

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
CASE TYPE: PERSONAL INJURY
AND PROPERTY DAMAGE

JASON HENKE,
Plaintiff,

Case No: 27-CV-19-9486

v.

Judge: Daniel C. Moreno

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

Defendants.

COMPLAINT

TO: DEFENDANT ABOVE-NAMED:

Plaintiff JASON HENKE, by and through their counsel of record, hereby submit this
Complaint for causes of action against the Defendant and state and allege the following:

1. At all times relevant herein, Plaintiff Jason Henke has resided at 4665 N. Thurman Dr., Golden Valley, AZ 86413.
2. Defendant Polaris Industries, Inc. (hereinafter "Polaris"), is a Minnesota corporation with its principle 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.

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

4. At all times pertinent, Polaris has sold, manufactured, designed, assembled, distributed, tested, and marketed off-road vehicles (“ORVs”), including without limitation, the Polaris RZR. The RZR is a side-by-side, four-wheel, off-road vehicles.

Incident Facts

5. On January 2, 2019, Plaintiff was traveling on Highway 93 in Golden Valley, Arizona in a 2015 Polaris XP 1000 (“The RZR”).

6. As Plaintiff was driving the RZR, he was traveling on a smooth road.

7. Suddenly and without warning, the RZR suddenly burst into flames (“the Incident”).

8. Plaintiff had only seconds to escape the fire after it started, and suffered burns to his hand, wrist, arm, and face. He narrowly escaped being killed or catastrophically burned.

9. The RZR was completely destroyed by fire within a few minutes.

10. As a result of nearly being burned to death himself, Plaintiff has suffered and continues to suffer severe emotional distress.

11. Prior to the January 2, 2019 fire, plaintiff, a combat veteran, suffered from post traumatic stress disorder. The events of January 2, 2019 have significantly aggravated and worsened plaintiff’s PTSD disorder.

The Prior Fire

12. In March 2015, Plaintiff’s prior RZR burst into flames. The prior RZR was also a 2015 XP 1000. Plaintiff suffered burn injuries in the March, 2015 fire.

13. Polaris was notified that Plaintiff suffered burn injuries in this March, 2015 fire.
14. Plaintiff requested a refund of his purchase price money after the prior fire.
15. Polaris denied Plaintiff's request for a refund. Instead, Polaris provided Plaintiff with a new RZR, which it indicated would be a safe vehicle.
16. Both fires occurred due to defects which rendered the 2015 RZR XP 1000 thermally unsafe.

Others Facts

17. For many years, Polaris has known that its systems for reporting and communicating the hazards of fires involving Polaris ORVs are deficient. These problems date back to at least 1999-2001, when Polaris received reports that due to defects in certain of its ORVs, some vehicles were prone to catch fire during use. Although Polaris received reports of more than 40 fires during this period, causing at least 18 injuries during that time, Polaris did not issue recalls of these ORVs, nor did Polaris timely report the problems to the Consumer Products Safety Commission ("CPSC"). The CPSC fined Polaris for failing to comply with federal laws that required Polaris to timely report these incidents. In 2005, Polaris paid the fine.

18. For the 2011 model year, Polaris brought out RZR XP 900 equipped with a new "Prostar" engine and exhaust system, using a forward mounted cylinder and exhaust routing. This design generated excessive thermal heat between the under chassis mounted engine (located just behind and under the passenger seats) and the passenger seat backs, where the seat belt harness buckle is located. This created the conditions which led to thermal damage to components, and fires.

