

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT  
CASE TYPE: PERSONAL INJURY

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ASHLEIGH SWANN, individually and as Trustee for the next of kin of Deborah Ann Swann, deceased; KIM SCHWITZER f/k/a KIM INGRAM individually, and as Trustee for the next of kin of Destiny Dixon, deceased; GREG PRIORE; and FLOYD INGRAM,

Case No \_\_\_\_\_

**COMPLAINT**

Plaintiffs,

v.

POLARIS INDUSTRIES, INC., a Minnesota corporation; and JOHN DOES I-X,

Defendants.

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TO: DEFENDANT ABOVE-NAMED:

The Plaintiffs, individually and as trustees for the next of kin of decedents, hereby submit this Complaint for causes of action against the Defendants and state and allege the following:

1. Plaintiff Ashleigh Swann is the daughter of Decedent Deborah Ann Swann and has been duly appointed as the Trustee to bring claims for next of kin related to the wrongful death of Deborah Ann Swann. Plaintiff Ashleigh Swann is a citizen and resident of the State of Washington, U.S.A. and resides at 3528 N. Mission Rd. Bremerton WA 98312.

2. Plaintiff Cory Swann is a citizen of the State of Washington and resides at 3528 N. Mission Rd W., Bremerton, WA 98312.

3. Plaintiff Sue Fultz is a citizen of the state of Ohio and resides at 1233 Stephens Rd., Sidney, OH 45365.

4. Plaintiff Ashleigh Swann brings this case both on behalf of herself as surviving heir and as Trustee on behalf of and for the benefit of Deborah Ann Swann's legal heirs.

5. Plaintiff Kim Schwitzer (formerly known as Kim Ingram) is the mother of Destiny Dixon and has been duly appointed as the Trustee to bring claims for next of kin related to the wrongful death of Destiny Dixon. Plaintiff Kim Schwitzer is a citizen of the State of Arizona and Resides at 717 Black Drive, Prescott, AZ 86301.

6. Kim Schwitzer brings this case both individually and on behalf of herself as surviving heir and as Trustee for the benefit of Destiny Dixon's legal heirs.

7. Plaintiff Greg Priore is a citizen of the State of Arizona and Resides at 11089 E. Hummingbird Ln., Gold Canyon, AZ 85118

8. Plaintiff Floyd Ingram is a citizen of the State of Arizona and resides at 52775 E. Hwy 60, Miami, AZ 85539.

9. Defendant Polaris Industries, Inc. (hereinafter "Polaris"), is a Minnesota corporation with its headquarters and principal place of business at 2100 Highway 55, Medina, Hennepin County, Minnesota 55340. Polaris does business in the state of Minnesota, including but not limited to, advertising, designing, testing, manufacturing, shipping, and selling its products in the State of Minnesota, and owning and operating multiple facilities in Minnesota. Jurisdiction and venue in this Court are proper pursuant to Minn. Stat. 549.09.

10. Defendant John Does I-X are presently unknown individuals or entities who may have been involved in the designing, manufacturing, assembling, distributing, servicing, repairing, modifying and/or selling of the Polaris vehicle at issue.

11. At all times pertinent, Polaris has sold, manufactured, designed, assembled, distributed, tested, and marketed off-road vehicles ("ORVs"), including without limitation, Polaris

Ranger (“Rangers”). The Rangers are side-by-side, four-wheel, off-road vehicles.

12. Polaris aggressively advertised its utility terrain vehicles, including the Ranger, as being suitable for rough roads and off road recreational use.

13. Polaris knew that the vehicles would, on occasion, tip over and designed the vehicles with, among other features, a prominent roll cage and seat belts designed to restrain occupants in tip over events.

14. Floyd Ingram was the owner of the subject vehicle, a 2010 Ranger 800 (“the Ranger”).

15. On September 2, 2016, Destiny Dixon was driving the Ranger in Grand County, Utah on a widely used 4-Wheel Drive trail. Mr. Ingram had given Destiny permission to operate the vehicle.

16. Deborah Swann was riding in the passenger seat of the Ranger.

17. While the Ranger was being operated at very slow speed over a challenging section of the 4-Wheeler Trail, it tipped slowly onto its right (passenger) side and then slid backwards for a short distance before coming to rest.

18. Greg Priore and Floyd Ingram were traveling in the same riding group and saw the Ranger as it began to tip. They exited a vehicle they were driving and proceeded on foot to the Ranger to help tip it back up.

