

Pennsylvania.

3. Plaintiffs Scott Ruddy and Rebecca Ruddy suffered horrific injuries on July 27, 2016, when their Polaris 2002 Virage i released gasoline and/or gasoline vapors into the hull of the PWC, which then ignited causing an explosion that launched Rebecca Ruddy and Scotty Ruddy into the air. Eugene Ruddy and Rebecca Ruddy witnessed their 7 year old son ejected in the air amidst a towering flame of fire. The force of the blast was so massive that Scott Ruddy landed on the wreckage and broke his skull in multiple places with brain matter exposed. In addition, Rebecca Ruddy broke her back and required spinal fusion surgery.

PARTIES

4. Plaintiffs Eugene Ruddy, Rebecca Ruddy and Scott Ruddy are citizens and residents of the Commonwealth of Pennsylvania, residing at 121 Sandwedge Drive, Mountain Top, PA 18707.

5. Defendant Polaris Industries, Inc. is a corporation or other jural entity organized and existing under the laws of the State of Minnesota, with a principal place of business located at 2100 Highway 55, Medina, MN 55340.

6. Defendant Polaris Sales, Inc. is a corporation or other jural entity organized and existing under the laws of the State of Minnesota, with a principal place of business located at 2100 Highway 55, Medina, MN 55340.

7. Polaris, Industries, Inc. and Polaris Sales, Inc. are referred to collectively as “Polaris” or “Defendants.”

8. At all times relevant hereto, Polaris, and/or their successor and/or predecessor companies, were manufacturers, designers, and/or sellers engaged in the business of designing, manufacturing, fabricating, assembling, inspecting, marketing, distributing, selling, and/or supplying, among other things, PWCs that are sold and distributed to various persons and companies directly for sale and for resale to the general public.

9. At all times relevant hereto, Polaris and/or their successor and/or predecessor companies, acted by and through their duly-authorized agents, servants and/or employees who were in turn acting within the course and scope of their agency and/or employment with the defendants and in furtherance of defendants’ business interests.

10. Defendants and/or their successor and/or predecessor and/or affiliate companies are the designers, manufacturers, fabricators, assemblers, inspectors, marketers, distributors, sellers and/or suppliers, of the subject PWC and placed said PWC into the stream of commerce.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this action pursuant to 28 U.S.C. §

1332 in that there is diversity of citizenship and the amount in controversy exceeds the sum of One Hundred Fifty Thousand Dollars (\$150,000.00), exclusive of interest and costs.

12. Venue is properly laid in this district by reason of 28 U.S.C. § 1391(a).

FACTUAL BACKGROUND

13. On or about January 19, 2010, plaintiffs purchased the subject PWC, Polaris Model 2002 Virage i and Serial No. US-PLE20266D202.

14. On July 27, 2016, Eugene, Rebecca, Scott and Blake Ruddy intended to use their PWCs at Wilsonville Campground on Lake Wallenpaupack. Rebecca, age 43, and Scott, age 7, were on one PWC and Eugene and Blake were to ride on the other.

15. Scott sat in the front of the subject PWC and his mother was behind him.

16. Rebecca pressed the ignition and the PWC started briefly and then stopped. She pressed the ignition button again to start the PWC and it unexpectedly and violently exploded at the dock in front of Eugene.

17. The force of the explosion was enormous; it threw both Rebecca and Scott into the air. Initially, Scott was thrown into Rebecca, breaking her teeth and

ripping her lip. The blast and ejection broke Rebecca's back. Scott came down hitting the remnants of the exploded PWC, shattering his skull.

18. The explosion was so strong that it sent parts of the PWC flying across the shoreline, starting from where the explosion happened to several docks away. Both the lake and PWC were on fire from the explosion.

19. Eugene witnessed the tragic events and instinctively jumped into the water and reached them both. They were both face-down, afloat in the water.

20. Eugene flipped them both over and Rebecca regained consciousness. She immediately began to cry from the pain in her back.

