

08-1900-CD

James Stormer vs Jeffrey Carns al

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT, INC.

Defendants.

CIVIL DIVISION

CASE NUMBER: 08-1900-CD

TYPE OF PLEADING:  
COMPLAINT

FILED ON BEHALF OF:  
James Stormer, Plaintiff

COUNSEL OF RECORD:  
Jason M. Schiffman, Esquire  
Pa. I.D. #207103

SCHIFFMAN & WOJDOWSKI  
1300 Fifth Avenue  
Pittsburgh, PA 15219  
412/288-9444

FIRM I.D. #466

3 FILED Any pd. 95.00  
OCT 06 2008 11:55 AM  
William A. Shaw  
Prothonotary/Clerk of Courts  
ICC Any  
ICC Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JAMES STORMER,	)	
	)	
Plaintiff,	)	NO.:
	)	
vs.	)	
	)	
JEFFREY CARNS t/d/b/a CARNS	)	
EQUIPMENT COMPANY and	)	
ARCTIC CAT, INC.	)	
	)	
Defendants.	)	

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR PHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

DANIEL NELSON, COURT ADMINISTRATOR  
CLEARFIELD COUNTY COURTHOUSE  
230 E. MARKET STREET, SUITE 228  
CLEARFIELD, PA 16830  
(814) 765-2641, Ext. 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JAMES STORMER,	)	
	)	
Plaintiff,	)	NO.:
	)	
vs.	)	
	)	
JEFFREY CARNS t/d/b/a CARNS	)	
EQUIPMENT COMPANY and	)	
ARCTIC CAT, INC.	)	
	)	
Defendants.	)	

**COMPLAINT**

AND NOW, comes the Plaintiff, James Stormer, by and through his attorneys, Schiffman & Wojdowski and Jason M. Schiffman, Esquire, and files the following Complaint:

1. The Plaintiff James Stormer is an individual and a resident of the Commonwealth of Pennsylvania and County of Jefferson, residing at 481 Butler Cemetery Road, Brookville, Pennsylvania 15825.
2. The Defendant Jeffrey Carns is an individual who trades and does business as Carns Equipment Company with a place of business located at 14357 Clearfield Shawville Highway, Clearfield, Pennsylvania 16830.
3. The Defendant Arctic Cat, Inc. is a corporation with its principal place of business located at 601 Brooks Avenue South, Thief River Falls, Minnesota 56701, which at all relevant times traded and did business in the Commonwealth of Pennsylvania and County of Clearfield.

4. On or about February 9, 2007, Lynn McGarvey purchased a 2007 Arctic Cat ATV, Model 650 H1 with Serial Number: 4UF07ATV57T225203 (hereinafter referred to as "ATV") from Carns Equipment Company.

5. On or about February 10, 2007 the ATV was delivered to Ms. McGarvey.

6. On or about February 10, 2007, the Plaintiff James Stormer was riding the ATV when the front wheel suddenly and unexpectedly fell off causing the Plaintiff to be thrown over the windshield and sustain serious injuries.

**COUNT I –  
JAMES STORMER VS.  
JEFFREY CARNS t/d/b/a CARNS EQUIPMENT COMPANY**

7. The Plaintiff hereby incorporates by reference paragraphs 1 through 6 of this Complaint as though the same were more fully set forth at length herein.

8. At all times relevant hereto, this Defendant was engaged in the business of selling all terrain vehicles and was a seller as defined by the Restatement (Second) Torts §402 as adopted by the Supreme Court of Pennsylvania.

9. The ATV was expected to and did reach the Plaintiff and was used by him without substantial change in the condition in which it was manufactured for sale.

10. This Defendant breached the duties owed to the Plaintiff as mandated by selling the ATV in a defective condition rendering it unreasonably dangerous to the user of the product.

11. The ATV was defective because it was manufactured of defective materials.

12. The ATV was further defective because it contained a defective the ball joint that fractured.

13. The ATV was further defective because it failed to have proper labels and warnings.

14. As the direct, legal and proximate result of the breach of the mandates of §402A by this Defendant, the Plaintiff James Stormer has sustained the following injuries:

- a. Cervical radiculopathy;
- b. Cervical sprain;
- c. Myofascial cervical strain;
- d. Ligamentous strain;
- e. Moderate left median neuropathy; and
- f. Other serious injuries.

15. As the direct, legal and proximate result of the breach of the mandates of §402A by this Defendant, the Plaintiff James Stormer has sustained the following damages:

- a. He has had to undergo medical treatment;
- b. He has suffered and will continue to suffer great pain, suffering, mental anguish and embarrassment;
- c. He has incurred medical bills for treatment;
- d. He has been unable to enjoy the ordinary pleasures of life;
- e. He has been unable to perform his normal daily activities including employment;
- f. He has incurred a loss of earnings and diminution of earning capacity; and
- g. His general health, strength and vitality have been impaired.

WHEREFORE, the Plaintiff James Stormer demands judgment in his favor and against the Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company for an amount in excess of Twenty Thousand (\$20,000.00) Dollars, exclusive of interest and costs.

**COUNT II –  
JAMES STORMER VS.  
JEFFREY CARNS t/d/b/a CARNS EQUIPMENT COMPANY**

16. The Plaintiff hereby incorporates by reference paragraphs 1 through 15 of this Complaint as though the same were more fully set forth at length herein.

17. This Defendant was negligent in the following particulars:

- a. In selling an ATV in a defective condition;
- b. In failing to adequately inspect the ATV prior to sale; and
- b. In failing to warn the Plaintiff of the dangers of the ATV.

18. As the direct, legal and proximate result of the negligence of these Defendants as aforesaid, the Plaintiff has sustained the injuries and damages previously set forth.

WHEREFORE, the Plaintiff James Stormer demands judgment in his favor and against the Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company for an amount in excess of Twenty Thousand (\$20,000.00) Dollars, exclusive of interest and costs.

**COUNT III –  
JAMES STORMER VS.  
JEFFREY CARNS t/d/b/a CARNS EQUIPMENT COMPANY**

19. The Plaintiff hereby incorporates by reference paragraphs 1 through 18 of this Complaint as though the same were more fully set forth at length herein.

20. At all times relevant hereto, this Defendant was a “merchant” within the meaning of the Pennsylvania Uniform Commercial Code.

21. Being within the ambit of the foreseeable operation and use of the ATV, the Plaintiff James Stormer relied upon the Defendant’s express warranties and/or implied warranties of merchantability and fitness for use for which the ATV was intended to be used and which were extended in accordance with the Pennsylvania Uniform Commercial Code.

22. As the direct, legal and proximate result of the breaches by this Defendant of the implied warranties, the Plaintiff has sustained the injuries and damages previously set forth.

WHEREFORE, the Plaintiff James Stormer demands judgment in his favor and against the Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company for an amount in excess of Twenty Thousand (\$20,000.00) Dollars, exclusive of interest and costs.

**COUNT IV –  
JAMES STORMER VS. ARCTIC CAT, INC.**

23. The Plaintiff hereby incorporates by reference paragraphs 1 through 22 of this Complaint as though the same were more fully set forth at length herein.

24. At all times relevant hereto, this Defendant was engaged in the business of designing, manufacturing, and/or selling ATVs and was a seller as defined by the Restatement (Second) Torts §402A as adopted by the Supreme Court of Pennsylvania.

25. This Defendant breached the duties owed to the Plaintiff as mandated by selling the ATV in a defective condition as previously set forth rendering it unreasonably dangerous to the user of the product.

26. As the direct, legal and proximate result of the breach of the mandates of §402A by this Defendant, the Plaintiff James Stormer has sustained the injuries and damages previously set forth.

WHEREFORE, the Plaintiff James Stormer demands judgment in his favor and against the Defendant, Arctic Cat, Inc. for an amount in excess of Twenty Thousand (\$20,000.00) Dollars, exclusive of interest and costs.



**COUNT V –**  
**JAMES STORMER VS. ARCTIC CAT, INC.**

27. The Plaintiff hereby incorporates by reference paragraphs 1 through 26 of this Complaint as though the same were more fully set forth at length herein.

28. This Defendant was negligent in the following particulars:

- a. In designing, manufacturing and/or selling an ATV with defective materials;
- b. In designing, manufacturing and/or selling an ATV with a defective ball joint that fractured;
- c. In designing, manufacturing and/or selling an ATV without proper labels and warnings;
- d. In designing and/or manufacturing and/or incorporating into the Artic Cat a defective ball joint;
- e. In incorporating a destructively designed ball joint into the design for the ATV in question; and
- f. In failing to properly test the ATV before marketing.

29. As the direct, legal and proximate result of the negligence of this Defendant as aforesaid, the Plaintiff has sustained the injuries and damages previously set forth.

WHEREFORE, the Plaintiff James Stormer demands judgment in his favor and against the Defendant, Arctic Cat, Inc. for an amount in excess of Twenty Thousand (\$20,000.00) Dollars, exclusive of interest and costs.

**COUNT VI –**  
**JAMES STORMER VS. ARCTIC CAT, INC.**

30. The Plaintiff hereby incorporates by reference paragraphs 1 through 29 of this Complaint as though the same were more fully set forth at length herein.

31. At all times relevant hereto, this Defendant was a “merchant” within the meaning of the Pennsylvania Uniform Commercial Code.

32. Being within the ambit of the foreseeable operation and use of the ATV, the Plaintiff James Stormer relied upon the Defendant’s express warranties and/or implied warranties of merchantability and fitness for use for which the ATV was intended to be used and which were extended in accordance with the Pennsylvania Uniform Commercial Code.

33. As the direct, legal and proximate result of the breaches by this Defendant of the implied warranties, the Plaintiff has sustained the injuries and damages previously set forth.

WHEREFORE, the Plaintiff James Stormer demands judgment in his favor and against the Defendant Arctic Cat, Inc. for an amount in excess of Twenty Thousand (\$20,000.00) Dollars, exclusive of interest and costs.

**COUNT VII –  
JAMES STORMER VS.  
JEFFREY CARNS t/d/b/a CARNS EQUIPMENT COMPANY  
AND ARCTIC CAT, INC.**

34. The Plaintiff hereby incorporates by reference paragraphs 1 through 33 of this Complaint as though the same were more fully set forth at length herein.

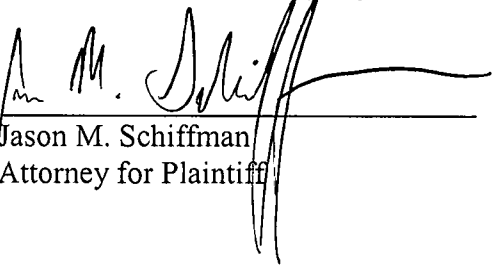
35. As the direct, legal and proximate result of the joint and/or several breaches of the mandates of §402A by these Defendants, the joint and/or several negligence of these Defendants, and the joint and/or several breaches of warranties by these Defendants, the Plaintiff has sustained the injuries and damages previously set forth.

WHEREFORE, the Plaintiff James Stormer demands judgment in his favor and against the Defendants Jeffrey Carns t/d/b/a Carns Equipment Company and Arctic Cat, Inc., both jointly and/or severally, for an amount in excess of Twenty Thousand (\$20,000.00) Dollars, exclusive of interest and costs.

RESPECTFULLY SUBMITTED:

SCHIFFMAN & WOJDOWSKI

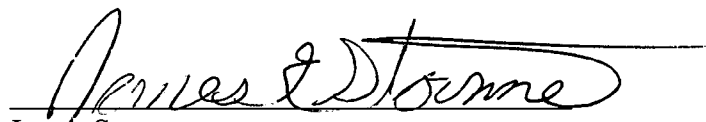
By:

  
\_\_\_\_\_  
Jason M. Schiffman  
Attorney for Plaintiff

**VERIFICATION**

The undersigned, James Stormer, Plaintiff named herein, and being authorized to make this Verification for and on his behalf, having read the foregoing COMPLAINT verifies that the averments are based on information furnished to counsel, which information has been gathered by counsel in the course of this lawsuit. The language is that of counsel and not of signer. Signer verifies that he has read the foregoing, and that it is true and correct to the best of the signer's knowledge, information and belief. To the extent that the contents of the foregoing document are that of counsel, verifier has relied upon counsel in making this verification. This verification is made subject to the penalties of 18 PA C.S.A. § 4904, relating to unsworn falsification to authorities.

Date: 9-11-08

  
James Stormer

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT, INC.

Defendants.

CIVIL DIVISION

CASE NUMBER: 08-1900-CD

TYPE OF PLEADING:  
AFFIDAVIT OF SERVICE  
FOR DEFENDANT ARCTIC  
CAT, INC.

FILED ON BEHALF OF:  
James Stormer, Plaintiff

COUNSEL OF RECORD:  
Jason M. Schiffman, Esquire  
Pa. I.D. #207103

SCHIFFMAN & WOJDOWSKI  
1300 Fifth Avenue  
Pittsburgh, PA 15219  
412/288-9444

FIRM I.D. #466

FILED <sup>NO CC</sup>  
OCT 23 2008  
William A. Shaw  
Prothonotary/Clerk of Courts

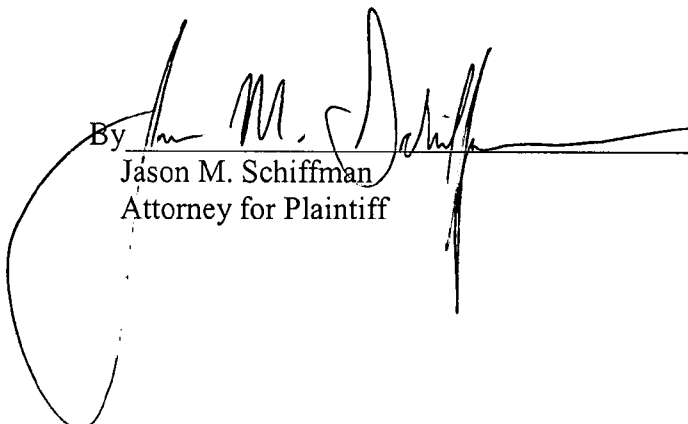
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JAMES STORMER, )  
 )  
Plaintiff, ) NO.: 08-1900-CD  
 )  
vs. )  
 )  
JEFFREY CARNS t/d/b/a CARNS )  
EQUIPMENT COMPANY and )  
ARCTIC CAT, INC. )  
 )  
Defendants. )

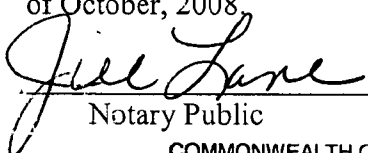
**AFFIDAVIT OF SERVICE FOR DEFENDANT**  
**ARCTIC CAT, INC.**

COMMONWEALTH OF PENNSYLVANIA ) SS:  
COUNTY OF ALLEGHENY )

Before me, the undersigned authority, personally appeared Jason M. Schiffman, Esquire, attorney for Plaintiff James Stormer, who, being duly sworn according to law, deposes and says that the Complaint was served upon Defendant, Arctic Cat, Inc., via Certified Mail/Return Receipt Requested on October 14, 2008. The original signed receipt is attached hereto, made a part hereof, and marked as Exhibit "A".

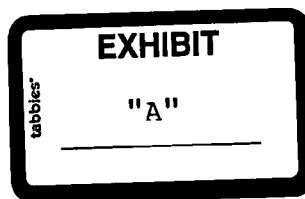
By   
Jason M. Schiffman  
Attorney for Plaintiff

Sworn to and subscribed  
before me this 21st day  
of October, 2008.

