University Medical Center  
9 1800 W. Charleston Blvd.  
10 Las Vegas, NV 89102

11 The Person(s) Most Knowledgeable and/or the Custodian of Records is expected to testify as  
12 to the facts and circumstances alleged in the Plaintiffs' Complaint, as to the medical care and  
13 treatment rendered to Plaintiff(s) and as to the costs associated with the services rendered to  
14 Plaintiff(s). The Person(s) Most Knowledgeable and/or Custodian of Records will also testify in  
15 regard to the completeness, accuracy and authenticity of University Medical Center's records and  
16 bills as they are kept and maintained in the ordinary course of business.

17 31. Person(s) Most Knowledgeable and/or Custodian of Records  
18 Allina Health  
19 167 Grand Avenue  
20 St. Paul, MN 55102

21 The Person(s) Most Knowledgeable and/or the Custodian of Records is expected to testify as  
22 to the facts and circumstances alleged in the Plaintiffs' Complaint, as to the medical care and  
23 treatment rendered to Plaintiff(s) and as to the costs associated with the services rendered to  
24 Plaintiff(s). The Person(s) Most Knowledgeable and/or Custodian of Records will also testify in  
25 regard to the completeness, accuracy and authenticity of Allina Health's records and bills as they are  
26 kept and maintained in the ordinary course of business.

27 32. Person(s) Most Knowledgeable and/or Custodian of Records  
28 Gillette Lifetime Specialty Healthcare  
435 Phalen Blvd.  
St. Paul, MN 55130



1 The Person(s) Most Knowledgeable and/or the Custodian of Records is expected to testify as  
2 to the facts and circumstances alleged in the Plaintiffs' Complaint, as to the medical care and  
3 treatment rendered to Plaintiff(s) and as to the costs associated with the services rendered to  
4 Plaintiff(s). The Person(s) Most Knowledgeable and/or Custodian of Records will also testify in  
5 regard to the completeness, accuracy and authenticity of Gillette Lifetime Specialty Healthcare's  
6 records and bills as they are kept and maintained in the ordinary course of business.

7 33. Person(s) Most Knowledgeable and/or Custodian of Records  
8 Limb Lab  
9 400 South Broadway, Suite 106  
10 Rochester, MN 55904

11 The Person(s) Most Knowledgeable and/or the Custodian of Records is expected to testify as  
12 to the facts and circumstances alleged in the Plaintiffs' Complaint, as to the medical care and  
13 treatment rendered to Plaintiff(s) and as to the costs associated with the services rendered to  
14 Plaintiff(s). The Person(s) Most Knowledgeable and/or Custodian of Records will also testify in  
15 regard to the completeness, accuracy and authenticity of Limb Lab's records and bills as they are  
16 kept and maintained in the ordinary course of business.

17 34. Person(s) Most Knowledgeable and/or Custodian of Records  
18 Havasu Regional Medical Center  
19 101 Civic Center Lane  
20 Havasu, AZ 68403

21 The Person(s) Most Knowledgeable and/or the Custodian of Records is expected to testify as  
22 to the facts and circumstances alleged in the Plaintiffs' Complaint, as to the medical care and  
23 treatment rendered to Plaintiff(s) and as to the costs associated with the services rendered to  
24 Plaintiff(s). The Person(s) Most Knowledgeable and/or Custodian of Records will also testify in  
25 regard to the completeness, accuracy and authenticity of Havasu Regional Medical Center's records  
26 and bills as they are kept and maintained in the ordinary course of business.

27 35. Person(s) Most Knowledgeable and/or Custodian of Records  
28 Advanced Arm Dynamics  
Fountains at Arbor Lakes  
11671 Fountains Drive, #220  
Maple Grove, MN 55369

1 The Person(s) Most Knowledgeable and/or the Custodian of Records is expected to testify as  
2 to the facts and circumstances alleged in the Plaintiffs' Complaint, as to the medical care and  
3 treatment rendered to Plaintiff(s) and as to the costs associated with the services rendered to  
4 Plaintiff(s). The Person(s) Most Knowledgeable and/or Custodian of Records will also testify in  
5 regard to the completeness, accuracy and authenticity of Advanced Arm Dynamics' records and bills  
6 as they are kept and maintained in the ordinary course of business.

7 36. Person(s) Most Knowledgeable and/or Custodian of Records  
8 Rocky Mountain Holdings  
9 Cincinnati, OH 45271

10 The Person(s) Most Knowledgeable and/or the Custodian of Records is expected to testify as  
11 to the facts and circumstances alleged in the Plaintiffs' Complaint, as to the medical care and  
12 treatment rendered to Plaintiff(s) and as to the costs associated with the services rendered to  
13 Plaintiff(s). The Person(s) Most Knowledgeable and/or Custodian of Records will also testify in  
14 regard to the completeness, accuracy and authenticity of Rocky Mountain Holdings' records and  
15 bills as they are kept and maintained in the ordinary course of business.

16 37. Julie Yang and/or  
17 Person(s) Most Knowledgeable and/or Custodian of Records  
18 Ciox Health  
19 Atlanta, GA 30384-9740

20 The Person(s) Most Knowledgeable and/or the Custodian of Records is expected to  
21 testify as to the facts and circumstances alleged in the Plaintiffs' Complaint, as to the medical  
22 care and treatment rendered to Plaintiff(s) and as to the costs associated with the services  
23 rendered to Plaintiff(s). The Person(s) Most Knowledgeable and/or Custodian of Records will  
24 also testify in regard to the completeness, accuracy and authenticity of Regions Hospital's  
25 records and bills as they are kept and maintained in the ordinary course of business.

26 38. Stuart Galentine  
27 20061 Frank St.  
28 Orange, CA 92869

Mr. Galentine was the previous renter of the subject Polaris RZR 900. He is expected  
to testify regarding the condition of the RZR at the time of his rental on 10/15/16.

1           **39.     Brenda Dean Galentine**  
2                   **20061 Frank St.**  
3                   **Orange, CA 92869**

4           **Ms. Galentine was the previous renter of the subject Polaris RZR 900. She is expected**  
5           **to testify regarding the condition of the RZR at the time of her rental on 10/15/16.**

6           **40.     Dean Kenneth Obst**  
7                   **2201 Canyon Road**  
8                   **Arcadia, CA 91106**

9           **Mr. Obst was the previous renter of the subject Polaris RZR 900. He is expected to**  
10           **testify regarding the condition of the RZR at the time of his rental on 10/16/16.**

11           **41.     Monica Hawkins**  
12                   **9803 Hampshire Street**  
13                   **Rancho Cucamonga, CA 91730**

14           **Ms. Hawkins was the previous renter of the subject Polaris RZR 900. She is expected to**  
15           **testify regarding the condition of the RZR at the time of his rental on 10/16/16.**

16           **42.     Lori Schnepf and/or**  
17                   **Person(s) Most Knowledgeable and/or Custodian of Records**  
18                   **Lake Havasu City Police Department**  
19                   **2330 McCulloch Boulevard**  
20                   **N. Lake Havasu City, AZ 86403**

21           **The Person(s) Most Knowledgeable and/or the Custodian of Records is expected to**  
22           **testify as to the facts and circumstances alleged in the Plaintiffs' Complaint, as to the medical**  
23           **care and treatment rendered to Plaintiff(s) and as to the costs associated with the services**  
24           **rendered to Plaintiff(s). The Person(s) Most Knowledgeable and/or Custodian of Records will**  
25           **also testify in regard to the completeness, accuracy and authenticity of Regions Hospital's**  
26           **records and bills as they are kept and maintained in the ordinary course of business.**

27           **42.     Kathy Myers and/or**  
28                   **Person(s) Most Knowledgeable and/or Custodian of Records**  
                  **Lake Havasu City Fire Department**  
                  **2330 McCulloch Blvd.**  
                  **N. Lake Havasu City, AZ 86403**

1       **The Person(s) Most Knowledgeable and/or the Custodian of Records is expected to**  
2 **testify as to the facts and circumstances alleged in the Plaintiffs' Complaint, as to the medical**  
3 **care and treatment rendered to Plaintiff(s) and as to the costs associated with the services**  
4 **rendered to Plaintiff(s). The Person(s) Most Knowledgeable and/or Custodian of Records will**  
5 **also testify in regard to the completeness, accuracy and authenticity of Regions Hospital's**  
6 **records and bills as they are kept and maintained in the ordinary course of business.**

7       **43.     Jared Sison, EMT**  
8       **Martin Port, EMT**  
9       **Tim Maple, EMT**  
10       **Rick Kelm, EMT**  
11       **Lake Havasu City Fire Department**  
12       **2330 McCulloch Blvd.**  
13       **N. Lake Havasu City, AZ 86403**

14       These witnesses is expected to testify regarding his/her knowledge of the facts and  
15 circumstances surrounding the alleged incident on October 18, 2016, that forms the basis of this  
16 litigation, including the investigation of the alleged incident.

17       **44.     Victoria Jenkins, RN**  
18       **Native Air – Arizona**  
19       **100 S. Tilbury Dr.**  
20       **Kearney, AZ 85137**

21       **Ms. Jenkins was the primary caregiver on both life flights, and is expected to testify**  
22 **regarding her knowledge of the facts and circumstances surrounding the alleged incident on**  
23 **October 18, 2016, that forms the basis of this litigation, including the investigation of the**  
24 **alleged incident.**

25       45.     Any medical providers not previously identified who have rendered treatment and/or  
26 medical care with respect to the subject incident.

27       46.     Defendant, POLARIS INDUSTRIES, INC., incorporates as part of its witness list all  
28 persons identified by other parties.

      47.     Defendant, POLARIS INDUSTRIES, INC., reserves the right to designate expert  
witnesses at the time required by Nevada law. Defendant further reserves the right to change,  
modify, supplement, or withdraw any listed experts.

48. Defendant, POLARIS INDUSTRIES, INC., reserves the right to supplement and/or amend this designation of witnesses should, during the course of the discovery of this matter, additional information become known to Defendant or Defendant's counsel.

It is anticipated that additional witnesses and documents will be identified during the course of discovery throughout the litigation and Defendant reserves its right to supplement this list as discovery progresses.

Additionally, Defendant reserves the right to name any witnesses identified by any other party to this action.

## II.

## DOCUMENTS

Defendant, POLARIS INDUSTRIES, INC. will produce the following categories of documents, if available, following the entry of a protective order:

1. Manufacturing & Design Documents for the 2017 Polaris RZR 900 EPS 4.
2. Testing Data for the 2017 Polaris RZR 900 EPS 4.
3. Manuals for the 2017 Polaris RZR 900 EPS 4.
4. Safety Information and Warnings for the 2017 Polaris RZR 900 EPS 4.
5. Vehicle Unity Inquiry for the Subject RZR.
6. Sales Invoice for the Subject RZR.
7. Certificate of Origin for the Subject RZR.
8. Declaration Page(s) for Applicable Insurance Coverage.

**PRODUCED IN THE FIRST SUPPLEMENT**

Document Description	Bates numbers
Certificate of Origin and Invoices	POL BORGER 000001-000002
Pre-Delivery Inspection	POL BORGER 000003-000004
Polaris RZR 900 Owner's Manual	POL BORGER 000005-000165
2017 RZR 4 900 Parts Manual	POL BORGER 000166-000315

2017 RZR 900 Service Manual	POL BORGER 000316-000878
Polaris RZR 4 900 Production List	POL BORGER 000879

**PRODUCED IN THE SECOND SUPPLEMENT**

Document Description	Bates numbers
Polaris' Off Road Vehicle Safety DVD	POL BORGER 000880
Polaris' Commercial Umbrella Liability Policy Declarations	POL BORGER 000881-000883

**PRODUCED IN THE THIRD SUPPLEMENT**

Document Description	Bates numbers
Medical records from Havasu Regional Medical Center – <i>previously disclosed in Plaintiffs' initial disclosure</i>	
Medical records from University Medical Center – <i>previously disclosed in Plaintiffs' initial disclosure</i>	
Medical records and bills from United Hospital – <i>previously disclosed in Plaintiffs' initial disclosure</i>	
Medical records and bills from Allina Health – <i>previously disclosed in Plaintiffs' initial disclosure</i>	
Medical records and bills from Advanced Arm Dynamics – <i>previously disclosed in Plaintiffs' initial disclosure</i>	
Medical records and bills from Gillette Lifetime Specialty Healthcare – <i>previously disclosed in Plaintiffs' initial disclosure</i>	
Medical records and bills from Regions Hospital – <i>previously disclosed in Plaintiffs' initial disclosure</i>	
Medical records and bills from Courage Kenny Rehabilitation Institute – <i>previously disclosed in Plaintiffs' initial disclosure</i>	
Medical records and bills from Mayo Clinic Rochester – <i>previously disclosed in Plaintiffs' initial disclosure</i>	
Medical records and bills from Medschool Associate South – <i>previously disclosed in Plaintiffs' initial disclosure</i>	

1	Medical records and bills from Rocky Mountain Holdings – <i>previously disclosed in Plaintiffs' initial disclosure</i>	
2		
3	Sandbar Powersports Rental Agreement for Polaris ATV, 10/18/16 – <i>previously disclosed in Sandbar's initial disclosure</i>	SP000001 – SP000003
4	Addendum to Rental Agreement for Polaris ATV, 10/18/16 – <i>previously disclosed in Sandbar's initial disclosure</i>	SP000004 – SP000005
5		
6	Sandbar Powersports Participant Agreement, Release and Assumption of Risk re Polaris ATV, 10/18/16 – <i>previously disclosed in Sandbar's initial disclosure</i>	SP000006 – SP000009
7	Pre-Rental Check-Out for Polaris ATV, 10/18/16 – <i>previously disclosed in Sandbar's initial disclosure</i>	SP000010 – SP000011
8	Sales Receipts for Rental of Polaris ATV, 10/18/16 (credit card info redacted) – <i>previously disclosed in Sandbar's initial disclosure</i>	SP000012
9		
10	Evidence of Insurance for Polaris ATV, 10/18/16 (credit card info redacted) – <i>previously disclosed in Sandbar's initial disclosure</i>	SP000013
11	Witness Statement of David Lehmitz, 10/18/16 – <i>previously disclosed in Sandbar's initial disclosure</i>	SP000014 - SP000015
12	Color photographs of Polaris ATV Accident Scene, 10/18/16 – <i>previously disclosed in Sandbar's initial disclosure</i>	SP000016 - SP000035
13		
14	Rocky Mountain ATV-MC online shopping printout, 10/19/16 – <i>previously disclosed in Sandbar's initial disclosure</i>	SP000036 - SP000052
15		
16	Sandbar Powersports receipt (invoice) to Sherri Borger regarding rescue out of desert, 10/19/16 – <i>previously disclosed in Sandbar's initial disclosure</i>	SP000053
17	Mohave County Sheriff's Office Incident Report, 11/8/16 – <i>previously disclosed in Sandbar's initial disclosure</i>	SP000054 - SP000063
18		
19	Witness Statement of Tracy Waddington, 11/17/16 – <i>previously disclosed in Sandbar's initial disclosure</i>	SP000064 - SP000065
20	American Modern Home Insurance Company (AMHIC) Recreational Vehicle Rental Insurance Policy No. 201797-4 for Sandbar Powersports, policy period 10/11/16 – 10/11/17 (premium info redacted) – <i>previously disclosed in Sandbar's initial disclosure</i>	SP000066 - SP000115
21		
22	American Modern Home Insurance Company (AMHIC) Recreational Vehicle Rental Insurance Rental Policy No. 211797-4 for Sandbar Powersports, policy period 10/11/16 – 10/11/17 (premium info redacted) – <i>previously disclosed in Sandbar's initial disclosure</i>	SP000116 - SP000151
23		
24		
25	MBA, Inc. Certificate of Insurance regarding the AMHIC Recreational Vehicle Rental Insurance Policy No. 201797-4 for Sandbar Powersports, policy period 10/11/16 – 10/11/17 (premium info redacted) – <i>previously disclosed in Sandbar's initial disclosure</i>	SP000152
26		
27	American Modern Insurance Company (AMHIC)	SP000153
28		

