

IN THE SUPREME COURT OF THE STATE OF NEVADA
No. 81764

JOHN BORGER and SHERRI BORGER
Appellants

Electronically Filed
Mar 15 2021 03:42 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

v.

POLARIS INDUSTRIES, INC.
Respondent

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

RESPONDENT'S APPENDIX

SGRO & ROGER

Jennifer Willis Arledge, Esq.
Nevada Bar No. 8729
Anthony P. Sgro, Esq.
Nevada Bar No. 3811
720 S. 7th Street, Third Floor
Las Vegas, Nevada 89101
Telephone: (702) 384-9800

**FAEGRE DRINKER BIDDLE
& REATH LLP**

Aaron D. Van Oort
(Pending Pro Hac Vice)
2200 Wells Fargo Center
90 South 7th Street
Minneapolis, Minnesota 55402
Telephone: (612) 766-7000

Matthew T. Albaugh
(Pro Hac Vice)
300 N. Meridian St., Suite 2500
Indianapolis, Indiana 46204
Telephone: (317) 237-0100

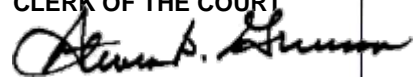
Attorneys for Respondent, Polaris Industries, Inc.

INDEX OF APPENDIX

TITLE	DATE	FILER/PREPARER	PAGE NOS.	VOL. NO.
Defendant's Motion to Dismiss for Forum Non Conveniens on Order Shortening Time	02.01.2019	Defendant Polaris Industries, Inc.	Resp. App. 021-132	I
Notice of Entry of Discovery Commissioner's Report and Recommendations regarding Protective Order	01.17.2019	Defendant Polaris Industries, Inc.	Resp. App. 001-020	I

INDEX OF APPENDIX

TITLE	DATE	FILER/PREPARER	PAGE NOS.	VOL. NO.
Defendant's Motion to Dismiss for Forum Non Conveniens on Order Shortening Time	02.01.2019	Defendant Polaris Industries, Inc.	Resp. App. 021-132	I
Notice of Entry of Discovery Commissioner's Report and Recommendations regarding Protective Order	01.17.2019	Defendant Polaris Industries, Inc.	Resp. App. 001-020	I



1 **NEO**
2 **JENNIFER WILLIS ARLEDGE**
3 Nevada Bar No.: 8729
4 **WILSON, ELSE, MOSKOWITZ,**
5 **EDELMAN & DICKER LLP**
6 300 South 4th Street, 11th 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.**

DISTRICT COURT
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.,

15 Defendants.

16 AND RELATED CLAIMS.

CASE NO: A-17-751896-C

DEPT NO: XXV

**NOTICE OF ENTRY OF DISCOVERY
COMMISSIONER'S REPORT AND
RECOMMENDATIONS**

17
18 PLEASE TAKE NOTICE that the Discovery Commissioner's Report and Recommendations
19 was entered by the Court on January 17, 2019. A true and correct copy is attached hereto as Exhibit
20 "A".

21 DATED this 22nd day of January, 2019.

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

24 BY:



25 **JENNIFER WILLIS ARLEDGE**

26 Nevada Bar No.: 8729

27 300 South 4th Street, 11th Floor

28 Las Vegas, NV 89101

Attorneys for Defendant

POLARIS INDUSTRIES, INC.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 22nd day of January, 2019, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS** 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;

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

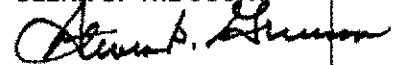
Griffith H. Hayes, Esq.
Keivan A. Roebuck, Esq.
LITCHFIELD CAVO, LLP
3753 Howard Hughes Parkway, Suite 100
Las Vegas, NV 8919
Attorneys for Defendant
SANDBAR POWERSPORTS, LLC

BY


An Employee of
Wilson Elser Moskowitz Edelman & Dicker LLP

EXHIBIT “A”

EXHIBIT “A”



1 DCRR
2 JENNIFER WILLIS ARLEDGE
3 Nevada Bar No.: 8729
4 WILSON, ELSER, MOSKOWITZ,
5 EDELMAN & DICKER LLP
6 300 South 4th Street, 11th 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.

DISTRICT COURT
CLARK COUNTY, NEVADA

12 JOHN BORGER and SHERRI BORGER,

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

13 Plaintiffs,

14 vs.

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

18 Defendants.

19 AND RELATED CLAIMS.

DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATIONS

20 Hearing Date: December 19, 2018

21 Hearing Time: 9:30 a.m.

22 Attorney for Plaintiff: Chad Bowers, Esq.

23 Attorney for Defendant: Jennifer Willis Arledge, Esq.

24 I.

25 FINDINGS

26 This matter came on for hearing on a joint motion for the entry of a protective order filed by
27 all parties in this case. After reviewing the pleadings and papers on file and hearing the arguments
28 of counsel at the hearing of this matter, the Commissioner makes the following findings:

1 A. Documents or information containing confidential or proprietary information, and/or
2 trade secret information ("Confidential Information") that bears significantly on the claims and/or
3 defenses of the parties are likely to be disclosed or produced during the course of discovery in this
4 litigation.

5 B. The parties subject to discovery assert that public dissemination and disclosure of
6 Confidential Information could severely injure or damage the party producing Confidential
7 Information and could place the producing party at a competitive disadvantage or subject them to
8 annoyance, embarrassment, oppression, or undue burden.

9 C. Public dissemination and disclosure of Confidential Information of third parties,
10 including but not limited to vendors and/or suppliers who are not parties to this action, could
11 severely injure those third parties, and would place them at a competitive disadvantage.
12

13 D. Entry of a Protective Order of Confidentiality controlling access to and dissemination
14 of Confidential Information will protect the respective interests of the parties and facilitate the
15 progress of disclosure and discovery in this case.
16

17 E. The terms of the Protective Order of Confidentiality agreed to by the parties are as
18 follows:

19 **1. Scope of Protection.**

20 This Protective Order of Confidentiality shall govern Confidential Information produced or
21 disclosed in this action, including all designated deposition testimony, all designated testimony taken
22 at a hearing or other proceeding, all designated deposition exhibits, interrogatory answers,
23 admissions, documents and other discovery materials, whether produced informally or in response to
24 interrogatories, requests for admissions, requests for production of documents or other formal
25 methods of discovery.
26
27
28

1 This Protective Order of Confidentiality shall apply to the parties and to any nonparty from
2 whom discovery may be sought who desires the protection of this Protective Order.

3 Nothing in this Protective Order of Confidentiality shall be deemed to preclude a party's
4 right to: (a) oppose discovery on grounds not addressed under the terms of this Protective Order; (b)
5 object on any ground to the admission of any Confidential Information into evidence at trial; or (c)
6 contest the alleged relevancy, admissibility, or discoverability of the Confidential Information
7 sought.

8
9 **2. Definitions.**

10 The term "Confidential Information" shall refer to records,¹ confidential or proprietary
11 technical, scientific, financial, business records and/or things protected as trade secrets or
12 confidential information pursuant to state and federal law and/or designated as such by the producing
13 party. Confidential Information produced during this lawsuit is the property of the producing party.
14 Plaintiffs' confidential medical records and financial information, including medical and
15 psychological records, tax returns and related financial records, Social Security numbers, names of
16 minors and incompetent persons (such persons shall be identified by initials), and the educational
17 records of any person shall also be considered Confidential Information.

18
19 **3. Designation of Confidential Information.**

20 A party may designate all or any portion of records and/or things it produces formally or
21 informally to other parties to this litigation as Confidential Information. Documents and things
22 produced or furnished during the course of this action shall be designated as containing Confidential
23 Information by placing on each page, each document (whether in paper or electronic form), or each
24 thing a label stating "CONFIDENTIAL – PRODUCED SUBJECT TO PROTECTIVE ORDER IN
25

26
27 ¹ As used in this Protective Order of Confidentiality, "records" shall mean information, both discrete and cumulative,
28 that is inscribed or otherwise recorded on a tangible medium or that is stored in an electronic or other medium and is
retrievable in perceivable form. Records also include both electronic records and printed, typewritten and other tangible
records.

1 BORGER V. POLARIS." All records and/or things designated as Confidential Information shall be
2 treated as such pursuant to the terms of this Protective Order of Confidentiality until further ordered
3 by the Court.

4 A party may designate information disclosed at a deposition as Confidential Information by
5 requesting the reporter to so designate the transcript at the time of the deposition. In the event that
6 any question is asked at a deposition with respect to which a party asserts that the answer requires
7 the disclosure of Confidential Information, such question shall nonetheless be answered by the
8 witness fully and completely. Prior to answering, however, all persons present shall be advised of
9 this Protective Order of Confidentiality by the party making the confidentiality assertion.
10

11 **4. Inadvertent Production of Confidential Information.**

12 The inadvertent, unintentional, or *in camera* production of any Confidential Information shall
13 not, under any circumstances, be deemed a waiver, in whole or in part, of the confidentiality of the
14 Confidential Information in question. If a party should inadvertently produce any Confidential
15 Information not responsive to a formal request for production and/or an order of the Court and/or
16 inadvertently fail to redact Confidential Information not discoverable in this case, the recipient of
17 such inadvertently produced Confidential Information shall immediately return the Confidential
18 Information, including all copies thereof, to the producing party, and shall make no use of the
19 Confidential Information for any purpose. Further, the unauthorized person who received the
20 Confidential Information (a) shall be informed promptly of the provisions of this Protective Order by
21 the party providing access to such Confidential Information; (b) shall be identified immediately to
22 counsel of record for the producing party; and (c) shall be directed, if within control of a party, or
23 otherwise asked, to sign the Disclosure Agreement (Exhibit A). The person or entity whose
24 inadvertence caused the unauthorized disclosure shall be responsible for securing the unauthorized
25 person's assent to the Disclosure Agreement. At the producing party's sole discretion, such
26
27
28

1 unauthorized person may be required to surrender to the producing party all copies of Confidential
2 Information in such unauthorized person's possession.

3 In the event that a producing party inadvertently fails to designate any of its information
4 and/or documents pursuant to Paragraph 3, it may later designate by notifying the receiving parties
5 in writing. The receiving parties shall take reasonable steps to see that the information is thereafter
6 treated in accordance with the designation. It shall be understood however, that no person or party
7 shall incur any liability hereunder with respect to disclosure that occurred prior to receipt of written
8 notice of a belated designation.
9

10 **5. Objection to Designation of Confidential Information.**

11 If any party objects to the designation of any record and/or thing as Confidential Information
12 produced prior to 120 days of the scheduled trial of this matter, that party shall notify all other
13 parties in writing no later than 90 days before the scheduled trial date, specifying the factual and
14 legal basis for the objection. For any Confidential Information produced within 120 days of the
15 scheduled trial of this matter, a party must object to the designation (specifying the factual and legal
16 basis for the objection) within 30 days of receipt of the record or thing or 21 days from the scheduled
17 trial, whichever is longer. If a dispute arises that cannot be resolved by agreement, then the dispute
18 will be submitted to the Court. Pending such determination (or the expiration of the period in which
19 Defendant may make a challenge to an adverse ruling), the records and/or things shall be maintained
20 as Confidential Information.
21

22 **6. Access to Confidential Information.**

23 Unless otherwise agreed by the parties to this Protective Order of Confidentiality, access to
24 Confidential Information shall be limited to Qualified Recipients, solely in the performance of their
25
26
27
28

1 duties in connection with trial preparation of this case.² Qualified Recipient means:

- 2 (a) Outside counsel of record for the parties in this action, and the partners, associates,
3 secretaries, paralegal assistants, administrative, legal personnel and employees of
4 such counsel to the extent necessary to render professional services in the action,
including outside copying services, document management services, and graphic
5 services;
- 6 (b) In-house counsel for a party to this action who are acting in a legal capacity and who
7 are actively engaged in the conduct of this action, and the secretary and paralegal
8 assistants of such counsel to the extent necessary;
- 9 (c) Outside forensic, technical and damages experts and consultants retained by counsel
10 of record and trial witnesses who have first consented to this Protective Order of
11 Confidentiality and signed the Disclosure Agreement (specifically excluding
12 attorneys who are not counsel of record for the parties to this civil action)³;
- 13 (d) The Court hearing this matter, the Court's personnel, mediators, other persons
14 appointed by the Court, court reporters, jurors at the time of trial, persons operating
15 video recording equipment at depositions, and any special master appointed by the
16 Court;
- 17 (e) Corporate representatives designated by any party in this case and current employees
18 of any party in this case, during their depositions taken in this case;
- 19 (f) Witnesses to be deposed in this lawsuit (subject to the terms set forth in Paragraph 11
20 ("Depositions")) and any other applicable terms of this Protective Order), that have
21 read this Protective Order of Confidentiality;
- 22 (g) If this Court so elects, any other non-authorized person may be designated as a
23 Qualified Recipient by Order of this Court only after application to this Court, with at
24 least fifteen (15) days written notice to all parties to this Protective Order of
25 Confidentiality, a hearing, and approval by this Court; and
- 26 (h) The insurer of a party to litigation and employees of such insurer to the extent
27 necessary to assist the party's counsel to afford the insurer an opportunity to
28 investigate and evaluate the claim for purposes of determining coverage and for
settlement purposes.

² Nothing in this Protective Order of Confidentiality shall prohibit the producing party from utilizing the Confidential Information as it deems appropriate, and any such use by the producing party shall not destroy the confidentiality of the Confidential Information in question.

³ Qualified Recipients shall not include any organization or entity or any representative thereof that regularly maintains and/or disseminates documents or information, including abstracts or summaries, or any other records as a service to its members, subscribers, or others.

1 **7. Disclosure Agreements.**

2 Excluding court staff, each Qualified Recipient who receives access to any Confidential
3 Information shall first be given a copy of this Protective Order of Confidentiality and advised by the
4 trial counsel making the disclosure that such person must not divulge any Confidential Information
5 to any other person except in the preparation or trial of this lawsuit, and that such disclosure is
6 limited to Qualified Recipients. A Disclosure Agreement (attached hereto as Exhibit A) must be
7 signed by each Qualified Recipient receiving any Confidential Information in advance of receipt
8 (excluding court staff).⁴ In the event that Confidential Information is disseminated to an
9 unauthorized recipient in any manner or under any circumstance, the producing party may request
10 the identities of all previously undisclosed recipients and the receiving party shall within 24 hours
11 disclose the identities of the previously undisclosed recipients and supply their Disclosure
12 Agreement.
13

14 **8. Omitted.**

15 **9. Use of Confidential Information.**

16 Unless otherwise agreed by the parties to this Protective Order of Confidentiality or by order
17 of this Court, all Confidential Information shall be used for the purpose of this lawsuit only. If any
18 subpoenas, requests for production, or other forms of discovery in connection with other litigation
19 are served on any party to this Protective Order of Confidentiality, or any Qualified Recipient
20 defined hereunder, that party or person will immediately notify the producing party's counsel of
21
22

23
24 ⁴ The signed original of each such Promise of Confidentiality by persons other than consulting-only experts shall be
25 retained by trial counsel and provided to counsel of record for Defendant at the time that expert witnesses are identified
26 by Plaintiffs. In the case of consulting-only experts, the signed original shall be maintained by the disclosing counsel
27 who will provide counsel for Defendant with a privilege log list at the time the disclosing party designates experts that
28 indicates that a specified number of signed Promises of Confidentiality are being withheld on the basis of privilege. In
the event that Confidential Information is disseminated to an unauthorized recipient in any manner or under any
circumstance, the disclosing party may request the identities of all previously undisclosed recipients and the party that
provided the consulting-only expert with the disclosing party's Confidential Information shall within 24 hours disclose
the identities of the previously undisclosed recipients and supply their Promises of Confidentiality. By disclosing the
identity of consulting experts, no waiver of the consulting expert privilege has occurred.

1 record, provide the producing party's counsel with a copy of the subpoena or other discovery
2 request, and will execute such documents necessary for the producing party to have standing to
3 obtain an order from the appropriate court protecting the Confidential Information from being
4 disseminated outside the scope of this Protective Order of Confidentiality.

5 In the event that any receiving party's briefs, memoranda, discovery requests, requests for
6 admission or other papers of any kind which are served or filed shall include another party's
7 Confidential Information, the papers shall be appropriately designated pursuant to Paragraph 3, and
8 shall be treated accordingly. All documents, including attorney notes and abstracts, which contain
9 another party's Confidential Information shall be handled as if they were designated pursuant to
10 Paragraph 3. Documents, papers and transcripts filed with the Court which contain any other party's
11 Confidential Information shall be filed in sealed envelopes and labeled in accordance with this
12 Court's applicable rules. Nothing in this Protective Order of Confidentiality shall bar or otherwise
13 restrict outside counsel from rendering advice to his or her client with respect to this action and, in
14 the course thereof, from relying in a general way upon his examination of materials designated
15 Confidential Information, provided, however, that in rendering such advice and in otherwise
16 communicating with his or her clients, such counsel shall not disclose the specific contents of any
17 materials designated Confidential Information.
18
19

20 **10. Confidential Information Submitted to the Court.**

21 In the event that any Confidential Information is submitted to the Court, including but not
22 limited to any pleading, motion, transcript, videotape, exhibit, photograph, or other material filed
23 with any court which incorporates or includes Confidential Information, the Confidential
24 Information shall be submitted in an attached envelope marked "For in camera review only."
25 Additionally, the enclosed envelope shall include the following label:
26
27
28

Case No. A-17-751896; *John Borger and Sherri Borger v. Sandbar Powersports, LLC, et al.*; In the District Court of Clark County, Nevada, Dept. No. XXV: CONFIDENTIAL – FILED FOR IN CAMERA REVIEW ONLY.

Such Confidential Information shall, however, remain available to personnel authorized by the Court and to Qualified Recipients. Alternatively, these *in camera* documents will be conditionally sealed by the Court pending a further Order, if necessary. When practicable, however, only the confidential portion of the pleadings filed with the Court will be filed in the attached envelope.

It is agreed that, following at least 14-days notice to opposing counsel of its intent to retrieve specific Confidential Information that has been filed with Court for *in camera* inspection, the producing party may take possession of all such specified Confidential Information supplied to the Court for any *in camera* inspection by the Court during the pendency of this action, unless the parties agree or the Court orders otherwise. To the extent that the producing party retrieves any such *in camera* Confidential Information from the Court, the producing party shall retain true and correct copies of all such Confidential Information until 30 days from the latter of the final conclusion of this matter via final judgment of the Court and exhaustion of all appeals. The Court finds that all documents which are provided to the Court throughout litigation under seal and returned during the course of this litigation to any party will be maintained by the party taking possession until completion of this litigation as if still being maintained by the Court under seal. Upon written request of any party or the Court, documents withdrawn from the Court's possession will be returned to the Court within seven (7) days of the request, unless otherwise ordered by the Court or agreed by the parties.

11. Depositions.

If any Confidential Information is used or referred to during any deposition, counsel for the producing party may require that only its representatives, Qualified Recipients, the deponent, the court reporter, and the camera operator (if the deposition is videotaped) shall be present for the

1 portion of the deposition dealing with Confidential Information. Under no circumstances shall any
2 Confidential Information be viewed by any deponent who is an employee of any competitor of the
3 producing party, or any person who over the next two years expects to be affiliated with, employed
4 by, or consulted by a competitor of the producing party regarding research, development,
5 production, manufacture, or testing of all-terrain vehicles or sport side-by-sides. Within thirty (30)
6 days of receipt of the completed deposition transcript, counsel for the producing party shall
7 designate by page and line the portions for which such claim is made, and give written notice of this
8 designation to the court reporter and all other parties.⁵ Pending such designation, the deposition and
9 all exhibits shall be treated in its entirety as Confidential Information.
10

11 **12. Evidence at Trial.**

12 This Protective Order of Confidentiality shall not affect or limit the presentation of evidence,
13 if otherwise admissible, during the trial of this action, including materials marked as Confidential
14 Information. However, to the extent that a party seeks to introduce Confidential Information into
15 evidence at trial, the party seeking to do so shall give notice of its intent to introduce such
16 Confidential Information as evidence at least fourteen (14) days before the scheduled trial or at the
17 same time that the party is required to disclose its trial exhibit list, whichever is later, so that it can
18 be determined during the pretrial conference (or other scheduled hearing in advance of trial) how
19 such Confidential Information will be treated at trial. In the event that a transcript of the trial is
20 prepared, any party may request that certain portions thereof, which contain trade secrets or other
21 Confidential Information, be filed under seal.
22
23
24
25
26

27 ⁵ This designation shall be placed on the first page in the original and all copies of the deposition by the court reporter
28 and by counsel for the parties. Those portions of the deposition which are designated as Confidential Information shall
be bound separately under seal and prominently marked "confidential information subject to Protective Order."

13. Conclusion of Action.

Unless otherwise agreed in writing by the parties to this matter, within thirty (30) days of final termination of this action (the latter of execution of a settlement agreement or resolution of all appellate actions), counsel of record for each party who received Confidential Information shall assemble and return all Confidential Information produced,⁶ whether in the possession of said counsel or in the possession of any Qualified Recipient who gained access to the Confidential Information. The obligation to return Confidential Information does not include true attorney work product, but attorney work product that contains direct quotes from or that constitutes descriptions or summaries of Confidential Information shall be destroyed by the counsel or expert in possession of such work product containing direct quotes from or that constitutes descriptions or summaries of Confidential Information. Accompanying the return of all Confidential Information, counsel of record for each party shall provide counsel of record for the producing party with all executed certifications in the forms attached hereto as Exhibit B (executed by each counsel for Plaintiffs and Defendants) and Exhibit C (executed by each expert and anyone else who had access to such Confidential Information). If counsel of record for returning party is unable to provide or locate any missing Confidential Information or records, then such counsel for the returning party shall execute an affidavit which states: (a) the bates numbers of those records that counsel of record for the returning party was unable to return; (b) that a diligent and thorough search was conducted of all Qualified Recipients who gained access to the Confidential Information through counsel of record for the returning party and counsel of record for the returning party was unable to find said

⁶ Including but not limited to all copies, notes, direct quotes, summaries, indices, transcripts, renderings, photographs, recordings, compact discs, DVDs, thumb/flash drives, other magnetic or electronic media, and physical or electronic reproductions of every kind of such Confidential Information and deposition excerpts containing Confidential Information.

1 Confidential Information; and (c) counsel of record for the returning party does not have said
2 Confidential Information in his or her possession.⁷

3 **14. Production by Third Parties Pursuant to Subpoena.**

4 Any third party producing documents or things or giving testimony in this action pursuant to
5 a subpoena, notice or request may designate said documents, things, or testimony as Confidential
6 Information. The parties agree that they will treat Confidential Information produced by third parties
7 according to the terms of this Protective Order of Confidentiality.