  
Notary Public

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Jill Lane, Notary Public  
City Of Pittsburgh, Allegheny County  
My Commission Expires May 4, 2010  
Member, Pennsylvania Association of Notaries

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>		<p>A. Signature  X <i>Shawn Flaten</i> <input type="checkbox"/> Agent  <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:  Arctic Cat, Inc.  Attn: Legal Dept.  601 Brooks Avenue South  Thief River Falls, MN  56701</p>		<p>B. Received by (Printed Name)  <i>SHAWN FLATEN</i></p> <p>C. Date of Delivery  <i>10-14-08</i></p>	
		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes  If YES, enter delivery address below: <input type="checkbox"/> No</p> <p><i>PO BOX 1</i></p>	
		<p>3. Service Type  <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>2. Article Number  (Transfer from service label)</p>		<p><i>11 1700712560 0002 6775 8594</i></p>	
PS Form 3811, February 2004		Domestic Return Receipt	
		102595-02-M-1540	



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
NO: 08-1900-CD

JAMES STORMER

vs

SERVICE # 1 OF 1

JEFFREY CARNS t/d/b/a CARNS EQUIPMENT COMPANY and ARCTIC CAT, INC.  
COMPLAINT

SERVE BY: 11/05/2008

HEARING:

PAGE: 104756

DEFENDANT: JEFFREY CARNS t/d/b/a CARNS EQUIPMENT COMPANY  
ADDRESS: 14357 CLEARFIELD SHAWVILLE HIGHWAY  
CLEARFIELD, PA 16830

ALTERNATE ADDRESS

SERVE AND LEAVE WITH: DEFENDANT/PIC

CIRCLE IF THIS HIGHLIGHTED ADDRESS IS:

VACANT

OCCUPIED

ATTEMPTS

5  
**FILED**  
011:20am  
OCT 24 2008  
William A. Shaw  
Prothonotary/Clerk of Courts

**SHERIFF'S RETURN**

NOW this 24th Day of OCT 2008 AT 11:40 (AM) PM **SERVED** THE WITHIN

COMPLAINT ON JEFFREY CARNS t/d/b/a CARNS EQUIPMENT COMPANY, DEFENDANT

BY HANDING TO

BRAD KATZ

Sales mgr

A TRUE AND ATTESTED COPY OF THE ORIGINAL DOCUMENT AND MADE KNOW TO HIM / HER THE CONTENTS THEREOF.

ADDRESS SERVED 14357 CLFD SHAWVILLE Hwy

NOW \_\_\_\_\_ AT \_\_\_\_\_ AM / PM **POSTED** THE WITHIN

COMPLAINT FOR JEFFREY CARNS t/d/b/a CARNS EQUIPMENT COMPANY

AT (ADDRESS) \_\_\_\_\_

NOW \_\_\_\_\_ AT \_\_\_\_\_ AM / PM AFTER DILIGENT SEARCH IN MY BAILIWICK,

I MAKE RETURN OF **NOT FOUND** AS TO JEFFREY CARNS t/d/b/a CARNS EQUIPMENT COMPANY

REASON UNABLE TO LOCATE \_\_\_\_\_

SWORN TO BEFORE ME THIS

\_\_\_\_\_ DAY OF \_\_\_\_\_ 2008

So Answered: CHESTER A. HAWKINS, SHERIFF

BY:

George F. DeHaven  
Deputy Signature

George F. DeHaven  
Print Deputy Name



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and ARCTIC  
CAT, INC.,

Defendants.

CIVIL DIVISION

Docket No.: 08-1900-CD

**PRELIMINARY OBJECTIONS AND  
BRIEF IN SUPPORT**  
(Jury Trial Demanded)

Filed on Behalf of the Defendant, Jeffrey  
Carns t/d/b/a Carns Equipment Company

Counsel of Record for This Party:

MARNA K. BLACKMER, ESQUIRE  
PA I.D. # 79528

WALSH, COLLIS & BLACKMER, P.C.  
The Gulf Tower, Suite 1400  
707 Grant Street  
Pittsburgh, PA 15219

(412) 258-2255

1073

**FILED** <sup>ICC</sup>  
m 11:06 AM  
NOV 06 2008  
Amy Blackmer

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

CIVIL DIVISION

Plaintiff,

Docket No.: 08-1900-CD

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and ARCTIC  
CAT, INC.,

Defendants.

### **PRELIMINARY OBJECTIONS**

AND NOW, comes the Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company, by and through its undersigned attorneys, Walsh, Collis & Blackmer, P.C., and Marna K. Blackmer, Esquire, and files the within Preliminary Objections and in support thereof avers as follows:

1. The Plaintiff claims that he was injured on February 10, 2007, when he was "thrown over the windshield" of a 2007 Artic Cat, ATV after the front wheel allegedly suddenly came off while he was riding it. See Plaintiff's Complaint, ¶¶ 4 and 6, a true and correct copy of which is attached as Exhibit A.

2. Lynn McGarvey allegedly purchased the ATV from this Defendant on February 9, 2007, and Plaintiff further claims that the ATV was delivered to Ms. McGarvey on February 10, 2007. See Exhibit A, ¶¶ 5 and 6.

3. Plaintiff's Complaint sets forth four (4) Counts against this Defendant. See Exhibit A

4. Count I seems to set forth a claim for strict products liability, Count II for negligence, Count III for breach of "express warranties and/or implied warranties of merchantability and fitness", and Count VII for breach of "the mandates of §402A", "joint and/or several negligence", and "joint and/or several breaches of warranties".

5. Pursuant to Pa.R.C.P. 1028(a), preliminary objections may be filed by any party to any pleading, where the pleading fails to conform to law or rule of court or includes scandalous or impertinent matter, is insufficiently specific, or is legally insufficient (demurrer).

6. Pa.R.C.P. 1019(a) directs that a complaint shall state, "[t]he material facts on which a cause of action ... is based ... in a concise and summary form." Smith v. Wagner, 403 Pa.Super. 316, 319, 588 A.2d 1308, 1310 (Pa.Super.1991). The rule requires fact pleading. Id. citing to 2A Anderson, Pennsylvania Civil Practice § 1019.1 (1969). "The purpose of [1019(a)] is to require the pleader to disclose the 'material facts' sufficient to enable the adverse party to prepare his case." Id. citing to Landau v. Western Pennsylvania National Bank, 445 Pa. 217, 225, 282 A.2d 335, 339 (1971).

7. A complaint therefore must do more than "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Id. citing to Conley v. Gibson, 355 U.S. 41, 47 (1957) (statement made in reference to Fed.R.Civ.P. 8(a)). It should formulate the issues by fully summarizing the material facts. Id.

8. "Material facts" are "ultimate facts," *i.e.*, those facts essential to support the claim. Id.

9. Allegations will withstand challenge under § 1019(a) if (1) they contain averments of all of the facts the plaintiff will eventually have to prove in order to recover,

and (2) they are "sufficiently specific so as to enable defendant to prepare his defense.

Id. (citations omitted).

**MOTION TO DISMISS COUNT I OF PLAINTIFF'S COMPLAINT**  
**PURSUANT TO Pa.R.C.P. 1028(a)(3)**

10. In Webb v. Zern, 422 Pa. 424, 220 A.2d 853 (1966), the Pennsylvania Supreme Court adopted section 402A of the Restatement of Torts (Second), which provides:

“(1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if

(a) the seller is engaged in the business of selling such a product, and

(b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

11. Accordingly, in order to properly plead a case of strict products liability, the Plaintiff must plead facts that establish the following:

- (1) a product;
- (2) a sale of that product;
- (3) a user or consumer;
- (4) a defective condition, unreasonably dangerous; and
- (5) causation-that the product caused physical harm to the ultimate user or consumer, or to his property.

If any of these requisite elements remains unsatisfied, § 402A has no applicability.

See Schriner v. Pennsylvania Power & Light Co., 348 Pa.Super. 177, 185, 501 A.2d 1128, 1132 (Pa.Super.1985).

12. In Count I of Plaintiff's Complaint, Plaintiff avers that the ATV was (1) defective because it was manufactured with defective materials, (2) defective because it contained a defective ball joint, and (3) it failed to have proper labels and warnings. See Exhibit A, ¶¶ 11-13.

13. However, the material facts upon which the strict liability claims are based are not pled sufficiently.

14. Specifically, the Complaint states that it was manufactured with defective materials, but does not state what defective materials. Further the Complaint states that it contained a defective ball joint, but does not say how or why the ball joint was defective. Lastly, Plaintiff claims that the product failed to have proper labels and warning, but fails to state what labels and warnings were missing or improper.

15. As Plaintiff fails to plead what defective materials were used, how or why the ball joint was defective and which labels and warnings were missing or improper, Plaintiff's claim is not sufficiently plead such that this Defendant is unable to prepare a proper defense in this matter.

16. Accordingly, Plaintiff's claim for strict liability against this Defendant, as contained in Count I of his Complaint, should be dismissed. In the alternative, Plaintiff should be required to file a more specific pleading.

WHEREFORE, Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company, respectfully requests that this Honorable Court grant his preliminary objections and dismiss Count I of Plaintiff's Complaint.

**MOTION TO DISMISS COUNT II OF PLAINTIFF'S COMPLAINT**  
**PURSUANT TO Pa.R.C.P. 1028(a)(3) and (4)**

17. In order to plead a case for negligence, Plaintiff must set forth averments that establish the elements of negligence, which are: (1) a duty of care; (2) the breach of the duty; (3) a causal connection between the conduct and the resulting injury; and (4) actual loss or damage resulting to the plaintiff. See R.W. v. Manzek, 585 Pa. 335, 888 A.2d 740, 746 (2005).

18. In Count II of Plaintiff's Complaint, Plaintiff claims that this Defendant was negligent in: (1) selling an ATV in a defective condition, (2) failing to adequately inspect the ATV prior to sale, and (3) failing to warn the Plaintiff of the dangers of the ATV. See Exhibit A, ¶17.

19. Those allegations are factually and legally insufficient under Pa.R.C.P. 1028(a)(3) and (4).

20. First, the negligence claim is pled insufficiently such that Defendant cannot form a defense on its behalf as Plaintiff does not set forth the defective condition of the ATV or how it failed to adequately inspect the ATV prior to sale.

21. Moreover, the negligence claim is legally insufficient in that Plaintiff claims that this Defendant failed to warn the Plaintiff of the dangers of the ATV; however, the Complaint does not set forth why this Defendant would have had a duty to warn the Plaintiff of any dangers.

22. Accordingly, if this Defendant owes no duty to the Plaintiff, then it cannot be held liable for negligence.

23. As there are no well pleaded facts existing on the face of the Complaint setting forth that this Defendant owed Plaintiff a duty, and the Complaint is insufficiently

pled with regard to how this Defendant breached that duty, Count II of Plaintiff's Complaint should be dismissed. In the alternative, Plaintiff should be required to file a more specific pleading.

WHEREFORE, Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company, respectfully requests that this Honorable Court grant his preliminary objections and dismiss Count II of Plaintiff's Complaint.

**MOTION TO DISMISS COUNT III OF PLAINTIFF'S COMPLAINT**  
**PURSUANT TO Pa.R.C.P. 1028(a)(3) and (4)**

24. Plaintiff next sets forth what appears to be claims for Breach of Express Warranty, Implied Warranty of Merchantability, and Implied Warranty of Fitness for a Particular Purpose as he states that he "relied upon the Defendant's express warranties and/or implied warranties of merchantability and fitness for use for which the ATV was intended to be used and which were extended in accordance with the Pennsylvania Uniform Commercial Code." See Exhibit A, ¶21.

**A. Breach of Express Warranty**

25. Pa.S.C.A. § 2313 provides for the following:

(a) General rule.-Express warranties by the seller are created as follows:

(1) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(2) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(3) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

26. If Plaintiff intends to rely on an express warranty, such specific facts must be set forth in the Complaint. See Van Scoyoc v. General Foam Corp., 1990 WL 305401 (Pa.Com.Pl. 1990) and Sellers v. Sharon Chrysler-Plymouth Inc., 49 Pa. D. & C.2d 483 (1970).

27. However in the current matter, Plaintiff merely states that Defendant was in breach of express and/or implied warranties.

28. As such, the breach of express warranty claim is legally insufficient in that Plaintiff claims that this Defendant breached an express warranty but failed to plead any facts that would establish that an express warranty was created between the parties relating to the ATV, how this Defendant breached the same or how Plaintiff was injured as a result.

29. Moreover, the breach of express warranty claim is pled insufficiently such that Defendant cannot form a defense on its behalf as Plaintiff does not set forth the terms of the express warranty or how the warranty was breached.

30. Accordingly all claims for breach of express warranty should be dismissed. In the alternative, Plaintiff should be required to file a more specific pleading.

**B. Breach of Implied Warranty of Merchantability**

31. With regard to the claim for breach of implied warranty of merchantability, 13 Pa.C.S.A. 2314 provides the following:

“(a) Sale by merchant.-Unless excluded or modified (section 2316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.



(b) Merchantability standards for goods.-Goods to be merchantable must be at least such as:

- (1) pass without objection in the trade under the contract description;
- (2) in the case of fungible goods, are of fair average quality within the description;
- (3) are fit for the ordinary purposes for which such goods are used;
- (4) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved;
- (5) are adequately contained, packaged, and labeled as the agreement may require; and
- (6) conform to the promises or affirmations of fact made on the container or label if any.

(c) Course of dealing or usage of trade.-Unless excluded or modified (section 2316) other implied warranties may arise from course of dealing or usage of trade.

32. However, an allegation in a plaintiff's complaint (claiming a breach by defendant of implied warranties) that the purchased product was "defective" is inadequate. Toth v. Glessner, 16 Pa. D. & C.3d 338 (Pa.Com.Pl. 1979).

33. In this matter, Plaintiff merely states that he relied upon this Defendant's express and/or implied warranties of merchantability and fitness.

34. In looking at the Complaint in its entirety, it is also stated that the product is defective.

35. However, the Complaint contains no additional specificity with regard to how any implied warranty was breached.

36. As such, the breach of implied warranty of merchantability claim is legally insufficient in that Plaintiff claims that this Defendant breached the implied warranty of merchantability but failed to set forth facts that would establish the basic elements for the same.

37. Furthermore, the breach of implied warranty of merchantability claim is pled insufficiently such that Defendant cannot form a defense on its behalf as the material facts of what implied warranty existed and how it was breached are not set forth.

38. Accordingly all claims for breach of implied warranty of merchantability should be dismissed. In the alternative, Plaintiff should be required to file a more specific pleading.

**C. Breach of Implied Warranty of Fitness for a Particular Purpose**

39. With regard to the claim for breach of implied warranty of fitness for a particular purpose, 13 Pa.C.S.A. 2314 provides:

Where the seller at the time of contracting has reason to know:

(1) any particular purpose for which the goods are required; and

(2) that the buyer is relying on the skill or judgment of the seller to select or furnish suitable goods;

there is unless excluded or modified under section 2316 (relating to exclusion or modification of warranties) an implied warranty that the goods shall be fit for such purpose.

40. In the current matter, there are absolutely no allegations pled that would establish the basic element of breach of implied warranty of fitness for a particular purpose, including that any such implied warranty existed, that that this Defendant knew of any specific needs, let alone the specific needs of the Plaintiff's who is not even

alleged to have been the purchaser, or how the implied warranty was breached, and therefore the Complaint is legally insufficient.

41. Additionally, the Complaint is factually insufficient with regard to that claims as this Defendant is unable to prepare a defense on its own behalf given the nature of Plaintiff's averments.

42. Accordingly all claims for breach of implied warranty of fitness for a particular purpose should be dismissed. In the alternative, Plaintiff should be required to file a more specific pleading.

WHEREFORE, Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company, respectfully requests that this Honorable Court grant his preliminary objections and dismiss Count III of Plaintiff's Complaint.

**MOTION TO DISMISS COUNT VII OF PLAINTIFF'S COMPLAINT**  
**PURSUANT TO Pa.R.C.P. 1028(a)(3) and (4)**

43. Lastly, Plaintiff includes one final Count against this Defendant, Count VII, which appears to be a catchall paragraph, which merely states, "as the direct, legal and proximate result of the joint and/or several breaches of the mandates of §402A by these Defendants, the joint and/or several negligence of these Defendants, and the joint and/or several breaches of warranties by these Defendants, the Plaintiff has sustained the injuries and damages previously set forth." See Exhibit A, ¶35.

44. Clearly, such a claim is legally and factually insufficient as (1) it does not set forth basic facts that if proven would establish a cause of action for any claim and (2) it does not set forth any material allegations pertaining to any matter complained of in the Complaint.

45. Accordingly, it Count VII is legally insufficient and insufficiently pled pursuant to Pa.R.C.P. 1028(a)(3) and (4), based upon the aforementioned law.

46. Accordingly, Count VII of Plaintiff's Complaint should be dismissed. In the alternative, Plaintiff should be required to file a more specific pleading.

WHEREFORE, Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company, respectfully requests that this Honorable Court grant his preliminary objections and dismiss Count VII of Plaintiff's Complaint.

Respectfully submitted,

WALSH, COLLIS & BLACKMER, P.C.

By Marna K. Blackmer  
Marna K. Blackmer, Esquire  
Counsel for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT, INC.

Defendants.