1	Declarations page regarding the Recreational Vehicle Rental Insurance Policy No. 201797-4 for Sandbar Powersports, policy period 10/11/16 – 10/11/17 (premium info redacted) – <i>previously disclosed in Sandbar's initial disclosure</i>	
2		
3	MBA Insurance Motorcycle Rental Insurance Report for October 2016 and dated, 10/27/16 (premium info redacted) – <i>previously disclosed in Sandbar's initial disclosure</i>	SP000154
4		
5	AMHIC claim acknowledgment/ROR letter to Sandbar Powersports – <i>previously disclosed in Sandbar's initial disclosure</i>	SP000155 - SP000157
6		
7	John Borger's & Sherri Borger's Minnesota Driver Licenses (nos. & address redacted) and Visa credit card (no. redacted) – <i>previously disclosed in Sandbar's initial disclosure</i>	SP000158 - SP000159
8		
9	Email exchange between Plaintiffs' Counsel and adjuster for Cincinnati/American Modern Insurance Group email exchange, March 23-24, 2017 – <i>previously disclosed in Sandbar's initial disclosure</i>	SP000160 - SP000167
10		
11	Plaintiffs' counsel letter to Sandbar Powersports, 11/07/16 – <i>previously disclosed in Sandbar's initial disclosure</i>	SP000168
12		
13	Medicare Beneficiary Form (incomplete) – <i>previously disclosed in Sandbar's initial disclosure</i>	SP000169 - SP000170
14	Pre-rental color photographs of Polaris ATV – <i>previously disclosed in Sandbar's 1st supplement</i>	SP000171 - SP000230
15	Warning sticker on Polaris ATV – <i>previously disclosed in Sandbar's 1st supplement</i>	SP000231 - SP000236
16	Sandbar Powersports' maintenance check-list for Polaris, 10/18/16 – <i>previously disclosed in Sandbar's 1st supplement</i>	SP000237
17		
18	Amazon.com order/receipt for Sandbar Powersports' purchase of lower door inserts for Polaris ATV, 09/26/16 – <i>previously disclosed in Sandbar's 1st supplement</i>	SP000238
19		
20	Rocky Mountain ATV/MC invoice for Sandbar Powersports' purchase of rearview mirror for Polaris ATV, 09/26/16 – <i>previously disclosed in Sandbar's 1st supplement</i>	SP000239
21		
22	Havasut Powersports invoice for Sandbar Powersports' purchase of windshield for Polaris ATV, 09/16/16 – <i>previously disclosed in Sandbar's 1st supplement</i>	SP000240
23		
24	Pro-Armor packing list/invoice for Sandbar Powersports' purchase of soft top for Polaris ATV, 09/22/16 – <i>previously disclosed in Sandbar's 1st supplement</i>	SP000241
25		
26	Sandbar Powersports' Receipts of Sale of Polaris ATV, 03/21/16 – <i>previously disclosed in Sandbar's 1st supplement</i>	SP000242
27		
28	Bill of Sale for Polaris ATV, 09/13/16 – <i>previously disclosed in Sandbar's 1st supplement</i>	SP000243
	Directions to off-road driving area – <i>previously disclosed in Sandbar's 1st supplement</i>	SP000244



1	Sandbar Powersports receipt for sale of Polaris RZR, 03/19/17 American Modern Insurance email to Sandbar Powersports regarding sale of subject Polaris RZR, 01/14/17 – <i>previously disclosed in Sandbar's 2nd supplement</i>	SP000245
2		
3	Rocky Mountain ATV-MC online shopping, 10/19/16 American Modern Insurance email to Sandbar Powersports regarding sale of subject Polaris RZR, 01/14/17 – <i>previously disclosed in Sandbar's 2nd supplement</i>	SP000246 - SP000262
4		
5	Medical and billing records from Advanced Arm Dynamics (redacted) American Modern Insurance email to Sandbar Powersports regarding sale of subject Polaris RZR, 01/14/17 – <i>previously disclosed in Sandbar's 2nd supplement</i>	SP000263 - SP000486
6		
7	Billing records from Allina Health (redacted) American Modern Insurance email to Sandbar Powersports regarding sale of subject Polaris RZR, 01/14/17 – <i>previously disclosed in Sandbar's 2nd supplement</i>	SP000487 - SP000503
8		
9	Medical records from Gillette Children's Specialty Healthcare (redacted) American Modern Insurance email to Sandbar Powersports regarding sale of subject Polaris RZR, 01/14/17 – <i>previously disclosed in Sandbar's 2nd supplement</i>	SP000504 - SP000513
10		
11	Medical and billing records from Havasu Regional Medical Center (redacted) American Modern Insurance email to Sandbar Powersports regarding sale of subject Polaris RZR, 01/14/17 – <i>previously disclosed in Sandbar's 2nd supplement</i>	SP000514 - SP000552
12		
13	Certificate of no [medical] records from Medschool Associates South n/k/a University of Nevada School of Medicine American Modern Insurance email to Sandbar Powersports regarding sale of subject Polaris RZR, 01/14/17 – <i>previously disclosed in Sandbar's 2nd supplement</i>	SP000553 - SP000554
14		
15	Billing records from Medschool Associates South n/k/a University of Nevada School of Medicine (redacted) American Modern Insurance email to Sandbar Powersports regarding sale of subject Polaris RZR, 01/14/17 – <i>previously disclosed in Sandbar's 2nd supplement</i>	SP000555 - SP000565
16		
17	Medical and billing records from Regions Hospital (redacted) American Modern Insurance email to Sandbar Powersports regarding sale of subject Polaris RZR, 01/14/17 – <i>previously disclosed in Sandbar's 2nd supplement</i>	SP000566 - SP000687
18		
19	Billing records and list of radiology imaging from University Medical Center American Modern Insurance email to Sandbar Powersports regarding sale of subject Polaris RZR, 01/14/17 – <i>previously disclosed in Sandbar's 2nd supplement</i>	SP000688 - SP000705
20		
21	Disc of radiology imaging form Allina Health – United Health American Modern Insurance email to Sandbar Powersports regarding sale of subject Polaris	SP000706
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1	RZR, 01/14/17 – <i>previously disclosed in Sandbar's 2nd supplement</i>	
2	Disc of radiology imaging Havasu Regional Medical Center American Modern Insurance email to Sandbar Powersports regarding sale of subject Polaris RZR, 01/14/17 – <i>previously disclosed in Sandbar's 2nd supplement</i>	SP000707
3		
4	Disc of radiology imaging from Mayo Clinic American Modern Insurance email to Sandbar Powersports regarding sale of subject Polaris RZR, 01/14/17 – <i>previously disclosed in Sandbar's 2nd supplement</i>	SP000708
5		
6	American Modern Home Insurance Company claim acknowledgement-ROR letter to Sandbar Powersports, 3/22/17 American Modern Insurance email to Sandbar Powersports regarding sale of subject Polaris RZR, 01/14/17 – <i>previously disclosed in Sandbar's 2nd supplement</i>	SP000709 - SP000711
7		
8	Cincinnati Insurance Notice of Loss, 10/27/16 American Modern Insurance email to Sandbar Powersports regarding sale of subject Polaris RZR, 01/14/17 – <i>previously disclosed in Sandbar's 2nd supplement</i>	SP000712
9		
10	Cincinnati Insurance and Sandbar Powersports email exchange, 4/11/17 to 4/12/17 American Modern Insurance email to Sandbar Powersports regarding sale of subject Polaris RZR, 01/14/17 – <i>previously disclosed in Sandbar's 2nd supplement</i>	SP000713 - SP000720
11		
12	Cincinnati Insurance & Sandbar Powersports email chain regarding Borger claim/lawsuit, etc., 03/20/17 to 03/22/17 (redacted) American Modern Insurance email to Sandbar Powersports regarding sale of subject Polaris RZR, 01/14/17 – <i>previously disclosed in Sandbar's 2nd supplement</i>	SP000721 - SP000743
13		
14	American Modern Insurance email to Sandbar Powersports regarding sale of subject Polaris RZR, 01/14/17 – <i>previously disclosed in Sandbar's 3rd supplement</i>	SP000744 - SP000745
15		
16	American Modern Insurance adjuster claim file notes, 11/28/17 – 03/21/17 American Modern Insurance email to Sandbar Powersports regarding sale of subject Polaris RZR, 01/14/17 – <i>previously disclosed in Sandbar's 3rd supplement</i>	SP000746 - SP000750
17		
18	American Modern Insurance adjuster litigation report, 03/21/17 (redacted) American Modern Insurance email to Sandbar Powersports regarding sale of subject Polaris RZR, 01/14/17 – <i>previously disclosed in Sandbar's 3rd supplement</i>	SP000751 - SP000753
19		
20	American Modern Insurance email to Sandbar Powersports regarding removal from use, 12/27/16 – <i>previously disclosed in Sandbar's 3rd supplement</i>	SP000754
21		
22	American Modern Insurance Company reservation of rights letter to Sandbar Powersports, 05/11/17 – <i>previously disclosed in Sandbar's 4th supplement</i>	SP000755 - SP000761
23		
24	Allied Insurance (Nationwide) personal automobile	SP000762 - SP000823
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insurance policy No. PPGM0042376657-0, policy period 04/20/09 to 10/20/09 for insureds John Borger, Sherri Borger, and Jade Borger (redacted premium info) – <i>previously disclosed in Sandbar's 5th supplement</i>	
Allied Insurance (Nationwide) personal automobile insurance identification card for policy No. PPGM0042376657-6, policy period 07/13/16 to 01/13/17, insured John Borger & Sherri Borger, vehicle Honda Odyssey EX vehicle – <i>previously disclosed in Sandbar's 5th supplement</i>	SP000824
Disc of radiology imaging & reports from University Medical Center – <i>previously disclosed in Sandbar's 5th supplement</i>	SP000825
Disc of radiology imaging from Regions Hospital – <i>previously disclosed in Sandbar's 5th supplement</i>	SP000826
Advanced Arm Dynamics medical and billing records received pursuant to HIPAA medical authorization	AAD 000001 – AAD 000339
University Medical Center radiology images received pursuant to HIPAA medical authorization (on CD) and Declaration of Custodian of Records	UMC 000001 – UMC 000002
Havasu Regional Medical Center radiology images received pursuant to HIPAA medical authorization (on CD) and Declaration of Custodian of Records	HRMC 000001 – HRMC 000002
University Medical Center billing records received pursuant to HIPAA medical authorization	UMC 000003 – UMC 000016
Declaration of Custodian of Records from Limb Lab – no records exist	Limb Lab 000001 – Limb Lab 000002
Gillette Children's Specialty Healthcare medical records received pursuant to HIPAA medical authorization	GCSH 000001 – GCSH 000012
Mayo Clinic medical records received pursuant to HIPAA medical authorization	Mayo Clinic 000001 – Mayo Clinic 000069
University Medical Center medical records received pursuant to HIPAA medical authorization	UMC 000017 – UMC 000133
Allina Health medical records received pursuant to HIPAA medical authorization	Allina Health 000001 – Allina Health 000158

PRODUCED IN THE FOURTH SUPPLEMENT

Document Description	Bates numbers
Rocky Mountain Holdings medical and billing records received pursuant to HIPAA medical authorization	RMH 000001 – RMH 000019
Mayo Clinic x-rays received pursuant to HIPAA medical authorization (on Disk) – <i>Reproduction of x-rays will be provided upon request and at the expense of the requesting party</i>	Mayo Clinic 000070

**PRODUCED IN THE FIFTH SUPPLEMENT**

Document Description	Bates numbers
<b>Sign-in sheet for inspection of subject accident site at Bison Washoe on 05/29/18 - previously disclosed in Sandbar's 7th supplement</b>	SP000827
<b>Sign-in sheet for inspection of subject Polaris RZR at residence of James Shellenback - previously disclosed in Sandbar's 7th supplement</b>	SP000828
<b>Sign-in sheet for inspection of subject Polaris RZR parts at residence of James Shellenback - previously disclosed in Sandbar's 7th supplement</b>	SP000829
<b>Medical records and bills from Rancho Family - Medical Group - previously disclosed in Plaintiffs' second supplement</b>	N/A
<b>Medical records and bills from Southland Arthritis - previously disclosed in Plaintiffs' second supplement</b>	N/A
<b>Medical and billing records from Allina Health re Owatonna Hospital and United Hospital (redacted)</b>	SP000830- SP000997
<b>Medical and billing records form Rocky Mountain Holdings (redacted)</b>	SP000998 - SP001028
<b>Color photos of subject accident scene taken on 05/29/18 by expert Mark Kittel, P.E. of Veritech Consulting Engineering, LLC - previously disclosed in Sandbar's 7th supplement</b>	SP001029 - SP001034
<b>Color photos of the subject Polaris RZR taken on 05/29/18 by expert Mark Kittel, P.E. of Veritech Consulting Engineering, LLC - previously disclosed in Sandbar's 7th supplement</b>	SP001035 - SP001151
<b>Herald Havasu News article regarding subject accident, 10/18/16 - previously disclosed in Sandbar's 7th supplement - previously disclosed in Sandbar's 7th supplement</b>	SP001152 - SP001153
<b>Herald Havasu News article regarding subject accident, 10/19/16 - previously disclosed in Sandbar's 7th supplement</b>	SP001154 - SP001155
<b>Nationwide Insurance Company insurance identification card for John and Sherri Borger regarding Honda Odyssey EX vehicle, policy period 07/13/16 – 01/13/17 - previously disclosed in Sandbar's 7th supplement</b>	SP001156
<b>Nationwide Insurance Company personal automobile insurance policy card for John and Sherri Borger regarding Honda Odyssey EX vehicle, policy period 07/13/13 – 01/13/14 - previously disclosed in Sandbar's 7th supplement</b>	SP001157 - SP001218
<b>Nationwide Insurance Company personal automobile insurance policy card for John and Sherri Borger regarding Honda Odyssey EX vehicle, policy period 07/13/16 – 01/13/17 - previously disclosed in Sandbar's 7th supplement</b>	SP001219 - SP001286

Additional billing records from Advanced Arm Dynamics ) - previously disclosed in Sandbar's 8th supplement	SP001287 - SP001288
Notice of no medical records from Summit Orthopedics (redacted) - previously disclosed in Sandbar's 8th supplement	SP001289 - SP001290
Notice of no medical records from Summit Orthopedics for Yesenia Rodriguez, M.D. - previously disclosed in Sandbar's 8th supplement	SP001291 - SP001294
Fax w/certification of no records from Alina Health, 09/12/18 (redacted) ) - previously disclosed in Sandbar's 9th supplement	SP001295 - SP001299
Fax from Alina Health regarding Sports & Orthopedics Specialists, 09/13/18 (redacted) ) - previously disclosed in Sandbar's 9th supplement	SP001300 - SP001306
Fax from Alina Health regarding Sports & Orthopedics Specialists, 09/17/18 (redacted) ) - previously disclosed in Sandbar's 9th supplement	SP001307 - SP001311
Rental agreement for prior renter of subject Polaris RZR 900 w/pre & post rental check of vehicle and renter's contract information, 11/15/16 - previously disclosed in Sandbar's 9th supplement	SP001312 - SP001315
Rental agreement for prior renters of subject Polaris RZR 900 w/pre & post rental check of vehicle and photocopies of California driver licenses (redacted) - previously disclosed in Sandbar's 10th supplement	SP001316 - SP001328
Color photos of subject accident site taken by safety consultant expert Joseph E. Manning on 05/29/2018 - previously disclosed in Sandbar's 11th supplement	SP001329 - SP001350
International Cultic Studies Association (ICSA) article entitled "Lying in Court and Religion: An Analysis of the Theocratic Warfare Doctrine of the Jehovah's Witness - previously disclosed in Sandbar's 12th supplement	SP001351 - SP001384
Regions Hospital medical records received pursuant to HIPAA medical authorization	Regions 000001 - Regions 000035
Lake Havasu City Police Department records received pursuant to HIPAA medical authorization	LHCPD 000001 - LHCPD 000007
Lake Havasu City Fire Department records received pursuant to HIPAA medical authorization	LHCFD 000001 - LHCFD 000013

Defendant, POLARIS INDUSTRIES, INC., reserves the right to introduce into evidence any document or record by any party identified as a potential exhibit for trial.