8
9 **15. Compulsory Disclosure to Third Parties.**

10 If any receiving party is subpoenaed in another action or proceeding or served with a
11 document or testimony demand or a court order, and such subpoena or demand or court order seeks
12 Confidential Information of a producing party, the receiving party shall give prompt written notice to
13 counsel for the producing party and allow the producing party an opportunity to oppose such
14 subpoena or demand or court order prior to the deadline for complying with the subpoena or demand
15 or court order. No compulsory disclosure to third parties of information or material exchanged
16 under this Protective Order of Confidentiality shall be deemed a waiver of any claim of
17 confidentiality, except as expressly found by a court or judicial authority of competent jurisdiction.

18
19 **16. Disclosure to Regulatory Agencies and Government Entities.**

20 The parties to this Protective Order of Confidentiality agree that, upon the request of any
21 party, relevant consumer product safety information will be provided to the Consumer Product
22 Safety Commission, the National Highway Transportation Safety Administration, or other
23 appropriate governmental authorities ("Governmental Authorities") under the provisions in this
24 paragraph. If any party seeks to provide Governmental Authorities consumer product safety
25

26
27 ⁷ Such affidavit shall not relieve counsel for the returning party from their continuing obligation to return the
28 Confidential Information as set forth in this paragraph.

1 information designated as Confidential Information, that party shall not provide such Confidential
2 Information directly to the Governmental Authorities because such disclosures could become
3 publicly available through Freedom of Information Act disclosures or other comparable disclosure
4 obligations of the Governmental Authorities. If any party seeks to provide Confidential Information
5 to a Governmental Authority, that party shall ask Polaris to provide such Confidential Information to
6 the Governmental Authority so Polaris can seek exemption from disclosure under applicable
7 regulations and rules including, but not limited to: CPSA, 15 U.S.C. § 2055; the Trade Secrets Act,
8 18 U.S.C. § 1905, National Highway Traffic Safety Administration – Confidential Business
9 Information. 49 CFR 512; and/or the Freedom of Information Act, 5 U.S.C. § 552(b). Upon receipt
10 of such a request from a party, Polaris shall have 30 business days to provide the Confidential
11 Information to the Governmental Authority. Polaris may seek relief from this requirement but
12 should it do so, this Stipulation and Agreed Protective Order of Confidentiality shall be enforceable
13 absent extraordinary circumstances.
14

15
16 **17. Jurisdiction to Enforce Protective Order.**

17 After the termination of this action, the Court will continue to have jurisdiction to enforce
18 this Protective Order of Confidentiality.

19 **18. Modification of Protective Order.**

20 This Protective Order of Confidentiality is without prejudice to the right of any person or
21 entity to seek a modification of this Protective Order at any time either through stipulation or Order
22 of the Court.
23
24
25
26
27
28

II.

RECOMMENDATIONS

IT IS THEREFORE RECOMMENDED that the Court enter an Order adopting all of the provisions of the Protective Order of Confidentiality (paragraphs 1 through 18), as set forth in paragraph E of the above Findings.


The Discovery Commissioner met with counsel for parties, having discussed the issues noted above and having reviewed any materials proposed in support thereof, hereby submits the above recommendations.

Dated this 3 day of January, 2019.


DISCOVERY COMMISSIONER

Respectfully submitted by:

WILSON, ELSE, MOSKOWITZ,
EDELMAN & DICKER LLP

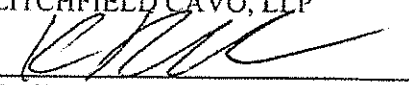

JENNIFER WILLIS ARLEDGE
Nevada Bar No.: 8729
300 South 4th Street, 11th Floor
Las Vegas, NV 89101
Attorneys for Defendant/Cross-Defendant
POLARIS INDUSTRIES, INC.

APPROVED AS TO FORM AND CONTENT BY:

CHAD A. BOWERS, LTD.

per written atty 12-21-18 gwa
Chad Bowers, Esq.
3202 W. Charleston Blvd.
Las Vegas, NV 89102
Attorneys for Plaintiff

LITCHFIELD CAVO, LLP


Griffith H. Hayes, Esq.
Keivan A. Roebuck, Esq.
3913 ~~3753~~ Howard Hughes Parkway, Suite 100
Las Vegas, NV ~~89102~~ 89169
Attorneys for Defendant
SANDBAR POWERSPORTS, LLC

APPROVED AS TO FORM AND CONTENT BY:

KASTER, LYNCH, FARRAR & BALL, LLP

NEAL & HARWELL, PLC

per written atty 12-21-18 gwa

Kyle W. Farrar, Esq.
Admitted pro hac vice
1010 Lamar, Suite 1600
Houston, TX 77002
Attorneys for Plaintiff

per written atty 12-21-18 gwa

James F. Sanders, Esq.
Admitted pro hac vice
Scott Ross, Esq.
Admitted pro hac vice
1201 Demonbreun Street, Suite 1000
Nashville, TN 37203
Attorneys for Defendant
POLARIS INDUSTRIES, INC.

NOTICE

Pursuant to NRCP 16.1(d)(2), you are hereby notified you have five (5) days from the date you receive this document within which to file written objections.

The Commissioner's Report is deemed received three (3) days after mailing to a party or the party's attorney, or three (3) days after the clerk of the court deposits a copy of the Report in a folder of a party's lawyer in the Clerk's office. E.D.C.R. 2.34(f).

A copy of the foregoing Discovery Commissioner's Report was:

_____ Mailed to Plaintiff/Defendant at the following address on the _____ day of _____, 20____.

_____ Placed in the folder of counsel in the Clerk's office on the _____ day of _____, 20____.

✓ Electronically served counsel on the 4 day of January, 2019.
Pursuant to N.E.F.C.R. Rule 9.

By Natalie Lu
Commissioner Designee

ORDER

The Court, having reviewed the above report and recommendations prepared by the
Discovery Commissioner and,

The parties having waived the right to object thereto,

✓ (KES) No timely objection having been received in the office of the Discovery
Commissioner pursuant to E.D.C.R. 2.34(f),
Having received the objections thereto and the written arguments in support of said
objections, and good cause appearing,

* * *

AND

✓ (KES) IT IS HEREBY ORDERED the Discovery Commissioner's Report and
Recommendations are affirmed and adopted.

IT IS HEREBY ORDERED the Discovery Commissioner's Report and
Recommendations are affirmed and adopted as modified in the following manner.
(attached hereto)

IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report
and Recommendations is set for _____, 20____, at ____:____ a.m.

Dated this 17th day of January, 2019.


DISTRICT COURT JUDGE

ORIGINAL

Electronically Filed
2/1/2019 4:06 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

MDSM
JENNIFER WILLIS ARLEDGE
Nevada Bar No.: 8729
WILSON, ELSE, MOSKOWITZ,
EDELMAN & DICKER LLP
300 South 4th Street, 11th 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

DEFENDANT POLARIS INDUSTRIES,
INC.'S MOTION TO DISMISS FOR
FORUM NON CONVENIENS
ON ORDER SHORTENING TIME

DEPARTMENT XXV
NOTICE OF HEARING
DATE 2/19/19 TIME 9:00 a.m.
APPROVED BY SC

///

///

///

///

///

///

///

///

///

///

///

1 **DEFENDANT POLARIS INDUSTRIES, INC.'S MOTION TO DISMISS**
2 **FOR FORUM NON CONVENIENS**

3 COMES NOW Defendant, POLARIS INDUSTRIES, INC., by and through undersigned
4 counsel, and respectfully moves to dismiss this case pursuant to NRCP 7(b) on the grounds of *forum*
5 *non conveniens*. This Motion is made and based upon the pleadings and papers on file herein, the
6 attached Memorandum of Points and Authorities, and any argument adduced by counsel at the
7 hearing hereof.

8 DATED: this 31st day of January, 2019.

9 **WILSON, ELSER, MOSKOWITZ,**

10 **EDELMAN & DICKER LLP**

11 By: Jennifer W. Arledge
12 **JENNIFER WILLIS ARLEDGE**
13 Nevada Bar No. 8729
14 300 South 4th Street, 11th Floor
15 Las Vegas, NV 89101
16 Attorneys for Defendant
17 **POLARIS INDUSTRIES, INC.**

18 **FAEGRE BAKER DANIELS, LLP**

19 By: per authority - gwa
20 Matthew T. Albaugh, Esq. – *pro hac vice pending*
21 Lexi C. Fuson, Esq. – *pro hac vice pending*
22 300 N. Meridian St., Suite 2700
23 Indianapolis, IN 46204
24 Attorneys for Defendant
25 **POLARIS INDUSTRIES, INC.**

ORDER SHORTENING TIME

It appearing to the satisfaction of the Court, and good cause appearing therefor, IT IS
HEREBY ORDERED that DEFENDANT POLARIS INDUSTRIES, INC.'S MOTION TO
DISMISS FOR FORUM NON CONVENIENS ON ORDER SHORTENING TIME is hereby
shortened to the 19 day of February, 2019 at 9:00 a.m., or as soon thereafter as
counsel may be heard. Any Opposition shall be due on February 8, 2019. Any Reply shall
be due on February 14, 2019.


IT IS SO ORDERED.

DATED this 1st day of February, 2019.


DISTRICT COURT JUDGE

Respectfully submitted by:

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


Jennifer Willis Arledge, Esq.
Nevada Bar No.: 8729
300 South Fourth Street, 11th Floor
Las Vegas, NV 89101
(702) 727-1400
Attorney for Defendant
POLARIS INDUSTRIES, INC.

**AFFIDAVIT OF JENNIFER WILLIS ARLEDGE, ESQ. IN SUPPORT OF
ORDER SHORTENING TIME**

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, Jennifer Willis Arledge, Esq., hereby depose and say as follows:

1. I am a competent adult, over the age of eighteen (18) years, and have personal knowledge of all facts stated herein.
2. I am an attorney duly licensed to practice law in the State of Nevada.
3. I am a partner in the law firm of WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER, LLP and am Nevada counsel of record for Defendant POLARIS INDUSTRIES, INC. ("Polaris") in Case No. A-17-751896-C, currently pending in Department XXV of the Eighth Judicial District Court, County of Clark, Nevada.
4. The present case has been pending since March 3, 2017. On November 14, 2017, Polaris was named a defendant in the case with the filing of Plaintiffs' amended complaint. Polaris is informed and believes that Plaintiffs and Co-Defendant Sandbar Powersports, LLC ("Sandbar") reached a settlement on January 16, 2019.
5. Hearing the instant Motion on shortened time is appropriate and serves the interests of all remaining parties. The focus of discovery is about to shift to Plaintiffs' product liability claims against Polaris which will be document intensive as well as expert-driven.
6. To date, the discovery conducted in this case has not been focused on Plaintiffs' claims against Polaris. Rather, it has been focused on Plaintiffs' rental of the off road vehicle (RZR) from Sandbar. The depositions taken have been of employees and owners of Sandbar, the person who purchased the RZR from Sandbar after the subject incident, and the Plaintiffs themselves.

1 7. Given the settlement between Plaintiffs and Sandbar, as well as the recent entry of a
2 protective order which enables Polaris to produce confidential and proprietary information,
3 the focus of discovery will shift to Plaintiffs' product liability claims against Polaris. If the
4 instant motion is granted and this case is brought in another jurisdiction, that other
5 jurisdiction's discovery rules would apply. It would be more appropriate, therefore, for the
6 parties to conduct future discovery in accordance with that other jurisdiction's rules rather
7 than the Nevada Rules of Civil Procedure which may or may not be compatible with those of
8 another jurisdiction.
9

10 8. Likewise, depositions of first responders and other percipient witnesses are soon to be set (in
11 Arizona). It is important to know at the time of deposition whether the deposition is being
12 taking as a discovery deposition or whether it will be used as trial testimony, so the parties
13 can adjust their witness examinations appropriately.
14

15 9. In addition, expert witnesses will be formulating their opinions. Jurisdictions have different
16 requirements for disclosing expert testimony and different standards for admissibility. It is
17 important for the parties to know which jurisdiction this case will be in prior to expert
18 disclosures.

19 10. Should the instant motion be heard in the ordinary course, it would likely not be heard and
20 ruled upon for at least four (4) weeks, possibly longer.
21

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

1 11. Therefore, I submit that good cause exists for the present Motion to be heard on shortened
2 time and suggest that two (2) weeks would be an appropriate amount of time to allow for
3 briefing by the parties.

4 FURTHER AFFIANT SAYETH NAUGHT.

5 *Jennifer W. Arledge*
6 JENNIFER WILLIS ARLEDGE, ESQ.

7 SUBSCRIBED AND SWORN to before me
8 this 31st day of January, 2019.

9 *Pamela Marie Lamper*
10 NOTARY PUBLIC in and for said
11 County and State



MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Polaris Industries, Inc. (“Polaris”) seeks dismissal of John and Sherri Borger’s (“Plaintiffs”) claims based on *forum non conveniens* because Nevada has no material interest in this lawsuit and other, more convenient forums exist—namely, Arizona and Minnesota.

The Court owes no deference to the Plaintiffs’ decision to file in Nevada because they have never been Nevada residents. Plaintiffs were Minnesota residents both at the time of their accident and at the time of filing suit. They now reside in California.

Plaintiffs do not allege that any event material to their claims occurred in Nevada. To the contrary, every event relevant to Plaintiffs’ product liability claims against Polaris occurred in either Minnesota or Arizona:

- Polaris is headquartered in Minnesota;
- Polaris designed, tested, and manufactured the vehicle at issue (a Polaris RZR) in Minnesota;
- All Polaris employees with knowledge and information about the Polaris RZR and all relevant Polaris documents are in Minnesota;
- Polaris sold the vehicle in Arizona to an Arizona dealership;
- The Arizona dealership then sold the subject vehicle to Sandbar Powersports, LLC (“Sandbar”), which operated near Lake Havasu City, Arizona;
- Plaintiffs (Minnesota residents) rented the vehicle from Sandbar in Lake Havasu, Arizona, pursuant to a rental agreement governed by Arizona law;
- Plaintiffs drove the vehicle on trails in Arizona, where they were involved in a serious accident;
- First responders from the Lake Havasu City, Arizona Fire Department, the Lake Havasu City, Arizona Police Department, and the Mohave County, Arizona Sheriff’s Office responded to the accident, treated Ms. Borger, and took statements from the four Borger family members;
- Ms. Borger received initial treatment in a hospital in Arizona;

- 1 ■ Every relevant document and witness, aside from the Borgers themselves, is in either Minnesota or Arizona;
- 2 ■ Sandbar subsequently sold the vehicle at issue to another Arizona resident in March 2017;
- 3
- 4 ■ The subject vehicle remains in Arizona; and
- 5 ■ Arizona law governs all of Plaintiffs' claims against Polaris;

6 Set against all those facts, Plaintiffs decided to file in Nevada state court. Nevada has no
7 local interest in this case, aside from the fact that Ms. Borger received medical treatment in Nevada
8 for approximately 11 days. The nature of Ms. Borger's treatment in Nevada is not at issue in this
9 case.

10 The Court should dismiss Plaintiffs' complaint for *forum non conveniens* and allow Plaintiffs
11 to refile in either Minnesota or Arizona. Polaris assents to the jurisdiction of both states and agrees
12 to waive personal jurisdiction, statute of limitations (for a period of six months), and *forum non*
13 *conveniens* arguments in those states. Dismissal will not cause Plaintiffs significant delay because
14 they have done almost nothing, to date, to advance their claims against Polaris.

15 Both Minnesota and Arizona are far more convenient forums. Nevada courts and jurors have
16 little interest in hearing a case based on the claims of Minnesota residents for an injury that occurred
17 in Arizona and involves product liability claims under Arizona law applicable to a product designed
18 and manufactured in Minnesota. Simply put, burdening Nevada courts with such a complex case,
19 likely to require many weeks of trial, makes no sense.

20 **II. FACTUAL AND PROCEDURAL BACKGROUND**

21 Plaintiffs filed their complaint against Sandbar on March 3, 2017. Plaintiffs later amended
22 their Complaint to add Polaris as a defendant on November 14, 2017.

23 Plaintiffs allege that on October 18, 2016, they rented a Polaris RZR from Sandbar, near
24 Lake Havasu, Arizona. See Am. Compl., ¶ 6. The vehicle at issue was designed, tested, and

1 manufactured in Minnesota by Polaris, a Minnesota headquartered company. *See* Exhibit A,
2 Affidavit of Blake Anderson, ¶¶ 4, 6. At the time of the rental, Plaintiffs were Minnesota residents
3 who were on vacation in Arizona. *See* Exhibit B, S. Borger Dep., 20:14-21:7. Plaintiffs currently
4 reside in California. *Id.*, at 10:15-22. As part of the rental process, Plaintiffs signed a “Participant
5 Agreement, Release and Assumption of the Risk,” in which they expressly assumed all risks of
6 injury associated with use of the Polaris RZR. *See* Exhibit C, Participant Agreement, Release and
7 Assumption of the Risk Agreement. The Agreement expressly provides that it shall be construed
8 under the laws of the State of Arizona. *Id.*

10 While Plaintiffs’ seventeen-year-old son, Foster Borger, was driving the RZR (in violation of
11 the Participant Agreement), the vehicle rolled onto its right side, trapping Ms. Borger’s right arm.
12 *See* Exhibit J, Plaintiffs’ Responses to Sandbar’s Requests for Admission, Nos. 9 and 10. Notably,
13 Foster likely had no experience driving off-road vehicles. *See* Exhibit D, J. Borger Dep., at 150:20-
14 151:20. Sandbar did not provide Foster with instruction on operating the vehicle or a safety
15 orientation because Sandbar prohibited anyone under the age of 25 from driving its vehicles. *See*
16 Exhibit E, Lehmitz Dep., 79:23-81:10, and Ex. C. Mr. Borger admitted that he provided Foster with
17 no instructions or directions prior to his operation of the vehicle. Ex. D, 151:21-152:2.

19 The accident caused severe injuries to Mrs. Borger’s arm. *See* Am. Compl. ¶ 6. Officials
20 from the Lake Havasu City Fire Department, the Lake Havasu City Police Department, and the
21 Mohave County Sheriff’s Office responded to the scene of the accident. *See* Exhibit F Incident
22 Report. Ms. Borger was airlifted from the scene to Havasu Regional Medical Center in Arizona for
23 initial treatment and stabilization. *See* Exhibit G, Native Air Incident Report, Borger001361-
24 001373. According to the Native Air Incident Report, Ms. Borger was conscious and “recall[ed] all
25 events of the accident.” *Id.* at Borger001363. Upon arrival, it was determined that Ms. Borger
26 should be transferred to University Medical Center (UMC) – Las Vegas, which could better treat her
27

injury. *Id.* at Borger001370. Ms. Borger received treatment at UMC – Las Vegas for eleven days, when she returned home to Minnesota. *See* Exhibit H, UMC Discharge Summary; *see also* Ex. B, 87:18-24. Ms. Borger continued to receive treatment in Minnesota, including treatment related to her prosthetic arm at Advanced Arm Dynamics in Maple Grove, Minnesota. Ex. B, 95:6-13.

III. PLAINTIFFS' LAWSUIT SHOULD BE DECIDED IN AN ARIZONA OR MINNESOTA COURT

A. Nevada's Three-Step *Forum Non Conveniens* doctrine mandates dismissal and refiling in Arizona or Minnesota.

The *forum non conveniens* doctrine allows a party to move to dismiss a lawsuit when it is domiciled in an inconvenient forum and another, more convenient forum exists. It has been codified in Nevada Revised Statutes 13.050(c), which states, in relevant part, that the court may, on motion, change the place of trial “[w]hen the convenience of the witnesses and the ends of justice would be promoted by the change.” N.R.S. § 13.050(c). District courts have wide discretion when considering whether to grant such motions. *Mountain View Rec. v. Imperial Commercial*, 305 P.3d 881, 884 (Nev. 2013).

Nevada has a three-step process for evaluating a motion to dismiss brought on *forum non conveniens* grounds. A court must “first determine the level of deference owed to the plaintiff’s forum choice.” *Provincial Gov’t of Marinduque v. Placer Dome, Inc.*, 350 P. 3d 392, 396 (Nev. 2015) (citing *Pollux Holding Ltd. v. Chase Manhattan Bank*, 329 F.3d 64, 70 (2d Cir.2003)). Second, the court determines “whether an adequate alternative forum exists.” *Id.* (citing *Lueck v. Sundstrand Corp.*, 236 F.3d 1137, 1142 (9th Cir. 2001)). If an adequate alternative forum does exist, the court then weighs public and private interest factors to determine whether dismissal is warranted. *Id.* “Relevant public interest factors include the local interest in the case, the district court’s familiarity with applicable law, the burdens on local courts and jurors, court congestion, and the costs of resolving a dispute unrelated to the plaintiffs [sic] chosen forum.” *Id.* at 397. Private

1 interest factors include “the location of a defendant corporation, access to proof, the availability of
2 compulsory process for unwilling witnesses, the cost of obtaining testimony from willing witnesses,
3 and the enforceability of a judgment.” *Id.* at 398. A court must weigh the public and private
4 interests together when making its determination. *Id.*

5 Applying these principles, this Court should dismiss this case so that Plaintiffs can re-file in a
6 proper forum: Arizona or Minnesota.

7
8 **1. Plaintiffs’ decision to file in Nevada is not entitled to deference because Plaintiffs**
9 **were Minnesota residents at the time of the alleged accident and because all relevant**
10 **events occurred in Minnesota or Arizona.**

11 Nevada courts’ deference to a plaintiff’s choice of forum is substantially reduced if (1)
12 Nevada is not the plaintiff’s home forum, and (2) Nevada lacks a significant connection to the
13 activities set forth in the complaint. “While a plaintiff’s selection of forum is generally due heavy
14 deference, deference is reduced for both foreign plaintiffs and U.S. plaintiffs who sue in other than
15 their home forums.” *Takiguchi v. MRI Int’l, Inc.*, 2015 WL 6661479, at *3 (D. Nev. Oct. 29, 2015);
16 *see also Quixtar Inc. v. Signature Management Team, LLC*, 566 F. Supp. 2d 1205, 1207 (D. Nev.
17 2008) (“Some courts have afforded less deference to a plaintiff’s choice of forum where the plaintiff
18 has not chosen its home forum.”). Deference is further reduced where Nevada lacks a significant
19 connection to the activities alleged in the complaint. *Editorial Planeta Mexicana, S.A. de C.V. v.*
20 *Argov*, 2012 WL 3027456, at *5 (D. Nev. July 23, 2012).

21 First, the Court should give no deference to Plaintiffs’ decision to file in Nevada because
22 Plaintiffs have never resided in Nevada. At the time of the incident, and at the time this case was
23 filed, Plaintiffs were Minnesota residents. *See* Ex. B, 20:14-21:7. After they filed suit, Plaintiffs
24 moved to California, where they still reside, along with their two children. *Id.*, at 10:15-11:4.
25
26
27
28

1 Second, the Court should give no deference to Plaintiffs' decision to file in Nevada because
2 Nevada lacks a significant connection to the activities alleged in the complaint. In fact, Plaintiffs'
3 Complaint makes no reference to any activity occurring in Nevada whatsoever.