19. Within the first year after release of the new Prostar equipped RZR XP 900 , Polaris received hundreds of reports that RZR were experiencing melting , thermal damage and fires near the divider panel between the exhaust header and the seat backs.
20. In 2011 or 2012 , Polaris' own Safety manager, Kenneth d'Entremont recommended to management that the 2011 RZR with Prostar be recalled due to this thermal hazard, Polaris did not do so. Nor did it conduct any robust assessment of the Prostar equipped RZR's then in development, (including the XP 1000) to determine the extent of the thermal hazard inherent in the design or redesign the engine/exhaust orientation.
21. Disregarding the thermal hazards, Polaris proceeded to release new Prostar models which were must more powerful, including the XP 1000 . The first XP 1000 were sold in late 2013
22. Within a few months of release, Polaris became aware that new XP 1000 vehicles were suddenly catching fire without an apparent reason, and completely burning to the ground.
23. By February 2014, the Polaris employee assigned to track safety claims had advised Polaris' Global Safety Manager and other senior Polaris management that the fire situation "raised alarms".
24. Despite this, for at least the next 18 months, Polaris continued to sell the extremely dangerous vehicles without any modifications to eliminate or reduce the fire hazard.
25. For the next 18 months, Polaris failed to modify or redesign the vehicles' thermal systems.
26. For the next two years, Polaris failed to advise consumers that there was a serious fire hazard problem affecting all 2013-2016 RZR; instead it continued to aggressive market the vehicles for adventure sports use.

27. A full scale recall of all Prostar equipped RZR's did not occur until April 19, 2016.
28. By April 19, 2016, Polaris had knowledge of more than 160 RZR model 2013-2016 fires, which had resulted in at least 19 injuries and the death of Baylee Hoaldrige, a teenage girl.
29. On April 19, 2016, Polaris announced a recall of 133,000 2013-2016 RZR 900 and 1000 models, due to multiple defects causing fires and burn injuries.
30. In dealing with the Consumer Product Safety Commission in 2015 and 2016, Polaris falsely represented to the CPSC that it had found solutions to the thermal hazards which, once implemented in recall repairs, would make the vehicles safe.
31. Polaris gave these false assurances in other public statements intended for consumers and investors.
32. Since April, 2016, Polaris has continued recalling other RZR models, for having defects that can cause them start on fire.
33. However, the recall modifications Polaris made, in 2016 and thereafter, are "band-aid" solutions which do not correct the thermal hazards. Indeed, RZR's including the 2015 XP 1000 continue to catch fire at alarming rates. Plaintiff's counsel have been personally involved in 4 separate cases in which occupants sustained such severe burn injuries that they eventually died. Other occupants have been catastrophically burned.
34. Polaris has spent millions of dollars on recall and public relations efforts, which have been consciously, falsely and in some cases, fraudulently designed and created to (1) mislead consumers that RZR vehicles, once recalled for corrective service, are safe to drive, and (2) mislead consumers that the changes Polaris has made to RZR's are effective to eliminate the risk of sudden and rapid propagating fires.

35. It has become increasingly clear that recall repairs being performed by Polaris do not eliminate the risk of fire and burn injuries. Polaris has continued to receive scores of reports of fires that have destroyed vehicles even though owners report that the vehicles had Polaris' recall service performed.

36. For many years, Polaris has failed to make changes to its RZR's to adequately reduce the risk of fire and protect occupants in the event of fire; properly and timely inform the CPSC and consumers of the gravity and extent of the problem and the risk to occupants of these vehicles; recall unsafe vehicles; or properly warn of the hazards and how to minimize risk.

37. Prior to the events at issue in this case, Polaris also knew that its vehicles lacked design features that provided occupant protection or safety to escape in time in the event a fire started.

38. Polaris also knew that its prior actions to notify users of the hazards or issue recalls with regard to the fires were insufficient.

39. Polaris also knew that any changes it had made to the design and warnings of the RZR's failed to provide proper notice to consumers of the extent and gravity of the fire hazards and had not proven to be effective.

40. Polaris did not sufficiently educate its engineers with regard to the many reports it received of RZR fires or the claims related to such fires. Polaris did not adequately staff a product safety department. Polaris limited the authority of employees to recall products. Polaris continued to aggressively market, promote, and sell Polaris RZR's, and through its advertising and public relations efforts, encouraged its users to modify vehicles.

41. Polaris' negligent, reckless and deliberate decisions in the years leading up to the incidents described in this case included continuing to rush new RZR models to market before

they were ready. This lead to problems with manufacturing , assembly quality, poor quality control, inadequate testing and premature release of products prior to validation of their safety.

42. In April, 2018, Polaris agreed to pay a civil fine from the CPSC of \$27,250,000 for failing to properly and timely report fires in 2013-2016 RZR models.

