

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Hayward Hall of Justice 24405 Amador Street, Hayward, CA 94544		FILED Superior Court of California County of Alameda 01/25/2022
PLAINTIFF/PETITIONER: Emilsa Lima et al		Chad Finke, Executive Officer / Clerk of the Court By: <i>Stephanie Gould</i> Deputy
DEFENDANT/RESPONDENT: Polaris Industries Inc et al		S. Gould
CERTIFICATE OF MAILING		CASE NUMBER: RG19026152

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Hayward, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

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Dated: 01/25/2022

By:

Chad Finke, Executive Officer / Clerk of the Court

Stephanie Gould

S. Gould, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
Hayward Hall of Justice

Emilsa Lima et al
Plaintiff/Petitioner(s)
VS.
Polaris Industries Inc et al
Defendant/Respondent(s)

No. RG19026152
Date: 01/24/2022
Time: 5:08 PM
Dept: 514
Judge: Delbert Gee

ORDER re: Ruling on Submitted Matter

The Court, having taken the matter under submission on 12/08/2021, now rules as follows:

The motion by Plaintiff Emilsa Lima (“Plaintiff”) for an order compelling Defendant Polaris (“Polaris”) to produce a Person(s) Most Qualified (“PMQ”) for further deposition on the topics described in Plaintiff’s Notice of Deposition and produce documents responsive to the requests for production in the deposition notice is GRANTED. The information sought about the effectiveness of the RZR Occupant Retention System and the number of similar injuries in other RZR models is reasonably calculated to lead to the discovery of admissible evidence.

The motion is timely. The deposition of Polaris’s PMQ was not completed, but was unilaterally adjourned by counsel for Polaris. The parties then agreed that the deposition would be completed after the parties reached an agreement or there was a court ruling on the scope of the deposition. (Dec. of Cloyd, Exhs. 1, 2.) Under the circumstances, the 60-day time limit under Code of Civil Procedure section 2025.480(b) never started to run because the record of the deposition was not completed. In addition, the record of Deckard’s deposition was not completed by the court reporter until July 19, 2021, and the motion was filed on September 17, 2021. (Decl. of Cloyd, Exh. 1.)

Polaris has not established that the discovery sought, as limited by the court’s order, will impose an undue burden. Plaintiff claims that her hand was amputated as the result of a rollover accident involving a 2013 Polaris RZR model vehicle because the Occupant Retention System (“ORS”) failed to keep her arms and hands inside the vehicle. Plaintiff agreed to limit the requests to side-by-side RZR model vehicles, which were introduced in 2007, and injuries to upper extremities caused by rollover accidents involving those vehicles. The vehicle at issue was manufactured in 2013, but accidents after that date involving injuries to upper extremities caused by rollover accidents involving side-by-side RZR model vehicles are relevant to causation. The court’s order does not, as Polaris claims, require it to produce incident reports for every rollover event ever reported for every RZR vehicle produced during this period of time. Nor does it show undue burden. Polaris does not dispute that it has a database of information that can be searched for evidence responsive to Plaintiffs’ requests.

Polaris’s contention that its search should be limited to the years 2007 to 2013 is not persuasive. Polaris does not show that the causes of injuries to hands and upper extremities in rollover

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accidents involving side-by-side RZR model vehicles manufactured from 2014 to the present are dissimilar from the causes of the same types of injuries in pre-2014 RZR models. In particular, Polaris does not show that the ORS in the RZR vehicle in this case, which manufactured in 2013, is dissimilar from the ORS in RZR vehicles from 2014 to the present.

No later than February 28, 2022, Polaris shall designate and make available for deposition its person most qualified to testify about the following issues, and diligently search for and produce documents responsive to those following issues as to side-by-side RZR model vehicles and injuries to upper extremities caused by rollover accidents involving those vehicles: (1) Other incidents of injuries to hands or upper extremities of occupants in Polaris RZR model side-by-side vehicles during roll-over or tipping incidents; (2) The differences and similarities between the subject vehicle and other Polaris side-by-side vehicles as they relate to the potential for upper extremity injuries to occupants during roll-over or tipping incidents; (3) Polaris's knowledge, analysis, and testing of the potential for upper extremity injuries to side-by-side vehicle occupants during roll-over or tipping incidents; (4) Efforts to minimize, prevent, or eliminate upper extremity injuries to POLARIS side-by-side vehicle occupants during roll-over or tipping incidents including but not limited to designs, modifications, and warnings; (5) The nature, dates, locations, and policies related to retention of information relating to injury incidents involving POLARIS side-by-side vehicles.

Plaintiff's request for an award of monetary sanctions is DENIED in the court's discretion. Polaris' position was arguable and imposition of monetary sanctions would be unjust. (Code Civ. Proc., sec. 2025.450(g)(1).)

Clerk is directed to serve endorsed-filed copies of this order, with proof of service, to counsel and to self-represented parties of record by mail.

Dated: 01/24/2022



Delbert Gee / Judge