4 As explained in Plaintiff's Amended Complaint, the Borger family rented the Polaris RZR
5 from Sandbar in Arizona and the accident occurred on October 18, 2016 near Lake Havasu, Arizona.
6 See Am. Compl. ¶ 6. Nearly every fact witness with relevant information about the Plaintiffs'
7 accident works or resides in Arizona: Sandbar's owners, Sandbar's employees, and first responders
8 from the local police and fire departments.
9

10 When Plaintiffs chose to file this lawsuit in Nevada,¹ there were only two plausible
11 connections between this lawsuit and Nevada: (1) Sandbar is organized under the laws of Nevada,
12 and (2) Ms. Borger received medical treatment in Nevada for 11 days following the incident. Now
13 that Plaintiffs have settled their claims against Sandbar, the only tangential connection Plaintiffs
14 could identify is the fact of Ms. Borger's brief treatment in Nevada.
15

16 The fact that Ms. Borger received medical treatment in Nevada is irrelevant to a *forum non*
17 *conveniens* analysis. First, Plaintiffs' claims against Polaris are not based on the 11 days of medical
18 treatment that Ms. Borger received in Nevada. Rather, their claims are based on allegations of
19 design defect, which they allege caused the incident in Lake Havasu, Arizona. Regarding the
20 design-defect allegations, the Polaris RZR at issue was designed and manufactured in Minnesota by
21 a Minnesota-headquartered company. See Ex. A, ¶¶ 4, 6. Further, Polaris sold the subject vehicle to
22 an Arizona dealership, who in turn sold it to Sandbar.² *Id.* ¶ 8. See also, Exhibit K, Polaris's
23 Answers to Sandbar's Interrogatories, No. 2. All relevant witnesses and documents associated with
24
25

26 ¹ Plaintiffs did not initially name Polaris in their original suit. Plaintiffs added Polaris as a named defendant over eight
27 months after their original filing date.

28 ² See Polaris's Answer to Sandbar Interrogatory No. 2. Polaris sold that subject vehicle to an Arizona-based dealership
(Parker Yamaha/Havasu Motorsports), who in turn sold the vehicle to Arizona-based Sandbar.

1 the Polaris RZR are either in Minnesota or Arizona—not Nevada. *Id.* ¶¶ 5-7. Moreover, all the
2 underlying events that gave rise to the Borgers’ accident took place in Arizona—not Nevada.

3 Likewise, the connection to Nevada is insignificant and immaterial to Polaris’s defenses in
4 this matter. Polaris does not dispute the nature of Ms. Borger’s injury. Ms. Borger undoubtedly
5 sustained injuries to her right arm that required amputation. While Polaris may dispute the
6 Plaintiffs’ computation of damages, it does not intend to dispute the fact of her injuries or the
7 treatment she received in Nevada. Accordingly, the evidence and witnesses located in Nevada are
8 not material to any of Plaintiffs’ claims or Polaris’s defenses. In other words, this case will not turn
9 on testimony from Nevada-based treating physicians because the nature of Ms. Borger’s injury is not
10 in dispute.
11

12 The primary disputes in this lawsuit include: (1) Polaris’s design of the RZR at issue, which
13 took place in Minnesota; and (2) how and why the incident, which took place in Arizona, occurred.
14 The first responders and initial treaters of Ms. Borger, all of which are located *in Arizona*, were first
15 on the accident scene and treated Ms. Borger prior to her being transported to Havasu Regional
16 Medical Center in Arizona for treatment and stabilization. *See* Ex. G. They will likely provide
17 significant testimony about Ms. Borger’s injuries and how the accident occurred. In fact, those first
18 responders and initial treaters interviewed each Borger family member. The statements made by the
19 Borgers in those interviews contradict Mr. and Ms. Borger’s sworn deposition testimony and will be
20 crucial to Polaris’s defenses. Thus, what the Borger family and first responders relayed to the
21 treaters at Havasu Regional Medical Center in Arizona will be important in understanding how the
22 underlying incident occurred—a material fact that is in dispute in this lawsuit.
23
24

25 **2. Both Arizona and Minnesota Are Adequate Alternative Forums.**

26 The second step in Nevada’s *forum non conveniens* analysis is whether an adequate
27 alternative forum exists. An alternative forum is adequate if (1) the defendant is amenable to
28

1 process in the other jurisdiction, and (2) the alternative forum provides the plaintiff with some
2 remedy for his wrong. *Placer Dome*, 350 P. 3d at 399.

3 First, Polaris is amenable to process in both Minnesota and Arizona. Polaris is headquartered
4 in Minnesota, and it sold the subject to an Arizona purchaser. Polaris consents to jurisdiction both in
5 Minnesota and Arizona for purposes of this case and defending the specific allegations in Plaintiffs'
6 Amended Complaint.

7
8 In *Placer Dome*, for example, the Supreme Court of Nevada found that an alternative forum
9 existed in Ontario and British Columbia because the district court conditioned the *forum non*
10 *conveniens* dismissal on the defendants' waiver of personal jurisdiction, statute of limitations, and
11 *forum non conveniens* arguments in the alternative forums. *Id.* Here, Polaris similarly agrees to
12 waive personal jurisdiction, statute of limitations, and any *forum non conveniens* arguments in the
13 alternative forum.

14 Second, both alternative forums of Minnesota and Arizona can provide Plaintiffs with a
15 remedy. There is no statute of limitations barring Plaintiffs' complaint from being filed in either
16 forum, as Polaris agrees to waive any statute of limitations defense that would otherwise be available
17 to it in either forum.³ *See id.* Additionally, both forums provide Plaintiffs with the ability to bring a
18 product liability claim against Polaris for an alleged product defect. *See* Ariz. Rev. Stat. § 12-681(5)
19 ("Product liability action' means any action brought against a manufacturer or seller of a product
20 for damages for bodily injury, death or property damage caused by or resulting from the
21 manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging,
22
23

24
25 ³ Regarding the statute of limitations, Arizona also has a savings statute that would permit Plaintiffs to bring a new
26 lawsuit in Arizona within six months of the dismissal of this case. *See* Ariz. Rev. Stat. § 12-504(A) ("If an action is
27 commenced within the time limited for the action, and the action is terminated in any manner other than by abatement,
28 voluntary dismissal, dismissal for lack of prosecution or a final judgment on the merits, the plaintiff . . . may commence
a new action for the same cause within six months after such termination."); *see also* *Rader v. Greenberg Traurig, LLP*,
352 P.3d 465, 471 (Ariz. Ct. App. 2015) ("Arizona's savings statute applies to an action timely filed in another
jurisdiction and later refiled in Arizona.").

1 labeling, sale, use or consumption of any product, the failure to warn or protect against a danger or
2 hazard in the use or misuse of the product or the failure to provide proper instructions for the use or
3 consumption of any product.”); *Bilotta v. Kelley Co. Inc.*, 346 N.W.2d 616, 621 (Minn. 1984)
4 (analyzing a claim for product defect under strict liability and negligence theories).

5 Thus, because Polaris consents to jurisdiction in either Arizona or Minnesota, and Plaintiffs’
6 claims will not be barred by the statute of limitations, Arizona and Minnesota are adequate
7 alternative forums.
8

9 **3. Public and Private Interests Weigh Heavily In Favor Of Arizona Or Minnesota.**

10 The third and final factor in the *forum non conveniens* analysis requires the Court to weigh
11 the relevant public and private interests. Dismissal for *forum non conveniens* is appropriate only
12 when the factors weigh strongly in favor of another forum. *Placer Dome*, 350 P.3d at 396. In this
13 case, both the private and public interests weigh heavily in favor of this case proceeding in either
14 Arizona or Minnesota.
15

16 **a. The Public Interests Favor Resolution Of This Case In Arizona Or 17 Minnesota**

18 The “public interest factors” that a court considers when deciding a *forum non conveniens*
19 motion include the local interest in the case, the district court’s familiarity with applicable law, the
20 burdens on the local courts and jurors, court congestion, and the costs of resolving a dispute
21 unrelated to the plaintiff’s chosen forum. *Id.* at 397. Here, the public interest factors weigh heavily
22 in favor of dismissing the Nevada action and proceeding in Arizona or Minnesota.

23 First, as discussed above, there is minimal, if any, local interest in this case. The parties’
24 dispute arises out of an accident that occurred in Lake Havasu, Arizona. The product at issue was
25 designed and manufactured in Minnesota, and Polaris sold the vehicle in Arizona. No salient case-
26 related events happened in Nevada. Nevada courts and jurors have little interest in hearing a case
27

1 based on the claims of California (formerly Minnesota) residents for an injury that occurred in
2 Arizona and involves a product designed and manufactured in Minnesota.

3 Second, Arizona law applies to Plaintiffs' claims, and an Arizona court will undoubtedly be
4 more familiar with Arizona law than a Nevada court. In *General Motors Corp. v. Eighth Judicial*
5 *Dist. Court of Nev.*, 134 P.3d 111 (Nev. 2006), the Supreme Court of Nevada clarified Nevada's
6 choice-of-law jurisprudence in tort actions. The Court held that Nevada follows the Second
7 Restatement of Conflict of Laws in applying the local law of the state where the injury occurred,
8 unless some other state has a *more* significant relationship to the occurrence. *Id.* at 117. Here,
9 Arizona is where the Borger family rented the Polaris RZR, where the activities leading up to and
10 causing Ms. Borger's injury occurred, where Mr. Borger was injured, and where she received her
11 initial treatment. The only other jurisdiction that has any relationship to the occurrence is Minnesota.
12 Indeed, Nevada's connection to this case cannot be considered "significant," as its only connection
13 to this case is Ms. Borger's brief treatment. *See* Restatement (Second) of Conflict of Laws, § 145
14 ("Contacts to be taken into account in applying the principles of Section 6 to determine the law
15 applicable to an issue include: (a) the place where the injury occurred, (b) the place where the
16 conduct causing the injury occurred, (c) the domicile, residence, nationality, place of incorporation
17 and place of business of the parties, and (d) the place where the relationship, if any, between the
18 parties is centered.").

19 Third, this case will be a significant burden to and impose significant costs on Nevada courts
20 and jurors. This case involves complex issues of fact and law, and will undoubtedly require multiple
21 weeks, if not a month, for trial. The Nevada court system will undoubtedly incur significant costs
22 while managing this case. Because this lawsuit involves design-defect allegations related to a
23 complex product, there will likely be multiple experts from each party addressing product defect
24 allegations, including engineers, regulatory experts, and human factors experts. There will also be
25 complex product, there will likely be multiple experts from each party addressing product defect
26 allegations, including engineers, regulatory experts, and human factors experts. There will also be
27

1 multiple witnesses from Polaris to testify about the RZR at issue, including those involved in the
2 design and testing of the vehicle, its component parts, and its warnings, as well as those involved in
3 manufacturing, post-sale monitoring, regulatory reporting, and sales and marketing. Moreover,
4 because of the nature of Ms. Borger's injuries, each party will likely produce a life care planner and
5 economist, and potentially a vocational rehabilitation specialist. All these witnesses are in addition to
6 the first responders and initial treating physicians.

7
8 This is an unreasonable burden to place on the Nevada courts and residents when Nevada's
9 connection to the Borgers' claims are tangential, at best. The time and energy of Nevada courts and
10 jurors should be spent on cases brought by Nevada residents or on cases that are appropriately
11 pending in Nevada courts. Therefore, the public interest factors favor dismissal in Nevada. *See*
12 *Placer Dome*, 350 P.3d at 397 (affirming dismissal of a complicated case based on *forum non*
13 *conveniens* because the burdens and costs of resolving the matter, which would require "extensive
14 expert testimony" and lacked any real connection to the forum state, favored dismissal).

15
16 **b. The Private Interests Favor Resolution Of This Case In Arizona Or Minnesota**

17 Among the private interest factors the Court should consider are the location of a defendant
18 corporation, access to proof, the availability of compulsory process for unwilling witnesses, the cost
19 of obtaining testimony from witnesses, and enforceability of a judgment. *Placer Dome*, 350 P.3d at
20 398. Applied here, these factors weigh strongly in favor of resolving this case in either Arizona or
21 Minnesota.

22
23 First, as mentioned above, Polaris is located in Minnesota, where the Polaris RZR at issue
24 was designed and manufactured. Thus, litigating this case in Minnesota would not only provide
25 convenience for Polaris, it would also provide easier access to the relevant evidence and witnesses
26 related to the design and manufacture of the RZR.

1 Second, as discussed in detail above, Plaintiffs' accident occurred in Arizona. The scene of
2 the incident, which the jurors may need to see in person, is in Arizona. The Sandbar witnesses are
3 located in Arizona, and the parties will likely call these witnesses to testify about the Polaris RZR at
4 issue and the details surrounding the Borger's rental of the RZR. Moreover, Officials from the Lake
5 Havasu City Fire Department, the Lake Havasu City Police Department, and the Mohave County
6 Sheriff's Office responded to the scene of the accident. *See* Ex. F. Polaris needs to call those
7 witnesses at trial so they can tell the jury what they observed upon arrival to the incident location.
8 From the incident location, Ms. Borger was airlifted from the scene to Havasu Regional Medical
9 Center in Arizona for initial treatment and stabilization. *See* Ex. G. According to the Native Air
10 Incident Report, Ms. Borger was conscious and "recall[ed] all events of the accident." *Id.* at
11 Borger001363. Thus, individuals both in the air ambulance and at Havasu Regional Medical Center
12 will likely have key information regarding Ms. Borger's recollection of how the incident occurred,
13 as they treated her closest in time to the incident. These witnesses will provide some of the most
14 important testimony in this case, and they are all located in Arizona.

17 Third, given that these important witnesses have no relation to Polaris, Polaris will be unable
18 to summon them for deposition or trial in Nevada. More specifically, as non-party witnesses, they
19 are beyond the subpoena power of the Nevada courts. *See Quinn v. Eighth Judicial Court in and for*
20 *County of Clark*, 410 P.3d 984, 987 (Nev. 2018) ("NRCP 45(b)(2) restricts the service of a subpoena
21 on a nonparty to 'any place within the state.' Thus, as evident from this rule, the subpoena power of
22 Nevada courts over nonparty deponents does not extend beyond state lines.") As a result, Polaris
23 cannot compel these witnesses to attend trial in Nevada. Unless the witnesses agree to travel to
24 Nevada for trial, the parties will be forced to use their deposition testimony as the witnesses'
25 testimony at trial.

1 For instance, Polaris cannot now compel Sandbar's employees to attend trial in Nevada. It
2 will be vital for a trier-of-fact to hear live witness testimony from those who provided safety
3 instructions and orientation to the Borgers, plus the Sandbar employee who gave the Borgers
4 specific instructions about whether the Borgers' children could drive. Cf J. Borger Dep, Ex. D
5 (37:22-38:1) ("A: We received [safety] instructions at Sandbar. Q: Was [Foster around when those
6 instructions were being given? A: Absolutely.") with D. Lehmitz Dep., Ex. E (80:6-11) ("A: The
7 kids were kind of standing off to the side. Q: All right. So the kids weren't given instruction on the
8 walk-around? A. No."); and Ex. D, (48:3-9) ("Q: [W]ere there any discussions [at Sandbar] about
9 who could operate the Ranger with the woman there? A: Not that I'm aware of.") with T.
10 Waddington Dep., Ex. I (32:23-33:13) ("At that time, I asked the ages of the children, just to make
11 sure they were old enough if they were going to drive; if they were not old enough, to explain to
12 them that they could not drive.").

14 Courts have long held that live testimony is preferable to deposition testimony. *Planned*
15 *Parenthood of Columbia/Williamette, Inc. v. Am. Coalition of Life Activists*, 290 F.3d 1058, 1118
16 (9th Cir. 2002) (stating that there is a "historical belief that live testimony better enables the jury to
17 adjudge the credibility of a witness and therefore to determine the weight and import ascribed to the
18 witness's testimony. Deposition testimony is itself only second-best."). Any jury would prefer to see
19 and hear a witness in person so that they can better assess their demeanor and credibility. *In re*
20 *Funeral Consumers Antitrust Litig.*, 2005 WL 2334362, at *5 (N.D. Cal. Sept. 23, 2005). Live
21 testimony is easier to follow and understand than deposition excerpts and the difficulty is made
22 worse by the fact that depositions are often taken before certain facts become important. *Id.*
23 Consequently, depositions may not fully address points decisive to a jury making live testimony
24 always preferable. *Id.* Thus, this case should be tried in a state that can facilitate the live testimony
25 of these witnesses.

1 It is also worth noting that Plaintiffs' lead counsel is based in Houston, Texas, and Polaris's
2 lead counsel is based in Indianapolis, Indiana. Thus, the parties' ability to appear for hearings and
3 trial will not be compromised by the refiling of this case in Arizona or Minnesota. Indeed, lead
4 counsel for both Plaintiffs and Polaris will be required to travel for such appearances—whether they
5 are required to travel to Nevada, Arizona, or Minnesota.

6 Fourth, the enforceability of a judgment is a neutral factor, as a judgment could be equally
7 enforced against Polaris in any of the suggested forums.

8 As the factors in the *forum non conveniens* analysis strongly favor dismissing this action, the
9 interests of Nevada taxpayers are best served by litigating this case in Arizona or Minnesota.
10

11 **B. This Motion Has Been Brought At An Appropriate Time**

12 Polaris's timing in bringing this motion does not impair its merits. In fact, Polaris brought
13 this motion promptly upon Sandbar's settlement with Plaintiffs.

14 There is no time limit for bringing a motion to dismiss for *forum non conveniens*. Nevada
15 Revised Statute Section 13.050 prescribes no time limit for such motion, and courts around the
16 country have held that no such time limit exists. *See, e.g., Yavus v. 61 MM, Ltd.*, 579 F.3d 1166,
17 1173 (10th Cir. 2009) (citing Wright & Miller's Federal Practice and Procedure (3d. Ed. 2008) for
18 the proposition that "there is generally no time limit on when a motion to dismiss for *forum non*
19 *conveniens* must be made, which differentiates it from the time limits on a motion to dismiss for
20 improper venue"); *Aldana v. Del Monte Fresh Produce N.A., Inc.*, 578 F.3d 1283, 1296-97 (11th Cir.
21 2009) (affirming dismissal of an action that had been pending for six years based on *forum non*
22 *conveniens*, citing Wright & Miller's Federal Practice and Procedure (3d. Ed. 2008) for the
23 proposition that "there is generally no time limit on when a motion to dismiss for *forum non*
24 *conveniens* must be made, which differentiates it from the time limits on a motion to dismiss for
25 improper venue"); *Sigalas v. Lido Mar., Inc.*, 776 F.2d 1512, 1520 (11th Cir. 1985) (affirming
26
27
28

1 dismissal based on *forum non conveniens* at the pre-trial conference stage, “after lengthy discovery
2 when [the case] was ready to be tried on the merits”).

3 Although Plaintiffs originally filed their Complaint in March 2017, they did not name Polaris
4 as a defendant until November 2017. Almost no discovery has been completed regarding Plaintiffs’
5 claims against Polaris. Polaris has not produced documents because an appropriate protective order
6 was just recently entered in this case. The only depositions that have taken place in this case are
7 those of the Plaintiffs and Sandbar witnesses. No Polaris representatives or witnesses have been
8 deposed. The discovery that remains—document discovery from Polaris and first responders and
9 depositions of Polaris witnesses, Jade and Foster Borger, and first responders—concerns documents
10 and witnesses that are located in either California, Minnesota, or Arizona. Further, Plaintiffs have
11 not developed their theory of design defect against Polaris, as no expert disclosures have been made,
12 and no expert depositions have been taken. Thus, with respect to each of the remaining claims,
13 significant discovery and expert work has yet to occur.
14

15 Finally, Polaris’s timing in bringing this motion is perfectly reasonable. Polaris brings this
16 motion the same month as Sandbar’s settlement with Plaintiffs. Plaintiffs alleged in their complaint
17 that Sandbar’s principal place of business was in Nevada. *See* Am. Compl. ¶ 2. That fact
18 represented the only viable jurisdictional hook to keep this case in Nevada. Without Sandbar,
19 Nevada lacks any material connection to this case.
20

21 Plaintiffs’ remaining claims focus on Polaris’s design of the RZR and the cause of the
22 Borgers’ accident. Either Arizona or Minnesota would be a more sensible, convenient, and fair
23 forum for the parties to litigate this case. The Court to dismiss this case before the parties engage in
24 inconvenient and costly discovery and before Nevada courts invest significant time, energy, and
25 resources in this case. Plaintiffs can then re-file this lawsuit in either Arizona or Minnesota.
26
27
28

1 **IV. CONCLUSION**

2 For the foregoing reasons, Polaris respectfully requests that the Court dismiss the complaint
3 on the basis of *forum non conveniens* as the facts are clear—either Arizona or Minnesota is a more
4 appropriate forum for this matter to be heard.
5

6 DATED: this 31st day of January, 2019

7 **WILSON, ELSER, MOSKOWITZ,**
8 **EDELMAN & DICKER LLP**

9 By: Jennifer W. Arledge
10 **JENNIFER WILLIS ARLEDGE**
11 Nevada Bar No.: 8729
12 300 South 4th Street, 11th Floor
13 Las Vegas, NV 89101
14 Attorneys for Defendant
15 **POLARIS INDUSTRIES, INC.**

16 **FAEGRE BAKER DANIELS, LLP**

17 By: per aty-JTA
18 Matthew T. Albaugh, Esq. – *pro hac vice pending*
19 Lexi C. Fuson, Esq. – *pro hac vice pending*
20 300 N. Meridian St., Suite 2700
21 Indianapolis, IN 46204
22 Attorneys for Defendant
23 **POLARIS INDUSTRIES, INC.**

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 1st day of ~~January~~ ^{February}, 2019, I served a true and correct copy of the foregoing **DEFENDANT POLARIS INDUSTRIES, INC.'S MOTION TO DISMISS FOR FORUM NON CONVENIENS** 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.
Marisa A. Pocchi, 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

Exhibit “A”

Exhibit “A”

1 **MDSM**
2 **JENNIFER WILLIS ARLEDGE**
3 Nevada Bar No.: 8729
4 **WILSON, ELSE, MOSKOWITZ,**
5 **EDELMAN & DICKER LLP**
6 300 South 4th Street, 11th 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.

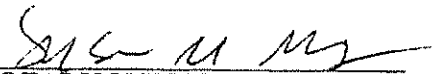
6 7. All Polaris employees with knowledge and information about the Polaris RZR and all
7 relevant Polaris documents are located in Minnesota.

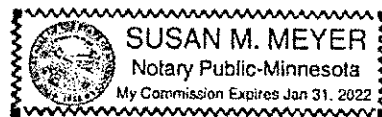
8 8. Polaris sold the vehicle to an Arizona dealership.