CIVIL DIVISION

CASE NUMBER: 08-1900-CD

TYPE OF PLEADING:  
COMPLAINT

FILED ON BEHALF OF:  
James Stormer, Plaintiff

COUNSEL OF RECORD:  
Jason M. Schiffman, Esquire  
Pa. I.D. #207103

SCHIFFMAN & WOJDOWSKI  
1300 Fifth Avenue  
Pittsburgh, PA 15219  
412/288-9444

FIRM I.D. #466

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OCT 06 2008

William A. Shaw  
Prothonotary/Clerk of Courts



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JAMES STORMER,	)	
	)	
Plaintiff,	)	NO.:
	)	
vs.	)	
	)	
JEFFREY CARNS t/d/b/a CARNS	)	
EQUIPMENT COMPANY and	)	
ARCTIC CAT, INC.	)	
	)	
Defendants.	)	

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR PHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

DANIEL NELSON, COURT ADMINISTRATOR  
CLEARFIELD COUNTY COURTHOUSE  
230 E. MARKET STREET, SUITE 228  
CLEARFIELD, PA 16830  
(814) 765-2641, Ext. 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JAMES STORMER,	)	
	)	
Plaintiff,	)	NO.:
	)	
vs.	)	
	)	
JEFFREY CARNS t/d/b/a CARNS	)	
EQUIPMENT COMPANY and	)	
ARCTIC CAT, INC.	)	
	)	
Defendants.	)	

**COMPLAINT**

AND NOW, comes the Plaintiff, James Stormer, by and through his attorneys, Schiffman & Wojdowski and Jason M. Schiffman, Esquire, and files the following Complaint:

1. The Plaintiff James Stormer is an individual and a resident of the Commonwealth of Pennsylvania and County of Jefferson, residing at 481 Butler Cemetery Road, Brookville, Pennsylvania 15825.
2. The Defendant Jeffrey Carns is an individual who trades and does business as Carns Equipment Company with a place of business located at 14357 Clearfield Shawville Highway, Clearfield, Pennsylvania 16830.
3. The Defendant Arctic Cat, Inc. is a corporation with its principal place of business located at 601 Brooks Avenue South, Thief River Falls, Minnesota 56701, which at all relevant times traded and did business in the Commonwealth of Pennsylvania and County of Clearfield.

4. On or about February 9, 2007, Lynn McGarvey purchased a 2007 Arctic Cat ATV, Model 650 H1 with Serial Number: 4UF07ATV57T225203 (hereinafter referred to as "ATV") from Carns Equipment Company.

5. On or about February 10, 2007 the ATV was delivered to Ms. McGarvey.

6. On or about February 10, 2007, the Plaintiff James Stormer was riding the ATV when the front wheel suddenly and unexpectedly fell off causing the Plaintiff to be thrown over the windshield and sustain serious injuries.

**COUNT I -  
JAMES STORMER VS.  
JEFFREY CARNS t/d/b/a CARNS EQUIPMENT COMPANY**

7. The Plaintiff hereby incorporates by reference paragraphs 1 through 6 of this Complaint as though the same were more fully set forth at length herein.

8. At all times relevant hereto, this Defendant was engaged in the business of selling all terrain vehicles and was a seller as defined by the Restatement (Second) Torts §402 as adopted by the Supreme Court of Pennsylvania.

9. The ATV was expected to and did reach the Plaintiff and was used by him without substantial change in the condition in which it was manufactured for sale.

10. This Defendant breached the duties owed to the Plaintiff as mandated by selling the ATV in a defective condition rendering it unreasonably dangerous to the user of the product.

11. The ATV was defective because it was manufactured of defective materials.

12. The ATV was further defective because it contained a defective the ball joint that fractured.

13. The ATV was further defective because it failed to have proper labels and warnings.



14. As the direct, legal and proximate result of the breach of the mandates of §402A by this Defendant, the Plaintiff James Stormer has sustained the following injuries:

- a. Cervical radiculopathy;
- b. Cervical sprain;
- c. Myofascial cervical strain;
- d. Ligamentous strain;
- e. Moderate left median neuropathy; and
- f. Other serious injuries.

15. As the direct, legal and proximate result of the breach of the mandates of §402A by this Defendant, the Plaintiff James Stormer has sustained the following damages:

- a. He has had to undergo medical treatment;
- b. He has suffered and will continue to suffer great pain, suffering, mental anguish and embarrassment;
- c. He has incurred medical bills for treatment;
- d. He has been unable to enjoy the ordinary pleasures of life;
- e. He has been unable to perform his normal daily activities including employment;
- f. He has incurred a loss of earnings and diminution of earning capacity; and
- g. His general health, strength and vitality have been impaired.

WHEREFORE, the Plaintiff James Stormer demands judgment in his favor and against the Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company for an amount in excess of Twenty Thousand (\$20,000.00) Dollars, exclusive of interest and costs.

**COUNT II –  
JAMES STORMER VS.  
JEFFREY CARNS t/d/b/a CARNS EQUIPMENT COMPANY**

16. The Plaintiff hereby incorporates by reference paragraphs 1 through 15 of this Complaint as though the same were more fully set forth at length herein.

17. This Defendant was negligent in the following particulars:

- a. In selling an ATV in a defective condition;
- b. In failing to adequately inspect the ATV prior to sale; and
- b. In failing to warn the Plaintiff of the dangers of the ATV.

18. As the direct, legal and proximate result of the negligence of these Defendants as aforesaid, the Plaintiff has sustained the injuries and damages previously set forth.

WHEREFORE, the Plaintiff James Stormer demands judgment in his favor and against the Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company for an amount in excess of Twenty Thousand (\$20,000.00) Dollars, exclusive of interest and costs.

**COUNT III –  
JAMES STORMER VS.  
JEFFREY CARNS t/d/b/a CARNS EQUIPMENT COMPANY**

19. The Plaintiff hereby incorporates by reference paragraphs 1 through 18 of this Complaint as though the same were more fully set forth at length herein.

20. At all times relevant hereto, this Defendant was a "merchant" within the meaning of the Pennsylvania Uniform Commercial Code.

21. Being within the ambit of the foreseeable operation and use of the ATV, the Plaintiff James Stormer relied upon the Defendant's express warranties and/or implied warranties of merchantability and fitness for use for which the ATV was intended to be used and which were extended in accordance with the Pennsylvania Uniform Commercial Code.

22. As the direct, legal and proximate result of the breaches by this Defendant of the implied warranties, the Plaintiff has sustained the injuries and damages previously set forth.

WHEREFORE, the Plaintiff James Stormer demands judgment in his favor and against the Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company for an amount in excess of Twenty Thousand (\$20,000.00) Dollars, exclusive of interest and costs.

**COUNT IV –  
JAMES STORMER VS. ARCTIC CAT, INC.**

23. The Plaintiff hereby incorporates by reference paragraphs 1 through 22 of this Complaint as though the same were more fully set forth at length herein.

24. At all times relevant hereto, this Defendant was engaged in the business of designing, manufacturing, and/or selling ATVs and was a seller as defined by the Restatement (Second) Torts §402A as adopted by the Supreme Court of Pennsylvania.

25. This Defendant breached the duties owed to the Plaintiff as mandated by selling the ATV in a defective condition as previously set forth rendering it unreasonably dangerous to the user of the product.

26. As the direct, legal and proximate result of the breach of the mandates of §402A by this Defendant, the Plaintiff James Stormer has sustained the injuries and damages previously set forth.

WHEREFORE, the Plaintiff James Stormer demands judgment in his favor and against the Defendant, Arctic Cat, Inc. for an amount in excess of Twenty Thousand (\$20,000.00) Dollars, exclusive of interest and costs.

**COUNT V –  
JAMES STORMER VS. ARCTIC CAT, INC.**

27. The Plaintiff hereby incorporates by reference paragraphs 1 through 26 of this Complaint as though the same were more fully set forth at length herein.

28. This Defendant was negligent in the following particulars:

- a. In designing, manufacturing and/or selling an ATV with defective materials;
- b. In designing, manufacturing and/or selling an ATV with a defective ball joint that fractured;
- c. In designing, manufacturing and/or selling an ATV without proper labels and warnings;
- d. In designing and/or manufacturing and/or incorporating into the Artic Cat a defective ball joint;
- e. In incorporating a destructively designed ball joint into the design for the ATV in question; and
- f. In failing to properly test the ATV before marketing.

29. As the direct, legal and proximate result of the negligence of this Defendant as aforesaid, the Plaintiff has sustained the injuries and damages previously set forth.

WHEREFORE, the Plaintiff James Stormer demands judgment in his favor and against the Defendant, Arctic Cat, Inc. for an amount in excess of Twenty Thousand (\$20,000.00) Dollars, exclusive of interest and costs.

**COUNT VI –  
JAMES STORMER VS. ARCTIC CAT, INC.**

30. The Plaintiff hereby incorporates by reference paragraphs 1 through 29 of this Complaint as though the same were more fully set forth at length herein.

31. At all times relevant hereto, this Defendant was a "merchant" within the meaning of the Pennsylvania Uniform Commercial Code.

32. Being within the ambit of the foreseeable operation and use of the ATV, the Plaintiff James Stormer relied upon the Defendant's express warranties and/or implied warranties of merchantability and fitness for use for which the ATV was intended to be used and which were extended in accordance with the Pennsylvania Uniform Commercial Code.

33. As the direct, legal and proximate result of the breaches by this Defendant of the implied warranties, the Plaintiff has sustained the injuries and damages previously set forth.

WHEREFORE, the Plaintiff James Stormer demands judgment in his favor and against the Defendant Arctic Cat, Inc. for an amount in excess of Twenty Thousand (\$20,000.00) Dollars, exclusive of interest and costs.

**COUNT VII -  
JAMES STORMER VS.  
JEFFREY CARNS t/d/b/a CARNS EQUIPMENT COMPANY  
AND ARCTIC CAT, INC.**

34. The Plaintiff hereby incorporates by reference paragraphs 1 through 33 of this Complaint as though the same were more fully set forth at length herein.

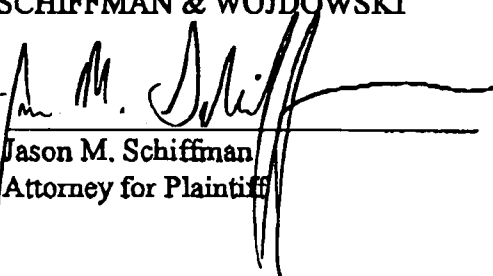
35. As the direct, legal and proximate result of the joint and/or several breaches of the mandates of §402A by these Defendants, the joint and/or several negligence of these Defendants, and the joint and/or several breaches of warranties by these Defendants, the Plaintiff has sustained the injuries and damages previously set forth.

WHEREFORE, the Plaintiff James Stormer demands judgment in his favor and against the Defendants Jeffrey Carns t/d/b/a Carns Equipment Company and Arctic Cat, Inc., both jointly and/or severally, for an amount in excess of Twenty Thousand (\$20,000.00) Dollars, exclusive of interest and costs.

RESPECTFULLY SUBMITTED:

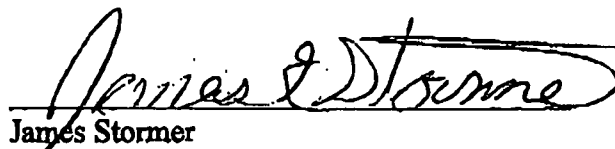
SCHIFFMAN & WOJDOWSKI

By:

  
Jason M. Schiffman  
Attorney for Plaintiff

**VERIFICATION**

The undersigned, James Stormer, Plaintiff named herein, and being authorized to make this Verification for and on his behalf, having read the foregoing COMPLAINT verifies that the averments are based on information furnished to counsel, which information has been gathered by counsel in the course of this lawsuit. The language is that of counsel and not of signer. Signer verifies that he has read the foregoing, and that it is true and correct to the best of the signer's knowledge, information and belief. To the extent that the contents of the foregoing document are that of counsel, verifier has relied upon counsel in making this verification. This verification is made subject to the penalties of 18 PA C.S.A. § 4904, relating to unsworn falsification to authorities.

Date: 9-11-08  
James Stormer


**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing **Preliminary Objections and Brief in Support** has been mailed by U.S. Mail to counsel of record via first class mail, postage pre-paid, this 5<sup>th</sup> day of November, 2008.

Jason M. Schiffman  
Schiffman & Wojdowski  
1300 Fifth Avenue  
Pittsburgh, PA 15219  
(*Counsel for Plaintiff*)

WALSH, COLLIS & BLACKMER, P.C.

By

  
Marna K. Blackmer, Esquire  
Natalie A. Troilo, Esquire  
Counsel for Defendants



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

CIVIL DIVISION

Plaintiff,

Docket No.: 08-1900-CD

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and ARCTIC  
CAT, INC.,

Defendants.

**ORDER OF COURT**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2008, upon consideration of Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company's Preliminary Objections, it is hereby ORDERED, ADJUDGED and DECREED that Defendant's Preliminary Objections are GRANTED and Count I, Count II, Count III and Count VII of Plaintiff's Complaint are DISMISSED. In the alternative, Plaintiff is required to file a more specific pleading with regard to Count I, Count II, Count III and Count VII within twenty (20) days of the date of this Order.

BY THE COURT:

\_\_\_\_\_, J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

Plaintiff,

VS.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and ARCTIC  
CAT, INC.,

Defendants.

CIVIL DIVISION

Docket No.: 08-1900-CD

**PRAECIPE FOR ARGUMENT**

(Jury Trial Demanded)

Filed on Behalf of the Defendant, Jeffrey  
Carns t/d/b/a Carns Equipment Company

Counsel of Record for This Party:

MARNA K. BLACKMER, ESQUIRE  
PA I.D. # 79528

WALSH, COLLIS & BLACKMER, P.C.  
The Gulf Tower, Suite 1400  
707 Grant Street  
Pittsburgh, PA 15219

(412) 258-2255

#1073

FILED <sup>icc</sup>  
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Atty Blackmer  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

CIVIL DIVISION

Plaintiff,

Docket No.:

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and ARCTIC  
CAT, INC.,

Defendants.

**PRAECIPE FOR ARGUMENT**

**TO THE COURT ADMINISTRATOR:**

Kindly place Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company's  
Preliminary Objections on the next available argument list.

Respectfully submitted,

WALSH, COLLIS & BLACKMER, P.C.

By



Marna K. Blackmer, Esquire  
Counsel for Defendants

9

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JAMES STORMER,

Plaintiff

vs.

JEFFREY CARNS t/d/b/a CARNS EQUIPMENT  
COMPANY and ARCTIC CAT, INC.,  
Defendants

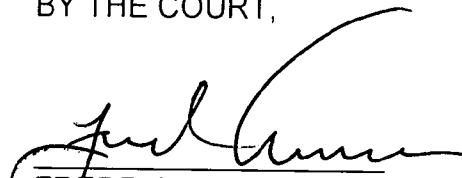
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NO. 08-1900-CD

**ORDER**

NOW, this 6<sup>th</sup> day of November, 2008, upon consideration of Defendant Jeffrey Carns t/d/b/a Carns Equipment Company Preliminary Objections to Plaintiff's Complaint filed by Marna K. Blackmer, Esquire, it is the ORDER of this Court that argument on the Preliminary Objections is scheduled for the 26<sup>th</sup> day of November, 2008 at 11:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, PA 16830.

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

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013:49/BAH Amy Blackmer  
NOV 06 2008 (GK)

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William A. Shaw  
Prothonotary/Clerk of Courts

FILED

NOV 06 2008

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 11/06/08

X You are responsible for serving all appropriate parties.

\_\_\_ The Prothonotary's office has provided service to the following parties:

\_\_\_ Plaintiff(s) \_\_\_ Plaintiff(s) Attorney \_\_\_ Other

\_\_\_ Defendant(s) \_\_\_ Defendant(s) Attorney

\_\_\_ Special Instructions:

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

Plaintiff,

v.

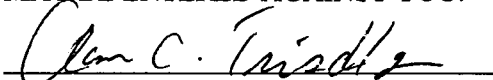
JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and ARCTIC  
CAT, INC.

Defendant.

**NOTICE OF PLEAD**

TO THE PARTIES:

YOU ARE HEREBY NOTIFIED TO FILE  
A WRITTEN RESPONSE TO THE WITHIN  
ANSWER AND NEW MATTER WITHIN  
TWENTY (20) DAYS FROM THE DATE OF  
SERVICE HEREOF OR A JUDGMENT  
MAY BE ENTERED AGAINST YOU.