21. Eugene carried Scott to shore and stayed with him until the ambulances arrived.

22. Two medical helicopters arrived and took Rebecca and Scott to Lehigh Valley Medical Center (“LVMC”).

23. Scott’s admitting and discharge diagnosis at LVMC was “head injury due to trauma.” He had an open depressed fracture of his skull, acute respiratory failure, subdural hematoma, fracture of sphenoid bone, fracture of his skull with a cerebral contusion, mastoid fracture, sinus fracture and orbital fracture. He was intubated and admitted to trauma surgery in critical condition. He was emergently taken to the operating room to have a craniotomy (surgical removal of bone from

the skull to expose the brain) with elevation and debridement of the depressed skull fracture as well as placement of a ventriculostomy (device that drains fluid from the head). The surgeon, Dr. Chris A. Lycette, noted at the onset of surgery that there were “2 linear lacerations evident with extrusion of some brain matter.” Multiple pieces of bone fractures were connected by screws.

24. Scott remained at LVMC until August 12, 2016. He was then transferred to the Good Shepherd Rehabilitation Hospital in Bethlehem, PA to learn to walk, eat, drink, go to the bathroom and other daily routines. Scott remained at Good Shepherd Rehabilitation Hospital until September 14, 2016. Subsequently, he was sent to Heinz Rehabilitation Hospital in Wilkes Barre, PA ("HWBRC") with speech impairment, memory impairment, balance impairment and multiple open skull fractures, among other things. A grueling, speech, cognitive, physical and occupational therapy plan ensued.

25. Scott continues to suffer physical pain, cognitive issues and memory loss and will continue to suffer from the sequela of his traumatic brain injury, which are permanent in nature.

26. Similarly, Rebecca arrived at LVMC with a T-12 compression fracture, upper lip avulsion, left rib fracture and fracture of the T-11 transverse process. She was admitted to the trauma surgery service and had fusion surgery

from T-10 to L1 with internal fixation.

27. Rebecca was discharged from LVMC and transferred to HWBRC for physical therapy and rehabilitation.

28. Both Scott and Rebecca are severely scarred and have suffered injuries to their bones, tissues, and other parts of their body, together with emotional distress, conscious pain and suffering, mental anguish, and other physical and emotional injuries, the full extent of which are not yet known and some or all of which may be permanent in nature, pain producing, and disabling.

29. Plaintiffs' injuries are a direct and proximate result of the defective and hazardous PWC product.

30. The subject PWC was designed, manufactured, and sold by defendants in a condition that was defective, dangerous and/or hazardous to users of the machine.

31. The subject PWC was designed, developed, manufactured and sold by defendants without adequate safety devices, mechanisms, design elements, and controls that would have prevented this incident and the corresponding horrific injuries.

32. The subject PWC was designed, developed, manufactured and sold by defendants in a defective condition unknowable and unacceptable to the average

or ordinary consumer.

33. The subject PWC was designed, developed, manufactured, and sold by the defendants in a condition in which a reasonable person would conclude that the probability and seriousness of harm caused by the product outweighed the burden or costs of taking precautions against the harm.

34. The subject PWC was designed, developed, manufactured, sold, fabricated, marketed, and distributed, without adequate warnings about the dangers of gasoline and gasoline vapors being trapped in the hull and exploding.

35. Prior to the incident involving plaintiffs, defendants failed to properly and adequately warn potential users of the defective, dangerous and/or hazardous condition of the subject PWC.

36. The subject PWC was designed, manufactured, sold, fabricated, marketed, and distributed, without adequate warnings or instructions concerning the danger of gasoline, gasoline vapors and sparks mating in the hull to cause an explosion.

37. At all relevant times, plaintiffs were using the subject PWC in a reasonable and ordinary manner for which it was intended and for its intended purpose.

38. At no time did plaintiffs misuse the subject PWC.

39. At no time did plaintiffs voluntarily or knowingly assume the risk of any potential harm associated with use of the subject PWC.

40. The explosion occurred during routine use of the subject PWC and defendants knew or should have known that the design of the PWC was hazardous, defective, and unreasonably dangerous because it was prone to explode and catch fire during routine use, conditions and activities.

41. Defendants are, or should have been aware, of the dangers and hazards of gas fumes and gas leaks in the hull resulting in explosions.