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
21
22
23
24
25
26
27
28

Exhibit “B”

Exhibit “B”

Deposition of:

Sherri Borger

Case:

John Borger, et al. v. Sandbar Powersports LLC, et al.
A-17-751896-C

Date:

10/18/2018



OASIS
REPORTING SERVICES

400 South Seventh Street • Suite 400, Box 7 • Las Vegas, NV 89101
702-476-4500 | www.oasisreporting.com | info@oasisreporting.com

COURT REPORTING | NATIONAL SCHEDULING | VIDEOCONFERENCING | VIDEOGRAPHY

1	DISTRICT COURT	
2	CLARK COUNTY, NEVADA	
3	JOHN BORGER and SHERRI)
4	BORGER,)
5	Plaintiffs,)
6	v.) CASE NO.
7	SANBAR POWERSPORTS, LLC,) A-17-751896-C
8	DOES I through X, ROE) DEPT. NO. XXV
9	CORPORATIONS XI through)
10	XX, inclusive, and POLARIS)
11	INDUSTRIES, INC.)
12	Defendants.)
13	SANDBAR POWERSPORTS, LLC,)
14	Counter-Claimant,)
15	v.)
16	JOHN BORGER and SHERRI)
17	BORGER,)
18	Counter-Defendants.)
19	SANDBAR POWERSPORTS, LLC,)
20	Cross-Claimant,)
21	v.)
22	POLARIS INDUSTRIES, INC.,)
23	Cross-Defendants.)
24	DEPOSITION OF SHERRI BORGER	
25	Taken at the Offices of	
	OASIS REPORTING SERVICES, LLC	
	400 South Seventh Street, Suite 400	
	Las Vegas, Nevada 89101	
	On October 18, 2018	
	At 9:47 a.m.	
	Reported by: JENNIFER M. DALY, CRR, RPR, CCR, CSR	
	License No.: 766	

1 APPEARANCES:

2 FARRAR & BALL, LLP

3 BY: WILLIAM R. OGDEN, ESQ.

4 bill@fbtrial.com

5 1010 Lamar Street

6 Suite 1600

7 Houston, Texas 77002

8 713.221.8300

9 On behalf of the Plaintiffs;

10

11 LITCHFIELD CAVO, LLP

12 BY: GRIFFITH H. HAYES, ESQ.

13 hayes@litchfieldcavo.com

14 3993 Howard Hughes Parkway

15 Suite 100

16 Las Vegas, Nevada 89169

17 702.949.3100

18 On behalf of the Defendant/Cross-Claimant

19 Sandbar Powersports, LLC;

20

21

22

23

24

25

1 refreshed, you want to go correct it. The best
2 thing to do is try to correct it when we're on the
3 record because then somebody can ask some follow-up
4 questions about it, okay?

5 A. Yes.

6 Q. Any reason you know of why the deposition
7 can't proceed today?

8 A. No.

9 Q. We know that you're claiming a severe
10 injury in this case.

11 Are you currently on any medication that
12 would affect your ability to give your best
13 testimony?

14 A. No.

15 Q. All right. What is your current
16 residence address?

17 A. 38222 Sherwood, S-H-E-R-W-O-O-D, Street,
18 Murrieta, M-U-R-R-I-E-T-A, California 92562.

19 Q. And who lives with you at that location?

20 A. It is me and my husband, John.

21 Q. Okay. How long have you lived there?

22 A. We moved there June of this year.

23 Q. You have a couple of children, correct?

24 A. Yes.

25 Q. Where do they live?

1 A. My daughter, Jade, just got married. She
2 lives in Vista, and I have a son, Foster.

3 Q. Where does Foster live?

4 A. He is staying with us currently.

5 Q. Okay. Prior to living at that address,
6 where did you live? What state? Let's start there.

7 A. Minnesota.

8 Q. How long did you live in Minnesota?

9 A. We were there for 10 years.

10 Q. What was your address there in Minnesota?

11 A. 3030 Third Avenue NE, Owatonna,
12 O-W-A-T-O-N-N-A, Minnesota 55060.

13 Q. Your date of birth?

14 A. December 5th, 1966.

15 Q. And you're married to John Borger,
16 correct?

17 A. Correct.

18 Q. How long have you been married?

19 A. A long time.

20 Q. Okay. Best estimate?

21 A. February 25th, 1989.

22 Q. By the way, it might be okay if you
23 forgot the date, but if your husband forgets, it
24 won't be okay.

25 Is this your first marriage?

1 MR. ROSS: '98, correct?

2 THE WITNESS: 1999.

3 MR. ROSS: Okay.

4 BY MR. HAYES:

5 Q. Other than speaking with your lawyer, did
6 you do anything else to prepare for the deposition
7 today? For example, did you talk to any friends or
8 review any documents?

9 A. Other than kind of reviewing, in my mind,
10 that's about all I've done.

11 Q. To the best of your knowledge, there
12 weren't any specific documents you looked at?

13 A. No.

14 Q. Okay. So what I'd like to do is go to
15 the -- around the time period in question, which is,
16 again, October of 2016, and tell me a little bit
17 about that time period. Was this a family vacation?

18 A. It was a family vacation.

19 Q. Okay. And approximately when did it
20 start, and where?

21 And by where, I'm just referring to what
22 state.

23 A. Okay. It was October 2016.

24 And -- let's see. And it was
25 Lake Havasu, Nevada, and I just picked that because

1 my parents liked to snowbird, and -- because they're
2 retired, and they had said that that was a spot that
3 they might pick one -- one year, and so I thought we
4 might try that. That's why we went there.

5 Q. Okay. And you were living in Minnesota
6 at that time?

7 A. We were.

8 Q. Okay. And you -- how did you get from
9 Minnesota to Lake Havasu? By flying?

10 A. We drove. We drive everywhere. When you
11 have a family of four, it's cheaper.

12 Q. About how long did it take you to get
13 from Minnesota to Lake Havasu by car, how many days?

14 A. I'm not sure because we actually -- we
15 took it slow because we were -- we were just
16 stopping where we wanted to, and we had different
17 points of interest, and at this particular time, I
18 can't really remember all the different stops we
19 had, but we were interested in stopping different
20 places. Even on the way back, we were going to stop
21 at some different spots, which we didn't get to do.

22 Q. Okay. Again, we know that this happened
23 on October 16th. When did you arrive in
24 Lake Havasu, what day?

25 A. I can't remember. I do know that we

1 A. I -- no. I was flown to Las Vegas
2 myself. John and the kids went to the rental home,
3 got everything, packed up, and then drove from
4 Lake Havasu to Las Vegas.

5 Q. Okay. Right after the accident, did you
6 have any discussions with anybody at Sandbar?

7 A. I don't think I did.

8 Q. Okay. How about -- we know the sheriff
9 came on site. Did you have any discussions with
10 sheriff personnel about the accident or what
11 happened?

12 A. I don't -- I don't recall if I did.

13 Q. Okay. How about emergency personnel, you
14 said they were there pretty quickly. Did you have
15 any discussion with them about what happened?

16 A. If they asked me questions, I don't know
17 what I answered.

18 Q. Okay. Okay. And again, with respect to
19 your time at UMC, we have records, so I know you're
20 referring to those. Whatever they say in terms of
21 how long you were there, that's what it would be,
22 but after leaving UMC, did you then go back home to
23 Minnesota?

24 A. I did.

25 Q. Skipping back a little bit, are you on

1 Q. Better in terms of medication?

2 A. Better answers.

3 Q. Okay. Better answers, okay.

4 A. Maybe medication, maybe something
5 different, if I could.

6 Q. Have you ever used a prosthetic, been
7 fitted for a prosthetic?

8 A. I do have a prosthesis.

9 Q. Prosthesis?

10 A. I went to Advanced Arm Dynamics in
11 Maple Grove, Minnesota. They're a very, very good
12 company.

13 And I do have a prosthetic arm.

14 Q. Where is that today?

15 A. I actually have it at the house where I'm
16 staying.

17 Q. Oh, okay. On a normal day, how often do
18 you wear that?

19 A. It -- I actually need to go and have it
20 re-fitted because I'm having -- what happened is my
21 arm kind of -- this part of my arm shrunk, and this
22 part of my arm got a little bigger, my muscle got a
23 little bigger, so I have to have the silicone
24 re-fitted better, but on a normal part of a day, if
25 it fits really well, I can wear it up to six to

1	CERTIFICATE OF DEPONENT		
2	PAGE	LINE	CHANGE REASON
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13	* * * * *		
14	I, SHERRI BORGER, deponent herein, do		
15	hereby certify and declare the within and foregoing		
16	transcription to be my deposition in said action;		
17	that I have read, corrected, and do hereby affix my		
18	signature, under penalty of perjury, to said		
19	deposition.		
20			
21			
22			
23			
24			
25			

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)
3) ss
COUNTY OF CLARK)

4 I, JENNIFER M. DALY, a duly commissioned
5 and licensed Court Reporter, Clark County, State of
6 Nevada, do hereby certify: That I reported the
7 taking of the deposition of the witness,
8 SHERRI BORGER, commencing on October 18, 2018, at
9 the hour of 9:47 a.m.

10 Prior to being examined, the witness was,
11 by me, duly sworn to testify to the truth. That I
12 thereafter transcribed my said shorthand notes into
13 typewriting and that the typewritten transcript of
14 said deposition is a complete, true and accurate
15 transcription of my said shorthand notes.

16 I further certify that I am not a
17 relative or employee of an attorney or counsel of
18 any of the parties, nor a relative or employee of an
19 attorney or counsel involved in said action, nor a
20 person financially interested in the action.

21 IN WITNESS WHEREOF, I have hereunto set my
22 hand, in my office, in the County of Clark, State of
23 Nevada, this 5th day of November, 2018.

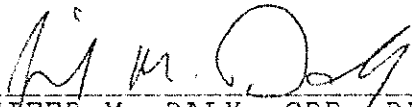
24 
25 JENNIFER M. DALY, CRR, RPR, CCR, CSR
CSR No. 766

Exhibit “C”

Exhibit “C”

PARTICIPANT AGREEMENT, RELEASE AND ASSUMPTION OF RISK***All participants, including drivers AND passengers, must sign this Agreement.***

In consideration of the services of Sandbar Powersports, LLC, a Nevada limited liability company, its agents, owners, officers, volunteers, participants, employees, and all other persons or entities acting in any capacity on its behalf (hereinafter collectively referred to as "Company"), the undersigned (hereinafter, "I" or "participant") hereby agree to release, indemnify, and discharge Company, on behalf of myself, my spouse, my children, my parents, my heirs, assigns, personal representative and estate as follows:

1. Assumption of Risk. I ACKNOWLEDGE THAT MY PARTICIPATION IN ATV/UTV RIDING ACTIVITIES ENTAILS KNOWN AND UNANTICIPATED RISKS THAT COULD RESULT IN PHYSICAL AND EMOTIONAL INJURY, PARALYSIS, DEATH, OR DAMAGE TO ME, TO PROPERTY, OR TO THIRD PARTIES. I UNDERSTAND THAT SUCH RISKS SIMPLY CANNOT BE ELIMINATED WITHOUT JEOPARDIZING THE ESSENTIAL QUALITIES OF THE ACTIVITY. I ALSO UNDERSTAND THAT MY RISK OF INJURY MAY BE INCREASED DUE TO MY OWN PHYSICAL CONDITION, AND THE PHYSICAL EXERTION ASSOCIATED WITH THIS ACTIVITY. I ACKNOWLEDGE THAT ACCIDENTS OR ILLNESS CAN OCCUR IN REMOTE PLACES WITHOUT MEDICAL FACILITIES OR THE AVAILABILITY OF IMMEDIATE MEDICAL ATTENTION IN THE EVENT OF AN INJURY. I EXPRESSLY AGREE TO ACCEPT AND ASSUME ALL OF THE RISKS EXISTING IN THIS ACTIVITY. MY PARTICIPATION IN THIS ACTIVITY IS PURELY VOLUNTARY, AND I ELECT TO PARTICIPATE IN SPITE OF THE RISKS. **THESE RISKS INCLUDE, BUT ARE NOT LIMITED TO:**

slips and falls, riding on uneven and/or snow covered terrain, changing weather conditions and variations in elevation; injury resulting from improper lifting or carrying; injury resulting from being jolted, jarred, bounced, thrown about and otherwise shaken during rides; injury resulting from contact with other passengers or equipment; injury resulting from items or conditions on the trail such as holes, bumps, ruts, obstacles, tree limbs and branches or rocks; injury resulting from loss of control of the vehicle, falls from the vehicle, collision with other vehicles, participants, trees, rocks, and other manmade or natural obstacles; injury resulting from exposure to temperature and weather extremes which could cause hypothermia, hyperthermia (heat related illness), heat exhaustion, sunburn, dehydration; and exposure to potentially dangerous wild animals, insect bites, and hazardous plant life, equipment failure, burns, mechanical and/or equipment problems.

I understand that Company employees have difficult jobs to perform. They seek to provide for the safety of all participants, but their ability to do so is limited by not only the inherent risks and uncertainties related to the use of the Vehicle or the Vehicle itself, weather and conditions, but also by the extent to which participants follow instructions and rules, whether written or orally expressed by Company employees. I agree to follow ALL instructions and rules set forth by the Company and its employees, including, but not limited to those set forth on Exhibit A hereto.

2. Waiver of Claims; Indemnification. I hereby voluntarily release, forever discharge, and agree to indemnify and hold harmless Company from any and all claims, demands, or cause of action, which are in any way connected with my participation in this activity or my use of Company's Vehicles, equipment or facilities, including any such claims which allege negligent acts or omissions of Company.

3. Insurance. I certify that I have adequate insurance to cover any injury or damage I may cause or suffer while participating, or else I agree to bear the costs of such injury or damage myself. I further certify that I am willing to assume the risk of any medical or physical condition I may have.

4. Pregnant Participants. Female drivers/passengers who are, or believe or suspect that they are pregnant, MUST have a doctor's release to participate in said activity prior to riding/driving a rented Vehicle.

5. Miscellaneous. This Agreement shall be governed by and construed under the laws of the State of Arizona, without regard to its conflict of laws principles. This Agreement embodies the entire agreement and understanding among the parties hereto and supersedes any other representations or agreements. This Agreement shall be binding upon the heirs, administrators, personal representatives, successors and assigns of the participant. I hereby waive and agree not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. I agree that if any portion of this agreement is found to be void or unenforceable, the remaining document shall remain in full force and effect. I agree to pay all costs and expenses, including reasonable attorney's fees, incurred in enforcing this Agreement or any right arising out of such breach.

By signing this document, I acknowledge that if anyone is hurt or property is damaged during my participation in this activity, I may be found by a court of law to have waived my right to maintain a lawsuit against the Company on the basis of any claim from which I have released them herein.

I have had sufficient opportunity to read this entire Agreement.
I have read and understood it, and I agree to be bound by its terms.

☒ By checking this Box I am declining to wear a helmet.

☐ By checking this box I will use a helmet that is being provided by "Company".

☐ By checking this Box I will be providing my own personal helmet that is Snell and Dot approved.

Signature of Participant [Signature]

Print Name Jade Berger

Address [Redacted]

Phone [Redacted]

Date 10/18/16

PARENT'S OR GUARDIAN'S ADDITIONAL INDEMNIFICATION
(Must be completed for participants under the age of 18)

In consideration of _____ (print minor's name)

("Minor") being permitted by Company to participate in its equipment and facilities, I further agree to indemnify and hold harmless Company from any and all claims which are brought by, or on behalf of Minor, and which are in any way connected with such use or participation by Minor.

Parent or Guardian: _____

Print Name: _____

Date: _____

PARTICIPANT AGREEMENT, RELEASE AND ASSUMPTION OF RISK***All participants, including drivers AND passengers, must sign this Agreement.***

In consideration of the services of Sandbar Powersports, LLC, a Nevada limited liability company, its agents, owners, officers, volunteers, participants, employees, and all other persons or entities acting in any capacity on its behalf (hereinafter collectively referred to as "Company"), the undersigned (hereinafter, "I" or "participant") hereby agree to release, indemnify, and discharge Company, on behalf of myself, my spouse, my children, my parents, my heirs, assigns, personal representative and estate as follows:

1. **Assumption of Risk.** I ACKNOWLEDGE THAT MY PARTICIPATION IN ATV/UTV RIDING ACTIVITIES ENTAILS KNOWN AND UNANTICIPATED RISKS THAT COULD RESULT IN PHYSICAL AND EMOTIONAL INJURY, PARALYSIS, DEATH, OR DAMAGE TO ME, TO PROPERTY, OR TO THIRD PARTIES. I UNDERSTAND THAT SUCH RISKS SIMPLY CANNOT BE ELIMINATED WITHOUT JEOPARDIZING THE ESSENTIAL QUALITIES OF THE ACTIVITY. I ALSO UNDERSTAND THAT MY RISK OF INJURY MAY BE INCREASED DUE TO MY OWN PHYSICAL CONDITION, AND THE PHYSICAL EXERTION ASSOCIATED WITH THIS ACTIVITY. I ACKNOWLEDGE THAT ACCIDENTS OR ILLNESS CAN OCCUR IN REMOTE PLACES WITHOUT MEDICAL FACILITIES OR THE AVAILABILITY OF IMMEDIATE MEDICAL ATTENTION IN THE EVENT OF AN INJURY. I EXPRESSLY AGREE TO ACCEPT AND ASSUME ALL OF THE RISKS EXISTING IN THIS ACTIVITY. MY PARTICIPATION IN THIS ACTIVITY IS PURELY VOLUNTARY, AND I ELECT TO PARTICIPATE IN SPITE OF THE RISKS. **THESE RISKS INCLUDE, BUT ARE NOT LIMITED TO:**

slips and falls, riding on uneven and/or snow covered terrain, changing weather conditions and variations in elevation; injury resulting from improper lifting or carrying; injury resulting from being jolted, jarred, bounced, thrown about and otherwise shaken during rides; injury resulting from contact with other passengers or equipment; injury resulting from items or conditions on the trail such as holes, bumps, ruts, obstacles, tree limbs and branches or rocks; injury resulting from loss of control of the vehicle, falls from the vehicle, collision with other vehicles, participants, trees, rocks, and other manmade or natural obstacles; injury resulting from exposure to temperature and weather extremes which could cause hypothermia, hyperthermia (heat related illness), heat exhaustion, sunburn, dehydration; and exposure to potentially dangerous wild animals, insect bites, and hazardous plant life, equipment failure, burns, mechanical and/or equipment problems.

I understand that Company employees have difficult jobs to perform. They seek to provide for the safety of all participants, but their ability to do so is limited by not only the inherent risks and uncertainties related to the use of the Vehicle or the Vehicle itself, weather and conditions, but also by the extent to which participants follow instructions and rules, whether written or orally expressed by Company employees. I agree to follow ALL instructions and rules set forth by the Company and its employees, including, but not limited to those set forth on Exhibit A hereto.

2. **Waiver of Claims; Indemnification.** I hereby voluntarily release, forever discharge, and agree to indemnify and hold harmless Company from any and all claims, demands, or cause of action, which are in any way connected with my participation in this activity or my use of Company's Vehicles, equipment or facilities, including any such claims which allege negligent acts or omissions of Company.

3. **Insurance.** I certify that I have adequate insurance to cover any injury or damage I may cause or suffer while participating, or else I agree to bear the costs of such injury or damage myself. I further certify that I am willing to assume the risk of any medical or physical condition I may have.

4. **Pregnant Participants.** Female drivers/passengers who are, or believe or suspect that they are pregnant, MUST have a doctor's release to participate in said activity prior to riding/driving a rented Vehicle.

5. **Miscellaneous.** This Agreement shall be governed by and construed under the laws of the State of Arizona, without regard to its conflict of laws principles. This Agreement embodies the entire agreement and understanding among the parties hereto and supersedes any other representations or agreements. This Agreement shall be binding upon the heirs, administrators, personal representatives, successors and assigns of the participant. I hereby waive and agree not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. I agree that if any portion of this agreement is found to be void or unenforceable, the remaining document shall remain in full force and effect. I agree to pay all costs and expenses, including reasonable attorney's fees, incurred in enforcing this Agreement or any right arising out of such breach.

By signing this document, I acknowledge that if anyone is hurt or property is damaged during my participation in this activity, I may be found by a court of law to have waived my right to maintain a lawsuit against the Company on the basis of any claim from which I have released them herein.

I have had sufficient opportunity to read this entire Agreement.
I have read and understood it, and I agree to be bound by its terms.

- ☒ By checking this Box I am declining to wear a helmet.
☒ By checking this box I will use a helmet that is being provided by "Company".
☐ By checking this Box I will be providing my own personal helmet that is Snell and Dot approved.

Signature of Participant

Print Name

Address

Phone

Date

PARENT'S OR GUARDIAN'S ADDITIONAL INDEMNIFICATION**(Must be completed for participants under the age of 18)**

In consideration of

(print minor's name)

(Minor) being permitted by Company to participate in its equipment and facilities. I further agree to indemnify and hold harmless Company from any and all claims which are brought by, or on behalf of Minor, and which are in any way connected with such use or participation by Minor.

Parent or Guardian

Print Name

Date:

PARTICIPANT AGREEMENT, RELEASE AND ASSUMPTION OF RISK**All participants, including drivers AND passengers, must sign this Agreement.**

In consideration of the services of Sandbar Powersports, LLC, a Nevada limited liability company, its agents, owners, officers, volunteers, participants, employees, and all other persons or entities acting in any capacity on its behalf (hereinafter collectively referred to as "Company"), the undersigned (hereinafter, "I" or "participant") hereby agree to release, indemnify, and discharge Company, on behalf of myself, my spouse, my children, my parents, my heirs, assigns, personal representative and estate as follows:

1. Assumption of Risk. I ACKNOWLEDGE THAT MY PARTICIPATION IN ATV/UTV RIDING ACTIVITIES ENTAILS KNOWN AND UNANTICIPATED RISKS THAT COULD RESULT IN PHYSICAL AND EMOTIONAL INJURY, PARALYSIS, DEATH, OR DAMAGE TO ME, TO PROPERTY, OR TO THIRD PARTIES. I UNDERSTAND THAT SUCH RISKS SIMPLY CANNOT BE ELIMINATED WITHOUT JEOPARDIZING THE ESSENTIAL QUALITIES OF THE ACTIVITY. I ALSO UNDERSTAND THAT MY RISK OF INJURY MAY BE INCREASED DUE TO MY OWN PHYSICAL CONDITION, AND THE PHYSICAL EXERTION ASSOCIATED WITH THIS ACTIVITY. I ACKNOWLEDGE THAT ACCIDENTS OR ILLNESS CAN OCCUR IN REMOTE PLACES WITHOUT MEDICAL FACILITIES OR THE AVAILABILITY OF IMMEDIATE MEDICAL ATTENTION IN THE EVENT OF AN INJURY. I EXPRESSLY AGREE TO ACCEPT AND ASSUME ALL OF THE RISKS EXISTING IN THIS ACTIVITY. MY PARTICIPATION IN THIS ACTIVITY IS PURELY VOLUNTARY, AND I ELECT TO PARTICIPATE IN SPITE OF THE RISKS. **THESE RISKS INCLUDE, BUT ARE NOT LIMITED TO:**

slips and falls, riding on uneven and/or snow covered terrain, changing weather conditions and variations in elevation; injury resulting from improper lifting or carrying; injury resulting from being jolted, jarred, bounced, thrown about and otherwise shaken during rides; injury resulting from contact with other passengers or equipment; injury resulting from items or conditions on the trail such as holes, bumps, ruts, obstacles, tree limbs and branches or rocks; injury resulting from loss of control of the vehicle, falls from the vehicle, collision with other vehicles, participants, trees, rocks, and other manmade or natural obstacles; injury resulting from exposure to temperature and weather extremes which could cause hypothermia, hyperthermia (heat related illness), heat exhaustion, sunburn, dehydration; and exposure to potentially dangerous wild animals, insect bites, and hazardous plant life, equipment failure, burns, mechanical and/or equipment problems.