  
ATTORNEY FOR ARCTIC CAT INC.

) CIVIL ACTION – LAW

) NO: 08-1900-CD

) ANSWER AND NEW MATTER

) Filed on Behalf of Defendant:  
) Arctic Cat Inc.

) Counsel of Record for This Party:

) Clem C. Triscaler, Esq.  
) FA I.D. No. 52957

) FIETRAGALLO GORDON ALFANO  
) BOSICK & RASPANTI, LLP  
) Firm #834

) The Thirty-Eighth Floor  
) One Oxford Centre  
) Pittsburgh, PA 15219  
) (412) 263-2000

) A JURY TRIAL IS DEMANDED

5  
**FILED** *na cc*  
*m 10:40 AM*  
NOV 07 2008 *GR*  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON FLEAS FOR CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,	)	
	)	
Plaintiff,	)	No.: 08-1900-CD
	)	
v.	)	
	)	
JEFFREY CARNS t/d/b/a CARNS EQUIPMENT	)	
COMPANY and ARCTIC CAT, INC.	)	
	)	
Defendant.	)	

**ANSWER AND NEW MATTER**

AND NOW, comes Defendant, Arctic Cat Inc., by and through its counsel, Clem C. Trischler, Esq. and Pietragallo, Gordon, Alfano, Bosick & Raspanti, LLP, and files this Answer and New Matter. Arctic Cat Inc. denies any and all liability to the Plaintiff and demands the entry of judgment in its favor and against the Plaintiff, James Stormer. By way of further response to the averments of the Plaintiff's Complaint, Arctic Cat Inc. ("Arctic Cat") submits the following:

**ANSWER**

1. Paragraph 1 of the Plaintiff's Complaint is denied. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments set forth at paragraph 1; therefore, the same are denied;

2. Paragraph 2 of the Plaintiff's Complaint is not directed to this Defendant. As such, no responsive pleading is required on behalf of Arctic Cat.

3. Paragraph 3 of the Plaintiff's Complaint is admitted.

4. Paragraph 4 of the Plaintiff's Complaint is admitted.

5. Paragraph 5 of the Plaintiff's Complaint is denied. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments set forth at paragraph 5; therefore, the same are denied.

6. Paragraph 6 of the Plaintiff's Complaint is denied. After reasonable investigation, this Defendant is presently without knowledge concerning all of the facts and circumstances surrounding the reported incident of February 10, 2007; therefore, all of the averments of paragraph 6 are denied.

Answer to Count I

7. – 15. Paragraphs 7 through 15 of the Plaintiff's Complaint are not directed to this Defendant. As such, no responsive pleading is required on behalf of Arctic Cat. To the extent the averments of paragraph 7 through 15 allege or infer any negligent, tortuous or improper conduct on the part of this Defendant, all of these averments are denied.

Answer to Count II

16. – 18. Paragraphs 16 through 18 of the Plaintiff's Complaint are not directed to this Defendant. As such, no responsive pleading is required on behalf of Arctic Cat. To the extent the averments of paragraphs 16 through 18 allege or infer any negligent, tortuous or improper conduct on the part of this Defendant, all of the averments of paragraphs 16 through 18 are denied.

Answer to Count III

19. – 22. Paragraphs 19 through 22 of the Plaintiffs' Complaint are not directed to this Defendant. As such, no responsive pleading is required on behalf of Arctic Cat. To the extent the averments of paragraphs 19 through 22 allege or infer any negligent, tortuous or improper conduct on the part of this Defendant, all of the averments of paragraphs 19 through 22 are denied.

Answer to Count IV

23. Paragraphs 1 through 22 of this Answer are incorporated by reference in response to paragraphs 1 through 23 of the Plaintiff's Complaint.



24. Paragraph 24 of the Plaintiff's Complaint is denied. The averments of paragraph 24 state conclusions of law to which no responsive pleading is required. To the extent that a response may be required, all of the averments of paragraph 24 are denied.

25. Paragraph 25 of the Plaintiff's Complaint is denied. The averments of paragraph 25 state conclusions of law to which no responsive pleading is required. To the extent that a response may be required, all of the averments of paragraph 25 are denied.

26. Paragraph 26 of the Plaintiff's Complaint is denied. The averments of paragraph 26 state conclusions of law to which no responsive pleading is required. To the extent that a response may be required, all of the averments of paragraph 26 are denied.

Answer to Count V

27. Paragraphs 1 through 26 of this Answer are incorporated by reference in response to the averments of paragraph 27 of the Plaintiff's Complaint.

28. Paragraph 28 of the Plaintiff's Complaint is denied. The averments of paragraph 28 state conclusions of law to which no responsive pleading is required. To the extent that a response may be required, all of the averments of paragraph 28 are denied. By way of further response and in accordance with Rule 1029 of the Pennsylvania Rules of Civil Procedure, Arctic Cat generally denies each and every averment of paragraph 28, including subparagraphs (a) through (f).

29. Paragraph 29 of the Plaintiff's Complaint is denied. The averments of paragraph 29 state conclusions of law to which no responsive pleading is required. To the extent that a response may be required, all of the averments of paragraph 29 are denied.

Answer to Count VI

30. Paragraphs 1 through 29 of this Answer are incorporated by reference in response to the averments of paragraph 30 of the Plaintiff's Complaint.

31. Paragraph 31 of the Plaintiff's Complaint is denied. The averments of paragraph 31 state conclusions of law to which no responsive pleading is required. To the extent that a response may be required, all of the averments of paragraph 31 are denied.

32. Paragraph 32 of the Plaintiff's Complaint is denied. The averments of paragraph 32 state conclusions of law to which no responsive pleading is required. To the extent that a response may be required, all of the averments of paragraph 32 are denied.

33. Paragraph 33 of the Plaintiff's Complaint is denied. The averments of paragraph 33 state conclusions of law to which no responsive pleading is required. To the extent that a response may be required, all of the averments of paragraph 33 are denied.

#### Answer to Count VII

34. Paragraphs 1 through 33 of this Answer are incorporated herein by reference in response to the averments of paragraph 34 of the Plaintiff's Complaint.

35. Paragraph 35 of the Plaintiff's Complaint is denied. The averments of paragraph 35 state conclusions of law to which no responsive pleading is required. To the extent that a response may be required, all of the averments of paragraph 35 are denied.

WHEREFORE, Defendant, Arctic Cat Inc., denies any and all liability to the Plaintiff and demands the entry of judgment in its favor and against the Plaintiff, James Stormer.

**A JURY TRIAL IS DEMANDED.**

#### NEW MATTER

36. The averments of Plaintiff's Complaint fail to state a claim upon which relief can be granted.

37. Arctic Cat avers that the ATV in question may have been altered, abused, misused or substantially changed after the date of its original sale. This defendant reserves the right to raise product alteration, abuse, misuse and substantial change as affirmative defenses to the claims raised in the Plaintiff's Complaint.

38. The Plaintiff was negligent under the circumstances.

39. The Plaintiff was negligent in his operation, handling and use of the ATV generally and in the following particulars:

- a) in failing to properly operate the ATV;
- b) in failing to adhere to the warnings and instructions provided with the ATV;
- c) in operating the ATV in a careless and reckless manner;
- d) in operating the ATV beyond his capabilities;
- e) in failing to be cognizant of all surrounding conditions;
- f) in failing to maintain control of the ATV;
- g) in operating the ATV at speeds and under conditions which were inappropriate for the circumstances;
- h) in otherwise being negligent.

40. The negligence of Plaintiff was the direct and proximate cause of the subject incident.

41. Arctic Cat hereby asserts the terms and provisions of the Pennsylvania Comparative Negligence Act, 42 Pa. C.S.A. § 72302, as an affirmative defense to the claims raised in this action.

42. Plaintiff may have assumed the risk of the fatal injuries he sustained by virtue of his careless and highly reckless conduct. Arctic Cat hereby asserts the assumption of the risk doctrine as an affirmative defense to the claims raised in this action.

43. The strict liability, negligence and warranty claims raised in Plaintiff's Complaint are barred based on the doctrine of federal preemption.

44. Plaintiff's Complaint improperly seeks to recover damages which are not recognized or permitted under Pennsylvania law.

45. The incident of February 10, 2007, was not caused by any act or omission on the part of Arctic Cat. Any injuries or damages which the Plaintiff claims to have sustained were the

result of the negligent and reckless actions of other individuals and entities for whom Arctic Cat is not responsible.

46. Some or all of the claims raised in the Plaintiff's Complaint may be barred by the applicable statute of limitations.

47. Arctic Cat hereby asserts the terms of its limited warranty and disclaimer as an affirmative defense to the claims raised in this action.

48. The ATV may have been misused at the time of this action and this misuse serves to bar this cause of action.


49. The actions of this Defendant were reasonable, prudent and proper under the circumstances, and Arctic Cat was not responsible in any way for any injuries or damages claimed by the Plaintiff.

50. The ATV was properly designed and manufactured and was safe for its intended use when originally sold.

Respectfully submitted,

PIETRAGALLO GORDON ALFANO BOSICK  
& RASPANTI, LLP

By

  
Clem C. Trischler, Esq.  
PA ID No. 52957

Counsel for Arctic Cat Inc.

### VERIFICATION

I, Fred Bernier, am employed with Arctic Cat Inc. as Manager of Product Testing & Certification, and products liability litigation representative. I hereby verify the foregoing Answer and New Matter to Plaintiff's Complaint, for and on behalf of Defendant, Arctic Cat Inc., and I am duly authorized to do so.

The matters stated in the Answer and New Matter are not all within my personal knowledge, and I am informed and believe that there is no officer of Arctic Cat Inc. who has personal knowledge of all such matters. Rather, the facts as stated in this pleading are true.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Further, this statement of verification is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities which provides that if I knowingly make false statements, I may be subject to criminal penalties.

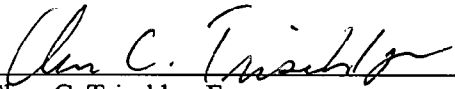
Executed this 27<sup>th</sup> day of October, 2008.

ARCTIC CAT INC.

A handwritten signature in cursive script, appearing to read "Fred Bernier", written over a horizontal line.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ANSWER AND NEW MATTER** has been served upon all parties listed below, via first-class mail, postage prepaid, on this 6<sup>th</sup> day of November 2008:

  
Clem C. Trischler, Esq.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT, INC.

Defendants.

CIVIL DIVISION

CASE NUMBER: 08-1900-CD

TYPE OF PLEADING:  
**RESPONSE TO  
DEFENDANT'S  
PRELIMINARY  
OBJECTIONS**

FILED ON BEHALF OF:  
James Stormer, Plaintiff

COUNSEL OF RECORD:  
Jason M. Schiffman, Esquire  
Pa. I.D. #207103

SCHIFFMAN & WOJDOWSKI  
1300 Fifth Avenue  
Pittsburgh, PA 15219  
412/288-9444

FIRM I.D. #466

EMAIL: [schifwojdo@hotmail.com](mailto:schifwojdo@hotmail.com)

FILED <sup>NO CC</sup>  
m/12:34/50  
NOV 18 2008 (E/C)

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William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JAMES STORMER,	)	
	)	
Plaintiff,	)	NO.: 08-1900-CD
	)	
vs.	)	
	)	
JEFFREY CARNS t/d/b/a CARNS )	)	
EQUIPMENT COMPANY and	)	
ARCTIC CAT, INC.	)	
	)	
Defendants.	)	

**RESPONSE TO DEFENDANT'S PRELIMINARY OBJECTIONS**

**AND NOW**, comes the Plaintiff James Stormer by and through his counsel, Schiffman & Woldowski, and Jason M. Schiffman, Esquire and files the within Response to Defendant Jeffrey Carns t/d/b/a Carns Equipment Company's Preliminary Objections.

The within action is predicated upon an accident which occurred on February 10, 2007 when the Plaintiff was injured by a defective all terrain vehicle (hereinafter referred to ATV) sold by Defendant Jeffrey Carns t/d/b/a Carns Equipment Company located at 14357 Clearfield Shawville Highway, Clearfield, PA 16830. This ATV had been purchased by Lynn McGarvey one day prior to the incident in question on February 9, 2007 from the aforementioned Defendant, bearing serial number 4UF07ATV57T225203. On the date of this incident, the Plaintiff James Stormer was riding the ATV in question when the front wheel suddenly and unexpectedly fell off causing the Plaintiff to be thrown over the windshield and sustain serious injuries. The Plaintiff sustained



cervical radiculopathy, cervical sprain, myofascial cervical strain, ligamentous strain, moderate left median neuropathy, and other serious injuries.

The Plaintiff filed a Complaint in the Court of Common Pleas of Clearfield County. The Defendant's request that this Honorable Court grant his Preliminary Objections and dismiss Counts I, II, III and IV of Plaintiff's Complaint for insufficient specificity is not supported by statute or law.

As this Honorable Court is well aware, Pa.R.C.P. 1019(a) requires, "the material facts on which a cause of action or defense is based must be stated in a concise and summary form."

In interpreting Pa.R.C.P. 1019(a), the courts have held that the complaint must (1) give the defendant notice of the plaintiff's claim; (2) set forth the grounds upon which the claim rests; and (3) help formulate the issues by summarizing the facts essential to support the claim. Alpha Tau Omega Fraternity v. University of Pennsylvania, 318 Pa.Super. 293, 464 A.2d 1349 (1983). However, the complaint need not be "an all-inclusive narrative of the events underlying the claim." General State Authority v. Sutter Corp., 69 Pa.Cmwlth. 504, 452 A.2d 75 (1982). Additionally, while the complaint must provide sufficient information to enable the defendant to defend the suit, in pleading its case, the complaint need not cite evidence but only those facts necessary for the defendant to prepare a defense. Unified Sportsmen of Pennsylvania v. Pennsylvania Game Com'n (PGC), 950 A.2d 1120 (Cmwlth.2008); Dep't of Transp. v. Bethlehem Steel Corp., 33 Pa.Cmwlth. 1, 380 A.2d 1308 (1977).

This Rule is satisfied if the allegations in a pleading contain averments of all facts the plaintiff must eventually prove in order to recover, and the averments are sufficiently specific to enable the adverse party to prepare a defense. Commonwealth ex rel. Pappert v. TAP Pharm. Prods., Inc., 868 A.2d 624 (Pa.Cmwlth.2005) *see also*: Sevin v. Kelshaw, 417 Pa.Super. 1, 611 A.2d 1232, 1235 (1992) (citations omitted); Feigley v. Dep't of Corr., 872 A.2d 189 (Pa.Cmwlth.2005); Paz v. Dep't of Corr., 135 Pa.Cmwlth. 162, 580 A.2d 452 (1990); Banfield v. Cortes, 922 A.2d 36 (Pa.Cmwlth.App., 2007).

To determine if a pleading is sufficiently specific, a court must ascertain whether the facts alleged are sufficiently specific to enable a defendant to prepare his defense. Foster v. Peat Marwick Main & Co., 138 Pa.Cmwlth. 147, 587 A.2d 382 (1991), *aff'd*, 544 Pa. 387, 676 A.2d 652 (1996).

When determining whether portions of a Complaint are sufficiently specific, the court must consider the provisions in question in light of the context of all other allegations contained within the complaint. *See: Yacoub v. Lehigh Valley Med. Assocs.*, 805 A.2d 579 (Pa.Super.2002); Unified Sportsmen of Pennsylvania v. Pennsylvania Game Com'n (PGC), 950 A.2d 1120 (Cmwlth.2008). Only after such consideration may a court determine whether the defendant is put on adequate notice to prepare a defense. Id.

Lack of specificity in a complaint is ground for preliminary objections requiring a more specific complaint, but not for objections in the nature of a motion to strike. Linn v. Morgan, 70 Pa. D. & C.2d 717 (1974). Preliminary objections in the nature of a motion for a more specific pleading raise the sole question of whether the pleading is sufficiently clear to enable the defendant to prepare a defense. Paz v. Com., Dept. of Corrections, 135 Pa.Cmwlth. 162, 580 A.2d 452 (1990) *appeal denied*, 532 Pa. 652, 615 A.2d 341 (1992).