42. Defendants knew, or should have known, that there was a defect/hole under the Polaris installed fuel pump retaining nut threads that would allow fuel into the engine compartment which would cause a fire or explosion resulting in severe injury, property damage or death.

43. Defendants knew, or should have known, that the Polaris installed fuel line hoses shrink, loosen from their connection, fray, chafe and tear permitting fuel leakage into the hull which would cause a fire or explosion resulting in severe injury, property damage or death.

44. Defendants knew, or should have known, that the Polaris installed fuel line hoses have insecure connections and dislodge from the fuel tank permitting fuel leakage into the hull which would cause a fire or explosion

resulting in severe injury, property damage or death.

45. Defendants knew, or should have known, that the Polaris installed plastic nipples from the gas line supply/return line and vent line from the fuel pump head are frail, brittle and break permitting fuel leakage into the hull which would cause a fire or explosion resulting in severe injury, property damage or death.

46. Defendants negligently designed, manufactured, and failed to warn users, including Plaintiffs, of the hazards and dangers of the subject PWC.

47. As a direct and proximate result of Defendants' negligence, negligent design and manufacture, and failure to warn, as set forth above and below, Plaintiffs suffered injuries that have precluded them and will in the future continue to preclude them from fully enjoying the ordinary pleasures of life and participating in their ordinary activities and avocations.

48. As a direct and proximate result of Defendants' negligence, negligent design and manufacture, and failure to warn, as set forth above and below, Plaintiffs suffered and will continue in the future to suffer pain, agony, anxiety, mental anguish, depression, disability, mental disturbances, bodily deformation, embarrassment, humiliation, loss of life's pleasures, loss of well-being and other such intangible losses some or all of which may be permanent in nature.

49. As a direct and proximate result of Defendants' negligence, negligent design and manufacture, and failure to warn, as set forth above and below, Plaintiffs incurred in the past and will in the future continue to incur substantial medical and medically-related expenses including, but not limited to, expenditures for medical attention, medication, hospitalization, medical and surgical care, testing, physical therapy, occupational therapy, rehabilitative care, equipment and other care and treatment to attend to, treat and attempt to alleviate, minimize, and/or cure themselves of the aforementioned injuries.

50. As a direct and proximate result of Defendants' negligence, negligent design and manufacture, and failure to warn, as set forth above and below, Plaintiffs suffered in the past and will in the future continue to suffer loss and depreciation of their earnings and earnings capacity, to their great detriment and loss.

COUNT I - NEGLIGENCE

Plaintiffs Rebecca Ruddy and Scott Ruddy v. All Defendants

51. The above allegations are incorporated herein by reference as though set forth in full.

52. At all relevant times, Defendants owed a duty to design, manufacture, fabricate, assemble, inspect, market, distribute, sell and/or supply products in such

a way so as to avoid harm to persons using them, such as Scott Ruddy and Rebecca Ruddy.

53. Defendants breached that duty.

54. Defendants owed a duty to warn of the hazards and dangers associated with the use of their products, so as to avoid harm to persons using them, such as Scott Ruddy and Rebecca Ruddy.

55. Defendants breached that duty.

56. Defendants knew, or in the exercise of reasonable care should have known, that the subject PWC was of such a nature that, if not properly designed, developed, manufactured, inspected, marketed, labeled, promoted, and sold, it was likely to cause severe injury or death to those who used the product.

57. Defendants, acting by and through their authorized divisions, subsidiaries, agents, servants and employees, breached these duties and were negligent, careless, and reckless in designing, developing, manufacturing, fabricating, assembling, inspecting, marketing, distributing, selling and/or supplying the PWC, both generally and in the following particular respects:

- a. designing, developing, manufacturing, fabricating, assembling, inspecting, marketing, promoting, distributing, selling and/or supplying the PWC negligently, without due care, and in an unsafe condition;