I understand that Company employees have difficult jobs to perform. They seek to provide for the safety of all participants, but their ability to do so is limited by not only the inherent risks and uncertainties related to the use of the Vehicle or the Vehicle itself, weather and conditions, but also by the extent to which participants follow instructions and rules, whether written or orally expressed by Company employees. I agree to follow ALL instructions and rules set forth by the Company and its employees, including, but not limited to those set forth on Exhibit A hereto.

2. Waiver of Claims; Indemnification. I hereby voluntarily release, forever discharge, and agree to indemnify and hold harmless Company from any and all claims, demands, or cause of action, which are in any way connected with my participation in this activity or my use of Company's Vehicles, equipment or facilities, including any such claims which allege negligent acts or omissions of Company.

3. Insurance. I certify that I have adequate insurance to cover any injury or damage I may cause or suffer while participating, or else I agree to bear the costs of such injury or damage myself. I further certify that I am willing to assume the risk of any medical or physical condition I may have.

4. Pregnant Participants. Female drivers/passengers who are, or believe or suspect that they are pregnant, MUST have a doctor's release to participate in said activity prior to riding/driving a rented Vehicle.

5. Miscellaneous. This Agreement shall be governed by and construed under the laws of the State of Arizona, without regard to its conflict of laws principles. This Agreement embodies the entire agreement and understanding among the parties hereto and supersedes any other representations or agreements. This Agreement shall be binding upon the heirs, administrators, personal representatives, successors and assigns of the participant. I hereby waive and agree not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. I agree that if any portion of this agreement is found to be void or unenforceable, the remaining document shall remain in full force and effect. I agree to pay all costs and expenses, including reasonable attorney's fees, incurred in enforcing this Agreement or any right arising out of such breach.

By signing this document, I acknowledge that if anyone is hurt or property is damaged during my participation in this activity, I may be found by a court of law to have waived my right to maintain a lawsuit against the Company on the basis of any claim from which I have released them herein.

I have had sufficient opportunity to read this entire Agreement.
I have read and understood it, and I agree to be bound by its terms.



By checking this Box I am declining to wear a helmet.



By checking this box I will use a helmet that is being provided by "Company".



By checking this Box I will be providing my own personal helmet that is Snell and Dot approved.

Signature of Participant

Print Name

Address

Phone

Date

PARENT'S OR GUARDIAN'S ADDITIONAL INDEMNIFICATION**(Must be completed for participants under the age of 18)**

In consideration of _____ (print minor's name)

("Minor") being permitted by Company to participate in its equipment and facilities, I further agree to indemnify and hold harmless Company from any and all claims which are brought by, or on behalf of Minor, and which are in any way connected with such use or participation by Minor.

Parent or Guardian:

Print Name:

Date:

EXHIBIT A**Driver/Rider Usage Rules:**

1. I/We will not drink and drive or allow a driver to drink.
2. I/We will only allow the authorized drivers on the Rental Agreement to drive the rental Vehicle.
3. I/We will not over load any part of the rental Vehicle (i.e.: more people on the vehicle than the number of seats on the vehicle), carrying excessive equipment or towing of equipment.
4. I/We will not ride on private property or areas stating that no driving or off road vehicles are allowed.
5. I/we will follow and obey all traffic laws and rules when driving on all paved roads and off roads that are located on BLM land.
6. I/We will not drive the rental Vehicle up or down or drive along the side of a hill that has more than a 15% incline or decline.
7. I/we will not drive the rental Vehicle in a reckless manor, such as (excessive speeding on trails, roads, or sliding the Vehicle sideways or doing donuts or burn outs, or racing or driving the rental Vehicle in an unauthorized area.
8. I/we will only drive the rental Vehicle on designated trails, or previously ridden trails or roads, but not to exceed my driving ability. I/we will not make our own trail. You are required to stay on existing trails only.
9. I/we by Arizona Law am/are required to have all passengers under the Age of 18 wear a helmet.
10. I/we will not ride in any Sand Dune areas. I will only ride in areas the is approved by the rental company.
11. I/we will not jump the rental Vehicle.
12. I/we will not roll or tip the rental Vehicle over.
13. I/we will make sure that all riders/passengers have their seat belts buckled at all times prior to driving the rental Vehicle.
14. I/we will make sure that all riders/passengers wear eye protection at all times prior to driving the rental Vehicle.
15. As the driver of the rental Vehicle I am responsible for everything and anything that happens with respect to the rental Vehicle and its use, and with respect to any passengers.
16. I/we will return the rental vehicle(s) full of fuel or be subject to refueling cost.
17. No Refunds are allowed. Credits only. If negligence or driver is found to be careless no credit will be allowed.
18. Driver Age Limits:
 - A) Polaris RZR 800 – Minimum age is 25 +
 - B) Polaris RZR 900 – Minimum age is 25 +
 - C) Polaris RZR 1000 – Minimum age is 30+ with experience Only and is approved by the rental company.
19. Excessive Usage to the rental Vehicle may, can or will include any of the following.
 - A) Tire/Wheels/Shocks repair or replacement – examples are dented bent, flat or punctured tires, chunked, hub broken, axles, drive shafts, a-arms, tie-rods etc. - Cost start at \$95
 - B) Engine damage or loss, examples - such as knocking, overheating, won't start, has trouble running, Vehicle will not go in forward or reverse or neutral, valve or head issues, transmission or drive gears etc. Parts + Labor Start @(\$95/hr)
 - C) Exterior marks or fender, roll bar damage of any kind, such as scratches, chips, holes, chunks, missing or dented areas and or parts. Repairs Parts Replacement Value
 - D) Interior damage such as cigarette burns, stains of any kind, tears and any broken equipment. Burns \$100 per hole, Fabric or any repairs will be a repair or replacement cost.
 - E) Loss of equipment such as anything that is sent out with the rental Vehicle safety equipment, ropes of any kind, fire extinguisher, flags, air horns, ignition or lock key(s) - Cost of replacement at current value.
 - F) Complete loss of rented equipment such as crashed, stolen, abandonment or non-return at return time. Cost of current replacement value, Abandonment will result in loss of deposit plus damages, non-return will be late charges and without notification within 2 hours will be reported stolen.
 - G) Any additional rented or loaned equipment, such as ropes, ice chest, goggles, and helmets - Replacement cost.
 - H) Recovery Cost \$75 per hour + .99cents per mile + any additional equipment need to recover the rental Vehicle + damages.
 - I) In the event that the machine is tip or rolled over, renter will automatically be charged full replacement cost of the roll cage and any additional damage + labor.

If any of these Driver Usage Rules are violated, the renter of the Vehicle will lose his or her rental deposit and will be responsible for any and all damages arising from such violation, and any participant acting in violation of these Driver Usage Rules will be responsible for any and all damages arising from such violation.

By signing below, participant certifies that participant understands and agrees to all of the terms, rules and conditions set forth in this Agreement without exception. participant affirms that participant is not impaired or under the



1600 Countryshire
Lake Havasu City, AZ 86403
928-854-4242



- G. Use of alcoholic beverages or drugs while riding in or operating the Vehicle;
- H. No use of the rented vehicle in or at a competition track, park or off road race.
- I. Working on or attempting to repair the Vehicle by Renter, any passenger or any other person without the prior approval of the Company;
- J. Failing to notify the Company of any accident involving the Vehicle or injury to any driver or passenger during the operation of the Vehicle.
8. **Damages:** All damages/repairs to any part of the vehicle are the renter(s) responsibility and shall be paid for prior to leaving at the end of the rental. Insurance does not cover flat tires, replacement of the tires, seats, wheels, body parts, steering parts, suspension parts, roof, mirrors or damages to the roll cage.
9. **Condition of Vehicle upon Return:** Renter must return the Vehicle to our rental office, on the date and time specified in this Agreement, and in the same condition that Renter received it, except for ordinary wear. Renter is responsible for all damage to, or loss or theft of, the Vehicle, including damage caused by weather, road conditions and acts of nature, whether or not Renter is at fault. It is Renter's responsibility to thoroughly inspect the Vehicle for any existing damage before the rental commences and to ensure any

Exhibit “D”

Exhibit “D”

Deposition of:

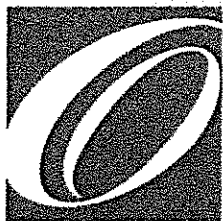
John Borger

Case:

John Borger, et al. v. Sandbar Powersports LLC, et al.
A-17-751896-C

Date:

10/19/2018



OASIS
REPORTING SERVICES

400 South Seventh Street • Suite 400, Box 7 • Las Vegas, NV 89101
702-476-4500 | www.oasisreporting.com | info@oasisreporting.com

COURT REPORTING | NATIONAL SCHEDULING | VIDEOCONFERENCING | VIDEOGRAPHY

1	DISTRICT COURT	
2	CLARK COUNTY, NEVADA	
3	JOHN BORGER and SHERRI)
4	BORGER,)
5	Plaintiffs,)
6	v.)
7	SANBAR POWERSPORTS, LLC,)
8	DOES I through X, ROE)
9	CORPORATIONS XI through)
10	XX, inclusive, and POLARIS)
11	INDUSTRIES, INC.)
12	Defendants.)
13	SANDBAR POWERSPORTS, LLC,)
14	Counter-Claimant,)
15	v.)
16	JOHN BORGER and SHERRI)
17	BORGER,)
18	Counter-Defendants.)
19	SANDBAR POWERSPORTS, LLC,)
20	Cross-Claimant,)
21	v.)
22	Polaris Industries, Inc.,)
23	Cross-Defendants.)
24	DEPOSITION OF JOHN BORGER	
25	Taken at the Offices of	
	OASIS REPORTING SERVICES, LLC	
	400 South Seventh Street, Suite 400	
	Las Vegas, Nevada 89101	
	On October 19, 2018	
	At 9:46 a.m.	
	Reported by: JENNIFER M. DALY, CRR, RPR, CCR, CSR	
	License No.: 766	

1 APPEARANCES:

2 FARRAR & BALL, LLP

3 BY: WILLIAM R. OGDEN, ESQ.

4 bill@fbtrial.com

5 1010 Lamar Street

6 Suite 1600

7 Houston, Texas 77002

8 713.221.8300

9 On behalf of the Plaintiffs;

10

11 LITCHFIELD CAVO, LLP

12 BY: GRIFFITH H. HAYES, ESQ.

13 hayes@litchfieldcavo.com

14 3993 Howard Hughes Parkway

15 Suite 100

16 Las Vegas, Nevada 89169

17 702.949.3100

18 On behalf of the

19 Defendant/Counter-claimant,

20 Sandbar Powersports, LLC;

21

22

23

24

25

1 A. Correct.

2 Q. So why would he have to ask permission to
3 drive the vehicle if you were just renting it?

4 A. We're speculating here. It's a weird
5 line of questioning, I guess. I don't understand
6 the question.

7 Why would he have to ask permission?

8 Q. Right.

9 A. We're speaking of hypotheticals, so I'm
10 not quite sure how to answer that.

11 Q. Okay. Well, how did he end up getting in
12 the driver's seat?

13 A. We stopped, he had to go to the bathroom.
14 As he was going to the bathroom, I noticed a sticker
15 next to the steering wheel that said, the circle
16 with the cross and 16 on it. Knowing my son was 17,
17 when he came back, I said, Hey, would you like to
18 drive it?

19 And he said, Sure.

20 Q. Okay. What instructions did you give
21 him?

22 A. None. We received instructions at
23 Sandbar.

24 Q. Was he around when those instructions
25 were being given?

1 A. Absolutely.

2 Q. How long did that instruction period
3 last?

4 A. I don't recall exact time, but less than
5 five minutes.

6 Q. Okay. After that instruction period, did
7 you feel comfortable on how to operate the subject
8 vehicle?

9 A. Yes.

10 Q. Okay. Would it be fair to say that you
11 would not have taken the vehicle out to the off-road
12 area if you do not feel comfortable; sound fair?

13 A. Sounds fair.

14 Q. Okay. Do you remember asking any
15 questions of the gentleman that was giving you
16 instructions about how to operate the vehicle?

17 A. I don't recall.

18 Q. Okay. Did -- in this five-minute time
19 when the instructions were being provided, was there
20 any discussion about who could operate the vehicle?

21 A. With that gentleman?

22 Q. Yes.

23 A. Not that I'm aware of.

24 Q. Okay.

25 A. We were all there. He was speaking to

1 to the rental contract at issue.

2 Did -- when you were at the counter
3 signing, did you -- were there any discussions about
4 who could operate the Ranger with the woman there?

5 A. Not that I'm aware of.

6 Q. Did you -- did you ask --

7 A. No.

8 Q. -- was it okay for the children to drive?

9 A. No, I did not.

10 Q. When you were at the counter, was there a
11 plan that Foster was going to drive?

12 A. No, there was no plan.

13 Q. So the first time that that came up,
14 again, when he got out and went to the restroom,
15 correct?

16 A. To my recollection.

17 Q. Okay. How about when you were around --
18 when you were getting instructions about the vehicle
19 with the gentleman outside, which I think you said
20 was about five minutes, any discussion there about
21 who could operate the vehicle?

22 A. With that gentleman?

23 Q. Yes.

24 A. No.

25 Q. Okay. Do you have any discussion with

1 a RZR or any of these other side-by-side vehicles
2 like this?

3 A. I don't know what they are. The
4 neighbors across the street had one that looked
5 similar, but it was two front seats, and in the back
6 was like a pickup-type thing where you can throw
7 stuff in with the roll cage on top. They had one of
8 those.

9 Q. Okay. In Minnesota?

10 A. Yes.

11 Q. Had you ever driven that one?

12 A. Me, no.

13 Q. Had you ever ridden in it?

14 A. No.

15 Q. I think your wife said they also had
16 four-wheelers; is that right?

17 A. Yes, I believe so.

18 Q. The handlebars?

19 A. Right.

20 Q. Now, let's turn to Foster.

21 Had Foster ever driven that side-by-side
22 vehicle, to your knowledge?

23 A. To my knowledge, no.

24 Q. Okay. Had he ever ridden in that
25 side-by-side vehicle, to your knowledge?

1 A. To my knowledge -- to my knowledge,
2 seeing, actually seeing him do it, no.

3 Q. Had you ever heard, Hey, Dad, we can have
4 fun -- did he ever tell you about doing it like
5 that?

6 A. He said he's driven one.

7 Q. He said he's driven?

8 A. Right. But I don't know if he had or
9 not, I've never seen him drive one.

10 Q. When you -- when you're talking about
11 one, you mean the side-by-side?

12 A. I don't know which one it was.

13 Q. Do you know whether he was talking about
14 driving a side-by-side or a four-wheeler?

15 A. No.

16 Q. Okay. So is it possible that, as of this
17 vacation, that he -- this was the first time he had
18 ever sat in the driver's seat and tried to drive a
19 side-by-side vehicle like this?

20 A. It's possible.

21 Q. Okay. When you turned over the driving
22 duties to Foster, did you give him any kind of
23 instructions at all?

24 A. No.

25 Q. Did you give him any warnings or advice

1 of any kind?

2 A. Not to my recollection.

3 Q. If you can --

4 MR. ROSS: Do we have the exhibits? I
5 need Exhibit A, the rental agreement.

6 You keep this. I have a copy. Try to do
7 it verbally.

8 BY MR. ROSS:

9 Q. So I want to direct your attention to one
10 page that we didn't talk about, which is SP7.

11 A. Okay.

12 Q. This page -- this page is headed,
13 Participants Agreement, Release and Assumption of
14 Risk, correct?

15 A. Correct.

16 Q. And that's in all caps, underlined, bold
17 at the top of the document, correct?

18 A. Correct.

19 Q. Then at the bottom, there are several
20 signatures.

21 Under signature of participants, or next
22 to it, that's your signature?

23 A. Correct.

24 Q. Okay. And then is that your printing
25 where it says, print name?

1	CERTIFICATE OF DEPONENT			
2	PAGE	LINE	CHANGE	REASON
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13	* * * * *			
14	I, JOHN BORGER, deponent herein, do			
15	hereby certify and declare the within and foregoing			
16	transcription to be my deposition in said action;			
17	that I have read, corrected, and do hereby affix my			
18	signature, under penalty of perjury, to said			
19	deposition.			
20				
21				
22				
23				
24				
25				

JOHN BORGER
Deponent

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)
3) ss
COUNTY OF CLARK)

4 I, JENNIFER M. DALY, a duly commissioned
5 and licensed Court Reporter, Clark County, State of
6 Nevada, do hereby certify: That I reported the
7 taking of the deposition of the witness,
8 JOHN BORGER, commencing on October 19, 2018, at the
9 hour of 9:46 a.m.

10 Prior to being examined, the witness was,
11 by me, duly sworn to testify to the truth. That I
12 thereafter transcribed my said shorthand notes into
13 typewriting and that the typewritten transcript of
14 said deposition is a complete, true and accurate
15 transcription of my said shorthand notes.

16 I further certify that I am not a
17 relative or employee of an attorney or counsel of
18 any of the parties, nor a relative or employee of an
19 attorney or counsel involved in said action, nor a
20 person financially interested in the action.

21 IN WITNESS HEREOF, I have hereunto set my
22 hand, in my office, in the County of Clark, State of
23 Nevada, this 5th day of November, 2018.

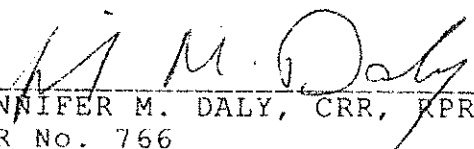
24 
25 JENNIFER M. DALY, CRR, RPR, CCR, CSR
CSR No. 766

Exhibit “E”

Exhibit “E”

Deposition of:

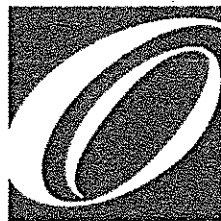
David Lehmitz

Case:

John Borger, et al. v. Sandbar Powersports LLC, et al.
A-17-751896-C

Date:

04/09/2018



OASIS
REPORTING SERVICES

400 South Seventh Street • Suite 400, Box 7 • Las Vegas, NV 89101
702-476-4500 | www.oasisreporting.com | info@oasisreporting.com

COURT REPORTING | NATIONAL SCHEDULING | VIDEOCONFERENCING | VIDEOGRAPHY

1 JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
2 IN AND FOR THE COUNTY OF CLARK
3

4 JOHN BORGER and SHERRI BORGER,)
5 Plaintiffs,) CASE NO.
6 vs.) A-17-751896-C
7 SANDBAR POWERSPORTS LLC,) DEPT. NO. XXV
8 DOES I through X; ROE)
9 CORPORATIONS XI through XX,)
inclusive, and POLARIS)
INDUSTRIES, INC.,)
10 Defendants.)
11)
12)

13 VIDEOTAPED DEPOSITION OF DAVID LEHMITZ

14 Taken on Monday, April 9, 2018

15 At 10:37 a.m.

16 At the Law Offices of Litchfield Cavo, LLP

17 3993 Howard Hughes Parkway

18 Las Vegas, Nevada
19
20
21
22
23
24

25 REPORTED BY: DANA TAVAGLIONE, RPR, CCR 841

1 APPEARANCES:

2

3 For the Plaintiffs:

4 KASTER, LYNCH, FARRAR & BALL, LLP
5 BY: KYLE W. FARRAR, ESQ.
6 1010 Lamar
7 Suite 1600
8 Houston, Texas 77002
9 713.221.8300
10 kyle@thetirelawyers.com

8

9 For the Defendant Sandbar Powersports, LLC:

9

10 LITCHFIELD CAVO, LLP
11 BY: GRIFFITH H. HAYES, ESQ.
12 3993 Howard Hughes Parkway
13 Suite 100
14 Las Vegas, Nevada 89169
15 702.949.3100
16 hayes@litchfieldcavo.com

13

14 For the Defendant Polaris Industries:

15 JOHNSON, TRENT & TAYLOR, LLP
16 BY: T. CHRISTOPHER TRENT, ESQ.
17 919 Milam Street
18 Suite 1700
19 Houston, Texas 77002
20 713.222.2323
21 ctrent@johnsontrent.com

19

20

21

22

23

24

25

1 Q. All right.

2 A. And in the -- in the yard.

3 MR. TRENT: Okay. We're going to mark
4 those as --

5 THE REPORTER: Nine.

6 MR. TRENT: Nine.

7 THE WITNESS: So hand it to her.

8 MR. TRENT: I'll just write it at the top,
9 and then we'll mark it.

10 (Whereupon Lehmitz/Plaintiffs' Exhibit
11 No. 9 was marked for identification.)

12 BY MR. TRENT:

13 Q. Come back to those in a second.

14 A. Uh-huh.

15 Q. Sorry about that.

16 So if we could, Mr. Lehmitz, back to the day
17 of the incident in October of 2016, you did a
18 walk-around. You took those photographs we marked as
19 Exhibit 9?

20 A. Uh-huh.

21 Q. Is that -- is that a "yes"?

22 A. Yes.

23 Q. And then you said you spoke to Mr. Borgers
24 about the vehicle?

25 A. Yes, sir.

1 Q. Did you speak to all of the Borgers about
2 the vehicle or just Mr. Borgers?

3 A. I believe it was Mr. Borger, and his wife
4 was present.

5 Q. All right.

6 A. The kids were kind of standing off to the
7 side.

8 Q. All right. So the kids weren't given
9 instruction on the walk-around?

10 A. No. Because I -- I normally take the
11 driver or whoever is the sig- -- the signator.

12 Q. All right. After the walk-around, you had
13 Mr. Borger sit in the vehicle?

14 A. Correct.

15 Q. And did you have the kids sit in the
16 vehicle?

17 A. Not while we did the walk-around because
18 they were still off to the side, and he was -- I
19 can't remember if he was with Tracy, the son, or
20 with -- or with Taylor, getting fitted for a helmet.

21 Q. So during your discussion about how to put
22 the vehicle into park, reverse, forward, high, low,
23 four-wheel drive, that was with Mr. Borgers alone?

24 A. And -- and his wife.

25 Q. His wife?

1 A. Yes.

2 Q. But the son was not present?

3 A. I don't believe so, no.

4 Q. All right. And -- and you didn't actually
5 instruct the son on how to operate the vehicle?

6 A. No.

7 Q. Correct?

8 A. Yes, that's correct. I did not.

9 Q. All right. I wasn't sure I understood your
10 answer to a question earlier.

11 After Sandbar bought this vehicle, it was
12 modified to add, I think the soft top; I think you
13 mentioned half windshield, and the lower door panels.