Defendant, POLARIS INDUSTRIES, INC., further reserves the right to introduce, amend and/or supplement this document list as discovery warrants.

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of WILSON ELSE MOSKOWITZ EDELMAN & DICKER LLP, and that on this 4<sup>th</sup> day of February, 2019, I served a true and correct copy of the foregoing **DEFENDANT POLARIS INDUSTRIES, INC.'S FIFTH SUPPLEMENTAL NRCP 16.1 LIST OF WITNESSES AND DOCUMENTS** as follows:

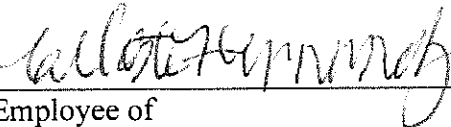
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada (documents and disks disclosed by U.S. mail only);
- ☒ via electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk;
- ☐ via hand-delivery to the addressees listed below;
- ☐ via facsimile;
- ☐ by transmitting via email the document listed above to the email address set forth below on this date before 5:00 p.m.

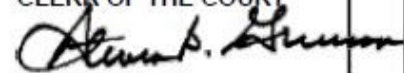
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Melanie Bernstein Chapman, Esq.  
LITCHFIELD CAVO, LLP  
3753 Howard Hughes Parkway, Suite 200  
Las Vegas, NV 8919  
Attorneys for Defendant  
SANDBAR POWERSPORTS, LLC

cc: Matthew T. Albaugh, Esq.  
Molly Gulbrandson, Esq.

BY   
An Employee of  
WILSON ELSE MOSKOWITZ EDELMAN & DICKER LLP



1 OSCJ

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 JOHN BORGER and SHERRI BORGER )

5 Plaintiff, )

6 vs. )

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

7 SANDBAR POWERSPORTS, LLC, DOES I )  
8 through X, ROE CORPORATION XI through )  
9 XX, inclusive, and POLARIS INDUSTRIES, )  
INC. )

10 Defendant(s). )

11 And All Related Matters. )  
\_\_\_\_\_ )

12 **THIRD AMENDED ORDER SETTING**  
13 **CIVIL JURY TRIAL AND PRETRIAL/CALENDAR CALL**

14 IT IS HEREBY ORDERED THAT:

15 A. The above-entitled case is set to be tried to a jury on a five-week stack to begin  
16 **Monday, October 7, 2019, at 10:30 a.m.**

17 B. A Pretrial/Calendar Call will be held on **Tuesday, October 1, 2019, at**  
18 **10:30 a.m.** Trial Counsel (and any party in proper person) must appear.

19 C. The Pretrial Memorandum must be filed prior to the Pretrial/Calendar Call, with  
20 a courtesy copy delivered to Department XXV. EDCR 2.67 must be complied with.

21 D. All discovery deadlines, deadlines for filing dispositive motions and motions to  
22 amend the pleadings or add parties are controlled by the previously issued Scheduling  
23 Order.  
24

25 F. Orders shortening time will not be signed except in extreme emergencies.

26 ***AN UPCOMING TRIAL DATE IS NOT AN EXTREME EMERGENCY***  
27  
28

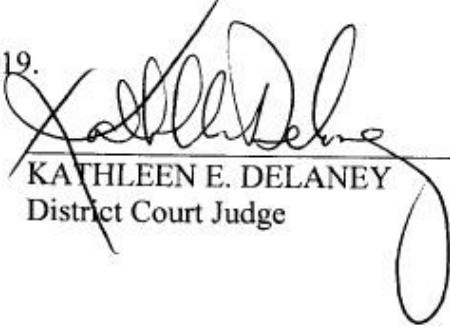
KATHLEEN E. DELANEY  
DISTRICT JUDGE  
DEPARTMENT XXV



1 following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4)  
2 vacation of trial date; and/or any other appropriate remedy or sanction.

3 Counsel must advise the Court immediately when the case settles or is otherwise  
4 resolved prior to trial. A stipulation which terminates a case by dismissal shall  
5 indicate whether a Scheduling Order has been filed and, if a trial date has been set, the date  
6 of that trial.  
7

8 Dated this 7<sup>th</sup> day of February, 2019.

9  
10   
11 KATHLEEN E. DELANEY  
District Court Judge

12 I hereby certify that on or about the date filed,  
13 the foregoing order was E-served, mailed, or  
14 a copy was placed in the attorney's folder in  
the Clerk's Office as follows:

15 Jennifer Willis Arledge, Esq. – Wilson Elser Moskowitz Edelman & Dicker, LLP  
16 Chad A. Bowers, Esq. – Chad A. Bowers, Ltd.  
17 Kyle W. Farrar, Esq. – Farrar & Ball, LLP  
18 Griffith H. Hayes, Esq. – Litchfield Cavo LLP

19 /s/ Marwanda Knight

20 Marwanda Knight  
21 Judicial Executive Assistant  
22  
23  
24  
25  
26  
27  
28

KATHLEEN E. DELANEY  
DISTRICT JUDGE  
DEPARTMENT XXV

**SUBP**  
**JENNIFER WILLIS ARLEDGE**  
Nevada Bar No.: 8729  
**WILSON, ELSE, MOSKOWITZ,**  
**EDELMAN & DICKER LLP**  
300 South 4th Street, 11<sup>th</sup> Floor  
Las Vegas, NV 89101  
(702) 727-1400; FAX (702) 727-1401  
Jennifer.Arledge@wilsonelser.com  
Attorneys for Defendant/Cross-Defendant  
**POLARIS INDUSTRIES, INC.**

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

JOHN BORGER and SHERRI BORGER,  
  
Plaintiffs,  
  
vs.

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

AND RELATED CLAIMS.

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

**SUBPOENA DUCES TECUM TO  
FOSTER BORGER**

**DATE: 2/28/2019**  
**TIME: 10:00 a.m.**

(for documents only)

**SUBPOENA DUCES TECUM**

**THE STATE OF NEVADA SENDS GREETINGS TO:**

**FOSTER BORGER**

YOU ARE HEREBY COMMANDED, that all and singular, business and excuses set aside, you appear and attend on the **28<sup>th</sup> day of February, 2019, at the hour of 10:00 a.m.**, at the law offices of WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP, located at 300 South Fourth Street, 11<sup>th</sup> Floor, Las Vegas, NV 89101.

Your attendance is required to give testimony and/or to produce and permit inspection and copying of designated books, documents or tangible things in your possession, custody or control, or to permit inspection of premises. You are required to bring with you at the time of your appearance

1 any items set forth below. If you fail to attend, you will be deemed guilty of contempt of Court and  
2 liable to pay all losses and damages caused by your failure to appear.

3 **ITEMS TO BE PRODUCED**

4 Deponent is to bring with him/her the following items:

- 5 1. Please produce a complete unedited copy, including sound, of the video  
6 posted to your Instagram account on or about June 6, 2018, which depicts  
7 you driving a vehicle, and which was discussed during your deposition on  
8 February 13, 2019;

9 You are reminded of the legal requirement "to preserve documents,  
10 tangible items, and information relevant to the litigation that are  
11 reasonably calculated to lead to the discovery of admissible evidence"  
12 once on notice of a potential legal claim. *See Bass-Davis v. Davis*, 122 Nev.  
13 442, 134 P.3d 103 (2006); and

- 14 2. And provide a signed original "Declaration of Foster Borger," attached  
15 hereto.

16 **IN LIEU OF APPEARANCE**, you are permitted to provide a copy of the above-referenced  
17 documentation together, **on February 28, 2019**, to Jennifer Willis Arledge, Esq., of WILSON,  
18 ELSE, MOSKOWITZ, EDELMAN & DICKER LLP, at 300 South Fourth Street, 11<sup>th</sup> Floor, Las  
19 Vegas, NV 89101.

20 PLEASE SEE EXHIBIT "A" ATTACHED HERETO FOR INFORMATION  
21 REGARDING THE RIGHTS OF THE PERSON SUBJECT TO THIS SUBPOENA.

22 DATED this 13<sup>th</sup> day of February, 2019.

23 **WILSON, ELSE, MOSKOWITZ,**  
24 **EDELMAN & DICKER LLP**

25 BY: Jennifer W. Arledge  
26 **JENNIFER WILLIS ARLEDGE**  
27 Nevada Bar No.: 8729  
28 300 South 4th Street, 11<sup>th</sup> Floor  
Las Vegas, NV 89101  
Attorneys for Defendant/Cross-Defendant  
**POLARIS INDUSTRIES, INC.**

**EXHIBIT "A"**  
**NEVADA RULES OF CIVIL PROCEDURE**

**Rule 45**

**(c) *Protection of persons subject to subpoena.***

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions

**(d) *Duties in responding to subpoena.***

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

**DECLARATION OF FOSTER BORGER**

STATE OF NEVADA )

Case No.: A-17-751896-C

) ss.

COUNTY OF CLARK )

1. I, FOSTER BORGER, declare

2. That on the \_\_\_\_ day of February, 2019, a Subpoena Duces Tecum was served on me requesting a complete unedited copy, including sound, of the video posted to your Instagram account on or about June 6, 2018, which depicts you driving a vehicle, and which was discussed during your deposition on February 13, 2019. This request is in connection with a lawsuit pending in District Court Clark County of Nevada, bearing Case Number A-17-751896-C.

3. That the documents responsive to this written request are attached and are true and correct unedited copies of the original video available at the time of the signing of this Declaration.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

DATED this \_\_\_\_ day of February, 2019.

\_\_\_\_\_  
**FOSTER BORGER**  
**(Signature)**

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Wilson Elser Moskowitz Edelman & Dicker LLP, and that on this 13th day of February, 2019, I served a true and correct copy of the foregoing SUBPOENA DUCES TECUM TO FOSTER BORGER as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- ☒ via electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk;
- ☐ via hand-delivery to the addressees listed below;
- ☐ via facsimile;
- ☐ by transmitting via email the document listed above to the email address set forth below on this date before 5:00 p.m.

Chad Bowers, Esq.  
CHAD A. BOWERS, LTD.  
3202 W. Charleston Blvd.  
Las Vegas, NV 89102  
Attorneys for Plaintiff

Kyle W. Farrar  
KASTER, LYNCH, FARRAR & BALL, LLP  
1010 Lamar, Suite 1600  
Houston, TX 77002  
Attorneys for Plaintiff

Griffith H. Hayes, Esq.  
Keivan A. Roebuck, Esq.  
LITCHFIELD CAVO, LLP  
3753 Howard Hughes Parkway, Suite 100  
Las Vegas, NV 8919  
Attorneys for Defendant  
SANDBAR POWERSPORTS, LLC

BY 

An Employee of  
Wilson Elser Moskowitz Edelman & Dicker LLP



## 1 APPEARANCES:

2 For the Plaintiff:

CHAD BOWERS, ESQ.

3 KYLE FARRAR, ESQ.

4  
5 For the Defendant:

JENNIFER ARLEDGE, ESQ.

6 MATTHEW ALBAUGH, ESQ.

7 GRIFFITH HAYES, ESQ.

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1 LAS VEGAS, NEVADA; TUESDAY, FEBRUARY 19, 2019

2 P R O C E E D I N G S

3 \* \* \* \* \*

4  
5 THE COURT: Pages 8 and 9, John Borger vs.  
6 Sandbar Power Sports.

7 MR. HAYES: Good morning, your Honor. Griff  
8 Hayes for Sandbar Power Sports.

9 MS. ARLEDGE: Good morning, your Honor.  
10 Jennifer Arledge for Polaris.

11 MR. ALBAUGH: Matthew Albaugh for Polaris as  
12 well.

13 MR. BOWERS: Chad Bowers for Plaintiff.

14 MR. FARRAR: Kyle Farrar for Plaintiff.

15 THE COURT: Good to see you all.

16 We have on the calendar today Polaris  
17 Industries' motion to dismiss of forum non conveniens.  
18 And we have a motion for determination of good faith  
19 settlement.

20 There were a lot of things that got filed and  
21 got to us very late on Friday. I did have the opportunity  
22 to and got it all piled here, I did have the opportunity  
23 to get through those. I don't have a lot of briefing on  
24 those because I wanted to give my clerk a break on that,  
25 but I did take everything and review everything.

1           We got the courtesy copies. Thank you for that,  
2           because just so everybody knows, even though they changed  
3           the system -- you probably know this by now. I'm sorry to  
4           waste your time.

5           Even though the system changed and now upon filing  
6           the copy goes to the other side, not just to the clerk,  
7           that's not the same for the court. We don't see it until  
8           it's actually accepted by the clerk, populates in Odyssey,  
9           then pops up in the system. As of Friday, none of those  
10          things were in the system. But because we had the  
11          courtesy copies we had something we could work with. So I  
12          do believe we can proceed.

13          I do think that -- I don't know if counsel has a  
14          preference on where we proceed. Because, of course, the  
15          motion for determination of good faith settlement is  
16          something that would carry with it some, you know,  
17          outcomes potentially to the world, as far as how we  
18          determine it. But whether we're going to be here or in  
19          another forum, to me, typically that's the one I want to  
20          start with.

21          If we are going to kick something to another forum or  
22          indicate it can't be in this forum, then I think that  
23          opens the door to and leads to the other forum, the  
24          opportunity to, if the case is viable, there are issues  
25          related to the case there.

1           So my preference is we start with forum non  
2           conveniens, but I'm open to suggestions if somebody  
3           suggests something else.

4           MR. HAYES: Your Honor, I'm sure Polaris would  
5           prefer that. From the perspective of my client, we've  
6           been in the case almost 2 years. We spent all day with  
7           Judge Glass. Keep in mind that on this particular policy  
8           I am defense counsel for Sandbar. I'm not their coverage  
9           lawyer. They had a coverage lawyer there. There is no  
10          liability coverage in this policy. No coverage.