- b. designing, developing, manufacturing, fabricating, assembling, inspecting, marketing, distributing, selling and/or supplying the PWC in such a way that persons using it would not be apprised of the danger;
- c. designing, developing, manufacturing, fabricating, assembling, inspecting, marketing, distributing, selling and/or supplying the PWC, the dangerous condition of which the Defendants knew or should have known users would not realize;
- d. failing to properly and adequately test and inspect the PWC to determine its safety;
- e. failing to employ safety mechanisms or design elements that would have prevented release and leakage of gasoline fumes and/or gasoline into the hull of the PWC causing explosion and fire;
- f. failing to use due care in the researching, development, and design of the subject PWC to prevent risks to individuals when the PWC was used in an ordinary and foreseeable manner;
- g. failing to conduct adequate pre-market testing and research to determine the safety of the subject PWC;
- h. failing to conduct adequate post-market surveillance to determine the safety of the subject PWC;
- i. failing to supply a PWC that was free of defects and was fit and safe in all respects for its intended and foreseeable uses;
- j. disregarding the safety and well-being of users and consumers of the PWC, including Scott Ruddy and Rebecca Ruddy, by designing and manufacturing the PWC in an unsafe matter;
- k. disregarding the safety of users and consumers of the PWC, including Scott Ruddy and Rebecca Ruddy, by failing to

eliminate, rectify and/or warn of known dangers and defects involving a substantial likelihood of injury;

- l. failing to provide adequate instructions, warnings, or labels covering all known or reasonably foreseeable risks or eventualities, including explosion and/or fire when the PWC was being used in an ordinary and foreseeable manner;
- m. failing to provide adequate instructions or warnings at any time regarding the hazards posed by the PWC when being used in an ordinary and foreseeable manner, when the Defendants knew or should have known of the risk of an individual being severely injured or killed by an explosion or fire caused by release of gasoline and/or gasoline fumes into the hull without proper venting design or mechanisms;
- n. failing to keep abreast of state of the art and existing principles of science, engineering, and design and/or applying such knowledge and principles to the design of the PWC;
- o. failing to comply with statutes, codes, regulations, and standards regarding the proper and safe design and operation of the PWC;
- p. failing to provide adequate warnings;
- q. failing to use reasonable care to provide a PWC that complied with industry standards;
- r. failing to recall, broadcast, warn, advertise or otherwise cause the repair of the design and manufacturing defect of the PWC detailed herein;
- s. failure to use due care under the circumstances; and,
- t. such other acts or omissions constituting negligence, carelessness, and recklessness as may appear during the course

of discovery or at the trial of this matter.

58. Despite the fact that Defendants knew or should have known that the subject PWC caused unreasonable, dangerous, and potentially fatal risks that many users would be unable to avoid, Defendants continued to market and promote the product to consumers, including Plaintiffs, providing false and misleading information with regard to the safety of the product, acting intentionally or in reckless disregard of the safety of consumers such as Plaintiffs, given Defendants' knowledge of the dangers associated with the subject PWC.

59. Defendants knew or should have known that consumers such as Plaintiffs would suffer injury and/or death as a result of Defendants' failures to exercise ordinary care.

60. Plaintiffs suffered the injuries and damages described herein as a direct and proximate result of the acts and/or omissions of Defendants set forth above.

WHEREFORE, Plaintiffs demand compensatory damages against Defendants, jointly and severally, in an amount in excess of One Hundred and Fifty Thousand (\$150,000.00) Dollars, together with lawful interest thereon, costs of suit, and such other damages as this Court deems just and proper.

COUNT II - STRICT LIABILITY
Plaintiffs Rebecca Ruddy and Scott Ruddy v. All Defendants

61. The above allegations are incorporated herein by reference as if set forth in full.

62. Defendants at all times relevant to this action were engaged in the design, development, testing, manufacture, distribution and sale of PWCs, and in particular, the subject PWC.

63. The subject PWC was expected to and did reach users and consumers, to wit, Plaintiffs, without substantial change in the condition in which it was sold.

64. The PWC was in a defective condition creating risk of harm to a user or a consumer, including Plaintiffs.

65. The defective condition of the PWC includes, among other things, those deficiencies set forth above in this complaint.