14 A. Yes.

15 MR. HAYES: Calls for speculation. Vague
16 and ambiguous.

17 BY MR. TRENT:

18 Q. Were you part of -- sorry. Were you part of
19 that decision --

20 MR. HAYES: Asked and answered.

21 BY MR. TRENT:

22 Q. -- as to which accessories to buy for the
23 Polaris?

24 A. No.

25 Q. Okay. You were aware that that occurred

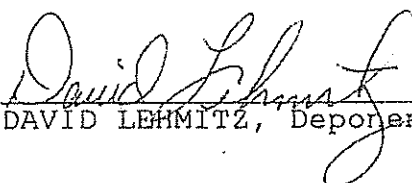
1 CERTIFICATE OF DEPONENT

2 PAGE LINE CHANGE REASON

3 _____
4 _____
5 _____
6 _____
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____

16 * * * * *

17 I, DAVID LEHMITZ, deponent herein, do hereby
18 certify and declare the within and foregoing
19 transcription to be my deposition in said action;
20 under penalty of perjury; that I have read,
21 corrected and do hereby affix my signature to said
22 deposition.

21  5/17/2018
22 DAVID LEHMITZ, Deponent Date

23
24
25

I, Dana J. Tavaglione, a Certified Court Reporter, licensed by the State of Nevada, do hereby certify:

That I reported the deposition of the witness, DAVID LEHMITZ, commencing on April 9, 2018, at 10:37 a.m.;

That prior to being examined, the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth; that I thereafter transcribed my related shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate record of testimony provided by the witness at said time.

I further certify (1) that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel involved in said action, nor a person financially interested in the action; and (2) that pursuant to Rule 30(e), transcript review by the witness was requested.

IN WITNESS WHEREOF, I have hereunto set my hand,
in my office in the County of Clark, State of
Nevada, this 23rd day of April 2018.

DANA J. TAVAGLIONE, RFR, CCR NO. 841

Exhibit “F”

Exhibit “F”

PERTAIN TO : **Sherri Borger**

FROM : **Records Mohave County Sheriff's Office**
P.O. Box 1191
Kingman, AZ 86401
Accident

DELIVER TO : **Kyle Farrar**
Farrar & Ball, LLP
1010 Lamar, Suite 1600
Houston, TX 77002

Order No. 207260.1



MOHAVE COUNTY SHERIFF'S OFFICE



DOUG SCHUSTER
SHERIFF

February 27, 2017

Stratos Records
Attn.: Melisa Funez
4299 San Felipe Street, Ste. 350
Houston, TX 77027

To Whom It May Concern:

As on file with the Mohave County Sheriff's Office the attached are true and exact copies of department report 16-037887 involving a SHERRI BORGER with our agency.

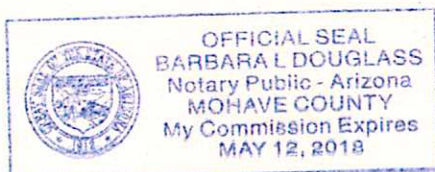
Tiffany Mitchell

Tiffany Mitchell
Office Assistant Sr. / Records
Mohave County Sheriff's Office
P.O. Box 1191
Kingman AZ 86402
928-753-0758

State of Arizona)
County of MOHAVE)

On this 27th day of February, 2017, before me personally appeared TIFFANY MITCHELL, whom I know personally, and acknowledged that he/she executed the same.

Barbara L. Douglass
Notary Public



600 West Beale Street • P.O. Box 1191 • Kingman, Arizona 86402
PHONE: (928) 753-0753 • FAX: (928) 753-0765



Mohave County Sheriffs Office

Incident Report for Incident 16-037887

INCIDENT INFORMATION

Incident Number: 16-037887
Nature: Traff. Incident
Location of Incident: -114.254380, 34.530314; AREA OF
City: LAKE **State:** AZ **Zip:** 86403
HAVASU CTY
Offense Codes: TINC **Reported:** TINC **Observed:**
Circumstances:
Responding Officers: Kole, J. HJ11 Tarkowski, L. McEuen, R. J.
Responsible Officers: Kole, J. **Agency:** MOH **CAD Call ID:** 1682046
Received By: Shelby, D. **Last:** 11:52:44 10/18/16 **98**
Radiolog:
How Received: T Telephone **Clearance:** COM
When Reported: 10:25:23 10/18/16 **Disposition:** INF **Disp. Date:** 11/04/16
Occurred between: 10:25:23 10/18/16 and 10:25:23 10/18/16
Judicial Sts: **Misc Entry:** JK92

Modus Operandi:

Description:

Method :

INCIDENT INVOLVEMENTS

INVOLVEMENTS:

Date	Type	Description	Relationship
10/26/16	Name	[REDACTED]	PASSENGER
10/26/16	Name	BORGER, JADE MICHELLE	PASSENGER
10/25/16	Name	BORGER, JOHN FOSTER	DRIVER
10/25/16	Name	BORGER, SHERRI LYNN	PASSENGER
10/25/16	Vehicle	BLK 2017 POL RZR 900 AZ	INVOLVED
10/18/16	Cad Call	10:25:23 10/18/16 Traff. Incident	Initiating Call
10/31/16	Evidence	PHOTO CD JCK1	Evidence Incident

11/08/16

INCIDENT NARRATIVE

Investigation Narrative

Response:

On 10-18-16 at approximately 1025 hours I was advised by dispatch of a traffic incident involving a quad that had flipped over causing an occupant's arm to be severed that had occurred in the desert area off of Bison Road approximately 1/4 mile out. Dispatch advised that Lake Havasu Fire was responding to try and locate the subjects involved. I requested that Lake Havasu PD also respond to assist in the report.

On scene observations:

Upon arriving to the area off of Bison road approximately 1/2 mile into the desert, I observed Lake Havasu City Fire Department treating several subjects that appeared to have been involved in the report. There were several people standing in the area along with several UTV's that were parked in the area.

I proceeded over to an older male subject who was seated against the driver's side front wheel of a RZR, who was identified by Fire Department Staff as being the driver involved.

I asked the male subject for his name and he provided me John Borger, DOB [REDACTED] John, when asked also provided me with his address in Minnesota. I asked him what happened and he advised that he was driving the RZR around and at one point while driving the RZR he turned left, and the machine rolled over on its right side. His wife was seated in the right front seat and her arm was pinned under the machine. They lifted the machine up and back onto the wheels. It should be noted that during this time of talking with John, he was being cared for by medical staff and his statements were very brief.

I asked John if everyone was wearing their seatbelts and he advised that they were. I asked him how long he had owned the RZR and he advised "ten." I asked him if he meant ten months and he corrected me and said ten minutes, as he and the family had just rented it. John further advised that it was essentially inexperience in driving the machine that was the cause of the incident. I asked John how fast he was going when the incident occurred and he wasn't sure. I asked him if he was going 45mph or if he was going 20mph and he advised it was maybe 20mph. John seemed to be in shock and I saw no sign that he was under any influence that might have contributed to the accident.

I next made contact with Lake Havasu City PD officer Murdock, who had provided me with the information for the other occupants including John's two

11/08/16

children who were riding in the back and for his wife Sherri who was riding in the front passenger seat.

While on scene I observed a Lifeflight Helicopter arrive on scene in the area. Sherri Borger was loaded up on the helicopter and was taken to HRMC for treatment. Prior to her being loaded onto the helicopter, while she was secured on a backboard I observed her right arm to be bandaged up near the area of her elbow. Sherri Borger asked the Fire Personnel with her if they had found her hand and the fireman advised her that they did. It appeared that Sherri could not feel her right hand (Lake Havasu Fire Department run #16-007077).

I observed the area where the RZR was parked to be made up of rocks and dirt. The area was open with no sight obstructions and the area was seemingly flat with no hills or embankments.

Passenger information:

I spoke briefly with the two rear occupants of the RZR involved, identified as Jade Michelle Borger who, according to Murdock's conversation with them, was seated in the rear left position and her brother [REDACTED] who was seated in the right rear position. These positions were documented by Officer Murdock with Lake Havasu Police Department. Both subjects seemed in shock and were not talking much.

I explained to [REDACTED] the information that I had learned, essentially that their father was driving in the area and the vehicle rolled over in another area while it was travelling maybe 20-30 mph. [REDACTED] corrected me during my conversation with him as I had believed that the vehicle rolled over in a different area then its current location. [REDACTED] advised that the vehicle had rolled in its current location, then they rolled the vehicle back over onto the wheels to get his mother's arm out from the vehicle. Both [REDACTED] and Jade seemed to be shaken from the event.

Involved vehicle owner:

I next made contact with the owner's representative for the vehicle, Tayler Paul Worthen with Sandbar Motorsports. I was advised that the driver John Borger had called the rental agency and informed them of the accident just after it had occurred. John was advised to open the glove box and activate the GPS tracker so that 911 could be dispatched to the area. Sandbar Motorsports then responded to retrieve the vehicle.

I was advised by the employee of Sandbar Motorsports that when the family rented the machine, Sherri and John did not want helmets but the 17 year old boy, [REDACTED] was required to have a helmet rented to him. When the family left the rental facility, they were explained that if there was an area that was unfamiliar to them that looked difficult, to get out and walk the area first and

11/08/16

then to drive the machine into the area at a slow pace.

Pictures were taken of the vehicle and the vehicle bearing Arizona registration GMC78G was released to Sandbar Motorsports on scene. It was removed from the desert by their employees via trailer.

Involved vehicle information:

Vin#4XAVCE871HB682552
Year-2017
Make-Polaris RZR
Owner-Sandbar Motorsports, PO box 3222 LHC, AZ. 86405
EXP-09-30-17
Plate- Az-GMC78G

Damage:

Damage was observed to the right side of the 2017 RZR including both passenger side tires being off of the wheel bead and flat as well as scraping along most of the right side of the vehicle. Damage was also observed to the front passenger side fender area.

Conclusion:

In looking at the scene after arriving, tracks were apparent in the dirt area where the vehicle was at rest that suggested that the vehicle was travelling Northwest and then turned left, consistent with what John Borger had told me. It appeared that the vehicle then rolled onto its right side. According to the statements that were given along with the injuries observed to Sherri Borger, it is believed that Sherri's arm was outside of the half door when the vehicle rolled over onto the passenger side. Several factors, possibly the weight of the vehicle along with its momentum pinned her arm in between the passenger side front door and the ground, nearly severing it.

This incident occurred at GPS location -114.254380, 34.530314 outside of the Lake Havasu City limits in Mohave County, the jurisdiction of the Mohave County Sheriff's Office. This incident occurred in an area of the desert that contained no county maintained roads and because of so, this report will be made for information purposes only and no Arizona State Accident Form will be completed in regards to this report.

Case status:

11/08/16

Closed.

Sgt. John Kole, S-92
10-26-16

11/08/16

INCIDENT SUPPLEMENTAL NARRATIVE

REQ. BY: SANDBAR PWER SPORTS LLC

11/08/16

INCIDENT SUPPLEMENTAL NARRATIVE

Supplement by Sgt. John Kole, S-92

On 10-25-16 I telephoned HRMC and inquired as to if Sherri Borger was still admitted into the hospital, which I was advised she was not. On 10-25-16 at approximately 0950 hours I attempted telephonic contact with John Borger at his telephone number that he provided me in the initial interview with him. I proceeded to leave a message for John to return my call.

11/08/16

INCIDENT SUPPLEMENTAL NARRATIVE

Supplement by Sgt. John Kole, S-92

On 10-25-16 at approximately 1100 hours I made telephonic contact with Sherri Borger, who was in the hospital in Las Vegas. She advised that the medical staff was unable to re attach her hand and that she was doing better, and was expected to be released from the hospital in maybe three or four days.

I advised Sherri that I wanted to confirm the seating position of her children prior to the accident in the RZR. Sherri advised that she was not really certain and she advised that she would give me her husband's cell phone number so that I could contact him, [REDACTED] Upon calling the number I left a message on his voicemail to contact me when it was convenient.

11/08/16

INCIDENT SUPPLEMENTAL NARRATIVE

Supplement by Sgt. John Kole, S-92

On 10-26-16 after numerous attempts to contact John Borger, I telephoned his number [REDACTED] and he proceeded to answer. I advised John that I was calling to confirm the seating position of his children prior to the accident. I further informed John that I believed that initially when the family had left the rental facility, he was driving, his daughter was seated directly behind him, his wife was seated in the front passenger position and his son was seated in the right rear of the vehicle.

John advised that when the family had arrived in the area out off of Bison Road, the family noticed a sticker on the RZR's dash that said that the operator had to be over 16 years old to operate. That was when his son and he switched positions. His son began driving and his daughter was seated behind his son. John was seated in the rear of the RZR at this time next to his daughter on the passenger side in the rear. His son drove for just a few minutes on the flat area where the incident occurred. He remembered his son turning the vehicle left at one point and the vehicle's tire perhaps caught a rock and went over onto its right side. The vehicle during the time of the accident was operating somewhere around 25-30 miles per hour. John's wife was then airlifted to HRMC in Havasu and then later was airlifted to University Medical Center in Las Vegas, where they were at currently being treated.

I asked John about the helmet that was found in the vehicle. He advised that the rental agency helped him secure the helmet in the vehicle and it was intended for his son, who was under 18 but the helmet was never used.

I asked John how much experience his son had operating a vehicle like the RZR and he advised that he had probably more than John, but still had very little total experience operating a machine like that.

John and I talked a little further about the incident and he advised that when I had spoken with him on scene, he was "out of it" and was probably in shock and that was why he was transported to the hospital.

11/08/16

INCIDENT SUPPLEMENTAL NARRATIVE

Supplement by Sgt. John Kole, S-92

On 11-04-16 at approximately 0715 hours I made telephonic contact with John Borger as he had earlier left me a message regarding how he would obtain the rental documents from the RZR he had rented.

While talking with John he explained that he and his family were back in Minnesota recovering. I further advised John that initially after the incident, he had essentially informed me that he was driving the vehicle and I wanted to confirm that he in fact was not driving when the incident occurred.

John explained that when the vehicle hit the dirt, he saw the sticker near the steering wheel that explained that no one under 16 could drive the vehicle. His son who is 17, went to the bathroom and then switched positions with John, and his son drove for a little while until the accident. John further explained that he didn't remember what he had told me the day of the incident, because of being treated and the shock of going through the incident with his family. I explained to John that no one was in trouble with me and that I just wanted to make sure I understood what occurred accurately. I further informed John that according to Murdock's notes, both kids said that they were seated in the rear of the RZR. I asked John if there would be a reason why maybe the initial information was not accurate, perhaps because his son thought he might be in trouble for being under 18 and driving the vehicle. John advised that he wasn't sure because he was not present when I spoke with his kids. I explained to John that I didn't ask many questions of his children at the time because of them just going through that experience, and perhaps I misunderstood some of the information relayed to me. John further advised that the information he had relayed to me during our previous conversation on the phone was accurate, where his son was driving the vehicle when the incident occurred.

I advised John that if he needed anything to contact me at the sheriff's office. I further explained to John that the vehicle was released to the owner on scene and that I assumed that if there was any personal belongings in the vehicle prior to its removal from the desert, they would have been removed by his children. I further recommended that John contact Sandbar Motorsports to obtain any items he was missing.

11/08/16

Exhibit “G”

Exhibit “G”



PRID:42764056	Flight Number:16-189964	Trauma/Hospital #:
Service: Native Air - Arizona	Date: October 18, 2016	
Base: Lake Havasu City	Flight Plan: VFR	
Unit: Native S-Lake Havasu City	Team: Critical Care	
Tail/Reg: Other	Crew 1:Pilot	
Dispatched As: Trauma, Adult	*Reeder, Steve M.	
Mass Casualty: No	EMT-P	
Vehc. Disp. GPS: 34.479543,-114.33846	Crew 2:Primary Caregiver	
Type of Svc: Interfacility Unscheduled	*Jenkins, Victoria	
Response Code: Emergent	RN	
Mode to Ref: Not Applicable	Crew 3:Secondary Caregiver	
Outcome: Treated, Transported	Stevenson, Skylar (Pilot)	
	* designates an ALS Provider	
	Mode to Rec: Not Applicable	
Ref Name: Havasu City Fire Dept	Receiving: Hospital	
Location: 4 miles In the desert East of Bison	Havasu Regional Medical Center	
Or	Emergency Department	
Bison Dr	101 Civic Center Lane	
Lake Havasu City, AZ 86404	Lake Havasu City, AZ 86403	
United States	928-855-8185	
Ref. Zip: 86404	Dest. GPS: 34.480282,-114.3388668	
	Rec. MD: Dr Butler	

Last Name: Borger First: Sherril Middle: L
 Address: [REDACTED]
 City: [REDACTED] ST: [REDACTED] Zip: [REDACTED]
 County: Steele
 Country: United States
 DOB: [REDACTED]
 Age: 69y Sex: F Weight: 66 kg
 Height: 57 in ISW: 11.6
 Subscriber: No
 Race: White, non-Hispanic
 Billing Information:
 None Given

Times	
Onset:	10:30
Received:	10:35
Notified:	10:36
Standby:	10:38
Dispatch:	10:50
Acknowledged:	10:50
EnRoute:	10:55
At Ref:	11:05
At Patient:	11:06
Leave w/ Pt:	11:19
Leave Ref:	11:14
At Rec:	11:17
Transfer Care Dest:	11:20
Available:	11:35
Max Alt:	2000

Scene Information																								
Patient Belongings: Pts clothing which remains on pt, but cut by EMS.																								
Chief Complaint (Category: Trauma, Adult)																								
right arm partial amputation																								
Anatomic Location: Extremity - Upper																								
History of Present Illness																								
Pt is a passenger in large 4 seat ATV, at around 1030 today pts ATV rolled onto its passenger side. Pt states she is a restrained passenger. Pt states she stuck her arm out to protect herself. Pts right arm was caught between the ATV and sandy/dirt ground. EMS was required to tip the ATV back on its wheels to extricate pts right arm. EMS applied CAT tourniquet with some bleeding through bulky dressing applied by EMS noted. No other injuries noted to pt. Pt is fully immobilized on back board by EMS upon flight crews arrival. Rapid air transport is requested by EMS per pts condition and to reduce the risk of loss of right extremity, mortality and morbidity. Rapid air transport time of <5 minutes vs >25 minutes by ground EMS. Pt was taken to the closest facility with trauma services, blood products and surgeon available.																								
Medical History	Current Medications	Allergies																						
None Obtained From: Not Recorded	None	None																						
Neurological Exam																								
Level of Consciousness: Alert	Loss of Consciousness: No																							
Chemically Paralyzed: No																								
Neurological Present: Normal																								
Mental Present: Oriented-Person, Oriented-Place, Oriented-Time																								
<table border="1"> <tr> <th colspan="2">Pupils</th></tr> <tr> <th>Left</th><th>Right</th></tr> <tr> <td>Size: 3mm</td><td>3mm</td></tr> </table>		Pupils		Left	Right	Size: 3mm	3mm	<table border="1"> <tr> <th colspan="4">Glasgow Coma Scale</th></tr> <tr> <th>E</th><th>V</th><th>M</th><th>Tot</th></tr> <tr> <td>Int: 4</td><td>5</td><td>6</td><td>= 15</td></tr> <tr> <td colspan="4">Qual: Legitimate values w/o interventions such as intubation and sedation</td></tr> </table>	Glasgow Coma Scale				E	V	M	Tot	Int: 4	5	6	= 15	Qual: Legitimate values w/o interventions such as intubation and sedation			
Pupils																								
Left	Right																							
Size: 3mm	3mm																							
Glasgow Coma Scale																								
E	V	M	Tot																					
Int: 4	5	6	= 15																					
Qual: Legitimate values w/o interventions such as intubation and sedation																								
<table border="1"> <tr> <th>Motor</th><th>Sensory</th></tr> <tr> <td>LA: Normal</td><td>Normal</td></tr> <tr> <td>RA: Flaccid</td><td>Normal</td></tr> </table>		Motor	Sensory	LA: Normal	Normal	RA: Flaccid	Normal																	
Motor	Sensory																							
LA: Normal	Normal																							
RA: Flaccid	Normal																							

React: Reactive Reactive	LL: Normal Normal	RL: Normal Normal	
--------------------------	-------------------	-------------------	--

Airway	Respiratory
Status: Patent	Effort: Normal Sounds: L: Clear R: Clear Oxygen: 10 lpm via NRS Performed By: EMS Provider Resp. Exam: Spontaneous

Cardiovascular
JVD: Not Appreciated Cap. Refill: Less than 2 Seconds Edema: Not Appreciated

Pulses												
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 50%;"></th> <th style="width: 25%; text-align: center;">Left</th> <th style="width: 25%; text-align: center;">Right</th> </tr> <tr> <td>Carotid:</td> <td></td> <td></td> </tr> <tr> <td>Radial:</td> <td style="text-align: center;">Normal</td> <td style="text-align: center;">Absent</td> </tr> <tr> <td>Femoral:</td> <td></td> <td></td> </tr> </table>		Left	Right	Carotid:			Radial:	Normal	Absent	Femoral:		
	Left	Right										
Carotid:												
Radial:	Normal	Absent										
Femoral:												

Motor Vehicle Incident
Involved: 1 Location of Pt in Vehicle: Front Seat-Right Side Vehicle Impact: 3 Extrication Required: No Was ACN Used: No

Injury Details
Reason for Encounter: Injury/Trauma Trauma Center Criteria: - Amputation proximal to wrist or ankle Drugs/Alcohol?: Intentional: No Work Related: No Injury Cause: Motor Vehicle Loss Of Control, Passenger Injured Mechanism: MVC - Off road Equipment: Shoulder And Lap Belt Risk Factors Present: Rollover/Roof Deformity

Initial Physical Findings
Assessment Head: Normal Findings: Normal cephalic, no deformity Neck Findings: No Deformity Chest Findings: Equal rise and fall Abdominal Appearance: Not Distended Abdominal Palpation: Soft, non-tender Abdominal Bowel Sounds: Not assessed Pelvis Findings: Intact and Stable Back Findings: Deferred Left Arm: Normal Right Arm: Abnormal Pulse, Lacerations, Deformity Left Leg: Normal Skin Findings: Pink, warm and dry