11          However, as your Honor well knows, various factors  
12          come into play in terms of arms-length negotiations, both  
13          on the Plaintiff's side -- Polaris was there too. They  
14          participated in good faith. There was a lot of back and  
15          forth. My client had to incur a lot of expense within a  
16          week of mediation. Once I heard the carrier was going to  
17          bring their coverage lawyer, my client had to spend money  
18          to bring their personal lawyer at the mediation. And so  
19          to go through all this effort, and, again, I'm licensed in  
20          Nevada. I'm not licensed in Arizona. We do have a  
21          lawyer, Ms. Pocchi, who is licensed in Arizona. But when  
22          we first got the case one of the questions that came to  
23          mind was as a Nevada lawyer can I handle an Arizona law  
24          case. We've dealt with that issue, but, again, something  
25          to keep in minds too.

1 I'm not criticizing Polaris. They have every right  
2 to have whatever lawyers they want. But this is the third  
3 set of counsel. The first two didn't want to move this to  
4 Arizona.

5 Now, maybe one of the reasons -- a main reason, as  
6 your Honor, pointed out, they wanted to have it in Arizona  
7 is because once my client, Sandbar, is out of the case,  
8 who is a Nevada formed LLC, then there is nothing else  
9 holding this case in Nevada. But it was originally filed  
10 here. We had to keep it here because, again, my client is  
11 a Nevada LLC. There's no question that the injury and the  
12 contract, that was signed in Arizona. But to go through  
13 all of this time and a tremendous amount of expense, then  
14 in some ways having the clock start over again where we've  
15 got to go back to Arizona. We'll have Ms. Pocci get  
16 involved, pro hac vice, two years, should have been done a  
17 long time ago.

18 One of the first two Polaris' counsels should have  
19 brought that up, I would submit, your Honor.

20 THE COURT: Let me come over -- only because,  
21 you know --

22 MR. BOWERS: I have a thought.

23 THE COURT: You indicated you're not really --  
24 whoever did it -- you indicate you're not really  
25 disputing, shall we say, the elements of good faith

1 determination here. That you know this was a lengthy  
2 process. That you spent quite a bit of time with Judge  
3 Glass. That it's arms-length. All of those things. But  
4 then you were thinking, well, it didn't need to be done on  
5 OST. We don't really need to do anything special and  
6 questioning why we need to have a separate order for  
7 Arizona. But you're not really disputing that the  
8 elements for the court to find good faith determination  
9 exists, right.

10 MR. BOWERS: No. If I may, just briefly on the  
11 motion for good faith.

12 We came to an agreement that we think is fair with  
13 Sandbar, right. We have a Nevada Defendant. Under  
14 Nevada, principles of good faith, we're fine with that.

15 What is becoming an issue and to some extent becoming  
16 more of an issue, when they filed that motion for good  
17 faith and said, well, here's where we think Arizona law  
18 applies, but let's go through this analysis siting to both  
19 Arizona law and Nevada law because a lot of these factors  
20 are the same.

21 From our perspective we're not -- on this limited  
22 portion we're not particularly concerned about whether  
23 it's done by Nevada or Arizona. We agree Polaris can go.  
24 We don't want indemnification or contribution from them.  
25 Obviously we'd come to a settlement. They've indicated in

1       their pleadings they're not looking for indemnification or  
2       contribution to anybody else.

3               So our position on this is let them go, irrespective  
4       of forum. Let them go irrespective of forum. But, under  
5       Nevada or Arizona law, there are substantive differences  
6       that appears as to what happens when we -- we feel that  
7       issue needs to be briefed separately, as to what choice of  
8       laws applies. We don't think it necessarily matters for  
9       Sandbar. We're not trying to hold them up. We came to an  
10      agreement with them and we're happy to honor it. But the  
11      consequences of what that means are different under  
12      Arizona and Nevada law. That, again, doesn't affect  
13      Sandbar. It does affect the dispute between Polaris and  
14      us, we think.

15             So as the briefing has come in on this, has gone  
16      from something where we say, no, we don't really have a  
17      dog in this fight. In fact, they're not going to be a  
18      party to this case under Nevada law. Fine.

19             Now, all of a sudden, there is a back door choice of  
20      law issue going on and our only comment is we don't  
21      care -- Sandbar does, because we have an agreement with  
22      them. We very much care what choice of law is decided on  
23      this issue. Particularly on this issue, because it's the  
24      choice of law for the whole case.

25             THE COURT: Now, I'll come to Polaris. I didn't

1 want to cut you off. I just want to get Plaintiff's  
2 remarks clear in the record so I've made sure I'm  
3 understanding there, sort of, opposition. It's styled as a  
4 response, not an opposition, but their response. It does  
5 to some degree appear to oppose me ruling on this matter  
6 now for the reasons I think just stated.

7 What's your position.

8 MR. ALBAUGH: My position on behalf of Polaris,  
9 your Honor, is this was not a back door choice of law  
10 issue. This was front and center. All the briefing was  
11 presented to you. Sandbar presented why Arizona law  
12 should apply. We presented in response why Arizona law  
13 should apply.

14 There are complex interplay between the applicable  
15 statutes in Arizona and its case law and what the  
16 settlement agreement says. And there are differences  
17 between Nevada law, particularly when it comes to the,  
18 jury verdict form that are probably left best to the forum  
19 that will ultimately decide this case.

20 In response to Sandbar's suggestion that the first  
21 two counsel should have brought this earlier. I make a  
22 very brief response to that. Initially, affirmative  
23 defense No. 1 in Polaris' answer was to improper venue.  
24 But unfortunately here when Polaris was brought into this  
25 lawsuit 9 months after it began in November of 2017,

1 Polaris had no firsthand knowledge of any of the facts  
2 associated with this case. We manufactured this vehicle.  
3 We sold it to a dealership. Sandbar purchased it from a  
4 dealership and did what it did with the vehicle. The  
5 accident, the underlying issues associated with this case,  
6 are all in the hands of others. All we did was  
7 manufacture the vehicle.

8 So I think it makes sense, in some degrees, for  
9 former counsel to wait and evaluate before we take up  
10 judicial resources with this sort of motion. We need  
11 facts. We need discovery. The Plaintiffs themselves were  
12 not deposed in this case until October of 2018. Shortly  
13 thereafter there were discussions about a mediation in  
14 front of Mediator Glass. And we felt that in this  
15 instance where we progressed to this point there are  
16 serious settlement discussions going on, why burden the  
17 court until we have the record in front of us on the forum  
18 non conveniens motion. Instead, let's let it play out.  
19 Let it play out. We do not reach a settlement with  
20 Plaintiffs. Sandbar did. The last of thread-bare  
21 connections in our view for the State of Nevada is now  
22 severed. And so for all the reasons that we'll discuss,  
23 we think it makes perfect sense to defer the ruling on  
24 this until after your Honor decides the forum non  
25 conveniens motion to dismiss.



1           THE COURT: My original instinct coming in here  
2 today was to hold off on making the determination on good  
3 faith settlement until we have heard and determined  
4 whether the forum non conveniens request would be granted  
5 and the case dismissed from this jurisdiction. I'm going  
6 go with that original thought process.

7           I understand very much, Mr. Hayes, the concern about  
8 the time frame that Sandbar has been in the case and that  
9 we do have factors to consider to determine good faith  
10 determination, but it does require some looking at  
11 underlying facts. I think at the end of the day it really  
12 does behove us to decide is this case going to remain here  
13 or is this case going to be dismissed here and potentially  
14 have life in some other jurisdiction. I'll state it  
15 generically that way. We have an idea where it will go if  
16 it's not here.

17           We still have to ultimately determine whether it  
18 stays here. There is great deference given to a  
19 Plaintiff's choice of forum. But it's also pointed out  
20 there are exceptions or there are factors that have to be  
21 determined. So I do think it behoves us to address the  
22 forum non conveniens first. Then decide if it's going to  
23 stay here. Then there's no reason that this court cannot  
24 proceed on substantive matters.

25           It it's not going stay here, perhaps I do think it's

1 more appropriate for the jurisdiction to have it to make  
2 final determinations on these matters.

3 Did you want to be heard, Mr. Farrar.

4 MR. FARRAR: If you don't mind.

5 If the court denies the FNC motion and is going  
6 to rule on the good faith and that issue is going to  
7 decide choice of law, I'd like to brief it. We didn't  
8 brief good faith because I didn't think that was the  
9 proper vehicle to decide choice of law. As to the  
10 ultimate affect of the settlement if this court is going  
11 to retain jurisdiction, I would like to brief that issue  
12 if the court is intending to rule on that.

13 THE COURT: We'll address that after we address  
14 the forum non conveniens.

15 I'll start with counsel for Polaris. I always make  
16 time, especially now. If it was 11:30 in the morning and  
17 we had a super long calendar, we might have truncated it a  
18 little bit, but we have time. I always want to, on  
19 something as important as this, to make the opportunity  
20 for counsel be heard on this issue. It doesn't come up  
21 very often, in all candor, that somebody seeks to have a  
22 case dismissed for forum non conveniens reasons. I can  
23 probably count on one hand the number of those times it  
24 has been fully fought, if you will, disputed here that the  
25 court has dealt with.

1           Like I said, we have great deference. I believe  
2           Plaintiff is entitled to a determination on what forum  
3           should be. And we have to, when we make those exceptions,  
4           there are certain findings that should be made. We have  
5           to find that the Plaintiff was blatantly forum shopping, I  
6           believe. I don't know that we have those facts.

7           We also have to find there's little or no connection  
8           between the chosen forum and the facts in play. And while  
9           things are raised about the connection to other forums, I  
10          think there is still one key connection here, besides the  
11          Plaintiff's choice. So I just want to make sure you know  
12          that's sort of the framework and standard, if you will,  
13          the court is coming to in this decision, from that  
14          standpoint so you can focus your argument.

15          Make whatever argument you'd like to make.

16                 MR. ALBAUGH: Certainly, your Honor.

17          I think at the outset, given your comments, I  
18          ought so address a handful of things right out of the gate  
19          to head this off.

20          It should be noted also that Polaris' response  
21          to Sandbar's motion for good faith determination was not  
22          an opposition. It was really a response. We do not  
23          substantively contend that there was fraud, that there was  
24          conclusion, or that there was tortious conduct.

25          We simply want to make clear that this is a case that

1 is controlled under choice of law provisions, Arizona law.  
2 It did not appear to us that anyone contested the fact  
3 that Arizona law applies to these claims.

4 Nevada courts may change the place of a trial when  
5 the convenience of the witnesses and the ends of justice  
6 could be promoted by the change. Your Honor, Polaris  
7 moved to dismiss because the State of Nevada, Nevada has,  
8 as a result of this good faith settlement that Sandbar  
9 struck, has minimal, at best, connections to this case  
10 going forward.

11 You spoke, your Honor, of the deference owed to the  
12 Plaintiff's choice. There is Nevada case law that we have  
13 cited that says, a lowered degree of deference is owed  
14 when the forum state is not the Plaintiff's home state.  
15 Here there's no contesting that fact. At the time of the  
16 accident the Plaintiffs were Minnesota residents. At the  
17 time they filed the lawsuit in this case they were  
18 Minnesota residents. And they have subsequently moved to  
19 California. There has never been a resident of a  
20 Plaintiff in this State.

21 Under the Nevada 3-part test for evaluating forum non  
22 conveniens motions, the other part of the deference owed  
23 is what is the connection that the State of Nevada has  
24 with the case. With Sandbar now out of the case, assuming  
25 their good faith motion is granted either here or in

1 Arizona, the connection that remains is that Mrs. Borger,  
2 who was injured in this accident, received treatment after  
3 she initially received treatment in Arizona, here in the  
4 State of Nevada for a handful of days. The issue  
5 associated with that treatment is not at issue in this  
6 case. There's no contesting on Polaris' part that she  
7 suffered an injury and that injury resulted in amputation  
8 of her arm. But what we do contest is how the accident  
9 happened. What led up to the accident. Who was at fault  
10 for the accident. What did those folks say after the  
11 accident occurred. What did the first responders hear.  
12 What did Sandbar's employees tell the Plaintiffs. All of  
13 those things happened in the State of Arizona.

14 So as a result of those very minimal connections that  
15 the State of Nevada has to this case and the fact that  
16 Arizona is a far more convenient forum to litigate  
17 Plaintiffs' claims for strict liability against Polaris,  
18 we would urge this court to dismiss.

19 Your Honor, for today's briefing I had intended to  
20 briefly go through the circumstances and the facts of this  
21 case that had come to light in discovery, since this is  
22 our first time to appear before your Honor substantively  
23 on this case. Then I thought I would walk through the  
24 3-part test that Nevada courts apply for evaluating forum  
25 non conveniens motions. And then briefly respond to the

1 four main arguments that Plaintiffs made in response to  
2 our motion to dismiss, if that's acceptable to you.

3 THE COURT: I don't have a problem making that  
4 record. Your briefings are all very thorough and very  
5 well done, but the court does -- is very familiar with the  
6 3-part test, is very familiar with the case and the  
7 relevant factors. There are factors as you look at the  
8 3-part test that weigh in where we look at and where I  
9 think we probably are ultimately going to be situated in  
10 making this final decision is public and private interest  
11 factors and ultimately public interest factors that you  
12 have already touched upon. I really don't think it's a  
13 bad idea to highlight some of those issues.

14 MR. ALBAUGH: So, your Honor, as you know the  
15 alleged accident in this case occurred just outside of  
16 Lake Havasu City, Arizona in October of 2016. At the  
17 time, as I mentioned, the Plaintiffs were Minnesota  
18 residents. At the time of the filing of the lawsuit in  
19 March 2017, they were Minnesota residents.

20 Plaintiffs initially filed a lawsuit in this case  
21 against Sandbar only. Sandbar operated its business in  
22 Lake Havasu City, Arizona, just outside of Lake Havasu.  
23 They rented the Plaintiffs a 4-seater all-terrain vehicle.  
24 If you're not familiar with these types of vehicles, they  
25 have a roll cage. They have 4 meaty, knobby tires.

1 They're open air. They're designed for outdoor adventure.  
2 Particularly on trails, in deserts. There are companies  
3 here in the City that offer these sorts of ATV rides out  
4 into the deserts of Las Vegas.

5 The initial claim by Plaintiffs against Sandbar was  
6 for negligence. Negligence in renting the ATV and  
7 providing instructions and warnings how to -- operation of  
8 this vehicle. The Plaintiffs were 4 individuals -- well,  
9 2 individuals, plus their two children -- Sherri and John  
10 Borger -- mother, father -- and Jade and Foster Borger --  
11 the daughter and the son. They rented them a 4 seater.  
12 This has become a fairly contentious point in the  
13 deposition so far as between Sandbar and the Plaintiffs  
14 and their children as to whether or not they were informed  
15 that a minor child could not operate the vehicle.  
16 Sandbar's employees all testified that they made it very  
17 clear that the minor son and the younger daughter could  
18 not operate the vehicle. They were prohibited from  
19 operating the vehicle.

20 The Plaintiffs signed a contract with the Sandbar  
21 entity that has an express prohibition on a minor child,  
22 anyone under 25 from operating their vehicle.

23 In all of the Plaintiffs' depositions and the  
24 children's depositions, they have simply said, we don't  
25 recall whether or not they told us that or not.