19. However, within a few seconds after the Ranger tipped onto its side and before Mr. Priore and Mr. Ingram could reach the Decedents, a large and lethal amount of gasoline saturated the area around the occupants, who were restrained in the vehicle by seat belts, and a large fire ignited.

20. Within a few seconds, the Ranger was completely consumed in extremely hot and

high flames, leaving no chance for Destiny Dixon and Debbie Swann to escape. They were burned to death before they could release their seat belts.

21. Had the vehicle not caught fire immediately and burned almost instantly thereafter, Destiny Dixon and Deborah Swann would have avoided permanent injury and would likely have walked away from the vehicle.

22. Greg Priore and Floyd Ingram were within a few feet of the Ranger when it caught fire and they watched as the women were burned to death.

23. The Grand County Sheriff investigated the accident and located the fuel filler cap a few feet from where the vehicle turned over. The Grand County Sheriff investigation determined that the fuel neck made contact with the ground, causing it to break and release a lethal amount of gasoline, which then ignited.

24. The subject fire occurred due to defects in the design and manufacture of the vehicle, which render the Ranger unreasonably dangerous, and due to Polaris' knowing, deliberate and reckless refusal to remedy known deficiencies with the Ranger's design or warn the occupants of the hazards associated with its use.

25. Some of the defects with this vehicle are :

- a. The fuel tank is located too close to the occupants and is not shielded from contact with body panels or other protection.
- b. The tank is not properly protected from contact with the ground in the event of a tip over or roll over event.
- c. The tank is not designed to avoid a massive spill of fuel should tip over occur.
- d. The manner in which the tank is vented is improper, which makes the vehicles prone to leak fuel.

- e. The vehicle is not designed to shut off the fuel pump in the event of a rollover or tip over.
- f. Polaris does not warn users of the potential hazards of a large, rapidly spreading fire and does not provide a method to quickly escape the seats while fuel is spilling.
- g. Other defects may be identified as discovery progresses.

26. Due to defects in the vehicle design, there is also no protection provided occupants to slow immediate rapid propagation of fire, prevent fire from spreading to the occupant compartment, or to allow occupants time to exit before fire consumes everything in and around the vehicle.

27. The design of the engine, exhaust system, fuel delivery system, and other components, and the manner in which these components are located in proximity to the occupant compartment contributes to creating an unreasonably dangerous vehicle, prone to catch fire and burn occupants. Not only does the vehicle run at high temperatures, but unacceptably hot temperatures are present near extremely flammable fuels.

28. As a direct and proximate result of the actions described herein, Deborah Swann, Destiny Dixon and Plaintiffs sustained, and/or will continue to suffer, noneconomic damages including, without limitation, pain and suffering, disability, severe emotional distress and mental anguish, loss of care, loss of companionship, and other non-economic damages recoverable by law as the evidence may show at trial.

29. **Prior to releasing the subject vehicle into the stream of commerce, Polaris knew that their fuel tank design and venting system was flawed, unsafe and exposed users to potential hazards from fire or escaping fuel.** Despite this knowledge, Polaris made a conscious

choice not to correct the problems on the 2010 Polaris Ranger vehicle, and failed post-sale to warn users.

30. As a direct and proximate result of the actions described herein, the legal heirs of the Decedents sustained non economic and economic damages including, without limitation, loss of love, comfort, advice, companionship, emotional support and society of the decedents, funeral and burial expenses, medical and evacuation expenses, loss of economic support, loss of inheritance and other economic damages recoverable by law as the evidence may show at trial.

31. Plaintiffs also seek compensation for the pain and emotional distress of the decedents prior to their death.

**FIRST CAUSE OF ACTION**  
**(Strict Liability)**

32. The preceding paragraphs are hereby incorporated by reference.

33. Polaris, at all times pertinent hereto, in the regular course of its individual business, designed, manufactured, constructed, distributed, assembled, sold, and/or placed into interstate commerce Rangers for use by the public, and specifically the Ranger used by Plaintiffs on September 2, 2016.

34. The Ranger was defective in design, manufacturing, assembly, testing, and warnings, including post-sale duty to warn, test and investigate problems.

35. By placing the defective Ranger into the stream of commerce, Polaris represented that the Ranger could be used safely by the public for the intended purpose. The Ranger remained in the same defective condition as it was when it was manufactured, and was unreasonably dangerous when used by Plaintiffs as it was intended.