Fluids Before & During Transport	IVs Prior to Assessment																				
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 50%; text-align: center;">INTAKE</th> <th style="width: 50%; text-align: center;">OUTPUT</th> </tr> <tr> <td style="text-align: center;">Before During</td> <td style="text-align: center;">Before During</td> </tr> <tr> <td>CRYS: 200 mL 50 mL</td> <td>EPL: mL mL</td> </tr> <tr> <td></td> <td>UO: mL mL</td> </tr> </table>	INTAKE	OUTPUT	Before During	Before During	CRYS: 200 mL 50 mL	EPL: mL mL		UO: mL mL	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 10%;">IV#</th> <th style="width: 10%;">Gauge</th> <th style="width: 20%;">Site</th> <th style="width: 10%;">Solution</th> <th style="width: 10%;">Rate</th> <th style="width: 40%;">Performed By</th> </tr> <tr> <td style="text-align: center;">1</td> <td style="text-align: center;">18</td> <td style="text-align: center;">Left AC</td> <td style="text-align: center;">NS</td> <td style="text-align: center;">w/o</td> <td>EMS Provider</td> </tr> </table>	IV#	Gauge	Site	Solution	Rate	Performed By	1	18	Left AC	NS	w/o	EMS Provider
INTAKE	OUTPUT																				
Before During	Before During																				
CRYS: 200 mL 50 mL	EPL: mL mL																				
	UO: mL mL																				
IV#	Gauge	Site	Solution	Rate	Performed By																
1	18	Left AC	NS	w/o	EMS Provider																

Medications / Infusions Prior to Assessment												
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 10%;">Time</th> <th style="width: 20%;">IV# / Other Route</th> <th style="width: 20%;">Medication</th> <th style="width: 20%;">Concentration</th> <th style="width: 10%;">Dose</th> <th style="width: 20%;">Performed By</th> </tr> <tr> <td></td> <td>IV#1</td> <td>Pentanyl</td> <td></td> <td>100 mcg</td> <td>EMS Provider</td> </tr> </table>	Time	IV# / Other Route	Medication	Concentration	Dose	Performed By		IV#1	Pentanyl		100 mcg	EMS Provider
Time	IV# / Other Route	Medication	Concentration	Dose	Performed By							
	IV#1	Pentanyl		100 mcg	EMS Provider							

Blood Product Administration Prior to Assessment

Impression / Diagnosis

System: Extremities

Symptoms: Pain

Impression: Traumatic injury

Field Diagnosis: Traumatic Amputation Of Arm And Hand (Complete) (Partial), Unilateral, At Or Above Elbow, Complicated

Activity

Time	H.R.	B.P.	MAP	SA SpO2	Resp	Rhythm	GCS	ECG Method	Temp	Pain
	H.R. Method	Method	LOC		Resp Effort		GCS Qual		Cabin Temp	
11:06	64	108 / 64	79	99	20		4/5/6			3
	Electric Monitor - Cardiac	Auto. Cuff	Alert		Normal		Legitimate values w/o interventions such as intubation and sedation			
Landed at scene. Havasu fire with pt fully immobilized on long board. Paramedic to flight crew report received. Primary and secondary assessment complete. Pt has right arm in bulky dressing with blood soaking noted. Tourniquet in place on right upper arm with 1053 time noted on it. Pts right arm with no distal pulse noted, capillary refill <2 seconds. Pts hand is discolored cyanotic noted. No other trauma noted, all neuro exams normal except for right arm which pt is unable to move. Pt states she can feel her fingers but is unaware when touched. Pt recalls all events of the accident. Pts spouse (driver of ATV) denies pt loss of consciousness. Pt placed on propaq monitor showing sinus rhythm without ectopy.										
11:10	70	122 / 74	90	100	20	Normal Sinus Rhythm, (REG)	4/5/6			
	Electric Monitor - Cardiac	Auto. Cuff	Alert		Normal		Legitimate values w/o interventions such as intubation and sedation			
IV 18 ga left AC flushes well with no sign of infiltration. NS at W/O rate with blood tubing.										
11:14	72	118 / 72	87	100	20		4/5/6		97.6°F Temporal 85	3
	Electric Monitor - Cardiac	Auto. Cuff			Normal		Legitimate values w/o interventions such as intubation and sedation			
Pt cold loaded into aircraft without incident and secured with all available straps. Flight safety briefing conducted, hearing protection deferred related to head blocks. Lift off en route to closest trauma center for bleeding control, blood products and trauma surgeon.										
11:17	Landed at level 3 trauma center. Pt cold off loaded without incident. En route to ED.									
11:20	80	112 / 74	87	100	20	Normal Sinus Rhythm, (REG)	4/5/6			3
		Auto. Cuff			Normal		Legitimate values w/o interventions such as intubation and sedation			
EN to trauma team given. IV remains intact with no sign of infiltration. No change in pt status or neuro assessment. Pts belongings are clothes which remain on pt which are cut by EMS. Pt care turned over, pt thanked by flight crew.										

Reeder, Steve M.: Electronically Signed on 10/18/2016 18:54:05 Arizona
Type:

Jenkins, Victoria: Electronically Signed on 10/18/2016 18:54:39 Arizona
Type:

Medical Director: _____

MRSA
VRE

HAVASU REGIONAL MEDICAL CENTER
101 Civic Center Lane, Lake Havasu City, AZ 86403 • (928) 855-8185

Advance Directive ☐

PATIENT ACCOUNT NO.

8795290

MEDICAL RECORD NO.

002224253

REGISTRATION ADMISSION

PATIENT (Name, Address, Phone)

BORGER SHERRI L

COURTESY: SHERRI

PHONE: [REDACTED]

BIRTH DATE

AGE

SEX

RACE

ETHNICITY

PRIMARY LANGUAGE

MAR. STATUS

REL

PC

ADMITTED BY

HIPAA

ADMISSION DATE & TIME

DISCHARGE DATE & TIME

SERVICE

ROOM/BED NO.

EMAIL ADDRESS

sherrilborger@hotmail.com

PATIENT EMPLOYER (Name, Address, Phone, Occ)

EMERGENCY CONTACT 1 (Name, Address, Phone, Rel)

EMERGENCY CONTACT 2 (Name, Address, Phone, Rel)

UNEMPLOYED

NONE PROVIDED

NONE PROVIDED

PHONE:

OCX: UNEMPLOYED

PHONE:

REL:

PHONE:

REL:

GUARANTOR (Name, Address, Phone, Rel)

GUARANTOR EMPLOYER (Name, Address, Phone)

ATTENDING PHYSICIAN (Name, Number)

BORGER SHERRI L

UNEMPLOYED

BUTLER NICHELLE 968

ADMITTING PHYSICIAN (Name, Number)

BUTLER NICHELLE 968

REFERRING PHYSICIAN (Name, Number)

NONSTAFF PHYS 101

PRIMARY INSURANCE

SECONDARY INSURANCE

TERTIARY INSURANCE

EO OUS

EO EOX 1924

PHOENIX

AZ

950620000

PHONE: (602) 864-4020

PHONE:

PHONE:

POLICY#

GROUP #:

GRF NAME:

AUTH#:

PAYOR PLAN:

POLICY#

GROUP #:

GRF NAME:

AUTH#:

PAYOR PLAN: 0

POLICY#

GROUP #:

GRF NAME:

AUTH#:

PAYOR PLAN: 0

BORGER JOHN F

SEX: M DOB: [REDACTED]

REL: Spouse

SEX:

DOB:

REL:

SEX:

DOB:

REL:

CHIEF COMPLAINT / ADMITTING DIAGNOSIS

TRAUMA COMPLAINT

COMMENTS

HR1000041513



PRID:42762542	Flight Number:16-190006	Trauma/Hospital #:
Service: Native Air - Arizona	Date: October 18, 2016	
Base: Lake Havasu City	Team: Critical Care	
Unit: Native 8-Lake Havasu City	Crew 1:Pilot	
Tail/Reg: Other	*Reeder, Steve M.	
Dispatched As: Trauma, Adult	EMT-P	
Mass Casualty: No	Crew 2:Primary Caregiver	
Vehc. Disp. GPS: 34.479543,-114.33846	*Jenkins, Victoria	
Type of Svc: Interfacility Unscheduled	RN	
Mode to Ref: Not Applicable	Crew 3:Secondary Caregiver	
Outcome: Treated, Transported	Stevenson, Skylar (Pilot)	
	* designates an ALS Provider	
	Mode to Rec: Not Applicable	
Location: Havasu Regional Medical Center	Receiving: Hospital	
(MED9244)	University Medical Center	
101 Civic Center Lane	Emergency Department	
Lake Havasu City, AZ 86403	1800 West Charleston Boulevard	
928-855-8185	Las Vegas, NV 89102-2329	
Ref. Zip: 86403	702-383-2000	
Ref Mohave	Dest. GPS: 36.159029,-115.167468	
County:	Rec. MD: Trauma team	
Ref. GPS: 34.4803821,-114.3388665		
Ref. MD: Euler		

Last Name: Norger **First:** Sherri **Middle:** L
Address: [REDACTED]
City: [REDACTED] **ST:** [REDACTED] **Zip:** [REDACTED]
County: Steele
Country: United States
DOB: [REDACTED]
Age: 49y **Sex:** F **Weight:** 66 kg
Height: 67 in **IBW:** 61.6
Subscriber: No
Race: White, non-Hispanic
Billing Information:
None Given

Times	
Onset:	10:30
Standby:	11:39
Dispatch:	11:39
EnRoute:	11:39
At Ref:	11:39
At Patient:	11:45
Leave w/ Pt:	12:40
Leave Ref:	12:45
At Rec:	13:28
Transfer Care Dest:	13:30
Available:	14:00
In Qtrs:	16:30
Call Completed:	17:00

Scene Information			
Patient Belongings: 1 bag of belongings			
Chief Complaint (Category: Trauma, Adult)			
right arm partial amputation			
Anatomic Location: Extremity - Upper			
History of Present Illness			
At or around 1030 this am pt was riding as a passenger in an ATV which rolled on its side. Pt was in seat belt restraints, no helmet. Pt stuck her arm out when ATV rolled onto its side catching her arm between ATV and the sandy/dirt ground. Pts arm was partially amputated just above the elbow with only a small amount of skin holding lower arm on. EMS requested N8 to the scene. N8 transported pt to Havasu Regional Medical Center for initial treatment and stabilization. Trauma services at this location could not handle this case. N8 was then requested for rapid air transport to UMC-Las Vegas Level 1 Trauma Center. Sending facility is a trauma center level 4, but pt required more intense surgery than sending could provide. Rapid air transport was requested due to pts condition to reduce mortality and morbidity. Air transport time of < 90 minutes vs > 120 minutes by ground EMS.			
Medical History	Current Medications	Allergies	
None	None	None	
Obtained From: Not Recorded			
Neurological Exam			
Level of Consciousness: Alert	Loss of Consciousness: No	Glasgow Coma Scale E V M Tot Int: 4 5 6 = 15	
Chemically Paralyzed: No			
Neurological Present: No deficit noted			
Mental Present: Oriented-Person, Oriented-Place,			

Pupils				Motor		Sensory	
Left		Right					
Size:	3mm		3mm	LA:	Normal	RA:	Normal
React:	Reactive		Reactive	LL:	Normal	RL:	Normal

Airway	Respiratory
Status: Patent	Effort: Normal
	Sounds: L: Clear R: Clear
	Oxygen: 3 lpm via NC Performed By: Other Healthcare Provider
	Resp. Exam: Spontaneous

Cardiovascular		Pulses
		Left Right
JVD: Not Appreciated	Cap. Refill: Less than 2 Seconds	Carotid:
Edema: Not Appreciated		Radial: Strong Absent
Temp: 97.3 °F via Axillary		Femoral:

Injury Details
Reason for Encounter: Injury/Trauma
Trauma Center Criteria: - Amputation proximal to wrist or ankle
Drugs/Alcohol?: Unknown
Intentional: No
Landed On: Right Side/Arm
Work Related: No
Injury Cause: Accidentally Caught In Or Between Object
Mechanism: MVC - Off road
Equipment: Shoulder And Lap Belt
Risk Factors Present: EMS Provider Judgment

Initial Physical Findings
Assessment
Head: Normal Findings: Normal cephalic, no deformity
Neck Findings: No Deformity
Chest: Normal Findings: Equal rise and fall
Abdominal Appearance: Not Distended
Abdominal Palpation: Soft, non-tender
Abdominal Bowel Sounds: Not assessed
Pelvis: Normal Findings: Intact and Stable
Back Findings: Deferred
Left Arm: Normal
Right Arm: Lacerations, Deformity
Left Leg: Normal
Right Leg: Normal
Extremity Findings: Intact, no deformity
Skin: Warm Findings: Pink, warm and dry

Fluids Before & During Transport				IVs Prior to Assessment					
INTAKE		OUTPUT		IV#	Gauge	Site	Solution	Rate	Performed By
Before	During	Before	During						
CRYS: 2300 mL	1000 mL	EBL: mL	mL	1	18	left AC	NS	w/o	EMS Provider
		UO: mL	mL	2	16	Left Forearm	Saline Lock		Other Healthcare Provider
Medication	100 mL								
Infusion:									

Medications / Infusions Prior to Assessment					
Time	IV# / Other Route	Medication	Concentration	Dose	Performed By
	IV#1	Fentanyl		100 mcg	EMS Provider
	IV#1	Fentanyl		200 mcg	Other Healthcare Provider
	IV#1	Versed		2 mg	Other Healthcare Provider
	IV#1	Cefazolin		2 gm	Other Healthcare Provider
Blood Product Administration Prior to Assessment					

Impression / Diagnosis	
System:	Extremities
Symptoms:	Bleeding
Impression:	Traumatic injury

Activity											
Time	H.R.	B.P.	MAP	RA SpO2	ETCO2	Resp	Rhythm	GCS	ECG Method	Glu	Pain
	H.R. Method	Method	LOC			Resp Effort		GCS Qual		Cabin Temp	
Action/Comment											
11:45	78	120 / 51	74	97		20	Normal Sinus Rhythm, (REG)	4/5/6			6
	Electric Monitor - Cardiac	Auto. Cuff	Alert			Normal			Legitimate values w/o interventions such as intubation and sedation		
Pt contact made, flight crew introduced. Trauma Serviced MD in room assessing pt. MD ordering X-rays of right extremities, blood work, irrigation and repackaging. Flight crew is at bedside to assist.											
12:00	70	105 / 61	76	99		20	Normal Sinus Rhythm, (REG)				
	Electric Monitor - Cardiac	Auto. Cuff	Alert			Normal					
Trauma MD is getting accepting Trauma Center at this time. Pts arm is being re-wrapped with pressure dressing. Tourniquet remains in place, bleeding is not controlled completely with tourniquet. Trauma MD orders pressure dressing to right arm. Pt refused blood products related to religion. Pt is medicated by ED staff with fentanyl 200 mcg and versed 2 mg IV for sedation and pain.											
12:15	68	110 / 68	82	100		20	Normal Sinus Rhythm, (REG)	4/5/6		151	4
	Electric Monitor - Cardiac	Auto. Cuff	Alert			Normal			Legitimate values w/o interventions such as intubation and sedation		
Pt care turned over to flight crew. Primary and secondary assessment complete. Pt is on back board with c-collar in place without straps. Pt immobilized fully on back board with c-collar. Pt is complaining of anxiety and is restless. Pt is easy to talk down but pt stays calm only for a very short period of time before stating she is panicking and starts to yell and move left arm frantically. Propag monitor on pt. Plan of care discussed with pt and pts spouse, pts spouse signed consent. Pt transferred with 4 person lift to transport gurney and secured with all available straps. Pt covered with 2 warm blankets.											
12:25	88	110 / 64	79	100	38	20	Normal Sinus Rhythm, (REG)				
		Auto. Cuff				Normal					
IV's 18 ga left forearm and 16 ga left AD both flush well with no sign of infiltration. ETCO2 NC at 2 ft on pt related to medication administration during ED stay.											
12:35	Med Pt continues to be agitated and yelling stating she is freaking out. Lorazepam, 0.5 MG via IV - Push given by Steve M. Reeder.										
12:40	101	92 / 71	78	100		22	4 Lead, Sinus Tachycardia (REG)	4/5/6			4
	Electric Monitor - Cardiac	Auto. Cuff	Alert			Normal			Legitimate values w/o interventions such as intubation and sedation		
Med Depart for ED en route to heli-pad with pt. Pt states she is nauseated and very high anxiety level. Flight crew providing verbal reassurance with only brief calming of pt. NS bolus of 250 ml started on pressure bag with blood tubing for noted drop in blood pressure. Ondansetron, 4 MG via IV - Push given by Steve M. Reeder. Pt. Response: Improved.											
12:41	Operations Pt cold loaded into aircraft without issue. Pt secured. Flight safety briefing conducted, hearing protection on pt. Safety Brief: Borger, Sherri, Weight: 66kg. Operations: Environmental Controls, Patient Loaded - Cold, Patient Monitoring.										
12:45											

Med Lift off en route to UMC-Las Vegas. Pt is stating she is having a hard time dealing with all of these issues then yells out and is flailing left arm. Midazolam, 2.5 MG via IV - Push given by Victoria Jenkins. Complication: None.									
12:50	105	90 / 65	73	98	18	4 Lead, Sinus Tachycardia (REG)	4/4/6	4	
Electric Monitor - Cardiac Auto. Cuff Alert Normal Legitimate values w/o interventions such as intubation and sedation 85F Pt tolerating ascent well. Gentamycin drip 40mg/100 ml started on mini-med at 100 ml/hr per sending facility. 2nd NS bolus of 250 ml started related to drop in blood pressure.									
12:55									
Med Pt is yelling and flailing left arm around with risk of pulling out IV's at this time. Midazolam, 2.5 MG via IV - Push given by Steve M. Reeder.									
13:00	107	96 / 80	85	99	24	4 Lead, Sinus Tachycardia (REG)	4/4/6	4	
Electric Monitor - Cardiac Auto. Cuff Alert Normal Legitimate values w/o interventions such as intubation and sedation 85 3rd bolus of NS 250 ml started for blood pressure control.									
13:05									
Pt complains of extreme anxiety.									
13:10	100	116 / 84	95	99	22	4 Lead, Sinus Tachycardia (REG)	4/4/6	4	
Electric Monitor - Cardiac Auto. Cuff Alert Normal Legitimate values w/o interventions such as intubation and sedation 85 Med Pt tolerating max altitude without altitude issues. Lorazepam, 0.5 MG via IV - Push given by Victoria Jenkins.									
13:10									
Med Pt Yelling flailing left arm around. Verbal reassurance no longer is effective. 4th bolus of NS started to maintain blood pressure on pressure bag. Midazolam, 2.5 MG via IV - Push given by Victoria Jenkins.									
13:20	102	124 / 89	101	100	20	4 Lead, Sinus Tachycardia (REG)	4/4/6	4	
Electric Monitor - Cardiac Auto. Cuff Alert Normal Legitimate values w/o interventions such as intubation and sedation 85 NS placed at TKO rate.									
13:28									
Operations Landed UMC-Las Vegas. Pt tolerated descent well without change. Pt cold off loaded without issue. En route to trauma bay. Operations: Environmental Controls, Patient Offload - Cold, Patient Monitoring.									
13:30	101	122 / 91	101	99	24	4 Lead, Sinus Tachycardia (REG)	4/4/6	4	
Electric Monitor - Cardiac Auto. Cuff Alert Normal Legitimate values w/o interventions such as intubation and sedation Wasted Med Pt transferred to Trauma bed, RN to Trauma team report given. IV's X 2 flush well with no sign of infiltration. Pt is yelling and non-cooperative with staff. Pt care turned over. Pts belongings bag left at bedside. Wasted versed 2.5 mg and wasted ativan 1 mg. Lorazepam, 1 MG wasted by Victoria Jenkins. Witnessed by V. Jenkins, S. Reeder CEP.									

Paperwork from Referring: Films, Patient Chart, Personal Belongings
 Paperwork to Receiving: Films, Patient Chart, Personal Belongings

Reeder, Steve M.: Electronically Signed on 10/18/2016 17:10:32 Arizona
 Type:

Jenkins, Victoria: Electronically Signed on 10/18/2016 18:19:25 Arizona
 Type:

Medical Director:

Exhibit “H”

Exhibit “H”

UNIVERSITY MEDICAL CENTER
1800 West Charleston Boulevard
Las Vegas, Nevada 89102

ADMITTED: 10/18/2016

DISCHARGED: 10/29/2016

ADMITTING DIAGNOSES:

1. Status post all-terrain vehicle rollover.
2. Near amputation of right upper extremity.
3. Acute blood loss anemia.
4. Class IV hemorrhagic shock.
5. Altered mental status secondary to blood loss anemia.
6. Ventilator-dependent respiratory failure.

DISCHARGE DIAGNOSES:

1. Symptomatic anemia. The patient refused transfusions as patient is [REDACTED]
2. Status post right arm amputation.
3. Symptomatic anemia.
4. Ventilator-dependent respiratory failure, resolved.

Please see dictated transfer summary by the trauma service. I received the patient after patient had a right arm amputation from an ATV rollover. The patient refuses all transfusions and understands the risks of this.

Latest hemoglobin and hematocrit showed a hemoglobin of 3.8 and hematocrit of 11.9. Again, they have refused transfusion during the stay here. I was giving the patient iron.

They refused any further blood products. They understand the risk. I have explained to them the dangers of flying and traveling. They still, however, want to go. We will discharge the patient with the following medications.

1. Ferrous sulfate 325 milligrams 1 tablet t.i.d.
2. Gabapentin 300 milligrams 1 tablet t.i.d.
3. Oxycodone 10 milligrams 1 tablet t.i.d. p.r.n. for pain.

DISPOSITION: Home in stable condition.

EXAMINATION ON DISCHARGE: EXTREMITIES: Right arm amputation.
CHEST: Clear to auscultation bilaterally.

FOLLOWUP: Follow up with Dr. Monroe in 1 week, but the patient will most likely fly to Minnesota. The patient can follow up there with an orthopedist in Minnesota.

CODE STATUS: Full code.

Discharge planning took 1 hour.

BORGER, SHERRIL

Borger000096

SBorger000565
Respondent's Appendix 108

0030131185

RLO/MedQ
DD: 10/29/2016 11:06:51
DT: 10/29/2016 12:41:56

RICHARD L ONGTENGCO, MD

PATIENT: BORGER, SHERRI ACCOUNT#: 9929088152
MR#: 0030131185
ADM DATE: 10/18/2016
JOB#: 153605/718672133

Dictated by: RICHARD L ONGTENGCO, MD

DISCHARGE SUMMARY

CC:
Ongtengco, Richard L

Electronically Authenticated and Edited by:
Richard L Ongtengco, MD On 11/10/2016 08:42 PM PST

BORGER, SHERRI L

Exhibit “I”

Exhibit “I”

Deposition of:

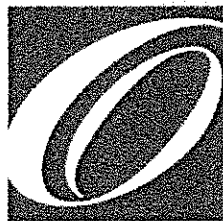
Tracy Waddington

Case:

John Borger, et al. v. Sandbar Powersports LLC, et al.
A-17-751896-C

Date:

04/10/2018



OASIS
REPORTING SERVICES

400 South Seventh Street • Suite 400, Box 7 • Las Vegas, NV 89101
702-476-4500 | www.oasisreporting.com | info@oasisreporting.com

COURT REPORTING | NATIONAL SCHEDULING | VIDEOCONFERENCING | VIDEOGRAPHY

1 JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

2 IN AND FOR THE COUNTY OF CLARK

3
4 JOHN BORGER and SHERRI BORGER,)

5 Plaintiffs,)

CASE NO.