1           There are going to be issues associated with that at  
2           the ultimate trial. The contract, it should also be  
3           noted, contained an express provision that says Arizona  
4           laws applies to construction and the contract also  
5           contains an express assumption of the risk provision.

6           So Sandbar rents the vehicle. They provide them with  
7           some orientation, some warnings, safety instructions and  
8           the family climbs into the vehicle.

9           John Borger, the dad, drove the vehicle away from  
10          Sandbar's facility. Then once safely away from Sandbar,  
11          Mr. Borger let his minor son, Foster Borger, get behind  
12          the wheel.

13          Foster Borger, as we learned last week at his  
14          deposition, has absolutely no experience ever driving or  
15          riding in an ATV. Foster Borger also testified that the  
16          only instruction or safety warning that he received from  
17          Sandbar was, here's where the steering wheel is. And  
18          here's where the brake is. In minutes of Foster, the  
19          minor child getting behind the wheel, Foster rolled the  
20          vehicle over. Foster's mother, during the vehicle tipping  
21          over, extended her arm outside the vehicle. And as it  
22          rolled over it was pinched during the vehicle's roll over.  
23          And ultimately the injuries led to the amputation of her  
24          arm.

25          There were specific warnings posted across the front



1 of the vehicle, that (a), this vehicle is subject to tip  
2 over and (b), do not extend any extremities or parts of  
3 your body outside of the vehicle. There is also a  
4 specific place for the front passenger, which is where  
5 Mrs. Borger was sitting, to hold on. There's a front hand  
6 bar in these vehicles to hold just for these purposes so  
7 you do not have your arm outside of this vehicle.

8 So promptly upon the accident happening the various  
9 Lake Havasu and Mohave County first respond to the  
10 accident. These reports, these investigations, the  
11 interviews that they conducted or going to be vital for  
12 purposes of this trial. According to their reports, John  
13 Borger told the police that I was driving. He said, I was  
14 driving. Not his son. John Borger, the dad, said I was  
15 driving at the time of this accident. John also told the  
16 police that it was essentially inexperience from driving  
17 the vehicle that caused the accident.

18 So in addition to Mr. Borger's statements to the  
19 first responders about who was driving, the children were  
20 also interviewed. The police officer, according to his  
21 report -- again, we've not had a chance to depose any of  
22 these people. They refused to return my calls at this  
23 point. According to the police reports the sheriff's  
24 officer went over to the two children and said, this is  
25 what your father told me. Can you confirm all these

1 facts. He told me that he was driving and this is where  
2 the accident occurred. If you read that section of the  
3 report, neither Jade nor Foster corrected their father and  
4 fessed up and said, no, Foster was the one driving. But  
5 foster does, in fact, take the time to correct the sheriff  
6 and say, the accident didn't happen over here. It actually  
7 happened over here. So there's going to be very essential  
8 testimony that's going to come from these first  
9 responders, the people who took the first interviews that  
10 will go to the very credibility of the essential parties  
11 in this case.

12 Your Honor, it was over a week later, I believe 8 or  
13 9 days later, and after repeated phone calls from the  
14 police to Mr. Borger that Mr. Borger finally returned  
15 their phone call. Then only after all those efforts by  
16 the police did Mr. Borger fess up and say, it wasn't me  
17 that was driving. It was actually my minor child who was  
18 driving. Notwithstanding the prohibition that Sandbar  
19 placed on that event.

20 Your Honor, Polaris first learned of this accident in  
21 November of 2017, approximately 9 months after a suit was  
22 filed and over 13 months after the accident itself  
23 actually happened, when the Plaintiff sought to add  
24 Polaris Industries, Inc., as a Defendant in this case.

25 Polaris Industries had no business relationship with

1 Sandbar. They had no people on the ground. As I've  
2 indicated earlier, we have no firsthand knowledge of  
3 anything that happened in this case. It has no, it had no  
4 firsthand knowledge and still to this date has no first  
5 hand knowledge.

6 Your Honor, as I indicated, Polaris answered in  
7 December of '17. It asserted its first affirmative  
8 defense, an improper venue challenge. Between January of  
9 2018 and January of 2019, four Sandbar representatives  
10 were deposed. Plaintiffs themselves were deposed in  
11 October of 2018. And the parties also exchanged some  
12 written discovery.

13 THE COURT: I want to interrupt here and address  
14 this because there's always a concern with the court when  
15 it may have been the challenge early on, but we are now  
16 sitting here with forum non conveniens being asserted,  
17 post a significant amount of discovery. The argument is  
18 made that discovery was geared towards what would  
19 understandably be, you know, a Nevada courtroom. I think  
20 we know that Arizona laws are an applicable issue here,  
21 and they also argue in the opposition that, you know, it's  
22 not unusual for us to apply laws from other jurisdictions.  
23 But they did argue that the way they put the discovery  
24 together was thinking they were going to be in this  
25 jurisdiction and it should be, perhaps, somewhat

1 disfavored when so much discovery has taken place, to  
2 consider moving it to another jurisdiction. Especially  
3 from Polaris' standpoint, where Polaris doesn't have ties  
4 to here or Arizona, for all intents and purposes, so what  
5 difference does it make to Polaris.

6 That's compound. I apologize. I do want you to  
7 address the issue of seeking forum non conveniens after so  
8 much discovery has been done. The separately, perhaps,  
9 address the issue of why Polaris somehow would be  
10 advantaged. There are private party interest factors that  
11 we have to look at in the 3-step analysis for forum non  
12 conveniens, how is it advantageous to Polaris to not be  
13 here but potentially be in Arizona.

14 MR. ALBAUGH: First point first, the issue of  
15 discovery. To date Polaris has not produced a single page  
16 of documents in response to either parties' request for  
17 production. No Polaris representative has been deposed.  
18 In fact, no Polaris representative has even been requested  
19 to be deposed. No expert discovery has been conducted.

20 This case really is starting anew right now.  
21 Sandbar, there was a focus on Sandbar. Sandbar's employees  
22 were examined, put under oath and questioned. Sandbar's  
23 production has been made. Sandbar has settled with the  
24 Plaintiff, and they're out of the case.

25 THE COURT: Your point is all the discovery that

1 remains is your entity.

2 MR. ALBAUGH: It's all --

3 THE COURT: and it starts now.

4 MR. ALBAUGH: Absolutely. It's all on us It's  
5 all about the design and manufacture of our vehicle. It's  
6 all going to come through our documents, our testing, our  
7 manufacturing processes, experts who are going to talk  
8 about that. None of that stuff happened yet. And this is  
9 the perfect time to move this case, now that Sandbar is  
10 out, to Arizona. Where Arizona can apply its own law.  
11 Arizona can look out for its own interests. Because  
12 importantly, everything here relates to Arizona. Such  
13 little connection to the State of Nevada that it's hard to  
14 see why Nevada would want to use its judicial resources,  
15 its time and its energy for a multi-week trial involving  
16 complex, difficult issues, when there's such little,  
17 minimal connection between the case as it exists now and  
18 the case as it will go to trial.

19 Your Honor, you also asked about why Polaris would be  
20 disadvantaged. That's because once Sandbar was out of the  
21 case, all Sandbar employees will not be subject to  
22 compulsory process. They will only appear if they appear  
23 voluntarily. All the first responders who are going to be  
24 so vital to the credibility of the Plaintiffs, they all  
25 reside in Arizona. As we indicated in our affidavits,

1       they will not respond to us. The ones who have responded  
2       to us said that's going to be virtually impossible for  
3       anybody to appear.

4               We talked to Sandbar's counsel. There was no  
5       commitments made about them appearing in person. There  
6       was an offer of potentially their participation by video.  
7       But there is Nevada case law on this exact point. When it  
8       comes to these types of issues, if I have to stand in  
9       front of your Honor for multiple weeks and challenge the  
10      credibility of the Plaintiffs, I need those witnesses  
11      sitting right there so that those jurors can evaluate  
12      those witnesses.

13             If we're stuck with Sandbar's depositions, those  
14      depositions were not video-taped, so we're left with a  
15      cold written record. There has been a shift in this case  
16      now that we're involved to video taping the depositions,  
17      but, again, that is a really poor second choice.

18             THE COURT: Do you perceive that any of the  
19      prior discovery will have to be redone. It is argued that  
20      it has to be redone. Your argument focuses on we have  
21      what we have There is still need to be more garnered  
22      regarding Polaris, but you don't agree there would have to  
23      be something redone.

24             MR. ALBAUGH: Nothing needs to be redone, your  
25      Honor. Because there's no protective order in the case

1       until the end of last month. So nothing was subject to  
2       protective order that requires that it be destroyed or  
3       returned within a certain time of this case being  
4       dismissed. All of that stuff is open and available to be  
5       used in whatever mode you want to.

6               To the extent you need our stipulation, we can  
7       stipulate to the use of any discovery already conducted in  
8       any additional forum or any future place.

9               So when we talk about how will we be prejudiced, the  
10      essentially witnesses and fact witnesses in this case are  
11      put in 3 pockets. There are the Plaintiffs themselves and  
12      their. Presumably Plaintiffs will come here and depose --  
13      testify be cross-examined live. The children will come on  
14      behalf of their parents. So there's one bucket of fact  
15      witnesses.

16              The second bucket of fact witnesses are all of the  
17      Sandbar employees who rented the vehicle, who gave them  
18      orientation and safety instructions. There is nothing we  
19      can do to require them to appear. And so we may be left  
20      with, at best, participation by a video tape. At worst by  
21      someone reading a transcript and saying here's what  
22      happened.

23              The third big bucket of fact witnesses are all these  
24      first responders. Again, we're having trouble getting  
25      them to even respond to request for depositions, to

1 cooperate with us in any way. And the very limited  
2 response we've got from them show us they're not going to  
3 cooperate with us at all. And the only way we're going to  
4 be able to have a jury evaluate the first responders, the  
5 investigations, the interviews, the questions, the  
6 responses and be able to evaluate who is telling the truth  
7 here. The only way Polaris gets that is if this case  
8 moves to Arizona.

9 I would say none of the discovery that's been  
10 conducted today has to be redone. Your Honor has broad  
11 discretion under Rule 26. We've cited to you a number of  
12 cases where courts have conditioned a dismissal for forum  
13 non conveniens grounds on the ability of Polaris, for  
14 instance, to waive personal jurisdiction, statute of  
15 limitation, additional forum non conveniens arguments. We  
16 would waive all of that. You could also govern the use of  
17 discovery that was already conducted in front of yourself  
18 and just say what was conducted here may be used in  
19 Arizona.

20 THE COURT: Anything else, Counsel.

21 MR. ALBAUGH: Yes.

22 THE COURT: You can have rebuttal time as  
23 well.

24 MR. ALBAUGH: Sure.

25 Your Honor, you picked up on sort of prong 3.



1 We talked about prong 1, the deference to Plaintiff's  
2 choice of forum. Prong 2, very quickly, is is there an  
3 adequate alternative forum. Very clearly, yes, Arizona.  
4 Because it's an adequate alternative forum. In our view a  
5 far superior alternative forum.

6 THE COURT: Is that only an alternative if the  
7 court does condition. Is there a statute of limitations  
8 issue that must be conditioned or other factors that must  
9 be conditioned.

10 I don't want to fall into a trap where we don't  
11 impose certain conditions, then we find that there's  
12 argument made now, well, okay, too bad. We couldn't be in  
13 Nevada. But you can't be in Arizona either.

14 It sounds like everybody is conceding to go to  
15 Arizona. In all candor, I didn't look to dot the I's and  
16 cross the T's on what might be disputes that could be  
17 raised about the ability to bring the case in Arizona.

18 MR. ALBAUGH: As I said, Polaris would and has  
19 on the record already indicated it will waive any  
20 affirmative defenses for statute of limitations, for  
21 jurisdictional issues under forum non conveniens issues.  
22 It would waive any objection to the use of discovery  
23 already disputed here. It's really just a matter of us  
24 getting to a forum where we can make sure that the  
25 witnesses are most inconvenienced by being in a forum where

1       they already reside and can be subject to the compulsory  
2       process. It's really a matter of justice and fairness for  
3       Polaris, because all that's left in the case is a strict  
4       liability claim by Plaintiffs against us. And we're  
5       really hamstrung from the fact that we have not started  
6       any discovery, yet, with respect to Polaris' side of this  
7       case, but we are going to be completely cut out from  
8       having what we consider to be essentially witnesses appear  
9       on Polaris' behalf here in the State of Nevada. If we're  
10      in Arizona, we have the power to make them come to trial  
11      and put them on the stand and allow the jury to evaluate  
12      their credibility and their truthfulness.

13             So prong 3, your Honor, is one we touched on earlier,  
14      and that's the court's weighing the various public and  
15      private interest. And as the court already knows, some of  
16      the public interest factors that are weighed are the local  
17      interest in the case. As we've explained there's little  
18      to none. The court's familiarity with the applicable law.  
19      Here we're going to be dealing with issues of peer  
20      comparative fault. We're going to be dealing with issues  
21      of strict liability under Arizona statute. These are  
22      significant and substantive differences between the State  
23      of Nevada and the State of Arizona. And we think the court  
24      unquestionably, if enough resources are thrown at it, will  
25      be capable of evaluating Arizona state law. But why not

1 let an Arizona judge who's already familiar with these  
2 issues handle this. Particularly in an instance where  
3 their connection to the case is so strong.

4 We're also talking under the public interest factors  
5 the burdens upon this court. We anticipate a 2 to 3 week  
6 trial in this case, jammed with experts, jammed with  
7 design issues. When you challenge the design and the  
8 manufacturer of a Polaris vehicle, we take that seriously,  
9 and we'll defend ourselves to the upmost. So this is, for  
10 a case that has almost zero connection to the State of  
11 Nevada, it's going to be a significant burden on this  
12 court to try.

13 The private interest that the court is to weigh under  
14 the 3-part test is the location of the Defendant. My  
15 client is located in Minnesota. We're headquartered just  
16 outside of Minneapolis, Minnesota.

17 Another of the private interest factors that are  
18 necessary to be evaluated is particularly the access to  
19 proof and the availability of compulsory process. As  
20 we've indicated, the vehicle itself still resides in the  
21 State of Arizona. The site of the accident, to the extent  
22 any jury needs to go out and evaluate that, is in the  
23 State of Arizona. The key fact witnesses are in the State  
24 of Arizona. It's just there is such an intense connection  
25 between Arizona and this case it makes sense to us that

1       this would be tried in the State of Arizona.

2               I did want to briefly get out in front of 4 of the  
3 arguments that Defendants -- or Plaintiffs made in  
4 response to our forum non conveniens motion.

5               THE COURT: I touched on a couple of them.

6               MR. ALBAUGH: Sure.

7               The first -- I think this is sort of the primary  
8 one -- is the timeliness of our motion. Plaintiffs  
9 concede in their response there is no time limit for  
10 bringing forum non conveniens motions. We cited a litany  
11 of cases to your Honor where discovery has been going on  
12 for years, where the case was ready for trial, and the  
13 forum non conveniens motion was then brought and then  
14 granted. So you would not be out on an island if --

15              THE COURT: We already discussed this to some  
16 degree about the fact that Polaris is here and discovery  
17 has not substantively taken place with Polaris. I took  
18 that as to be the primary argument.