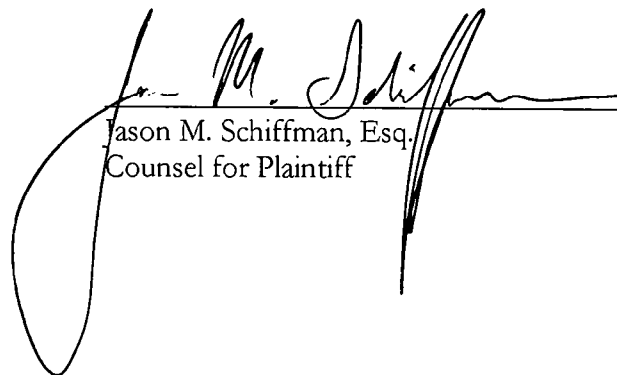
"A more specific pleading should not be required as to matters about which the objecting party has, or should have, as much or better knowledge than the pleader." Paz, supra. Citing: Hock v. L.B. Smith, Inc., 69 D. & C.2d 420 (1974); Goodrich-Amram 2d § 1017(b):9; *See also: Line Lexington Lumber & Millwork Co., Inc. v. Pennsylvania Pub. Corp.*, 451 Pa. 154, 301 A.2d 684 (1973).

In the case at bar, the Plaintiffs have clearly set forth the facts and the grounds for their claim for relief. They have alleged that the ATV is a defective product and that the Defendant, as a seller, is liable for the harm caused by the defective product. The ATV was defective because it malfunctioned and/or broke apart. The materials used to construct the ATV were defective because they malfunctioned and/or broke apart during normal and anticipated use. The ATV was also defective because it failed to warn of this danger. The Defendant has also been alleged to be liable for its negligence in selling this defectively made product and for breaching implied warranties. Whether express warranties in the form of writing on the product's packaging or representations of salespersons or agents of this Defendant were breached will be revealed in discovery. The Plaintiff has claimed damages for personal injury and medical and attendant costs.

The Defendant's grievances are spurious and its allegations that it cannot defend against this Complaint can only be based upon erroneous reasoning that the Complaint is designed to provide all information in lieu of discovery.

The Plaintiff respectfully submits that Defendant's Preliminary Objections be denied.

Respectfully submitted,  
SCHIFFMAN & WOJDOWSKI



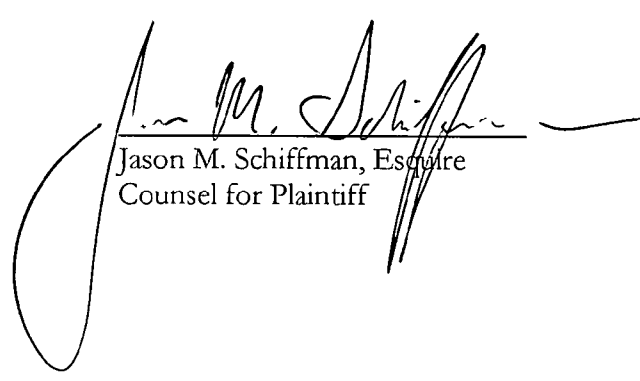
Jason M. Schiffman, Esq.  
Counsel for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the RESPONSE TO DEFENDANT'S PRELIMINARY OBJECTIONS prepared on behalf of the Plaintiff has been served upon the individual(s) listed below, via first class mail, postage prepaid, on this 17 day of November, 2008.

Marna K. Blackmer, Esquire  
WALSH, COLLIS & BLACKMER, P.C.  
The Gulf Tower, Suite 1400  
707 Grant Street  
Pittsburgh, PA 15219

Clem Trischler, Esquire  
PIETRAGALLO GORDON ALFANO  
BOSICK & RASPANTI, LLP  
38<sup>th</sup> Floor, One Oxford Centre  
Pittsburgh, PA 15219



Jason M. Schiffman, Esquire  
Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and ARCTIC  
CAT, INC.,

Defendants.

CIVIL DIVISION

Docket No.: 08-1900-CD

(Jury Trial Demanded)

**PRAECIPE FOR APPEARANCE**

Filed on Behalf of the Defendant, Jeffrey  
Carns t/d/b/a Carns Equipment Company

Counsel of Record for This Party:

PAUL J. WALSH III, ESQUIRE  
PA I.D. #58843

MARNA K. BLACKMER, ESQUIRE  
PA I.D. # 79528

NATALIE A. TROILO, ESQUIRE  
PA I.D. #89148

WALSH, COLLIS & BLACKMER, P.C.  
The Gulf Tower, Suite 1400  
707 Grant Street  
Pittsburgh, PA 15219

(412) 258-2255

#1073

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William A. Shaw  
Prothonotary/Clerk of Courts

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

CIVIL DIVISION

Plaintiff,

Docket No.: 08-1900-CD

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and ARCTIC  
CAT, INC.,

Defendants.

**PRAECIPE FOR APPEARANCE**

TO: THE PROTHONOTARY

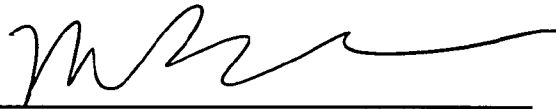
Kindly enter the Appearance of the undersigned, Paul J. Walsh III, Esquire, Marna K. Blackmer, Esquire, and Natalie A. Troilo, Esquire, of the law firm of Walsh, Collis & Blackmer, P.C., on behalf of the Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company, in the above case

**JURY TRIAL DEMANDED**

Respectfully submitted,

WALSH, COLLIS & BLACKMER, P.C.

By



Paul J. Walsh III, Esquire  
Marna K. Blackmer, Esquire  
Natalie A. Troilo, Esquire  
Counsel for Defendants

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing **Praecipe for Appearance** has been mailed by U.S. Mail to counsel of record via first class mail, postage pre-paid, this 21<sup>st</sup> day of November, 2008.

Jason M. Schiffman, Esquire  
Schiffman & Wojdowski  
1300 Fifth Avenue  
Pittsburgh, PA 15219  
(*Counsel for Plaintiff*)

Clem C. Trischler, Esquire  
Pietragallo, Bosick & Gordon, LLP  
One Oxford Centre  
301 Grant Street; 38<sup>th</sup> Floor  
Pittsburgh, PA 15219-1407  
(*Counsel for Defendant, Arctic Cat, Inc.*)

WALSH, COLLIS & BLACKMER, P.C.

By



Paul J. Walsh III, Esquire  
Marna K. Blackmer, Esquire  
Natalie A. Troilo, Esquire  
Counsel for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT, INC.

Defendants.

CIVIL DIVISION

CASE NUMBER: 08-1900-CD

TYPE OF PLEADING:  
REPLY TO NEW MATTER  
OF DEFENDANT ARCTIC  
CAT, INC.

FILED ON BEHALF OF:  
James Stormer, Plaintiff

COUNSEL OF RECORD:  
Jason M. Schiffman, Esquire  
Pa. I.D. #207103

SCHIFFMAN & WOJDOWSKI  
1300 Fifth Avenue  
Pittsburgh, PA 15219  
412/288-9444

FIRM I.D. #466

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William A. Shaw  
Prothonotary/Clerk of Courts  
no cc  
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JAMES STORMER,	)	
	)	
Plaintiff,	)	NO.: 08-1900-CD
	)	
vs.	)	
	)	
JEFFREY CARNS t/d/b/a CARNS	)	
EQUIPMENT COMPANY and	)	
ARCTIC CAT, INC.	)	
	)	
Defendants.	)	

**REPLY TO NEW MATTER OF  
DEFENDANT ARCTIC CAT, INC.**

AND NOW, comes the Plaintiff, James Stormer, by and through his attorneys, Schiffman & Wojdowski and Jason M. Schiffman, Esquire, and files the following Reply to New Matter of Defendant Arctic Cat, Inc.

1. The Plaintiff hereby incorporates by reference the averments of his Complaint as though the same were more fully set forth at length herein.
2. The New Matter averred in paragraph 36 is denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.
3. The New Matter averred in paragraph 37 is denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.
4. The New Matter averred in paragraph 38 is denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

5. The New Matter averred in paragraph 39 and subparagraphs a) through h) is denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

6. The New Matter averred in paragraph 40 is denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

7. The New Matter averred in paragraph 41 is denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

8. The New Matter averred in paragraph 42 is denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

9. The New Matter averred in paragraph 43 is denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

10. The New Matter averred in paragraph 44 is denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

11. The New Matter averred in paragraph 45 wherein it is stated that the incident of February 10, 2007 was not caused by any act or omission on the part of Arctic Cat and that any injuries or damages sustained were the result of the negligent and reckless actions of other individuals and entities for whom Arctic Cat is not responsible is specifically denied. To the contrary, it is averred that the conduct of this Defendant as more fully set forth in Plaintiff's Complaint was the direct, legal and proximate result of the injuries and damages sustained by the Plaintiff.

12. The New Matter averred in paragraph 46 is denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

13. The New Matter averred in paragraph 47 is denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

14. The New Matter averred in paragraph 48 is denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

15. The New Matter averred in paragraph 49 is denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

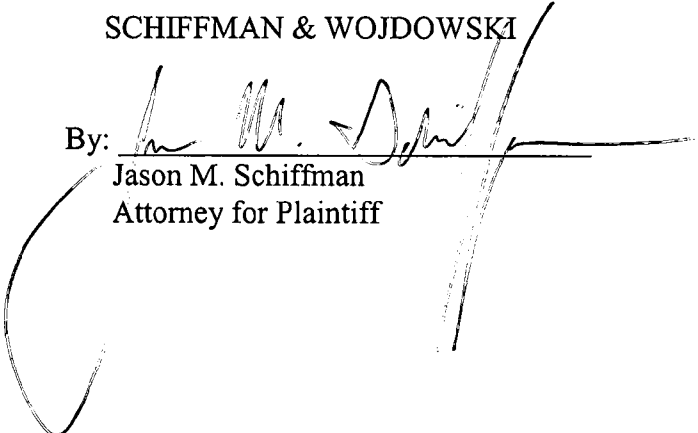
16. The New Matter averred in paragraph 50 is denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

WHEREFORE, the Plaintiff James Stormer demands judgment in his favor and against the Defendants Jeffrey Carns t/d/b/a Carns Equipment Company and Arctic Cat, Inc., both jointly and/or severally, for an amount in excess of Twenty Thousand (\$20,000.00) Dollars, exclusive of interest and costs.

RESPECTFULLY SUBMITTED:

SCHIFFMAN & WOJDOWSKI

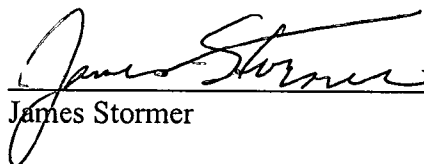
By:

  
Jason M. Schiffman  
Attorney for Plaintiff

### VERIFICATION

The undersigned, James Stormer, Plaintiff named herein, and being authorized to make this Verification for and on his behalf, having read the foregoing REPLY TO NEW MATTER OF DEFENDANT ARCTIC CAT, INC. verifies that the averments are based on information furnished to counsel, which information has been gathered by counsel in the course of this lawsuit. The language is that of counsel and not of signer. Signer verifies that he has read the foregoing, and that it is true and correct to the best of the signer's knowledge, information and belief. To the extent that the contents of the foregoing document are that of counsel, verifier has relied upon counsel in making this verification. This verification is made subject to the penalties of 18 PA C.S.A. § 4904, relating to unsworn falsification to authorities.

Date: 11-20-08

  
James Stormer

**CERTIFICATE OF SERVICE**

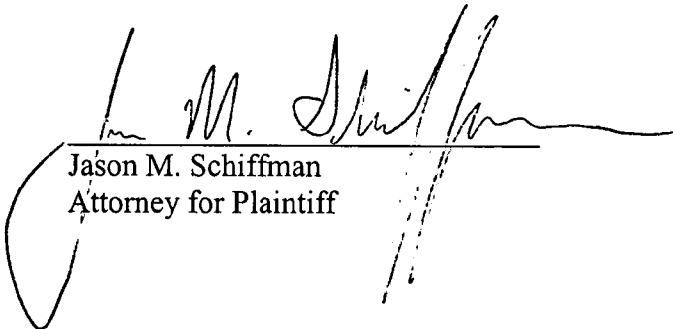
I hereby certify under penalty of perjury that I am this day serving a true and correct copy of the attached or foregoing Reply to New Matter of Defendant Arctic Cat, Inc., upon the person(s) and in the manner indicated below:

Service by first class mail, postage prepaid and addressed as follows:

Clem C. Trischler, Esquire  
Pietragallo, Gordon, Alfano,  
Bosick & Raspanti, LLP  
38<sup>th</sup> Floor, One Oxford Centre  
Pittsburgh, PA 15219

Marna K. Blackmer, Esquire  
Walsh, Collis & Blackmer, P.C.  
The Gulf Tower, Suite 1400  
707 Grant Street  
Pittsburgh, PA 15219

11/25/08  
Date

  
Jason M. Schiffman  
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JAMES STORMER

VS.

NO. 08-1900-CD

JEFFREY CARNS, t/d/b/a CARNS

EQUIPMENT and ARCTIC CAT, INC)

O R D E R

NOW this 26th day of November, 2008, following argument on Preliminary Objections filed on behalf of Defendant, it is the ORDER of this Court that the Preliminary Objections are hereby granted to the extent that:

1. In regard to Counts 1, 2 and 3 of the Plaintiff's Complaint, the Plaintiff shall have no more than twenty (20) days from this date in which to file an Amended Complaint regarding additional factual details.

2. Preliminary Objection against Count 7 is hereby granted in that the factual averments set forth in Paragraph 35 relate to the claims of causation only and the Court hereby finds that Count 7 does not set forth a distinct and separate cause of action.

BY THE COURT

*Frederick J. Gammeman*  
President Judge

**FILED**  
DEC 02 2008

William A. Shaw  
Prothonotary/Clerk of Courts

100 A#ys:  
Schiffman  
Blackmer/Walsh/Troilo  
Trischler

(60)

FILED

DEC 02 2008

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 12/2/08

\_\_\_\_ You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

\_\_\_\_ Plaintiff(s) X Plaintiff(s) Attorney \_\_\_\_ Other

\_\_\_\_ Defendant(s) X Defendant(s) Attorney

\_\_\_\_ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT, INC.

Defendants.

CIVIL DIVISION

CASE NUMBER: 2008-1900 CD

TYPE OF PLEADING:  
AMENDED COMPLAINT

FILED ON BEHALF OF:  
James Stormer, Plaintiff

COUNSEL OF RECORD:  
Jason M. Schiffman, Esquire  
Pa. I.D. #207103

SCHIFFMAN & WOJDOWSKI  
1300 Fifth Avenue  
Pittsburgh, PA 15219  
412/288-9444

FIRM I.D. #466

FILED No CC.  
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William A. Shaw  
Prothonotary/Clerk of Courts



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JAMES STORMER,	)	
	)	
Plaintiff,	)	NO.:
	)	
vs.	)	
	)	
JEFFREY CARNS t/d/b/a CARNS	)	
EQUIPMENT COMPANY and	)	
ARCTIC CAT, INC.	)	
	)	
Defendants.	)	

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR PHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

DANIEL NELSON, COURT ADMINISTRATOR  
CLEARFIELD COUNTY COURTHOUSE  
230 E. MARKET STREET, SUITE 228  
CLEARFIELD, PA 16830  
(814) 765-2641, Ext. 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JAMES STORMER,	)	
	)	
Plaintiff,	)	NO.:
	)	
vs.	)	
	)	
JEFFREY CARNS t/d/b/a CARNS	)	
EQUIPMENT COMPANY and	)	
ARCTIC CAT, INC.	)	
	)	
Defendants.	)	

**AMENDED COMPLAINT**

AND NOW, comes the Plaintiff, James Stormer, by and through his attorneys, Schiffman & Wojdowski and Jason M. Schiffman, Esquire, and files the following Amended Complaint:

1. The Plaintiff James Stormer is an individual and a resident of the Commonwealth of Pennsylvania and County of Jefferson, residing at 481 Butler Cemetery Road, Brookville, Pennsylvania 15825.
2. The Defendant Jeffrey Carns is an individual who trades and does business as Carns Equipment Company with a place of business located at 14357 Clearfield Shawville Highway, Clearfield, Pennsylvania 16830.

3. The Defendant Arctic Cat, Inc. is a corporation with its principal place of business located at 601 Brooks Avenue South, Thief River Falls, Minnesota 56701, which at all relevant times traded and did business in the Commonwealth of Pennsylvania and County of Clearfield.