66. The above-noted defects caused Scott Ruddy's and Rebecca Ruddy's injuries.

67. The aforesaid incident and Scott Ruddy's and Rebecca Ruddy's injuries and losses were caused by Defendants' designing, developing, manufacturing, fabricating, assembling, inspecting, marketing, distributing, selling and/or supplying the PWC in a defective condition for which Defendants are

strictly liable to Plaintiffs pursuant to Restatement (Second) of Torts § 402A.

68. The aforesaid incident and Plaintiffs' injuries and losses were caused by Defendants' designing, developing, manufacturing, fabricating, assembling, inspecting, marketing, distributing, selling and/or supplying the PWC without proper and adequate warnings, instructions, and/or guidelines for safe use for which the Defendants are strictly liable to plaintiffs.

69. Plaintiffs suffered the injuries and damages described herein as a direct and proximate result of the defective nature of the product.

WHEREFORE, Plaintiffs demand compensatory damages against Defendants, jointly and severally, in an amount in excess of One Hundred and Fifty Thousand (\$150,000.00) Dollars, together with lawful interest thereon, costs of suit, and such other damages as this Court deems just and proper.

COUNT III - BREACH OF WARRANTY
Plaintiffs Rebecca Ruddy and Scott Ruddy v. All Defendants

70. The above allegations are incorporated herein by reference as if set forth in full.

71. In designing, developing, manufacturing, fabricating, assembling, inspecting, marketing, distributing, selling and/or supplying the subject PWC, Defendants expressly warranted that the product was safe for its intended and

foreseeable uses and made other express warranties concerning the quality and characteristics of the product, in promoting and marketing the PWC.

72. In designing, developing, manufacturing, fabricating, assembling, inspecting, marketing, distributing, selling and/or supplying the subject PWC, the Defendants impliedly warranted that it was of merchantable quality, was fit and safe for the ordinary and particular purpose for which it was sold, and was free of all defects.

73. The aforesaid express and implied warranties were breached by Defendants in that the subject PWC constituted a serious danger to the user and others, was not safe for its intended or foreseeable uses, was not of merchantable quality, was not fit and safe for the ordinary purposes for which it was sold, and was not free from all defects.

74. At the time of these warranties, Defendants knew of the intended uses of the subject PWC and, for these uses, warranted the PWC to be safe, effective, and proper. Said PWC did not conform to these express and implied representations in that it was neither safe nor effective and use resulted in unreasonable risk of serious injury or death.

75. In using the subject PWC, Plaintiffs relied on the skill, judgment, representations, and express and implied warranties of Defendants.

76. Plaintiffs suffered the injuries and damages described herein as a direct and proximate result of the acts and/or omissions of Defendants set forth above.

WHEREFORE, Plaintiffs demand compensatory damages against Defendants, jointly and severally, in an amount in excess of One Hundred and Fifty Thousand (\$150,000.00) Dollars, together with lawful interest thereon, costs of suit, and such other damages as this Court deems just and proper.

COUNT IV - GROSS NEGLIGENCE, RECKLESSNESS, MALICE
Plaintiffs Rebecca Ruddy and Scott Ruddy v. All Defendants

77. The above allegations are incorporated herein by reference as if set forth in full.

78. Prior to July 27, 2016, Defendants had actual and subjective awareness of the dangers and hazards of the subject PWC to users such as Scott Ruddy and Rebecca Ruddy and willfully and/or recklessly disregarded the facts.

79. Despite such knowledge, and in willful, wanton, outrageous and reckless disregard for human life and safety, including the safety and well-being of Plaintiffs, Defendants continued to design, manufacture, fabricate, assemble, market, distribute, sell and/or supply the PWC with such characteristics, allowed the products to remain in the stream of commerce where they could injure and/or

cause the death of consumers such as Scott Ruddy and Rebecca Ruddy, failed to warn owners and users of the potential danger posed by the design, and affirmatively promoted the safety and efficacy of the PWC, all to avoid the expense of changing the design of their products and to prevent potential lost revenue.

80. Despite such knowledge, and in willful, wanton, outrageous and reckless disregard for human life and safety, including the safety and well-being of Scott Ruddy and Rebecca Ruddy, Defendants failed to recall, repair or modify the defective PWC and failed to warn and/or inform owners and users of the extreme degree of risk and danger posed by the PWC or how to reduce and/or eliminate those dangers, all to avoid the expense of these procedures and to prevent potential lost sales caused by adverse publicity.