43. Had Polaris properly and truthfully communicated to Mr. Henke what it knew about the thermal hazards related to its RZR vehicles, including the 2015 Model , Mr. Henke would not have accepted the subject vehicle as a replacement for the first burned RZR, and/or he would not used the vehicle.

COUNT 1

Negligence

44. The preceding paragraphs are hereby incorporated by reference.

45. 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 RZR vehicles.

B. In failing to use reasonable care in the manufacturing of RZRs.

C. In failing to use reasonable care in the design of RZRs.

D. In failing to use reasonable care in the assembly of RZRs.

E. In failing to use reasonable care in inspecting RZRs.

F. In failing to use reasonable care in testing RZRs.

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 RZRs.

H. In failing to use reasonable care in providing adequate warnings and/or instructions for safe use of RZR's.

I. In failing to use reasonable care to warn members of the public generally, and the Plaintiff specifically, before and after RZR's were sold, of the foreseeable and latent dangers and defects, related to fire and burn hazards, inherent in the usage of RZR's.

J. In failing to use reasonable care in using recalls related to RZR's.

K. For any and all other defects, presently unknown, that may exist and may be determined by discovery.

L. For any and all other acts and omissions of negligence, presently unknown, that may exist and may be determined by discovery.

46. Defendants' negligence was the direct and proximate cause of Plaintiff's damages.

COUNT 2

Strict Liability

47. The preceding paragraphs are hereby incorporated by reference.

48. Polaris, at all times pertinent hereto, in the regular course of its individual business, designed, manufactured, constructed, distributed, assembled, sold, and/or placed RZR's, including the RZR at issue in this Case, into the stream of interstate commerce for use by the public, including the RZR used by the Plaintiff. The RZR was defective in design, manufacturing, assembly, testing and warnings.

49. By placing the RZR into the stream of commerce, Polaris represented that the RZR could be used safely by the public for the intended purpose. The RZR remained in the same defective

condition as when it was manufactured and was unreasonably dangerous when used by Plaintiff as they were intended.

50. The defects in the RZR were the direct and proximate cause of Plaintiff's damages.

COUNT 3

Manufacturing Flaw

51. The preceding paragraphs are hereby incorporated by reference.

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

53. The defects in the RZR were the direct and proximate cause of Plaintiff's damages.

COUNT 4

Failure to Warn

54. The preceding paragraphs are hereby incorporated by reference.

55. Polaris failed to properly warn Plaintiff and other people who would foreseeably be in close proximity to, use, or drive the RZR of the defective and dangerous condition of the RZR, both before and after sale.

56. Polaris' failure to warn was the direct and proximate cause of Plaintiff's damages.

COUNT 5

Breach of Express and Implied Warranties

57. The preceding paragraphs are hereby incorporated by reference.

58. In the design, manufacture, marketing, assembly, distribution, and/or sale of the RZR, Polaris expressly and/or impliedly warranted to the public in general and to Plaintiff 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.

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

60. Polaris' breach of warranties was the direct and proximate of Plaintiff's damages.

COUNT 6

Negligent Infliction of Emotional Distress

61. The preceding paragraphs are hereby incorporated by reference.

62. Plaintiff were in the zone of danger when the RZR was consumed by fire.

63. Such Plaintiff reasonably feared for their own safety.

64. Plaintiff suffered severe emotional distress with attendant physical manifestations.

Injuries and damages

65. The liable conduct of Polaris described above caused Plaintiff to sustain substantial injuries and damages, including but not limited to property damage, loss of interest, past and future medical expense, income loss, earning capacity loss, disability, emotional distress, pain, suffering and loss of household services. Plaintiff has sustained damages greater than \$50,000.

THEREFORE, Plaintiff prays for judgment against Polaris as follows:

1. For damages in an amount greater than \$50,000;
2. For prejudgment interest on all special damages pursuant to Minnesota law.
3. For costs and such other further relief as the Court deems proper.

Plaintiff hereby acknowledges that sanctions may be imposed by the Court under Minnesota Statute 549.211 if parties to a lawsuit make inappropriate or unfounded claims or defenses.

DATED this 29th day of May 2019.

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