19              MR. ALBAUGH: Yes.

20              Under this line of test, there is no time line.  
21 Really the only test is a matter of reasonableness. Is it  
22 reasonable for Polaris to raise the forum non conveniens  
23 motion when it did. As your Honor just pointed out  
24 because virtually no discovery has happened against  
25 Polaris to date and because we think this is a very good

1 time to do so, this would be a great time for us to move  
2 this case over to Arizona.

3 One important thing I think is indicative of the  
4 status of Plaintiff's case against Polaris is up until the  
5 point of the January 8, 2019 mediation in front of Judge  
6 Glass, there's never been a single demand made on Polaris.  
7 I asked in advance. I said, has there been a demand made  
8 on Polaris. Can you give me one. No demand was made.

9 There was finally a demand made in mediation. Those  
10 conversations and efforts at settlement did not go  
11 anywhere. Frankly -- well, scratch that. I won't go into  
12 that because mediations are confidential. But I did,  
13 after the mediation, talk with Judge Glass and said, your  
14 Honor, what do we do here. We made zero progress when it  
15 comes to Polaris' defenses and its efforts to settlement  
16 this case with Plaintiffs. She suggested pick up the  
17 phone and call them. Just try to keep the conversation  
18 going. So I did call Plaintiff's counsel after the fact.  
19 I said, you know, we left. We didn't get a chance to  
20 really engage in this. Where are we at. Can we come to  
21 some reasonable compromise when it comes to Polaris' side  
22 of this case as well. And Plaintiff's counsel said, we  
23 really need discovery from Polaris before we can properly  
24 evaluate this claim. That speaks loudly to me. They  
25 don't know how to evaluate their case because they don't

1 have discovery from us that they need.

2 THE COURT: You mentioned other factors you  
3 wanted to address in the opposition. Go ahead and do  
4 that. I want to give counsel the opportunity to  
5 respond.

6 MR. ALBAUGH: Sure.

7 The second argument was that significant  
8 discovery will have to be done. We've already touched on  
9 that.

10 The third argument is that Polaris did not  
11 support its forum non conveniens motion with appropriate  
12 affidavits in our reply. I think we've hit on all the  
13 necessary elements to show how we're cut off from proof to  
14 the best of our ability so far. We can't go and obtain  
15 affidavits from Sandbar's employees because Sandbar is  
16 represented. We can't even get through to the first  
17 responders.

18 The fourth argument, and this was something we only  
19 addressed a little bit in our briefing. They argued as  
20 American litigants their choice of forum is entitled to  
21 substantial deference. I think I've already explained  
22 that under Nevada case law simply because you're an  
23 American citizen does not give you just open and free  
24 reign into the courts of the State of Nevada. Otherwise,  
25 you're going to start dealing with car accidents that

1       happen in Indianapolis, Indiana here in the State of Las  
2       Vegas. That assertion that because you're an American  
3       citizen you're open to the courts of the State of Nevada.

4               So, your Honor, I'll yield the floor. Thank you for  
5       your patience and for your interest in the case.

6               THE COURT: Thank you. I'll give you an  
7       opportunity at rebuttal.

8               Mr. Farrar, are you making arguments.

9               MR. FARRAR: If that's all right.

10              I appreciate the court has read my briefing.  
11       I'm not going to rehash the brief. I just want to address  
12       the arguments that were made and heard for the first time  
13       today -- some in the briefing. But the issue of discovery  
14       is sort of offensive to me. I sent Polaris requests for  
15       production February 26, 2018. I still don't have  
16       documents. I have been diligent. I have 3 sets of  
17       lawyers promising me I'm going to get the documents over,  
18       and over, and over. I had Mr. Ross, who I believe is  
19       still counsel of record, tell me I've got the documents  
20       sitting on my desk. I'm going to send them to you. I  
21       have the current counsel saying I will produce them. I  
22       was supposed to get them last week, and I still don't have  
23       them. Got an e-mail on Valentine's day saying, maybe,  
24       next week you'll get them. So this idea that we haven't  
25       done discovery or I haven't requested a single corporate

1 request for deposition is offensive. I have tried, short  
2 of coming to this court and begging, because I keep  
3 getting emails saying you'll get it next week. I know if  
4 I come to the court you're are going to look at me, they  
5 said they'd get it to you next week. What's the big  
6 deal.

7 So Polaris has drug the discovery out for a year to  
8 have them stand in front of this court and say Plaintiffs  
9 haven't done discovery as to Polaris.

10 THE COURT: More honestly for me what resinated  
11 and what you may want to address is you raised an argument  
12 in the opposition that so much of the discovery that was  
13 done would have to be redone because it was geared towards  
14 Nevada courts. But, you know, this issue of, like you  
15 said, choice of law is hanging out there any way, it's  
16 hard for me to understand why -- and they effectively  
17 stipulated to whatever discovery has been done can still  
18 be utilized, that's not the issue -- so that was the one  
19 that more resinated for me. Is there really an issue of  
20 prejudice to or inconvenience to the Plaintiff to have to  
21 redo discovery or not. Not so much what has taken place  
22 with Polaris so far.

23 MR. FARRAR: Sure.

24 Again, I'm a year into sending requests for  
25 production documents. I fear if I go to another court



1 I'll be a year into that court waiting for documents. I'm  
2 restarting the clock on discovery. As to whether or not  
3 we have to re-depose the folks, I don't know. There's a  
4 lot of promises from Polaris, I will waive limitations.  
5 We'll waive jurisdiction. We'll waive venue. We'll  
6 stipulate to that. But where is the enforceability.

7 If I go to Arizona or as Polaris says over, and  
8 over, Minnesota. In their motion they say this court  
9 should dismiss Plaintiff's complaints of forum non  
10 conveniens and have Plaintiffs re-file in either Minnesota  
11 or Arizona. The fact they say Minnesota it undercuts  
12 everything we just heard today about all the witnesses in  
13 Arizona and how important they are. It's basically  
14 anywhere but here, your Honor. Not more convenient.

15 I sort of went off the rails on the question you  
16 asked me. I guess the answer is we're going to start  
17 over. If the court in Arizona says you can use the  
18 discovery already, great, so be it. If the court doesn't,  
19 we'll have to re-depose those folks.

20 This issue that I'm still into a year to try to get  
21 documents and we don't have them yet, that's going to  
22 restart the clock.

23 The other thing is we have to remember Sandbar is  
24 still in this case. So, you know, Polaris says we should  
25 move it to Minnesota or Arizona. I don't think Sandbar is

1       going to waive personal jurisdiction. I don't think  
2       Sandbar is going to waive statute of limitations in these  
3       other venues. I'm just going to loose that case  
4       apparently. A case that's already had a settlement.

5               This court can't make Sandbar, who is not on the  
6       forum non conveniens, waive these defenses in other  
7       venues. They're not going to hold a jurisdiction in  
8       Minnesota. They're an Arizona, Nevada corporation. So I  
9       think the fact they're still involved in the case and  
10      still here as a party is a significant issue for the  
11      alternative forum.

12             One of the things Mr. Albaugh said was this is a  
13      heavy expert intensive case. I agree with that. So when  
14      we look at convenience and we look at the --

15             THE COURT: But no experts have actually been  
16      utilized here yet. Have they.

17             MR. FARRAR: Mine have all been retained. Of  
18      course, we're not that far out. It sort of brings the  
19      point we're a year-and-a-half into the case, 6 months our  
20      or trial, my experts have all been retained. Polaris has  
21      requested multiple extensions on the expert destination  
22      deadline, which I've consented to. I don't have a problem  
23      with it. But they should have been all designated  
24      pursuant to this courts scheduling order a lot time ago.  
25      I just allowed it for Polaris. But my point being is all

1 the experts have to travel. If you look at the  
2 Mountainview Rec case, 129 Nevada 413, Supreme Court  
3 Nevada case, it talks about the convenience of expert  
4 witnesses. If we go to Arizona, all those experts -- the  
5 closest airport to fly into is right here in Vegas. Vegas  
6 is significantly more convenient for Polaris witnesses,  
7 for expert witnesses to get to then in Arizona, if the  
8 case were to be filed, Lake Havasu, versus here, where  
9 they'd be flying to any way. It's the closest airport.

10 Your Honor, we started this conversation off saying,  
11 look, the things we've got to look at are the key  
12 connections to Nevada. We have a Nevada Defendant that's  
13 still there. Clearly there's a connection to Nevada.  
14 Polaris sort of -- well, they don't sort of, they overtly  
15 and politely say the treating physicians for the 11 days  
16 here are irrelevant. I think it's interesting when you  
17 look at their motion and they say on page 13, the first  
18 responders and initial treaters will provide significant  
19 testimony. She was brought to Nevada the day of the  
20 accident. Those are initial treaters. The 11 days and  
21 the amputation occurred here in Nevada. They're our  
22 treating physicians. There's a connection to Nevada over  
23 and above the fact that we have the Defendant.

24 So Polaris comes in and says, look, you should have  
25 brought this in the Defendant's home. Only if we're the

1 Defendant, not Sandbar's home. That doesn't make any  
2 sense. We should have brought it in Minnesota or in  
3 Arizona.

4 We looked at it when I filed the case, and I thought  
5 Nevada was the proper forum. I still do. It's convenient  
6 to all the parties. It has a connection with the lawsuit.  
7 We should leave it here, your honor.

8 Unless the court has any questions, I'll rest on my  
9 papers.

10 THE COURT: No, I don't really have any  
11 questions. I don't think any of the facts of what  
12 occurred where and when and with whom are in dispute.  
13 It's really how do all the factors line up. And, you  
14 know, the 3-part test, is level of deference to  
15 Plaintiff's choice. There is an argument that has been  
16 made that we should lower that great deference to a lower  
17 standard of deference because the Plaintiff doesn't live  
18 here. I don't know if you wanted to address that. Or,  
19 like you said, your pleadings are very thorough.

20 The second factor being if there's an alternative --  
21 adequate alternative forum. I don't think that is  
22 reasonably in disputed.

23 MS. FARRAR: I think it is, your Honor. I think  
24 the reasonable alternative forum is in dispute as to  
25 Sandbar.

1           Polaris --

2           THE COURT:  You were talking about Minnesota.  
3       We're talking about Arizona.  They all but conceded here  
4       today to Arizona.

5           MR. FARRAR:  Sure.  But there's a statute of  
6       limitations issue.

7           THE COURT:  They've already conceded waiving  
8       that as well.

9           MR. FARRAR:  Sandbar hasn't.

10          THE COURT:  Sandbar -- here's the part where it  
11       gets so tricky is I did defer to wait to decide on the --  
12       on whether or not there is a good faith settlement  
13       determination to be made, because Nevada has a statute  
14       that gives that then precludes indemnification,  
15       contribution.  Things like that related to that  
16       determination.  But there doesn't seem to be any dispute  
17       that you settled with Sandbar.  Sandbar is done in the  
18       case.  It's just are there going be the statutory affects  
19       of a good faith determination made in that case.

20          MR. FARRAR:  The settlement is contingent upon  
21       this court's ordering the good faith settlement -- or the  
22       settlement was in good faith.  So while we have done  
23       everything we can do, our settlement is not finalized  
24       yet.

25          THE COURT:  I guess the way I want to put this

1 is it does not resinate with me at all that Sandbar is  
2 still in this case and that's a reason for the case to  
3 stay in Nevada. Sandbar has settled out of this case.

4 The question is is there going to be a good  
5 faith determination. And you can say it's contingent upon  
6 a good faith determination all day long, but that's based  
7 on certain factors which none of the parties are disputing  
8 the factors apply. The question was do we make the call  
9 in advance of dealing with the forum non conveniens or do  
10 we deal with forum non conveniens and let whatever  
11 appropriate court, this one or another one, make the  
12 call.

13 MR. FARRAR: Understood, your Honor.

14 I think the court is correct that there is  
15 probably an appropriate forum, an alternative forum in  
16 Arizona. I do sort of question in the back of my mind how  
17 are the agreements enforceable. In other words, the  
18 waiver of limitations and the waiver of jurisdiction. If  
19 I get to Arizona and find those defenses are raised, I'm  
20 not positive how I enforce the agreements in a Nevada  
21 court in Arizona. That's an issue for probably another  
22 day.

23 I do, to the extent that most FNC motions I've  
24 dealt with go to Mexico, go to Canada not go to another  
25 state. This issue of alternative forum becomes a real

1 issues then, right. Is there law that even provides a  
2 remedy for whatever the issue may be. I think to that  
3 extent the court is right. There probably is an available  
4 forum.

5 On the deference issue I rely on what I briefed. I  
6 do want to point out that the Nevada Supreme Court has  
7 said that Plaintiff's selected forum choice may only be  
8 denied under exceptional circumstances strongly supporting  
9 another forum. There are circumstances that support  
10 Nevada. The treatment here. The fact that one of the  
11 Defendants was based here strongly supports a connection  
12 to Nevada. So this isn't an exceptional circumstances  
13 where the case was filed in Nevada that there's no reason  
14 to do that. It should have been filed somewhere else,  
15 that's absolutely not the case. There was a strong  
16 connection, especially when you only filed against Sandbar  
17 initially. That make sense to file where they're based  
18 and incorporated.

19 If the court has any other questions.

20 THE COURT: I don't.

21 MR. ALBAUGH: Just briefly, your Honor.

22 On the question of enforceability. We really go  
23 two ways here. You can embed it in your order and make us  
24 subject to a court order. If we violate it and we raise  
25 the statute of limitations or some other defense in

1 Arizona, we can be sanctioned. You can take my law  
2 license away. I'm telling you right here, on the record  
3 with a court reporter taking my assertions, that we are  
4 not going to challenge things if you dismiss it and they  
5 file it in Arizona.

6 There is also Section ARS 12-504, it's a savings  
7 provision. That if an action is commenced within the time  
8 limit allowed -- and they did -- they filed it within a  
9 handful of months of the accident -- that they have 6  
10 months to re-file. And statute of limitations and those  
11 sorts of defenses fall out. So even if you were to  
12 dismiss, under ARS Section 12-504, they have 6 months to  
13 re-plead, then the Defendants are precluded from raising  
14 those types of arguments upon being re-filed in the State  
15 of Arizona. So they're protected in two ways. They're  
16 protected under Arizona Revised Statutes. And they're  
17 also protected under your own order and my statement here  
18 as an officer of the court on the record to this court.

19 Just a handful of other things. Mr. Farrar  
20 referenced the initial treaters. We specifically pointed  
21 this out in the briefing about who the initial treaters  
22 are that we really need. The initial treaters are the  
23 police officers, the sheriffs who came in and conducted  
24 the initial investigation. Those are all Arizona folks.

25 We also need the initial treater who is the EMT. The



1 EMT who rode with Mrs. Borger in the helicopter from the  
2 Arizona hospital to the Nevada hospital where he makes  
3 detailed note. And one of those notes is, I talked to  
4 Mrs. Borger. And Mrs. Borger said, I have a clear  
5 recollection of everything that happened in the case.  
6 Unfortunately, when she was put under oath and questioned  
7 at her deposition, she feigned memory of almost everything  
8 that happened in the case. So we need those sorts of  
9 people to get up and dispute the credibility of the  
10 Plaintiff in this case.

11 Regarding Minnesota, your Honor, we were pointing out  
12 in our opening brief as Minnesota is an available  
13 alternative forum. We know they're not going to come to  
14 our background and our home State and file it. It's  
15 simply there is an existence of multiple other alternative  
16 forums for this case. We are here today really to argue  
17 that if this is dismissed it needs to be re-filed in  
18 Arizona, because there's where the essential witnesses  
19 are.