81. Defendants' conduct, as set forth above, was willful and wanton misconduct, was grossly negligent and reckless, and evidenced a conscious and reckless disregard for human life and safety, including the safety and well-being of Plaintiffs.

82. Defendants' acts and omissions involved an extreme degree of risk considering the probability and magnitude of potential harm to others, including Plaintiffs.

83. As a direct and proximate result of such conduct by Defendants, Plaintiffs suffered and continue to suffer extensive and severe injuries as set forth above.

WHEREFORE, Plaintiffs demand compensatory damages against Defendants, jointly and severally, in an amount in excess of One Hundred and Fifty Thousand (\$150,000.00) Dollars, punitive damages, together with lawful interest thereon, costs of suit, and such other damages as this Court deems just and proper.

COUNT V - LOSS OF CONSORTIUM
Eugene Ruddy v. All Defendants

84. The above allegations are incorporated herein by reference as if set forth in full.

85. Plaintiff, Eugene Ruddy, is the husband of Plaintiff Rebecca Ruddy and has suffered and will continue to suffer the loss of his wife's services, society, companionship, assistance, personal relations and consortium as a result of defendants' conduct as stated above.

WHEREFORE, Plaintiff demands compensatory damages against Defendants, jointly and severally, in an amount in excess of One Hundred and Fifty Thousand (\$150,000.00) Dollars, together with lawful interest thereon, costs

of suit, and such other damages as this Court deems just and proper.

COUNT VI - NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
Eugene Ruddy and Rebecca Ruddy v. All Defendants

86. The above allegations are incorporated herein by reference as if set forth in full.

87. Plaintiffs Eugene Ruddy and Rebecca Ruddy witnessed and/or contemporaneously sensed and observed the negligent conduct and injury producing defect that caused physical injury to Scott Ruddy, while in the presence and view of Scott Ruddy and the events described herein.

88. Plaintiffs Eugene Ruddy and Rebecca Ruddy were keenly aware of Scott Ruddy's injuries and experienced, first hand and contemporaneously, the injuries as they occurred.

89. Plaintiffs Eugene Ruddy and Rebecca Ruddy suffer from the traumatic impact of contemporaneously witnessing and experiencing Scott Ruddy's unspeakable pain and suffering caused by Defendants' negligence and the defective condition of the PWC. Plaintiffs Eugene Ruddy's and Rebecca Ruddy's, awareness and observations have resulted in the infliction of emotional distress upon them.

90. The witnessing of the above-described negligence, episodes, and

injury caused to Scott Ruddy has caused Eugene Ruddy and Rebecca Ruddy to suffer physical injury, including severe emotional shock and trauma and psychological injury.

91. Eugene Ruddy and Rebecca Ruddy continue to experience effects of that physical injury, emotional trauma, and shock and will continue to so suffer in the future, and are, therefore, entitled to recover damages in their own right for their physical injury and emotional distress under the law as stated in *Sinn v. Burd*, 404 A.2d 672 (Pa. 1979), and its progeny, including *Pearsall v. Emhart Industries, Inc.*, 599 F.Supp. 207 (1984).

92. The negligence and actions of all Defendants, as described above, was the proximate cause of Plaintiffs' damages.

WHEREFORE, Plaintiffs demand compensatory damages against Defendants, jointly and severally, in an amount in excess of One Hundred and Fifty Thousand (\$150,000.00) Dollars, together with lawful interest thereon, costs of suit, and such other damages as this Court deems just and proper.

ROSS FELLER CASEY, LLP

By: /s/ Matthew A. Casey
MATTHEW A. CASEY, ESQUIRE - PA 84443
GREGORY N. HAROUTOUNIAN- PA 207338
Motion for *Pro Hac Vice* Admission
1650 Market Street, Suite 3450
Philadelphia, PA 19103
(215)574-2000
(215) 574-3080 - fax
mcasey@rossfeller Casey.com
gharouto@rossfeller Casey.com
Attorneys for Plaintiffs

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