4. On or about February 10, 2007, the Plaintiff James Stormer was riding a 2007 Arctic Cat ATV, Model 650 H1 with Serial Number: 4UF07ATV57T225203 (hereinafter referred to as "ATV") which had been purchased from Carns Equipment Company on February 9, 2008 and had been delivered on February 10, 2007.

5. The Plaintiff was lawfully and carefully operating the ATV when the front wheel suddenly and unexpectedly fell off causing the Plaintiff to be thrown over the windshield and sustain serious injuries.

**COUNT I –  
JAMES STORMER VS.  
JEFFREY CARNS t/d/b/a CARNS EQUIPMENT COMPANY**

6. The Plaintiff hereby incorporates by reference paragraphs 1 through 5 of this Complaint as though the same were more fully set forth at length herein.

7. At all times relevant hereto, this Defendant was engaged in the business of selling all terrain vehicles and was a seller as defined by the Restatement (Second) Torts §402A as adopted by the Supreme Court of Pennsylvania.

8. The ATV was expected to and did reach the Plaintiff and was used by him without substantial change in the condition in which it was manufactured for sale.

9. This Defendant breached the duties owed to the Plaintiff as mandated by selling the ATV in a defective condition rendering it unreasonably dangerous to the user of the product.

10. The ATV was defective because it was manufactured and/or designed in such a manner that it would malfunction by having the wheel fall off.

11. The ATV was defective because it malfunctioned in such a manner as to have the ball joint fracture during normal and anticipated use.

12. The ATV was defective because it failed to have labels and warnings that would alert the user that parts of the ATV could break during normal intended use.

13. As the direct, legal and proximate result of the breach of the mandates of §402A by this Defendant, the Plaintiff James Stormer has sustained the following injuries:

- a. Cervical radiculopathy;
- b. Cervical sprain;
- c. Myofascial cervical strain;
- d. Ligamentous strain;
- e. Moderate left median neuropathy; and
- f. Other serious injuries.

14. As the direct, legal and proximate result of the breach of the mandates of §402A by this Defendant, the Plaintiff James Stormer has sustained the following damages:

- a. He has had to undergo medical treatment;
- b. He has suffered and will continue to suffer great pain, suffering, mental anguish and embarrassment;
- c. He has incurred medical bills for treatment;
- d. He has been unable to enjoy the ordinary pleasures of life;
- e. He has been unable to perform his normal daily activities including employment;

f. He has incurred a loss of earnings and diminution of earning capacity;  
and

g. His general health, strength and vitality have been impaired.

WHEREFORE, the Plaintiff James Stormer demands judgment in his favor and against the Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company for an amount in excess of Twenty Thousand (\$20,000.00) Dollars, exclusive of interest and costs.

**COUNT II –  
JAMES STORMER VS.  
JEFFREY CARNS t/d/b/a CARNS EQUIPMENT COMPANY**

15. The Plaintiff hereby incorporates by reference paragraphs 1 through 17 of this Complaint as though the same were more fully set forth at length herein.

16. At all times relevant hereto, this Defendant was a “merchant” within the meaning of the Pennsylvania Uniform Commercial Code.

17. The Plaintiff relied upon the Defendant’s express warranties set forth in its published warranties, product information, commercials, and/or statements made by its employees. Any written warranties are not presently available to the Plaintiff and are therefore not attached.

18. These warranties were breached because the ATV was not of the quality it was purported to be.

19. As a direct and legal result of the failure of the ATV to conform to the warranties and to be of the type and quality of good the Plaintiff believed he was using, the Plaintiff has sustained the injuries and damages previously set forth.

20. The Plaintiff also relied upon an implied warranty of merchantability.

21. The Plaintiff also relied upon an implied warranty of fitness for the particular purpose for which the ATV was intended and was known to the seller.

22. These warranties are extended by law in accordance with the Pennsylvania Uniform Commercial Code to users of goods and require, in part, that the good be fit for the purpose for which it is to be used.

23. The warranty of merchantability was breached because the ATV was not fit for the ordinary purposes for which ATVs are used.

24. The warranty of merchantability was breached because the ATV was not of fair and average quality within the description of ATVs.

25. The unfit nature of the ATV in question is evidenced by its malfunction in the nature of its wheel becoming detached while the Plaintiff was operating it in a normal and anticipated manner.

26. At the time of sale, it was represented that this ATV would be used by the Plaintiff.

27. At the time of sale, it was represented that this ATV was fit for use by the Plaintiff.

28. The ATV was not fit for use by this Plaintiff as is evidenced by its wheel becoming detached during a normal and anticipated use.

29. As the direct, legal and proximate result of the breaches by this Defendant of the aforementioned express and implied warranties, the Plaintiff has sustained the damages previously set forth.

WHEREFORE, the Plaintiff James Stormer demands judgment in his favor and against the Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company for an amount in excess of Twenty Thousand (\$20,000.00) Dollars, exclusive of interest and costs.

**COUNT III –  
JAMES STORMER VS. ARCTIC CAT, INC.**

30. The Plaintiff hereby incorporates by reference paragraphs 1 through 31 of this Complaint as though the same were more fully set forth at length herein.

31. At all times relevant hereto, this Defendant was engaged in the business of designing, manufacturing, and/or selling ATVs and was a seller as defined by the Restatement (Second) Torts §402A as adopted by the Supreme Court of Pennsylvania.

32. This Defendant breached the duties owed to the Plaintiff as mandated by selling the ATV in a defective condition as previously set forth rendering it unreasonably dangerous to the user of the product.

33. As the direct, legal and proximate result of the breach of the mandates of §402A by this Defendant, the Plaintiff James Stormer has sustained the injuries and damages previously set forth.

WHEREFORE, the Plaintiff James Stormer demands judgment in his favor and against the Defendant, Arctic Cat, Inc. for an amount in excess of Twenty Thousand (\$20,000.00) Dollars, exclusive of interest and costs.

**COUNT IV –  
JAMES STORMER VS. ARCTIC CAT, INC.**

34. The Plaintiff hereby incorporates by reference paragraphs 1 through 33 of this Complaint as though the same were more fully set forth at length herein.

35. This Defendant was negligent in the following particulars:

- a. In designing, manufacturing and/or selling an ATV which would malfunction by having the wheel fall off;
- b. In designing, manufacturing and/or selling an ATV with a defective ball joint that fractured;
- c. In designing, manufacturing and/or selling an ATV without proper labels and warnings of the dangers of the wheel falling off and the ATV malfunctioning;
- d. In designing and/or manufacturing and/or incorporating into the Artic Cat a defective ball joint which would fracture and cause the wheel to fall off; and,
- e. In incorporating a defectively designed ball joint into the design for the ATV.

36. As the direct, legal and proximate result of the negligence of this Defendant as aforesaid, the Plaintiff has sustained the injuries and damages previously set forth.

WHEREFORE, the Plaintiff James Stormer demands judgment in his favor and against the Defendant, Arctic Cat, Inc. for an amount in excess of Twenty Thousand (\$20,000.00) Dollars, exclusive of interest and costs.

**COUNT V –**  
**JAMES STORMER VS. ARCTIC CAT, INC.**

37. The Plaintiff hereby incorporates by reference paragraphs 1 through 36 of this Complaint as though the same were more fully set forth at length herein.

38. At all times relevant hereto, this Defendant was a “merchant” within the meaning of the Pennsylvania Uniform Commercial Code.



39. The Plaintiff relied upon the Defendant's express warranties set forth in its published warranties, product information, and commercials. Any written warranties are not presently available to the Plaintiff and are therefore not attached.

40. These warranties were breached because the ATV was not of the quality it was purported to be.

41. As a direct and legal result of the failure of the ATV to conform to the warranties and to be of the type of good the Plaintiff believed he was using, the Plaintiff has sustained the injuries and damages previously set forth.

42. The Plaintiff also relied upon implied warranty of merchantability.

43. The warranty of merchantability was breached because the ATV was not fit for the ordinary purposes for which ATVs are used.

44. The warranty of merchantability was breached because the ATV was not of fair and average quality within the description of ATVs.

45. The warranty of merchantability was breached because the ATV was not fit for use as set forth in detail previously.

46. As the direct, legal and proximate result of the breaches by this Defendant of the implied warranty of merchantability, the Plaintiff has sustained the damages previously set forth.

WHEREFORE, the Plaintiff James Stormer demands judgment in his favor and against the Defendant Arctic Cat, Inc. for an amount in excess of Twenty Thousand (\$20,000.00) Dollars, exclusive of interest and costs.

RESPECTFULLY SUBMITTED:

SCHIFFMAN & WOJDOWSKI

By: 

Jason M. Schiffman  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

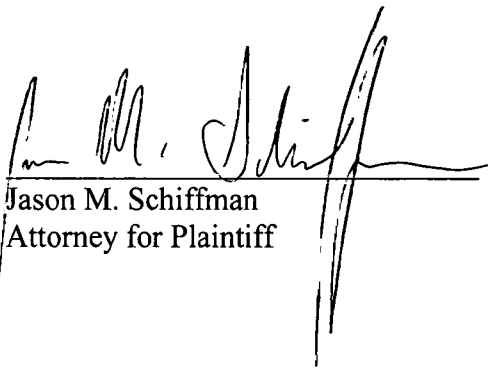
I hereby certify under penalty of perjury that I am this day serving a true and correct copy of the attached or foregoing Amended Complaint, upon the person(s) and in the manner indicated below:

Service by first class :mail, postage prepaid and addressed as follows:

Clem C. Trischler, Esquire  
Pietragallo, Gordon, Alfano,  
Bosick & Raspanti, LLP  
38<sup>th</sup> Floor, One Oxford Centre  
Pittsburgh, PA 15219

Marna K. Blackmer, Esquire  
Walsh, Collis & Blackmer, P.C.  
The Gulf Tower, Suite 1400  
707 Grant Street  
Pittsburgh, PA 15219

12/10/2008  
Date



Jason M. Schiffman  
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CIVIL DIVISION

Wells Fargo Bank, N.A., as )  
Successor by merger to Wells Fargo Bank Minnesota, N.A., )  
As Trustee f/k/a Northwest Savings Bank Minnesota, N.A., )  
As Trustee for the registered holders of Structured Asset )  
Securities Corporation, Amortizing Residential Collateral )  
Trust, Mortgage Pass-Through Certificates, Series 2002-BC9 )  
PLAINTIFF )  
VS. )  
Alan B. Kemp and Laura J. Kemp )  
4185 Meadow Way )  
Marietta, GA 30066 )  
DEFENDANTS )

CASE NO. 2008-2145-CD

FILED ICC Atty  
m/11:40Lm Falcone  
DEC 12 2008 (610)

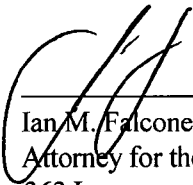
William A. Shaw  
Prothonotary/Clerk of Courts

SUGGESTION OF BANKRUPTCY

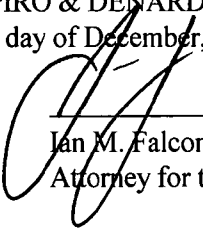
COME NOW the Defendants, Alan B. Kemp and Laura J. Kemp, through their undersigned attorney, and would show the Court:

1. They have filed a petition for relief under Title 11 United States Code, in the United States Bankruptcy Court for the Northern District of Georgia – Atlanta Division, which bears the case number 08-72417.
2. Relief was ordered on June 30, 2008.
3. This action is founded on a claim from which a discharge would be a release or that seeks to impose a charge on the property of the estate.
4. This is for informational purposes only, and does not constitute a notice of appearance by the undersigned.

WHEREFORE, the defendants suggest that this action has been stayed by the operation of 11 U.S.C. § 362.

  
\_\_\_\_\_  
Ian M. Falcone 254470  
Attorney for the Defendant  
363 Lawrence Street  
Marietta, GA 30060

IT IS HEREBY CERTIFIED that a copy of the foregoing Suggestion of Bankruptcy was delivered by mail to Ilana Zion, Attorney for Plaintiff, SHAPIRO & DENARDO, LLC., 3600 Horizon Drive, Suite 150, King of Prussia, Pennsylvania 19406, this 8th day of December, 2008.

  
\_\_\_\_\_  
Ian M. Falcone 254470  
Attorney for the Defendant

IN THE COURT OF COMMON PLEAS FOR CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and ARCTIC  
CAT INC.,

Defendants.

CIVIL DIVISION

No.: 08-1900-CD

**FILED**

DEC 12 2008

W. A. Shaw  
Prothonotary/Clerk of Courts

**MOTION FOR ADMISSION *PRO HAC*  
*VICE***

Filed on behalf of Defendant:

**ARCTIC CAT INC.**

Counsel of Record for this Party:

Clem C. Trischler, Esquire  
Pa. I.D. # 52957

**PIETRAGALLO GORDON ALFANO  
BOSICK & RASPANTI, LLP**  
Firm #834

The Thirty-Eighth Floor  
One Oxford Centre  
Pittsburgh, PA 15219

(412) 263-2000

IN THE COURT OF COMMON PLEAS FOR CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

CIVIL DIVISION

Plaintiff,

No.: 08-1900-CD

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and ARCTIC  
CAT INC.,

Defendants.

**MOTION FOR ADMISSION *PRO HAC VICE***

AND NOW, comes the defendant, Arctic Cat Inc. (hereinafter "Arctic Cat") by and through its counsel, Clem C. Trischler, Esquire, and Pietragallo Gordon Alfano Bosick & Raspanti, LLP, and submits this Motion for Admission *Pro Hac Vice*. Arctic Cat seeks the entry of an Order permitting Scott G. Olds, Esquire, to appear as counsel, *pro hac vice*, for Arctic Cat.

In support of this Motion, Arctic Cat submits the following:

1. Clem C. Trischler of the law firm of Pietragallo Gordon Alfano Bosick & Raspanti, LLP is trial counsel and will continue to serve as trial counsel for Arctic Cat with the assistance of Scott G. Olds, who serves as national trial counsel for Arctic Cat and is familiar with the technical and legal issues presented in this litigation.
2. Payment to the Pennsylvania IOLTA Board in the amount of \$100.00 was made on November 17, 2008, in accordance with 204 Pa. Code 81.501, *et seq.* See, Exhibit "A".
3. It is submitted that the knowledge, appearance, and familiarity of Mr. Olds in the handling of this type of litigation will be invaluable to Arctic Cat, and this defendant requests

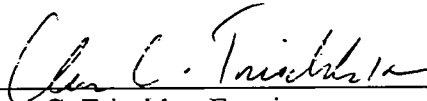
that Mr. Olds be permitted to appear as counsel, *pro hac vice*, to assist Mr. Trischler in the trial of this matter.

4. This Motion is being submitted in accordance with Pa. R.C.P. 1012.1(c) and 1012.1(d), respectively, at Exhibits "B" and "C."

WHEREFORE, defendant, Arctic Cat Inc., respectfully requests the entry of an Order permitting Scott G. Olds to appear as trial counsel, *pro hac vice*, for Arctic Cat Inc. in this action.

Respectfully submitted,

**PIETRAGALLO GORDON ALFANO  
BOSICK & RASPANTI, LLP**

By:   
Clem C. Trischler, Esquire  
Pa. I.D. #52957  
One Oxford Center, 38<sup>th</sup> Floor  
Pittsburgh, PA 15219

*Attorney for Defendant,  
Arctic Cat Inc.*



SUPREME COURT OF PENNSYLVANIA  
PENNSYLVANIA INTEREST ON  
LAWYERS TRUST ACCOUNT BOARD

P. O. BOX 1025 • 115 STATE STREET  
HARRISBURG, PENNSYLVANIA 17108-1025  
717/238-2001 • 888-PA-IOLTA (724-6582) • 717/238-2003 FAX  
paiolta@pacourts.us  
www.paiolta.org

*Chair*

MAUREEN P. KELLY, Esquire  
Two Gateway Center  
13 Stanwix Street, 8th Floor  
Pittsburgh, PA 15222-5412

November 17, 2008

*Vice-Chair*

WILLIAM P. CARLUCCI, Esquire  
Williamsport, PA

Sent by fax: (208) 983-9274

*Board Members*

ROBERT X. GILROY, Esquire  
Carlisle, PA

Scott Garrett Olds, Esquire  
OLDS & ASSOCIATES, P.A.  
204 N. Meadow St.  
Grangeville, ID 83530

WILLIAM T. HANGLEY, Esquire  
Philadelphia, PA

Dear Attorney Olds:

PENNA KESSLER LIEBER, Esquire  
Pittsburgh, PA

MICHAEL H. REED, Esquire  
Philadelphia, PA

ANDREW F. SUSKO, Esquire  
Philadelphia, PA

This letter serves as the fee payment certification referenced in 204 Pa Code §81.503 and acknowledges receipt of the \$100 fee paid by Check, number 1236, on this date related to your pursuit for admission pro hac vice in the case identified as James Stormer v. Jeffrey Carnes & Arctic Cat, Inc., case no. 08-1900-CD, filed in the Court of Common Pleas of Clearfield County.