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**SECOND CAUSE OF ACTION**  
**(Negligence)**

36. The preceding paragraphs are hereby incorporated by reference.
37. Polaris was negligent in one or more of the following respects, among others:
- A. In failing to use reasonable care in the selection of proper materials reasonably suited for the safe utilization and/or operation of the Ranger;
  - B. In failing to use reasonable care in manufacturing of the Ranger;
  - C. In failing to use reasonable care in the design of the Ranger;
  - D. In failing to use reasonable care in the assembly of the Ranger;
  - E. In failing to use reasonable care in inspecting the Ranger;
  - F. In failing to use reasonable care in testing the Ranger;
  - G. In failing to use reasonable care for quality control and quality assurance during the manufacturing, design, maintenance, assembly, distribution, and/or sale of the Ranger;
  - H. In failing to use reasonable care in providing adequate warnings and/or instructions for safe use of the Ranger;
  - I. In failing to use reasonable care to warn members of the public generally, and the Plaintiff specifically, before and after the Ranger was sold, of the foreseeable and latent dangers and defects, related to fire and burn hazards, inherent in the usage of the Ranger, including investigation of complaints, incidents and problems;
  - J. In failing to use reasonable care in using recalls related to the Ranger; and
  - K. For any and all other defects, presently unknown, that may exist and may be determined by discovery.

**THIRD CAUSE OF ACTION**  
**(Breach of Express and Implied Warranties)**

38. The preceding paragraphs are hereby incorporated by reference.

39. In the design, manufacture, marketing, assembly, distribution, and/or sale of the Ranger, Polaris expressly and/or impliedly warranted to the public in general and to Plaintiffs in particular, that the products designed, manufactured, marketed, assembled, distributed, installed and/or sold by them or under their supervision, direction, and/or control, were merchantable and reasonably fit and suitable for the ordinary purposes for which such goods are used, and that the products conform to the standards imposed by law.

40. Polaris breached its express and implied warranties of fitness and merchantability, insofar as the Ranger was placed into the stream of commerce in such a manner as to constitute an unreasonable danger and a hazard to Plaintiffs when used as it was intended.

**FOURTH CAUSE OF ACTION**  
**(Manufacturing Flaw)**

41. The preceding paragraphs are hereby incorporated by reference.

42. The above-referenced Ranger was in defective condition and unreasonable dangerous, and Plaintiffs could not have anticipated the dangers of the product. Polaris failed to properly assemble, manufacture, inspect, and test the Ranger or its design to determine if the Ranger would be sufficiently safe to permit foreseeable users to use the Ranger without injury. The defective condition was hidden and not apparent to Plaintiffs.

**FIFTH CAUSE OF ACTION**  
**(Failure to Warn)**

43. The preceding paragraphs are hereby incorporated by reference.

44. Polaris failed to properly warn, both pre-sale and post-sale, Plaintiffs and other people who would foreseeably be in close proximity to, use, or drive the Ranger that in the event

of a tipover or rollover, fuel could escape the vehicle and quickly ignite, causing risk of severe injury or death. This failure to warn included failures to properly investigate complaints, incidents, information and problems, and conduct reasonable testing.

**SIXTH CAUSE OF ACTION**  
**(Negligent Infliction of Emotional Distress)**

45. The preceding paragraphs are hereby incorporated by reference.

46. Plaintiffs Greg Priore and Floyd Ingram were in the zone of danger when the Ranger was consumed in flames.

47. Plaintiffs Greg Priore and Floyd Ingram reasonably feared for their own safety.

48. Plaintiffs Greg Priore and Floyd Ingram suffered severe emotional distress with attendant physical manifestations.

**INJURIES AND DAMAGES**

49. The liable conduct of Polaris described above caused Plaintiffs to sustain substantial injuries and damages, including but not limited to past and future medical expense, pain, income loss, earning capacity loss, disability, emotional distress, and loss of household services. Plaintiffs have each sustained damages greater than \$50,000.

THEREFORE, each of the Plaintiffs pray for judgment against Polaris as follows:

1. For damages in an amount greater than \$50,000;
2. For prejudgment interest pursuant to Minnesota law.
3. For costs and such other further relief allowed by law.

DATED: April 18, 2017.

**WOJTALEWICZ LAW OFFICE, LTD.**

/s/ Brian Wojtalewicz  
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