6 vs.)

A-17-751896-C

7 SANDBAR POWERSPORTS LLC,)

DEPT. NO. XXV

8 DOES I through X; ROE)

9 CORPORATIONS XI through XX,)

inclusive, and POLARIS)

INDUSTRIES, INC.,)

10 Defendants.)

11
12 VIDEOTAPED DEPOSITION OF TRACY WADDINGTON

13 Taken on Tuesday, April 10, 2018

14 At 9:50 a.m.

15 At the Law Offices of Litchfield Cavo, LLP

16 3993 Howard Hughes Parkway

17 Las Vegas, Nevada

18
19
20
21
22
23
24
25 REPORTED BY: DANA TAVAGLIONE, RPR, CCR 841

1 APPEARANCES:

2

3 For the Plaintiffs:

4 KASTER, LYNCH, FARRAR & BALL, LLP
5 BY: KYLE W. FARRAR, ESQ.
6 1010 Lamar
7 Suite 1600
8 Houston, Texas 77002
9 713.221.8300
10 kyle@thetirelawyers.com

8

For the Defendant Sandbar Powersports, LLC:

9

10 LITCHFIELD CAVO, LLP
11 BY: GRIFFITH H. HAYES, ESQ.
12 3993 Howard Hughes Parkway
13 Suite 100
14 Las Vegas, Nevada 89169
15 702.949.3100
16 hayes@litchfieldcavo.com

13

14 For the Defendant Polaris Industries:

15 JOHNSON, TRENT & TAYLOR, LLP
16 BY: T. CHRISTOPHER TRENT, ESQ.
17 919 Milam Street
18 Suite 1700
19 Houston, Texas 77002
20 713.222.2323
21 ctrent@johnsontrent.com

19

20

21

22

23

24

25

1 Q. Do you have a specific recollection of that?

2 A. No.

3 Q. Okay. How do you know you took it? Just
4 because you take all the reservations.

5 A. I take all the reservations.

6 Q. Totally fair.

7 A. Yes.

8 Q. But you don't have a specific recollection
9 of that phone call or --

10 A. No.

11 MR. FARRAR: Okay.

12 MR. HAYES: My pen ran out of ink.

13 MR. FARRAR: Yeah, yeah.

14 MR. HAYES: We don't need to go off the
15 record. I'll just get it right here.

16 MR. FARRAR: We'll just stay on.

17 THE VIDEOGRAPHER: We're on the record,
18 yes.

19 MR. FARRAR: Yeah, yeah.

20 (Pause in the proceedings.)

21 MR. HAYES: Okay.

22 BY MR. FARRAR:

23 Q. Ms. Waddell (sic), can you walk me through
24 what you recall about your interactions with the
25 Borgers in October of 2016.

1 A. They came in the office. I greeted them.
2 We started talking, asking who was going to be
3 driving the vehicle, who was going to be the
4 responsible for the vehicle; and I tell them to go
5 over the paperwork. The daughter was standing by
6 the door. The son was standing closest by the dad,
7 by the counter where we do everything.

8 And then that's -- at that time, I asked
9 the ages of the children, just to make sure they
10 were old enough if they were going to drive; if they
11 were not old enough, to explain to them that they
12 could not drive; and if they were 18 and under, they
13 would have to wear a helmet.

14 That's another safety thing that I do in
15 the office is to make sure anyone that is 18 or
16 under has to, by law, wear it. Any adults, I ask
17 them if they would like a helmet. If not, they
18 could sign off on the waiver.

19 Q. Your recollection is all four were inside?

20 A. Yes.

21 Q. The -- the entire time that you had the --
22 the signing of the paperwork and whatnot?

23 A. Yes.

24 Q. Okay. Everybody signed something called a
25 Participant Agreement Release and Assumption of the

1	CERTIFICATE OF DEPONENT			
2	PAGE	LINE	CHANGE	REASON
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16			*	*
17			*	*
18			*	*
19			*	*
20			*	*
21			*	*
22			*	*
23			*	*
24			*	*
25			*	*

I, TRACY WADDINGTON, deponent herein, do hereby certify and declare the within and foregoing transcription to be my deposition in said action; under penalty of perjury; that I have read, corrected and do hereby affix my signature to said deposition.

TRACY WADDINGTON, Deponent Date

1 CERTIFICATE OF REPORTER

2
3 I, Dana J. Tavaglione, a Certified Court
4 Reporter, licensed by the State of Nevada, do hereby
5 certify:

6 That I reported the deposition of the witness,
7 TRACY WADDINGTON, commencing on April 10, 2018, at
8 9:50 a.m.;

9 That prior to being examined, the witness was by
10 me first duly sworn to testify to the truth, the
11 whole truth, and nothing but the truth; that I
12 thereafter transcribed my related shorthand notes
13 into typewriting and that the typewritten transcript
14 of said deposition is a complete, true and accurate
15 record of testimony provided by the witness at said
16 time.

17 I further certify (1) that I am not a relative
18 or employee of an attorney or counsel of any of the
19 parties, nor a relative or employee of any attorney
20 or counsel involved in said action, nor a person
21 financially interested in the action; and (2) that
22 pursuant to Rule 30(e), transcript review by the
23 witness was requested.

24 IN WITNESS HEREOF, I have hereunto set my hand,
25 in my office in the County of Clark, State of
Nevada, this 25th day of April 2018.


DANA J. TAVAGLIONE, RPR, CCR NO. 841



Exhibit “J”

Exhibit “J”

KYLE W. FARRAR, ESQ.
KASTER, LYNCH, FARRAR & BALL, L.L.P.
1010 LAMAR, SUITE 1600
HOUSTON, TX 77002
TEL: (713) 221-8300
FAX: (713) 221-8301
ADMITTED PRO HAC VICE
EMAIL: kyle@fbtrial.com

Attorneys for Plaintiffs

IN THE JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

JOHN BORGER and SHERRI BORGER,

Plaintiffs,

v.

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

Defendants.

Case No. A-17-751896-C
XXV

**PLAINTIFF, SHERRI BORGER'S
RESPONSES TO DEFENDANT,
SANBAR POWERSPORTS, LLC'S
FIRST SET OF REQUESTS FOR
ADMSSIONS**

COMES NOW, the Plaintiffs, John Borger and Sherri Borger, by and through counsel,
and hereby serve their Responses to Defendant Sandbar Power Sports, LLC's First Set of
Requests for Admissions:

ANSWERS TO REQUEST FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1:

Admit that you signed and initialed the document titled, "Rental Contract", a copy of which is
attached hereto as Exhibit A.

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 2:

Admit that you were over the age of 18 when you signed and initialed the document titled,
"Rental Contract", a copy of which is attached hereto as Exhibit A.

1 **RESPONSE:**

2 Admit.

3 **REQUEST FOR ADMISSION NO. 3:**

4 Admit that you were not under the influence of drugs or alcohol when you signed and initialed
5 the document titled, "Rental Contract", a copy of which is attached hereto as Exhibit A.

6 **RESPONSE:**

7 Admit.

8 **REQUEST FOR ADMISSION NO. 4:**

9 Admit that you were not under duress when you signed and initialed the document titled,
10 "Rental Contract", a copy of which is attached hereto as Exhibit A. For the purposes of this
11 Request, "duress" is defined as "any threat, constraint or other action, forcing you to do
12 something against your will or better judgment."

13 **RESPONSE:**

14 Admit.

15 **REQUEST FOR ADMISSION NO. 5:**

16 Admit that you signed and initialed the document titled, "Participant Agreement, Release and
17 Assumption of the Risk", a copy of which is attached hereto as Exhibit B.

18 **RESPONSE:**

19 Admit.

20 **REQUEST FOR ADMISSION NO. 6:**

21 Admit that you were over the age of 18 when you signed and initialed the document titled,
22 "Participant Agreement, Release and Assumption of the Risk", a copy of which is attached
23 hereto as Exhibit B.

24 **RESPONSE:**

25 Admit.

26

27

28

1 **REQUEST FOR ADMISSION NO. 7:**

2 Admit that you were not under the influence of drugs or alcohol when you signed and initialed
3 the document titled, "Participant Agreement, Release and Assumption of the Risk", a copy of
4 which is attached hereto as Exhibit B.

5 **RESPONSE:**

6 Admit.

7 **REQUEST FOR ADMISSION NO. 8:**

8 Admit that you were not under duress when you signed and initialed the document titled,
9 "Participant Agreement, Release and Assumption of the Risk", a copy of which is attached
10 hereto as Exhibit B. For the purposes of this Request, "duress" is defined as "any threat,
constraint or other action, forcing you to do something against your will or better judgment."

11 **RESPONSE:**

12 Admit.

13 **REQUEST FOR ADMISSION NO. 9:**

14 Admit that your son, Foster Borger ("F.B."), was driving the RZR at the time of the Subject
15 Accident.

16 **RESPONSE:**

17 Admit.

18 **REQUEST FOR ADMISSION NO. 10:**

19 Admit that F.B. was under the age of 18 at the time of the Subject Accident.

20 **RESPONSE:**

21 Admit.

22 **REQUEST FOR ADMISSION NO. 11:**

23 Admit that F.B. was under the age of 25 at the time of the Subject Accident..

24 **RESPONSE:**

25 Admit.

26

27

28

1 **REQUEST FOR ADMISSION NO. 12:**

2 Admit that F.B. had never driven a RZR prior to the date of the Subject Accident.

3 **RESPONSE:**

4 Admit.

5 **REQUEST FOR ADMISSION NO. 13:**

6 Admit that prior to taking possession of the RZR, you participated in an inspection of the
7 vehicle with an employee of SANDBAR.

8 **RESPONSE:**

9 Admit.

10 **REQUEST FOR ADMISSION NO. 14:**

11 Admit that prior to taking possession of the RZR, an employee of SANDBAR spoke to you
12 regarding how to safely operate the RZR

13 **RESPONSE:**

14 Deny.

15 **REQUEST FOR ADMISSION NO. 15:**

16 Admit that an employee of SANDBAR advised that anyone under the age of 25 was prohibited
17 from driving the RZR.

18 **RESPONSE:**

19 Deny.

20 **REQUEST FOR ADMISSION NO. 16:**

21 Admit that you have never been an employee of SANDBAR.

22 **RESPONSE:**

23 Admit.

24 **REQUEST FOR ADMISSION NO. 17:**

25 Admit that you read the document titled, "Rental Contract", a copy of which is attached hereto
26 as Exhibit A before you signed and/or initialed it.
27

28

1 **RESPONSE:**

2 Deny.

3 **REQUEST FOR ADMISSION NO. 18:**

4 Admit that you understood the document titled, "Rental Contract", a copy of which is attached
5 hereto as Exhibit A, before you signed and/or initialed it.

6 **RESPONSE:**

7 Deny.

8 **REQUEST FOR ADMISSION NO. 19:**

9 Admit that you read the document titled, "Participant Agreement, Release and Assumption of
10 the Risk", a copy of which is attached hereto as Exhibit B, before you signed and/or initialed it.

11 **RESPONSE:**

12 Deny

13 **REQUEST FOR ADMISSION NO. 20:**

14 Admit that you understood the document titled, "Participant Agreement, Release and
15 Assumption of the Risk", a copy of which is attached hereto as Exhibit B, before you signed
16 and/or initialed it.

17 **RESPONSE:**

18 Deny.

19 **REQUEST FOR ADMISSION NO. 21:**

20 Admit that you understood the document titled, "Participant Agreement, Release and
21 Assumption of the Risk", a copy of which is attached hereto as Exhibit B, before you signed
22 and/or initialed it.

23 **RESPONSE:**

24 Deny

25
26 Dated: October 23rd, 2017

27
28

By _____
KYLE W. FARRAR, ESQ.
KASTER, LYNCH, FARRAR & BALL, LLP
1010 Lamar, Suite 1600
Houston, TX 77002

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

713.221.8300
ADMITTED PRO HAC VICE

&

CHAD A. BOWERS, ESQ.
Nevada Bar #: 007283
CHAD A. BOWERS, LTD.
3202 West Charleston Blvd
Las Vegas, NV 89102
702-457-1001

Attorneys for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of October, 2017, I served a true and correct copy of the foregoing **PLAINTIFF, SHERRI BORGER'S RESPONSES TO DEFENDANT, SANDBAR POWERSPORTS, LLC'S FIRST SET OF REQUESTS FOR ADMISSIONS** by sending a copy of the same via Odyssey E-File NV, the Court's electronic filing/service program to the following:

Griffith H. Hayes, Esquire
Keivan A. Roebuck, Esquire
LITCHFIELD CAVO, LLP
3993 Howard Hughes Parkway, Suite 100
Las Vegas, Nevada 89169
hayes@litchfieldcavo.com
roebuck@litchfieldcavo.com

Chad A. Bowers, Esquire
CHAD A. BOWERS, LTD.
3202 West Charleston Blvd.
Las Vegas, NV 89102
bowers@lawyer.com

Exhibit “K”

Exhibit “K”

RSPN
JENNIFER WILLIS ARLEDGE
Nevada Bar No.: 8729
WILSON, ELSE, MOSKOWITZ,
EDELMAN & DICKER LLP
300 South 4th Street, 11th Floor
Las Vegas, NV 89101
(702) 727-1400; FAX (702) 727-1401
Jennifer.Arledge@wilsonelser.com

T. CHRISTOPHER TRENT
Admitted pro hac vice
DAVID J. BALUK
Admitted pro hac vice
JOHNSON, TRENT & TAYLOR, LLP
919 Milam Street, Suite 1500
Houston, TX 77002
(713) 222-2323; FAX (713) 222-2226
ctrent@johnsontrent.com
dbaluk@johnsontrent.com
Attorneys for 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.

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

DEFENDANT POLARIS INDUSTRIES,
INC.'S OBJECTIONS AND ANSWERS
TO SANDBAR POWERSPORTS, LLC'S
FIRST SET OF INTERROGATORIES

Defendant, **POLARIS INDUSTRIES, INC.** ("Polaris"), by and through its attorneys of
record, **JENNIFER WILLIS ARLEDGE, ESQ.**, of the law firm of **WILSON ELSE MOSKOWITZ**
EDELMAN & DICKER LLP, hereby serves its Objections and Answers to Sandbar Powersports,

1 LLC's ("Sandbar") First Set of Interrogatories pursuant to the Nevada Rules of Civil Procedure as
2 follows:

3 **PRELIMINARY STATEMENT AND GENERAL OBJECTIONS**

4 1. The "Subject Vehicle" is a 2017 Polaris RZR 4 900 EPS.

5 2. Polaris expressly preserves its rights to object to jurisdiction and venue on behalf of
6 itself, its successor or predecessor firms or corporations, subsidiaries, parent corporations, or other
7 entities affiliated with Polaris, yet not named as a party to this lawsuit.

8 3. Polaris' responses are based on information presently available and are given without
9 prejudice to its right to supplement or modify them based on the discovery of additional or different
10 information. By making this response, Polaris does not concede that the information disclosed or
11 documents produced are properly discoverable or admissible at trial.

12 4. Polaris objects to the extent each discovery request imposes a greater duty on it than
13 allowed under the law of Nevada, and to the extent each seeks information that is both irrelevant and
14 not reasonably calculated to lead to the discovery of admissible evidence.

15 5. Polaris is a party. Successor or predecessor firms or corporations, parent corporations,
16 holding companies, subsidiaries, present and former employees or officers, directors, agents,
17 employees and any and all other persons, firms or corporations acting or purporting to act on behalf
18 of Polaris are not parties to this lawsuit.

19 6. Modifiers, whether articulated or implied, which require responses to "any" or "all"
20 discovery requests create limitless discovery and are generally impermissible in product liability
21 litigation. Definitions and discovery requests containing references to "any" or "all" are overly
22 broad, overly encompassing, and do not appropriately tailor the request to the scope of discovery
23 given the nature of the product and the nature of claimed defect, whatever it might be.

24 7. Polaris further objects that these requests are unduly burdensome to the extent that
25 they purport to require Polaris to conduct open-ended searches through its many different computer
26 systems, servers, databases, and back-up tapes in an attempt to locate all documents and/or
27 information that Sandbar purports to describe in these requests. Polaris will conduct a good-faith
28 search for responsive documents/information in the areas, including certain readily-accessible
electronic databases, where Polaris reasonably expects responsive information/documents to be
found. To the extent that any search must be conducted that is beyond reasonably accessible
electronic databases, Sandbar should be required by the Court to bear the costs of such a search.

8. Polaris further objects to the extent that these requests seek information protected
from discovery by the attorney-client, work product and/or consulting expert privileges.

9. To the extent that any information or documents sought by these requests are
confidential, Polaris objects to producing any confidential documents or providing any confidential
information unless and until an appropriate Protective Order of Confidentiality has been entered in
this case.

1 10. Polaris objects to each request and part thereof to the extent that it seeks production
2 of trade secret information. The inadvertent disclosure of this information would irreparably harm
3 Polaris' business interests. Further, Sandbar has failed to show that such information is both
relevant and necessary to prove an essential element of Sandbar's prima facie case.

4 11. Polaris also objects to the production of confidential or trade secret information on
5 constitutional grounds, because the Fifth Amendment to the United States Constitution forbids the
6 government from "taking" private property for "public use without just compensation." U.S. CONST.
7 AMEND. V. Pursuant to the Fifth Amendment's "Takings Clause," a court order constitutes "state
8 action," and trade secrets are "property." *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1002-3
(1984); *US v. O'Hagen*, 521 U.S. 642, 654 (1997); *In re Remington Arms Co., Inc.*, 952 F.2d 1029,
1032 (8th Cir. 1991); *Philip Morris, Inc. v. Reilly*, 312 F.3d 24 (1st Cir. 2002) (*en banc*); *Saini v.*
Int'l Game Tech., 434 F. Supp. 2d 913, 919 (D. Nev. 2006).

9 12. Polaris objects to each and every of Sandbar's discovery requests to the extent they
10 seek information beyond the scope of discovery.

11 13. These general objections and responses are applicable to and incorporated in each
12 response below as though specifically set forth in them. The assertion of specific objections to any
13 particular discovery request is not intended to be and should not be construed as a waiver or
14 modification of Polaris' Preliminary Statement and General Objections. Additionally, unless
15 otherwise specifically stated, Polaris' objections to each discovery request apply to the entire
16 discovery request, including each and every subparagraph. Objections made herein are made on
advice of counsel in order to protect responding party from unwarranted invasion of its privacy,
records, and files. Incorporating its Preliminary Statement and General Objections into each
response, Polaris responds as follows:

17 POLARIS' ANSWERS TO SANDBAR'S INTERROGATORIES

18 INTERROGATORY NO. 1: Identify all entities which assisted in the manufacturing of the
19 product.

20 ANSWER:

21 Polaris originally manufactured the 2017 Polaris RZR 4 900 EPS, VIN:
22 4XAVCE871HB682552 ("Subject RZR"). Polaris understands the Subject RZR was altered
23 and/or modified by Sandbar after it was sold. As such, Polaris' investigation into any
24 subsequent changes to the original equipment condition of the Subject Vehicle after its sale is
ongoing. Accordingly, Polaris reserves the right to supplement this answer in accordance
with the Nevada Rules of Civil Procedure and any Order of this Court.

25 Polaris objects to the extent this Interrogatory is overbroad, seeks information in the
26 exclusive possession of and/or equally available to Sandbar, contains undefined terms,
27 including but not limited to the terms "assisted in the manufacturing of the product," and not
properly limited in time or scope as it is not limited to the Subject Vehicle or the claims and
28 defenses at issue in this litigation. This Interrogatory constitutes an impermissible "fishing

1 expedition" without adequate focus on the facts and circumstances involved in this case.
2 Polaris also objects to the extent this Interrogatory is unduly burdensome as it seeks
3 information that may be found in documents produced during the course of discovery.
4 Polaris further objects to the extent this Interrogatory seeks information that is protected by
5 business-confidential and/or trade secret privileges pursuant to Chapter 49 of the Nevada
6 Revised Statutes and Nevada law.

7 **INTERROGATORY NO. 2:** State the name and address of each entity within the distributive
8 chain with regard to the product, from the time of manufacture up to and including the time said
9 product was sold to SANDBAR.

10 **ANSWER:**

11 Polaris Industries, Inc. originally manufactured the 2017 Polaris RZR 4 900 EPS, VIN:
12 4XAVCE871HB682552 ("Subject RZR").

13 The Subject RZR was sold through Polaris' subsidiary, Polaris Sales, Inc., to GEI, LLC dba
14 Parker Yamaha, 800 S. California Ave., Parker, Arizona 85344.

15 GEI, LLC dba Havasu Powersports, 1040 N. Lake Havasu Ave., Lake Havasu City, Arizona
16 then sold the Subject RZR to Sandbar Powersports, LLC, 1595 Countryside Ave., Lake
17 Havasu City, Arizona 86403.

18 Polaris objects to the extent this Interrogatory is overbroad, contains undefined terms,
19 including but not limited to the terms "within the distributive chain," and not properly limited
20 in time or scope as it is not limited to the Subject Vehicle or the claims and defenses at issue
21 in this litigation. Polaris also objects to the extent this Interrogatory seeks information in the
22 exclusive possession of and/or equally available to Sandbar.

23 **INTERROGATORY NO. 3:** Please identify what department/corporate division and persons of
24 POLARIS that had responsibility for approving the design of the product before it was marketed for
25 sale.

26 **ANSWER:**

27 Polaris will produce ANSI/ROHVA 1-2014 compliance documentation for the Subject
28 Vehicle following the entry of an appropriate Protective Order.

Polaris objects to the extent this Interrogatory is overbroad and not properly limited in time
or scope as it is not limited to the Subject Vehicle or the claims and defenses at issue in this
litigation. This Interrogatory constitutes an impermissible "fishing expedition" without
adequate focus on the facts and circumstances involved in this case. Polaris also objects to
the extent this Interrogatory is unduly burdensome as it seeks information that may be found
in documents produced during the course of discovery. Polaris further objects to the extent
this Interrogatory seeks information that is protected by business-confidential and/or trade
secret privileges pursuant to Chapter 49 of the Nevada Revised Statutes and Nevada law.

DATED this 6th day of June, 2018.

**WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP**

BY: Jennifer W. Arledge
JENNIFER WILLIS ARLEDGE, ESQ.
Nevada Bar No.: 8729
300 South 4th Street, 11th Floor
Las Vegas, NV 89101
Attorneys for Defendant
POLARIS INDUSTRIES, INC.

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 6th day of June, 2018, I served a true and correct copy of the foregoing **DEFENDANT POLARIS INDUSTRIES, INC.'S OBJECTIONS AND ANSWERS TO SANDBAR POWERSPORTS, LLC'S FIRST SET OF INTERROGATORIES** 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 A. Bowers, Esq.
CHAD A. BOWERS, LTD.
3202 W. Charleston Blvd.
Las Vegas, NV 89102
Attorneys for Plaintiffs

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

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

BY 
An Employee of
WILSON ELSE MOSKOWITZ EDELMAN & DICKER LLP

794544