*Executive Director*  
ALFRED J. AZEN

You should refer to Pa Rule of Civil Procedure 1012.1, local court rules, and other regulations of 204 Pa Code §81.501 et. seq. concerning additional requirements related to seeking pro hac vice admission.

Sincerely,

Alfred J. Azen  
Executive Director

cc: James F. Marrion, Esq.  
(412) 263-2001

G:\CLIDOC\PH\ACK LTR\2008\Nov\November 17.wpd



**VERIFICATION OF SCOTT OLDS**

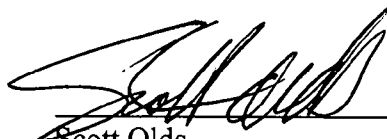
I, Scott Olds, candidate for admission *pro hac vice* in the Court of Common Pleas of Clearfield County, Pennsylvania, verify that I have been admitted to the State Bar of Idaho in 1991, Bar Number 4426.

I have never been suspended, disbarred or otherwise disciplined in any way in any of the jurisdictions in which I have been admitted. I am not subject to any disciplinary proceedings.

I am admitted in one other pending Pennsylvania action in Chesterfield County Court of Common Pleas, and have not been denied *pro hac vice* admission in any court of record in Pennsylvania.

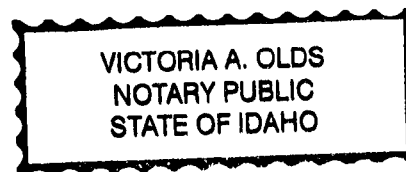
I will comply with and be bound by the applicable statutes, case law and procedural rules of the Commonwealth of Pennsylvania, including the Pennsylvania Rules of Professional Conduct. I will submit to the jurisdiction of the Pennsylvania courts and the Pennsylvania Disciplinary Board with respect to acts and omissions during the appearance in the matter for which admission *pro hac vice* is being sought.

I have consented to the appointment of the sponsor as the agent upon whom service of process shall be made for all actions, including disciplinary actions, that may arise out of the practice of law in the matter for which *pro hac vice* admission is sought.

  
\_\_\_\_\_  
Scott Olds

SUBSCRIBED & SWORN TO BEFORE ME  
this 19th day of November, 2008.

Victoria A. Olds  
Notary Public, State of Idaho  
Residing at Grangeville.  
Commission expires: 10/1/09



**VERIFICATION OF CLEM C. TRISCHLER**

I, Clem C. Trischler, sponsor of Scott G. Olds for admission *pro hac vice* hereby state that after reasonable investigation, I reasonably believe Scott G. Olds to be a reputable and competent attorney and I recommend his admission *pro hac vice*.

I am aware that he proceeds from the settlement of a cause in which the candidate is granted admission *pro hac vice* shall be received, held, distributed and accounted for in accordance with Rule 1.15 of the Pennsylvania Rules of Professional Conduct, including the IOLTA provisions thereof, if applicable.

Dated 12/09, 2008

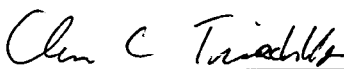
Clem C. Trischler  
Clem C. Trischler

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing **Motion for Admission Pro Hac Vice** has been served via First-Class U.S. Mail, postage prepaid, this 9th day of December 2008, upon the following:

Jason M. Schiffman, Esquire  
Schiffman & Wojdowski  
1300 Fifth Avenue  
Pittsburgh, PA 15219  
*Attorney for Plaintiff*

Marna K. Blackmer, Esquire  
Walsh, Collis & Blackmer, P.C.  
The Gulf Tower  
Suite 1400  
707 Grant Street  
Pittsburgh, PA 15219  
*Attorney for Jeffrey Carns t/d/b/a  
Carns Equipment Company*

  
\_\_\_\_\_  
Clem C. Trischler, Esquire

IN THE COURT OF COMMON PLEAS FOR CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

CIVIL DIVISION

Plaintiff,

No.: 08-1900-CD

vs.

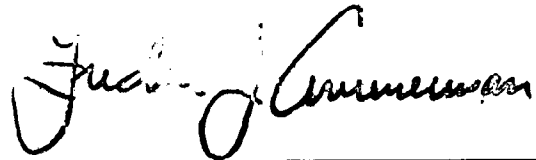
JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and ARCTIC  
CAT INC.,

Defendants.

ORDER OF COURT

AND NOW, this 15<sup>th</sup> day of December, 2008, upon consideration of the defendant's Motion for Appearance *Pro Hac Vice*, it is hereby ORDERED that Scott G. Olds, Esquire, shall be admitted, *pro hac vice*, for purposes of this action only, and may serve as trial counsel to Arctic Cat Inc.

BY THE COURT,



J.

FILED

DEC 15 2008

William A. Shaw  
Prothonotary/Clerk of Courts

104:00/51 Amy Trischler

(60)

FILED

DEC 15 2008

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 12/15/08

☒ You are responsible for serving all appropriate parties.  
☐ The Prothonotary's office has provided service to the following parties:  
\_\_\_\_ Plaintiff(s) \_\_\_\_ Plaintiff(s) Attorney \_\_\_\_ Other  
\_\_\_\_ Defendant(s) \_\_\_\_ Defendant(s) Attorney  
\_\_\_\_ Special Instructions:

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

FILED

DEC 26 2008

W/10-40/12  
William A. Shaw  
Prothonotary/Clerk of Courts

no 46

JAMES STORMER,

Plaintiff,

v.

JEFFREY CARNES t/d/b/a CARNES  
EQUIPMENT COMPANY and ARCTIC CAT  
INC.

Defendant.

) CIVIL ACTION – LAW

) NO: 08-1900-CD

) ANSWER TO PLAINTIFF'S  
) AMENDED COMPLAINT AND  
) NEW MATTER

) Filed on Behalf of Defendant:  
) Arctic Cat Inc.

) Counsel of Record for This Party:

) Clem C. Trischler, Esq.  
) PA I.D. No. 52957

) PIETRAGALLO GORDON ALFANO  
) BOSICK & RASPANTI, LLP  
) Firm #834

) The Thirty-Eighth Floor  
) One Oxford Centre  
) Pittsburgh, PA 15219  
) (412) 263-2000

**NOTICE OF PLEAD**

TO THE PARTIES:

YOU ARE HEREBY NOTIFIED TO FILE  
A WRITTEN RESPONSE TO THE WITHIN  
NEW MATTER WITHIN TWENTY (20)  
DAYS FROM THE DATE OF SERVICE  
HEREOF OR A JUDGMENT MAY BE  
ENTERED AGAINST YOU.

Clem C. Trischler  
ATTORNEY FOR ARCTIC CAT INC.

A JURY TRIAL IS DEMANDED

IN THE COURT OF COMMON PLEAS FOR CLEAFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,	)	
	)	
Plaintiff,	)	No.: 08-1900-CD
	)	
v.	)	
	)	
JEFFREY CARNES t/d/b/a CARNES EQUIPMENT	)	
COMFANY and ARCTIC CAT INC.	)	
	)	
Defendant.	)	

**ANSWER TO PLAINTIFF'S AMENDED COMPLAINT AND NEW MATTER**

AND NOW, comes Defendant, Arctic Cat Inc., by and through its counsel, Clem C. Trischler, Esq. and Pietragallo Gordon Alfano Bosick & Raspanti, LLP, and files this Answer to Plaintiff's Amended Complaint and New Matter. Arctic Cat Inc. denies any and all liability to the Plaintiff and demands the entry of judgment in its favor and against the Plaintiff, James Stormer. By way of further response to the averments of the Plaintiff's Amended Complaint, Arctic Cat Inc. ("Arctic Cat") submits the following:

**ANSWER**

1. Paragraph 1 of the Plaintiff's Amended Complaint is denied. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments set forth at paragraph 1; therefore, the same are denied;

2. Paragraph 2 of the Plaintiff's Amended Complaint is not directed to this Defendant. As such, no responsive pleading is required on behalf of Arctic Cat.

3. Paragraph 3 of the Plaintiff's Amended Complaint is admitted.

4. Paragraph 4 of the Plaintiff's Amended Complaint is denied. After reasonable investigation, this Defendant is presently without knowledge concerning all of the facts and circumstances surrounding the purchase and sale of the subject vehicle or the reported incident of February 10, 2007; therefore, all of the averments of paragraph 4 are denied.

5. Paragraph 5 of the Plaintiff's Amended Complaint is denied. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments set forth at paragraph 5; therefore, the same are denied.

#### ANSWER TO COUNT I

6. – 14. Paragraphs 6 through 14 of the Plaintiff's Amended Complaint are not directed to this Defendant. As such, no responsive pleading is required on behalf of Arctic Cat. To the extent the averments of paragraph 6 through 14 allege or infer any negligent, tortuous or improper conduct on the part of this Defendant, all of these averments are denied.

#### ANSWER TO COUNT II

15. – 29. Paragraphs 15 through 29 of the Plaintiff's Amended Complaint are not directed to this Defendant. As such, no responsive pleading is required on behalf of Arctic Cat. To the extent the averments of paragraphs 15 through 29 allege or infer any negligent, tortuous or improper conduct on the part of this Defendant, all of the averments of paragraphs 15 through 29 are denied.

#### ANSWER TO COUNT III

30. Paragraphs 1 through 29 of this Answer are incorporated by reference in response to the averments of paragraph 30 of the Plaintiff's Amended Complaint.

31. Paragraph 31 of the Plaintiff's Amended Complaint is denied. The averments of paragraph 31 state conclusions of law to which no responsive pleading is required. To the extent that a response may be required, all of the averments of paragraph 31 are denied.

32. Paragraph 32 of the Plaintiff's Amended Complaint is denied. The averments of paragraph 32 state conclusions of law to which no responsive pleading is required. To the extent that a response may be required, all of the averments of paragraph 32 are denied.

33. Paragraph 33 of the Plaintiff's Amended Complaint is denied. The averments of paragraph 33 state conclusions of law to which no responsive pleading is required. To the extent that a response may be required, all of the averments of paragraph 33 are denied.



#### ANSWER TO COUNT IV

34. Paragraphs 1 through 33 of this Answer are incorporated by reference in response to the averments of paragraph 34 of the Plaintiff's Amended Complaint.

35. Paragraph 35 of the Plaintiff's Amended Complaint is denied. The averments of paragraph 35 state conclusions of law to which no responsive pleading is required. To the extent that a response may be required, all of the averments of paragraph 35 are denied. By way of further response and in accordance with Rule 1029(e) of the Pennsylvania Rules of Civil Procedure, Arctic Cat generally denies each and every averment of paragraph 35, including subparagraphs (a) through (e).

36. Paragraph 36 of the Plaintiff's Amended Complaint is denied. The averments of paragraph 36 state conclusions of law to which no responsive pleading is required. To the extent that a response may be required, all of the averments of paragraph 36 are denied.

#### ANSWER TO COUNT V

37. Paragraphs 1 through 36 of this Answer are incorporated by reference in response to the averments of paragraph 37 of the Plaintiff's Amended Complaint.

38. Paragraph 38 of the Plaintiff's Amended Complaint is denied. The averments of paragraph 38 state conclusions of law to which no responsive pleading is required. To the extent that a response may be required, all of the averments of paragraph 38 are denied.

39. Paragraph 39 of the Plaintiff's Amended Complaint is denied. The averments of paragraph 39 state conclusions of law to which no responsive pleading is required. To the extent that a response may be required, all of the averments of paragraph 39 are denied.

40. Paragraph 40 of the Plaintiff's Amended Complaint is denied. The averments of paragraph 40 state conclusions of law to which no responsive pleading is required. To the extent that a response may be required, all of the averments of paragraph 40 are denied.

41. Paragraph 41 of the Plaintiff's Amended Complaint is denied. The averments of paragraph 41 state conclusions of law to which no responsive pleading is required. To the extent that a response may be required, all of the averments of paragraph 41 are denied.

42. Paragraph 42 of the Plaintiff's Amended Complaint is denied. The averments of paragraph 42 state conclusions of law to which no responsive pleading is required. To the extent that a response may be required, all of the averments of paragraph 42 are denied.

43. Paragraph 43 of the Plaintiff's Amended Complaint is denied. The averments of paragraph 43 state conclusions of law to which no responsive pleading is required. To the extent that a response may be required, all of the averments of paragraph 43 are denied.

44. Paragraph 44 of the Plaintiff's Amended Complaint is denied. The averments of paragraph 44 state conclusions of law to which no responsive pleading is required. To the extent that a response may be required, all of the averments of paragraph 44 are denied.

45. Paragraph 45 of the Plaintiff's Amended Complaint is denied. The averments of paragraph 45 state conclusions of law to which no responsive pleading is required. To the extent that a response may be required, all of the averments of paragraph 45 are denied.

46. Paragraph 46 of the Plaintiff's Amended Complaint is denied. The averments of paragraph 46 state conclusions of law to which no responsive pleading is required. To the extent that a response may be required, all of the averments of paragraph 46 are denied.

WHEREFORE, Defendant, Arctic Cat Inc., denies any and all liability to the Plaintiff and demands the entry of judgment in its favor and against the Plaintiff, James Störmer.

**A JURY TRIAL IS DEMANDED.**

### NEW MATTER

47. The averments of Plaintiff's Amended Complaint fail to state a claim upon which relief can be granted.

48. Arctic Cat avers that the all-terrain vehicle ("ATV") in question may have been altered, abused, misused or substantially changed after the date of its original sale. This defendant reserves the right to raise product alteration, abuse, misuse and substantial change as affirmative defenses to the claims raised in the Plaintiff's Amended Complaint.

49. The Plaintiff was negligent under the circumstances.

50. The Plaintiff was negligent in his operation, handling and use of the ATV generally and in the following particulars:

- a) in failing to properly operate the ATV;
- b) in failing to adhere to the warnings and instructions provided with the ATV;
- c) in operating the ATV in a careless and reckless manner;
- d) in operating the ATV beyond his capabilities;
- e) in failing to be cognizant of all surrounding conditions;
- f) in failing to maintain control of the ATV;
- g) in operating the ATV at speeds and under conditions which were inappropriate for the circumstances;
- h) in otherwise being negligent.

51. The negligence of Plaintiff was the direct and proximate cause of the subject incident.

52. Arctic Cat hereby asserts the terms and provisions of the Pennsylvania Comparative Negligence Act, 42 Pa. C.S.A. § 72302, as an affirmative defense to the claims raised in this action.

53. Plaintiff may have assumed the risk of the injuries he sustained by virtue of his careless and highly reckless conduct. Arctic Cat hereby asserts the assumption of the risk doctrine as an affirmative defense to the claims raised in this action.

54. The strict liability, negligence and warranty claims raised in Plaintiff's Amended Complaint are barred based on the doctrine of federal preemption.

55. Plaintiff's Amended Complaint improperly seeks to recover damages which are not recognized or permitted under Pennsylvania law.

56. The incident of February 10, 2007, was not caused by any act or omission on the part of Arctic Cat. Any injuries or damages which the Plaintiff claims to have sustained were the result of the negligent and reckless actions of other individuals and entities for whom Arctic Cat is not responsible.

57. Some or all of the claims raised in the Plaintiff's Amended Complaint may be barred by the applicable statute of limitations.

58. Arctic Cat hereby asserts the terms of its limited warranty and disclaimer as an affirmative defense to the claims raised in this action.

59. The ATV may have been misused at the time of this incident and this misuse serves to bar this cause of action.

60. The actions of this Defendant were reasonable, prudent and proper under the circumstances, and Arctic Cat was not responsible in any way for any injuries or damages claimed by the Plaintiff.

61. The ATV was properly designed and manufactured and was safe for its intended use when originally sold.

62. The breach of express warranty claims raised in Plaintiff's Amended Complaint are barred on the grounds that there existed no privity between Arctic Cat and the Plaintiff.