20 Your Honor, you have been more than patient with your  
21 time today. If you have any other questions, I'm happy to  
22 answer them.

23 THE COURT: I do not. I thank you very much for  
24 the argument.

25 And, you know, obviously this court is never shy

1 about thinking about cases, whether they be two or three  
2 weeks long, or whether they be difficult issues, or  
3 whether we have to get up to speed on the law, that's our  
4 job. We can do that. It really boiled down, in my  
5 opinion, to the application of the factors, the facts to  
6 the factors and the 3-part test. As we've gone over the  
7 3-part test already, let me just reiterate, we do have a  
8 determination of what level of deference is owed to the  
9 Plaintiff's forum choice. I think with this not being the  
10 Plaintiff's residence that they are entitled to a lesser  
11 deference to their choice. It doesn't mean they have no  
12 deference to their choice, but the great deference  
13 typically applicable to the Plaintiff's choice is, I  
14 think, one that is lesser in this case.

15 I don't think there's any accusation the Plaintiff's  
16 are forum shopping. I think that, you know, counsel, Mr.  
17 Farrar makes a very good point it was assessed. We looked  
18 at it. We do have treatment providers here. And it made  
19 sense to do it here. But at the end of the day, I think,  
20 it is entitled to deference, but not great deference. So  
21 that is one factor we have to look at.

22 The second factor we have to look at is are there  
23 adequate alternative forums that exist. I think the  
24 appropriate alternative forum in the circumstances would  
25 be Arizona. It's been conceded by Polaris that Arizona

1 would be where they would stay. But there are alternative  
2 forums that are adequate. And the adequacy of the forum  
3 in Arizona is particularly one that stands out in the  
4 sense of that is where the accident occurred, that is  
5 where I would suggest the greater number of witnesses  
6 exist and that is a factor. There are basically  
7 alternative adequate forums.

8 What it really boils down to, I think, every time we  
9 have had forum non conveniens decisions we've had to make,  
10 and this is where the bulk of the analysis would go, and  
11 that is the third step, which has been 2 parts. Which  
12 they themselves have several sub-factors or factors that  
13 are applicable. And that is the weighing of public and  
14 the private interest factors to determine if dismissal is  
15 ultimately warranted.

16 Counsel discussed the public factors and some of them  
17 I actually, from the case law that I reviewed, and, again,  
18 I focus on this Placer Dome case from 2015. But  
19 ultimately that there are upwards to 5 factors for the  
20 public analysis. What is the local interest, if any, in  
21 the case. I think it is ultimately minimal here when you  
22 talk about treatment providers. But the accident, what we  
23 would consider first responders, from my perspective,  
24 would be the police, fire, et cetera, not necessarily the  
25 doctors. But I don't discount the fact that, yes, we do

1 have treatment providers here, but that we have personal  
2 providers. But the ultimate local interest in the case,  
3 it's not, again, the residency of any party. It's not  
4 where the accident occurred. And it's where some aspect  
5 of treatment occurred and some significant aspect of where  
6 the treatment occurred to the Plaintiff, but that's all.

7 Minimal local interest in the case. The familiarity  
8 with the applicable law. We don't have it. We could get  
9 it, but we don't have it. Certainly Arizona would already  
10 have it.

11 There is a burden that's always imposed upon a court  
12 when you have matters that would involve -- especially  
13 when it's expert testimony and lengthy trials. Even  
14 though I said we could handle it, and that's our job, it  
15 still is a burden that has to be weighed in terms of is it  
16 appropriate to have that on this court here.

17 The other two factors, which weren't discussed by  
18 counsel, which do appear in the case are the congestion we  
19 have, we experience in this very busy forum. Cost  
20 ultimately resolving the dispute here that would have  
21 applicability where there is little, if any, connection  
22 overall to the case to the State of Nevada. And, you  
23 know, much of the, again, evidence and litigation, factual  
24 determinations, discoveries could take place and would  
25 take place in Arizona potentially. So we have all the

1 factors with some limited evaluation that weigh public  
2 factors in favor of dismissal.

3 The other component of the third step are the private  
4 factors. These are a little bit closer in call because,  
5 yes, there are treating physicians here. And, yes, there  
6 would be the need to have that discovery, if not complete,  
7 but ultimately have those witnesses testify as to their  
8 treatment and cost of their treatment. So that waivers in  
9 favor of the Plaintiff. But we also have ultimately  
10 factors that weigh in favor of Polaris' position.

11 The first factor under the private interest review is  
12 location of the parties. We, again, don't have any  
13 parties located in Nevada. We have Plaintiff in  
14 California. Arizona is convenient. We have Defendant  
15 remaining, Polaris, out in Minnesota. Arizona is not  
16 convenient. But ultimately we have no convenience of any  
17 party to Nevada in terms of residency.

18 The access to the proof and availability of  
19 compulsory witnesses, those overlap in my mind, even  
20 though listed as separate factors. I think the vast  
21 majority of that weighs in favor of dismissal, because  
22 while the treatment providers could be compelled to  
23 testify here, that goes to damages. But when we come to  
24 liability and dispute of liability, the fact the accident  
25 occurred there, the fact the actual vehicle is there, the

1 fact that Sandbar's witnesses are there, the fact that the  
2 first responder witnesses are there, it heavily weighs in  
3 favor of dismissal related to Arizona forum.

4 The remaining two factors I have to analyze from the  
5 private interest component, the cost of obtaining  
6 testimony from willing witnesses and the enforceability  
7 ultimately of the judgment. While I think that one is not  
8 necessarily a major factor, the fifth one, enforceability  
9 of the judgment, because if there is a judgment obtained  
10 against Polaris, again, they're based in Minnesota.

11 We have the cost of obtaining testimony from willing  
12 witnesses. Again, the vast majority of witnesses who  
13 would be expected to provide testimony in the courtroom  
14 are going to be coming from Arizona and how are we going  
15 to get them and how are we going to compel them. And  
16 ultimately the expense of all of that to the parties.

17 What I look at, there are so few, if any, factors in  
18 favor of keeping the case here and all the factors, with  
19 only few exceptions or a few that maybe have balance,  
20 weigh in favor of dismissal.

21 As much as I am not fond of saying goodbye to a case  
22 that have been thoughtfully filed and pled in the State of  
23 Nevada, I do think it's appropriate in this case to grant  
24 the motion to dismiss the matter for forum non conveniens.  
25 But I do also think it is imperative that it be

1       conditioned and that it includes -- I'm going to direct  
2       counsel to prepare -- prevailing counsel to prepare the  
3       order. That it include that there were stipulations --  
4       well, I can't call them stipulations. I can't say that  
5       Plaintiff agreed to accept it at the time. That there  
6       were acknowledgments that this could and should be  
7       conditioned on certain things, inclusive of the fact that  
8       there is Arizona law that provides protections to the  
9       Plaintiffs to be able to re-file there within a certain  
10      time frame. That the statute of limitations that has been  
11      effectively challenged that would be brought by Polaris  
12      has been waived. Any further arguments regarding  
13      jurisdiction of Arizona or forum non conveniens of Arizona  
14      was also waived by acknowledgment. And that discovery  
15      could be utilized in Arizona. And that it's appropriate  
16      for Arizona to be that forum and Arizona to ultimately  
17      determine the forthcoming motions.

18             The only remaining issue in my opinion is should this  
19      court make the determination regarding good faith  
20      settlement or defer that to Arizona as well. There were  
21      some arguments that that could have been more fully  
22      briefed.

23             Mr. Bowers, did you want to say something.

24             MR. BOWERS: Yeah. Maybe I'm slow. I'm not  
25      going to argue with the court. I very clearly hear you

1       saying that this Defendant is not going be in the case,  
2       subject to these conditions. And those conditions appear  
3       at their face right now adequate to make sure these  
4       clients can still bring a claim against this Defendant in  
5       that State.

6               I'm very concerned -- Sandbar is not a party to this  
7       motion for forum, to dismiss for forum non conveniens.  
8       Presumably I accept your representation. I'm not arguing  
9       with you the fact that Sandbar technically remains in the  
10      case doesn't sway you in your analysis.

11             THE COURT: It's a factor.

12             MR. BOWERS: I get it.

13             THE COURT: Based on the status, right.

14             MR. BOWERS: I got it.

15             But to that end, as of this minute, if your  
16      order were final these folks would not be here. But  
17      Sandbar would still be sitting here and still have this  
18      issue of motion of good faith to resolve.

19             THE COURT: I don't think that's true, because  
20      the motion was to dismiss the case for forum non  
21      conveniens. Not just -- well, the motion was forum non  
22      conveniens dismissal of Polaris, correct. But ultimately  
23      the -- my -- the way I believe the case is currently  
24      postured is -- and maybe then -- and that's where I was  
25      heading with my discussion was we need to address the good



1 faith settlement today and wrap that up. So let's project  
2 ahead.

3 We don't have anybody disputing the factors that  
4 would allow for a good faith settlement determination to  
5 be made. It's on the table. There was a concern  
6 expressed about whether it was back-dooring choice of law,  
7 but at the end of the day the only thing the court would  
8 look at for a good faith determination would be are those  
9 factors for good faith determination met and should that  
10 be made. And then the statute, again, the applicability  
11 of those effects.

12 But in terms of the court permitting any back-dooring  
13 in choice of law, that's a non-issue. To me where we go  
14 with this is Sandbar is out. The case that remains is  
15 between Plaintiff and Polaris. And for all of the  
16 factors, with a few, again, limited exceptions, and those,  
17 again, are still out balanced or out weighed by the  
18 factors that weigh in favor of Polaris. Then the case  
19 between the Plaintiffs and Polaris goes to Arizona.  
20 That's how I see it.

21 MR. BOWERS: I get it. There is just a  
22 logistical issue of monies offered by this Defendant to  
23 these Plaintiffs. And if you're going to dismiss the  
24 case -- I'm not arguing. That's fine. You're the Judge.  
25 Leaving that aside.

1 THE COURT: We have niceties to clean up.

2 MR. BOWERS: Before we leave the room, maybe I'm  
3 simple, but there is a chunk of change that needs to get  
4 exchanged before we walk out of here in one fashion or  
5 another. If I'm understanding the court's order correctly  
6 the whole case is going to be dismissed. There's not an  
7 adequate remedy for that problem in Arizona.

8 THE COURT: Where I was planning to go next was,  
9 and I think it addresses your question. Let me come back  
10 to these folks and you tell me if I think we do. Even  
11 though we made the determine it is appropriate for the  
12 dismissal, that determination is based, in large part, on  
13 what the court has stated earlier and will restate again,  
14 as the status of Sandbar.

15 Sandbar I believe is out of this case. I think  
16 officially to be out of this case the court needs to make  
17 the determination of a good faith settlement. And that's  
18 what the court would intend to proceed with today to wrap  
19 all of this up. And that would result in a dismissal of  
20 the case to go to Arizona.

21 Ms. ARLEDGE: If I may, your Honor. I might be  
22 able to short cut this a little bit.

23 Jennifer Arledge on behalf of Polaris. Polaris did  
24 not file an opposition to the motion as Mr. Albaugh  
25 indicated. There's no indication of collusion of anything

1       that would make it not a good faith settlement. The  
2       concern was the applicability of Nevada good faith  
3       settlement statute versus the Arizona good faith  
4       settlement statute. The only difference between the two,  
5       your Honor, is Arizona only discharges claims for  
6       contribution. Indemnity claims would remain. If we are  
7       going -- the other point to be made was going to be  
8       Nevada's comparative negligence jurisdiction. Who would  
9       be on the verdict form if we were having the case heard  
10      here, applying Arizona law. I think all of that is  
11      resolved as far as your ruling on the forum non conveniens  
12      motion. That's really the reason Polaris expressed any  
13      response at all to the motion was to make sure that it  
14      substantive rights with respect to pure comparative  
15      negligence, the defenses in the verdict form are  
16      preserved. So I think it would be appropriate to proceed  
17      with the motion for good faith settlement, noting those  
18      comments.

19               THE COURT: Even though we took the arguments in  
20      reverse order, we didn't really technically because Mr.  
21      Hayes did raise them earlier and try to get the court to  
22      do it. There was some argument about the other and see  
23      what happened. But as the conversation -- this is why I  
24      think oral argument can be so important because, you know,  
25      it helps flesh out these things. But it also helps reveal

1       that, yes, it is part of the factor of this court's  
2       decision that when I'm weighing the private interest, I'm  
3       not weighing the private interest of Sandbar because  
4       Sandbar is done in this case. But Sandbar is not  
5       technically officially done in this case until the court  
6       hears and reviews the factors for the motion for good  
7       faith settlement. I think it is Nevada law that should  
8       apply. This settlement was engaged in here. This  
9       settlement predates, you know, obviously the court's  
10      determination on forum non conveniens. It's just the good  
11      faith settlement portion of it, and if we needed to  
12      reverse the argument we could do so.

13           The way it's all going to come out in orders, it's  
14      all going to look like it was done around the same time,  
15      which I don't think there is anything procedurally  
16      improper about that. I don't think we need to reargue  
17      anything further with forum non conveniens. I think the  
18      issue here is we have Nevada factors.

19           Just to reiterate them from the MGM Grand Hotel case,  
20      the Dr. Smitsen (ph) case we have the amount paid with the  
21      allocation of the proceeds proceeding among the Plaintiff,  
22      to the extent that's a matter. Insurance policy limits,  
23      to the extent that's a matter. Financial condition of the  
24      settlement Defendants and the existence of collusion,  
25      fraud, or tortious conduct. If there's a denial of good

1       faith settlement determination, it's because there's a  
2       concern about the amount paid. But more typically a  
3       concern was it not arms-length, was it not done fairly and  
4       appropriately. Was there any potential for collusion,  
5       fraud, or tortious conduct.

6               Of all the factors that are applicable here, there is  
7       no dispute that those factors apply, from what I can see  
8       from the pleading. Nor is there any oral or verbal  
9       dispute being made here today. Just on the issue of the  
10      good faith determination, good faith settlement  
11      determination should be made. In looking at NRS 17.245,  
12      the factors and the effects of it, I think it is  
13      appropriate to grant the motion for good faith settlement.  
14      That will effectively resolve the condition of the  
15      settlement and that will effectively remove Sandbar from  
16      the case as a party.

17             That will effectively move this case into a product's  
18      liability case between the Plaintiffs and Polaris, which I  
19      think, again, based on the court's analysis it undertook,  
20      is appropriate to be in Arizona forum. Mr. Albaugh is  
21      going to write that order to make it clear Plaintiffs have  
22      that venue, have that opportunity. Then issues of Sandbar  
23      witnesses and first responder witnesses and family  
24      witnesses, and the other things, Plaintiff to Plaintiffs  
25      themselves are resolved. And other factors are

1 resolved.

2 I think that is the appropriate best outcome here,  
3 even though I very much understand why it would be  
4 disappointing ultimately to Plaintiff's counsel and  
5 Plaintiff who have moved this case forward to the degree  
6 they have in this jurisdiction, but I have to weigh the  
7 factors. I have to be bound by those factors. And they  
8 just all militate for dismissal, given the current  
9 status.

10 So, that's where we are. Mr. Albaugh will prepare  
11 that order. I'll ask Mr. Hayes to prepare the motion for  
12 good faith determination order. But don't include  
13 anything about the choice of law or those factors because  
14 I don't think that's necessary for the evaluation.

15 MR. HAYES: To reiterate, we filed a motion to  
16 place the settlement under seal in terms of the amount of  
17 the settlement and terms. That's been granted by the  
18 court. But as your Honor knows, it's a substantial amount  
19 of the money.

20 THE COURT: I didn't want to make a record of  
21 specifics on it. The applicable factors all weigh.  
22 They're not disputed and all weigh.

23 MR. HAYES: The point I just wanted to reiterate  
24 is that I think there are -- well, originally we, of  
25 course, Arizona law, we're going to apply that. We were

1       going to assert an indemnity claim for contribution tying  
2       to get money back for Polaris for the reasons we specified  
3       in the motion. Where we are now is Sandbar is not doing  
4       that. Carrier is not doing that. We just want it done.  
5       We want to pay the money.

6               Likewise, we don't want any situation or circumstance  
7       under which if something goes wrong at trial with Polaris  
8       and there's a big judgment Polaris is, wait a minute,  
9       Arizona law we can do that. We can come back.

10              My understanding is they've agreed, as long as we're  
11       not pursuing them under any circumstances for indemnity or  
12       contribution or any other claims, attorney fees, all of  
13       it, it goes, from their perspective, that under no  
14       circumstance will Polaris ever request any kind of  
15       reimbursement or money.

16              THE COURT: The Nevada statute would be  
17       preclusive in my opinion. It's the Nevada statute that's  
18       applicable in my determination.

19              MR. HAYES: Thank you.

20              MS. ARLEDGE: There was one other housekeeping  
21       matter. You asked for a judgment. I forgot that.

22              THE COURT: There was some dispute of the  
23       Plaintiff's opposition about that too as to why do we need  
24       a separate order under Arizona law related to your order  
25       there, but I don't know how you want to address that.

1           MR. FARRAR: I just want to request one more  
2           thing in the order that the court will allow a waiver of  
3           service so I can just serve counsel as opposed to going  
4           through --

5           THE COURT: They need to be agreeing to that.  
6           Put that in the order. We'll address as much in the order  
7           as we possibly can.

8           MR. BOWERS: I'm slow today. So I can join  
9           everyone here.

10          I think the concern was not that there wouldn't  
11          be a final order. We all expect that. I think it was  
12          whether it's called a judgment or not. I think that's  
13          been mooted. But just so I understand with the group.  
14          Mr. Hayes is going to prepare an order granting his motion  
15          for good faith settlement under Nevada law. And that's  
16          that, with respect to it, right.

17          THE COURT: He's going to address, perhaps, just  
18          to eliminate any concerns because it's Nevada law, it  
19          doesn't leave available what otherwise indemnification  
20          might be available. The parties have agreed not to pursue  
21          those things.

22          MR. BOWERS: Mr. Hayes is going to prepare --  
23          Polaris' counsel is going to prepare a separate order that  
24          deals with the other stuff.

25          THE COURT: Correct.



1                   MR. BOWERS: The waivers and all that language.  
2                   We can have that out and get that back to the court.

3                   THE COURT: True.

4                   MR. ALBAUGH: I will exchange copies with all  
5                   counsel to make sure everybody is on board with the  
6                   language.

7                   THE COURT: Yes, exchange everything.

8                   MS. ARLEDGE: There's not going to be a  
9                   judgement, just an order.

10                  MR. BOWERS: Not persuing indemnity under the  
11                  statute.

12                  THE COURT: Perfect.

13                  We're all on the same page. I know it's a long  
14                  argument here today. I appreciate there may be some  
15                  disappointment on the outcome, but I do think it's the  
16                  appropriate one. Thank you very much for your time.

17                  MS. ARLEDGE: Thank you.

18                  MR. BOWERS: Thank you, Judge.

19

20

21

22

\* \* \* \* \*

23

24

25

CERTIFICATE  
OF  
CERTIFIED COURT REPORTER

\* \* \* \* \*

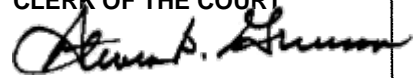
I, the undersigned certified court reporter in and for the  
State of Nevada, do hereby certify:

That the foregoing proceedings were taken before me at the  
time and place therein set forth; that the testimony and  
all objections made at the time of the proceedings were  
recorded stenographically by me and were thereafter  
transcribed under my direction; that the foregoing is a  
true record of the testimony and of all objections made at  
the time of the proceedings.

A handwritten signature in cursive script, reading "Sharon Howard", followed by a large, circular flourish.

---

Sharon Howard  
C.C.R. #745



**NOEJ**  
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Nevada Bar No. 7374  
**MARISA A. POCCHI, ESQ.**  
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Email: pocchi@litchfieldcavo.com

*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 ORDER**

1 SANDBAR POWERSPORTS, LLC.

2 Third-Party Plaintiff,

3 v.

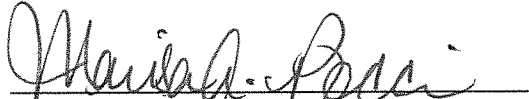
4 FOSTER BORGER,

5 Third-Party Defendant.

6  
7 **PLEASE TAKE NOTICE** that the Order Granting Motion of Sandbar Powersports LLC for  
8 Determination of Good Faith Settlement was filed by the Court on March 12, 2019, a copy of which  
9 is attached hereto.

10  
11  
12 Dated: March 13, 2019

**LITCHFIELD CAVO LLP**

13 By: 

14 GRIFFITH H. HAYES, ESQ.

15 Nevada Bar No. 7374

MARISA A. POCCI, ESQ.

16 Nevada Bar No. 10720

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17 Las Vegas, Nevada 89169

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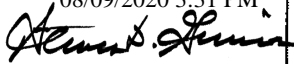
20 *Attorneys for Defendant/ Counter-Claimant/Cross-*  
21 *Claimant/Third-Party Plaintiff Sandbar*  
22 *Powersports, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 13<sup>th</sup> day of March, 2019, that I caused to be served a true and accurate copy of the foregoing **NOTICE OF ENTRY OF ORDER** 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 <sup>th</sup> Floor Las Vegas, NV 89101	T: (702) 727-1400 F: (702) 727-1401 E: <a href="mailto:jennifer.arledge@wilsonelser.com">jennifer.arledge@wilsonelser.com</a>	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 CAYO LLP

  
CLERK OF THE COURT

1 OGM  
2 JENNIFER WILLIS ARLEDGE  
3 Nevada Bar No.: 8729  
4 WILSON, ELSE, MOSKOWITZ,  
5 EDELMAN & DICKER LLP  
6 300 South 4th Street, 11<sup>th</sup> Floor  
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8 (702) 727-1400; FAX (702) 727-1401  
9 Jennifer.Arledge@wilsonelser.com  
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.,

Defendants,

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**

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

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

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

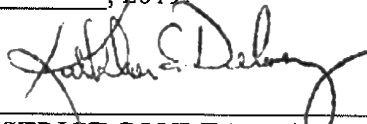
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1 entitled to lesser deference because it is not the Plaintiffs' residence; (2) Arizona is an adequate  
2 alternative forum because of the amount of evidence and the number of witnesses located in  
3 Arizona; and (3) the public and private interest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

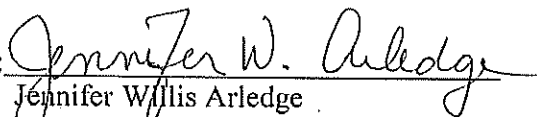
13 Dated:; this \_\_\_\_\_ day of \_\_\_\_\_, 2019. **Dated this 9th day of August, 2020**

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, 11<sup>th</sup> 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*  
300 N. Meridian St., Suite 2700  
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

15 "Chad A. Bowers, Esq." .

bowers@lawyer.com

16 Daniela .

daniela.cablaw@gmail.com

17 Renee Finch

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18 Kimberly Shonfeld

kshonfeld@messner.com

19 Caleb Meyer

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20 Griffith Hayes

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21 Hilary Rainey

rainey@litchfieldcavo.com

22 Diarmuid Dillon

dillon@litchfieldcavo.com

23 Mary Ann Tuer

tuer@litchfieldcavo.com

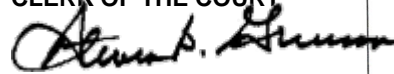
24 Kyle Farrar

kyle@fbtrial.com

25 Skip Lynch

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2	David Guillen	dguillen@fbtrial.com
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4	Marilyn Abel	mabel@messner.com
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6	Lexi Fuson	lexi.fuson@FaegreBD.com
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8	Cheryl Lewallen	Cheryl.Lewallen@FaegreBD.com
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4 **CHAD A. BOWERS, LTD.**  
5 3202 West Charleston Blvd.  
6 Las Vegas, Nevada 89102  
7 Telephone(702) 457-1001  
8 Facsimile(702) 457-8006

9 Attorney for Plaintiffs

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 JOHN BORGER and SHERRI BORGER,

13 Plaintiffs,

14 vs.

15 SANBAR POWERSPORTS, LLC., and  
16 DOES I through X; and ROE CORPORATIONS  
17 XI through XX, inclusive,

18 Defendants.

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

**NOTICE OF APPEAL**

19 Notice is hereby given that John Borger and Sherri Borger, Plaintiffs above named, hereby appeal  
20 to the Supreme Court of Nevada from final judgement Order Granting Polaris Industries, Inc.'s  
21 Motion to Dismiss for Forum Non Conveniens entered in this action on August 9, 2020, the Notice  
22 of Entry of Order filed August 10, 2020 attached hereto as Exhibit 1, as well as any and all orders,  
23 decisions, judgments, findings, conclusions and or recommendations relating thereto.

24 Dated this 4<sup>th</sup> day of September, 2020.

**CHAD A. BOWERS, LTD.**

25 By: 

26 CHAD A. BOWERS, ESQ.  
27 Nevada Bar #: 007283  
28 3202 West Charleston Blvd.  
Las Vegas, Nevada 89102

1  
2 **CERTIFICATE OF MAILING**  
3


4 I HEREBY CERTIFY that on this 4th day of September, 2020, a true and correct copy of  
5 the foregoing **NOTICE OF APPEAL** through the electronic filing system of the Eight Judicial  
6 District Court of the State of Nevada, pursuant to Nevada Electronic Filing and Conversion Rules,  
7 (or, if necessary, by United States Mail at Las Vegas, Nevada, postage fully prepaid ) upon the  
8 following:  
9

10 Kyle W. Farrar, Esq.  
11 CASTER, LYNCH, FARRAR & BALL  
12 1010 Lamar, Suite 1600  
Houston, TX 77002

13 Jennifer Willis Arledge, Esq.  
14 Sgro & Roger

15   
An Employee of CHAD A. BOWERS, ESQ.  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT 1**



1 **NEO**  
2 JENNIFER WILLIS ARLEDGE, ESQ.  
3 Nevada Bar No. 8729  
4 ANTHONY P. SGRO, ESQ.  
5 Nevada Bar No. 3811  
6 SGRO & ROGER  
7 720 S. Seventh Street, Third Floor  
8 Las Vegas, Nevada 89101  
9 Telephone: (702) 384-9800  
10 Facsimile: (702) 665-4120  
11 Attorneys for Plaintiffs  
12 [jarledge@sgroandroger.com](mailto:jarledge@sgroandroger.com)  
13 [tsgro@sgroandroger.com](mailto:tsgro@sgroandroger.com)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

11 JOHN BORGER and SHERRI BORGER,

CASE NO.: A-17-751896-C

12  
13 Plaintiffs,

DEPT. NO.: XXV

14 vs.

**NOTICE OF ENTRY OF ORDER**

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

19 Defendants.

20 And Related Claims.

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

23 ///

24 ///

25 ///

26 ///

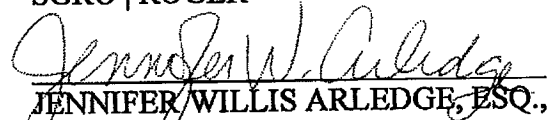
27 ///

28 ///

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

2 DATED this 10<sup>th</sup> 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

**CERTIFICATE OF SERVICE**

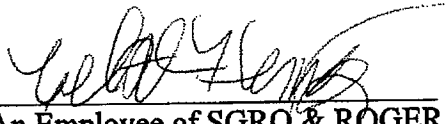
I HEREBY CERTIFY that on the 10th day of August, 2020, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** as follows:

- \_\_\_\_\_ by first class mail, prepaid, addressed to the recipients below,
- \_\_\_\_\_ by facsimile transmission to the recipients' telephone numbers below,
- XX by electronic service via the Clark County District Court electronic filing system,
- \_\_\_\_\_ by hand delivery to the recipients below.

Griffith H. Hayes, Esq.  
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[hayes@litchfieldcavo.com](mailto:hayes@litchfieldcavo.com)

Kyle W. Farrar, Esq.  
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Chad A. Bowers, Esq.  
Chad A. Bowers, Ltd.  
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Las Vegas, NV 89102  
Tel.: (702) 457-1001  
Fax: (702) 457-8006

  
An Employee of SGRO & ROGER



1 **OGM**  
 2 **JENNIFER WILLIS ARLEDGE**  
 Nevada Bar No.: 8729  
 3 **WILSON, ELSE, MOSKOWITZ,**  
**EDELMAN & DICKER LLP**  
 4 300 South 4th Street, 11<sup>th</sup> Floor  
 Las Vegas, NV 89101  
 5 (702) 727-1400; FAX (702) 727-1401  
 Jennifer.Arledge@wilsonelser.com  
 6 Attorneys for Defendant/Cross-Defendant  
 7 **POLARIS INDUSTRIES, INC.**

**DISTRICT COURT****CLARK COUNTY, NEVADA**

JOHN BORGER and SHERRI BORGER,

CASE NO: A-17-751896-C

DEPT NO: XXV

Plaintiffs,

vs.

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

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

Defendants,

And Related Claims.

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

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

26 **IT IS ORDERED** that Polaris Industries, Inc.'s Motion to Dismiss for Forum Non  
 27 Conveniens is Granted. The above-described action is hereby dismissed under NRCP 7(b) on the  
 28 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 **IT IS SO ORDERED.**

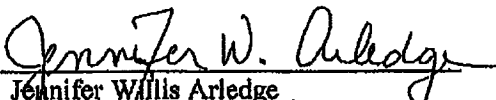
12  
13 Dated this 9th day of August, 2020  
14 Dated:; this \_\_\_\_ day of \_\_\_\_\_, 2019

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, 11<sup>th</sup> Floor  
24 Las Vegas, NV 89101  
Attorneys for Defendant  
**POLARIS INDUSTRIES, INC.**

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1  
2 **FAEGRE BAKER DANIELS, LLP**  
3

4 By: per authority - GWA  
5 Matthew T. Albaugh - pro hac vice  
6 Lexi C. Fuson - pro hac vice  
7 300 N. Meridian St., Suite 2700  
8 Indianapolis, IN 46204  
9 Attorneys for Defendant  
10 **POLARIS INDUSTRIES, INC.**

11 Approved as to form and content

12 **KASTER, LYNCH, FARRAR & BALL, LLP**

13 By: declined to sign - GWA  
14 Kyle W. Farrar - pro hac vice  
15 1010 Lamar, Suite 1600  
16 Houston, TX 77002  
17 Attorneys for **PLAINTIFFS**  
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1 CSERV

2 DISTRICT COURT  
3 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  
14 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 8/9/2020

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