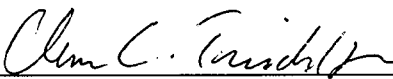
63. This action should be consolidated with the action filed at Case Number: 08-2116-CD; Lynn M. Patricelli v. Jeffrey Carns t/d/b/a Carns Equipment Company and Arctic Cat Inc., in the Court of Common Pleas of Clearfield County, Pennsylvania.

**A JURY TRIAL IS DEMANDED.**

Respectfully submitted,

PIETRAGALLO GORDON ALFANO BOSICK  
& RASPANTI, LLP

By

  
\_\_\_\_\_  
Clem C. Trischler, Esq.  
PA ID No. 52957

Counsel for Arctic Cat Inc.

### VERIFICATION

I, Fred Bernier, am employed with Defendant Arctic Cat Inc., as Director of Product Safety & Validation. I hereby verify the foregoing Answer to Plaintiff's Amended Complaint and New Matter, for and on behalf of Defendant Arctic Cat Inc., and I am duly authorized to do so.

The matters stated in the Answer to Plaintiff's Amended Complaint and New Matter are not all within my personal knowledge, and I am informed and believe that there is no officer of Arctic Cat Inc. who has personal knowledge of all such matters. Rather, the facts as stated in this pleading are true.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Further, this statement of verification is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities which provides that if I knowingly make false statements, I may be subject to criminal penalties.

Executed this 22<sup>nd</sup> day of December, 2008.

ARCTIC CAT INC.

By:

  
FRED BERNIER

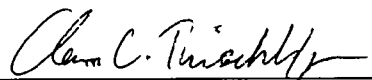
Director of Product Safety & Validation

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ANSWER TO PLAINTIFF'S AMENDED COMPLAINT AND NEW MATTER** has been served upon all parties listed below, via first-class mail, postage prepaid, on this 27<sup>th</sup> day of December 2008:

Jason M. Schiffman, Esquire  
Schiffman & Wojdowski  
1300 Fifth Avenue  
Pittsburgh, PA 15219  
*Attorney for Plaintiff*

Marna K. Blackmer, Esquire  
Walsh, Collis & Blackmer, P.C.  
The Gulf Tower  
Suite 1400  
707 Grant Street  
Pittsburgh, PA 15219  
*Attorney for Jeffrey Carns t/d/b/a  
Carns Equipment Company*

  
\_\_\_\_\_  
Clem C. Trischler, Esq.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

Plaintiff,

v.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and ARCTIC CAT  
INC.

Defendant.

LYNN M. PATRICELLI,

Plaintiff,

v.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY  
and ARCTIC CAT INC.

Defendants.

) CIVIL DIVISION  
) NO: 08-1900-CD

) ARBITRATION DIVISION  
) NO: 08-2116-CD

) MOTION TO CONSOLIDATE

) Filed on Behalf of Defendant:  
) Arctic Cat Inc.

) Counsel of Record for This Party:

) Clem C. Trischler, Esquire  
) PA I.D. No.: 52957

) James F. Marrion, Esquire  
) PA I.D. No.: 85181

) PIETRAGALLO GORDON ALFANO  
) BOSICK & RASPANTI, LLP  
) Firm #834

) The Thirty-Eighth Floor  
) One Oxford Centre  
) Pittsburgh, PA 15219  
) (412) 263-2000

FILED

DEC 26 2008

William A. Shaw  
Prothonotary/Clerk of Courts

NO C/L



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

Plaintiff,

v.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and ARCTIC CAT  
INC.

Defendant.

CIVIL DIVISION  
NO: 08-1900-CD

---

LYNN M. PATRICELLI,

Plaintiff,

v.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY  
and ARCTIC CAT INC.

Defendants.

ARBITRATION DIVISION  
NO: 08-2116-CD

**MOTION TO CONSOLIDATE**

AND NOW comes Defendant, Arctic Cat Inc., (hereinafter "Defendant" or "Arctic Cat") by its counsel, James F. Marrion, Esq. of Pietragallo Gordon Alfano Bosick & Raspanti, LLP, and files this Motion to Consolidate. Pursuant to Rule 213(a) of the Pennsylvania Rules of Civil Procedure, the defendant requests the entry of an Order consolidating the civil actions at C.D. 08-1900 and C.D. 08-2116 for purposes of discovery and trial. In support of this Motion to Consolidate, the defendant states as follows:

1. Two (2) civil actions have been commenced which seek to recover damages as a result of the same incident involving the same all-terrain vehicle ("ATV") which allegedly occurred on or about February 10, 2007.

2. Both lawsuits arise out of the same occurrence and assert claims for breach of express and implied warranty<sup>1</sup> of the subject Arctic Cat ATV, Model H1, serial No. 4UF07ATVS7T225203. See Patricelli and Stormer Amended Complaints attached at Exhibit "A."

3. Rule 213(a) of the Pennsylvania Rules of Civil Procedure provides:

In actions pending in a county which involves a common question of law or fact or which arise from the same transaction or occurrence, the court, on its own motion or on the motion of any party, may order a joint hearing or trial or on any matter at issue in the actions, may order the actions consolidated, and may make orders that avoid unnecessary cost or delay.

4. The same product and witnesses are involved in both actions.

5. The same experts likely will be utilized in the actions. In order for a breach of warranty action to proceed the product must first be found to be defective. Zwiercan v. General Motors Corp., 2002 Phila. Ct. Com. Pl. LEXIS 24 (05/22/02).

6. In the interest of judicial economy and to avoid unnecessary costs, delay and inconvenience amongst the parties, the defendant respectfully requests the entry of an Order consolidating these civil actions.

7. Counsel for plaintiffs, who is counsel for both Mr. Stormer and Ms. Patricelli, has been consulted with respect to this Motion, and does not object to the consolidation of these actions.

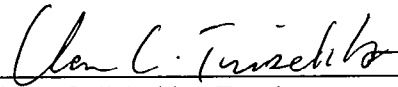
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<sup>1</sup> In addition to the breach of express and implied warranty claims filed by both plaintiffs, Plaintiff James Stormer also asserts negligence and product liability claims in his complaint filed at C.D. 08-190C. These additional claims also stem from the same February 10, 2007 occurrence and use of the subject ATV.

WHEREFORE, defendant, Arctic Cat Inc., respectfully requests the entry of an Order granting this Motion to Consolidate.

Respectfully submitted,

PIETRAGALLO GORDON ALFANO  
BOSICK & RASPANTI, LLP

By:   
Clem C. Trischler, Esquire  
James F. Marrion, Esquire  
One Oxford Center, 38<sup>th</sup> Floor  
Pittsburgh, PA 15219  
(412) 263-2000

*Attorneys for Defendant,  
Arctic Cat Inc.*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LYNN M. PATRICELLI,

Plaintiff

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT, INC.

Defendants.

ARBITRATION DIVISION

CASE NUMBER: 08-2116 CD

TYPE OF PLEADING:  
AMENDED COMPLAINT

FILED ON BEHALF OF:  
Lynn M. Patricelli, Plaintiff

COUNSEL OF RECORD:  
Jason M. Schiffman, Esquire  
Pa. I.D. #207103

SCHIFFMAN & WOJDOWSKI  
1300 Fifth Avenue  
Pittsburgh, PA 15219  
412/288-9444

FIRM I.D. #466

EXHIBIT "A"

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
ARBITRATION DIVISION

LYNN M. PATRICELLI,	)	
	)	
Plaintiff,	)	NO.:
	)	
vs.	)	
	)	
JEFFREY CARNS t/d/b/a CARNS	)	
EQUIPMENT COMPANY and	)	
ARCTIC CAT, INC.	)	
	)	
Defendants.	)	

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR PHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

DANIEL NELSON, COURT ADMINISTRATOR  
CLEARFIELD COUNTY COURTHOUSE  
230 E. MARKET STREET, SUITE 228  
CLEARFIELD, PA 16830  
(814) 765-2641, Ext. 5982

RECEIVED DEC 11 2008

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
ARBITRATION DIVISION

LYNN M. PATRICELLI,	)	
	)	
Plaintiff,	)	NO.:
	)	
vs.	)	
	)	
JEFFREY CARNS t/d/b/a CARNS	)	
EQUIPMENT COMPANY and	)	
ARCTIC CAT, INC.	)	
	)	
Defendants.	)	

**AMENDED COMPLAINT**

AND NOW, comes the Plaintiff, Lynn M. Patricelli, by and through her attorneys, Schiffman & Wojdowski and Jason M. Schiffman, Esquire, and files the following Amended Complaint:

1. The Plaintiff Lynn M. Patricelli is an individual and a resident of the Commonwealth of Pennsylvania and County of Jefferson, residing at 121 Playground Road, Rockport, Pennsylvania 15823.

2. The Defendant Jeffrey Carns is an individual who trades and does business as Carns Equipment Company with a place of business located at 14357 Clearfield Shawville Highway, Clearfield, Pennsylvania 16830.

3. The Defendant Arctic Cat, Inc. is a corporation with its principal place of business located at 601 Brooks Avenue South, Thief River Falls, Minnesota 56701, which at all

relevant times traded and did business in the Commonwealth of Pennsylvania and County of Clearfield.

4. On or about February 9, 2007, Plaintiff, Lynn M. Patricelli purchased a new 2007 Arctic Cat ATV, Model 650 H1 with Serial Number: 4UF07ATV57T225203 from Carns Equipment Company.

5. On or about February 10, 2007 the ATV was delivered to Miss. Patricelli.

6. On or about February 10, 2007, James Stormer was riding the ATV when the ball joint fractured causing the front wheel to fall off causing injury to the rider and complete destruction of the ATV.

7. Since some time shortly following the aforementioned incident, Defendant Carns has maintained possession of the aforementioned ATV.

8. Since some time shortly following the aforementioned incident, Defendant Arctic Cat, Inc. has maintained possession of the aforementioned fractured ball joint.

**COUNT I -**  
**LYNN M. PATRICELLI VS.**  
**JEFFREY CARNS t/d/b/a CARNS EQUIPMENT COMPANY**

9. The Plaintiff hereby incorporates by reference paragraphs 1 through 8 of this Complaint as though the same were more fully set forth at length herein.

10. At all times relevant hereto, this Defendant was a "merchant" within the meaning of the Pennsylvania Uniform Commercial Code for goods of this type.

11. The Plaintiff contracted for and expected to purchase a properly designed and manufactured ATV which would be able to be used for the intended purpose for which it was purchased.

12. The Plaintiff Lynn M. Patricelli relied upon the Defendant's express warranties set forth in its published warranties, product information, commercials, and/or statements made by its employees. Any written warranties are not presently available to the Plaintiff and are therefore not attached.

13. These warranties were breached because the ATV was not of the quality it was purported to be.

14. As a direct and legal result of the failure of the ATV to conform to the warranties and to be of the type of good the Plaintiff believed she was purchasing, the Plaintiff has an ATV which broke and was completely destroyed leaving it with no value and has lost the use of the ATV and incurred incidental and consequential costs.

15. The Plaintiff also relied upon implied warranties of merchantability and fitness for particular purpose for which the ATV was intended.

16. These warranties are extended by law in accordance with the Pennsylvania Uniform Commercial Code to purchasers of goods and require that the good be fit for the purpose for which it is to be used.

17. The warranty of merchantability was breached because the ATV was not fit for the ordinary purposes for which ATVs are used.

18. The warranty of merchantability was breached because the ATV was not of fair and average quality within the description of ATVs.

19. At the time of the sale, Plaintiff Lynn M. Patricelli indicated to the agents, servants, and/or employees that the ATV in question was being purchased for the specific purpose of being used by her friend who is a male of greater weight than she.



20. At the time of the sale, agents, servants and/or employees of this Defendant indicated that this specific ATV was fit for the aforementioned known purpose.

21. The warranty of fitness for particular purpose was breached because the ATV was not fit for this known purpose.

22. As the direct, legal, and proximate result of the aforementioned breaches by this Defendant, the Plaintiff has sustained the damages previously set forth.

WHEREFORE, the Plaintiff Lynn M. Patricelli demands judgment in her favor and against the Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company for an amount not in excess of applicable Arbitration limits, exclusive of interest and costs.

**COUNT II –  
LYNN M. PATRICELLI VS. ARCTIC CAT, INC.**

23. The Plaintiff hereby incorporates by reference paragraphs 1 through 22 of this Complaint as though the same were more fully set forth at length herein.

24. At all times relevant hereto, this Defendant was a “merchant” within the meaning of the Pennsylvania Uniform Commercial Code for goods of this type.

25. The Plaintiff contracted for and expected to purchase a properly designed and manufactured ATV which would be able to be used for the intended purpose for which it was purchased.

26. The Plaintiff Lynn M. Patricelli relied upon the Defendant’s express warranties set forth in its published warranties, product information, and commercials. Any written warranties are not presently available to the Plaintiff and are therefore not attached.

27. These warranties were breached because the ATV was not of the quality it was purported to be.

28. As a direct and legal result of the failure of the ATV to conform to the warranties and to be of the type of good the Plaintiff believed she was purchasing, the Plaintiff has an ATV which broke and was completely destroyed leaving it with no value and has lost the use of the ATV and incurred incidental and consequential costs.

29. The Plaintiff also relied upon the implied warranty of merchantability.

30. This warranty is extended by law in accordance with the Pennsylvania Uniform Commercial Code to purchasers of goods and requires, in part, that the good be fit for the purpose for which it is to be used.

31. The warranty of merchantability was breached because the ATV was not fit for the ordinary purposes for which ATVs are used.

32. The warranty of merchantability was breached because the ATV was not of fair and average quality within the description of ATVs.

33. As the direct, legal and proximate result of the breaches by this Defendant of the warranties, the Plaintiff has sustained the damages previously set forth.

WHEREFORE, the Plaintiff Lynn M. Patricelli demands judgment in her favor and against the Defendant, Artic Cat, Inc. for an amount not in excess of applicable Arbitration limits, exclusive of interest and costs.

RESPECTFULLY SUBMITTED:  
SCHIFFMAN & WOJDOWSKI

By: 

Jason M. Schiffman  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

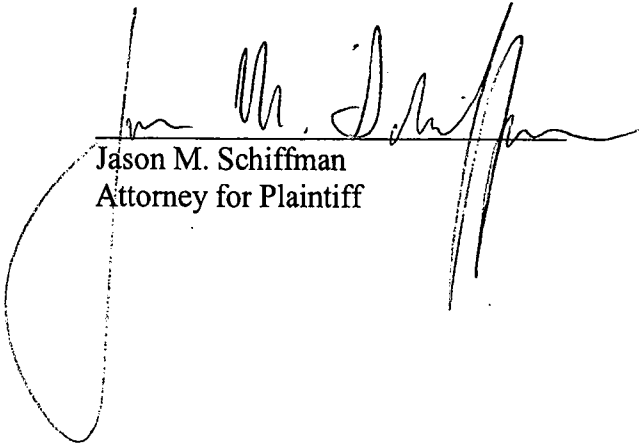
I hereby certify under penalty of perjury that I am this day serving a true and correct copy of the attached or foregoing Amended Complaint, upon the person(s) and in the manner indicated below:

Service by first class mail, postage prepaid and addressed as follows:

Clem C. Trischler, Esquire  
Pietragallo, Gordon, Alfano,  
Bosick & Raspanti, LLP  
38<sup>th</sup> Floor, One Oxford Centre  
Pittsburgh, PA 15219

Marna K. Blackmer, Esquire  
Walsh, Collis & Blackmer, P.C.  
The Gulf Tower, Suite 1400  
707 Grant Street  
Pittsburgh, PA 15219

12/10/2008  
Date

  
Jason M. Schiffman  
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT, INC.

Defendants.

CIVIL DIVISION

CASE NUMBER: 2008-1900 CL

TYPE OF PLEADING:  
AMENDED COMPLAINT

FILED ON BEHALF OF:  
James Stormer, Plaintiff

COUNSEL OF RECORD:  
Jason M. Schiffman, Esquire  
Pa. I.D. #207103

SCHIFFMAN & WOJDOWSKI  
1300 Fifth Avenue  
Pittsburgh, PA 15219  
412/288-9444

FIRM I.D. #466

12/10

RECEIVED DEC 11 2008

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JAMES STORMER,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT, INC.

Defendants.

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NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR PHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

DANIEL NELSON, COURT ADMINISTRATOR  
CLEARFIELD COUNTY COURTHOUSE  
230 E. MARKET STREET, SUITE 228  
CLEARFIELD, PA 16830  
(814) 765-2641, Ext. 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

JAMES STORMER,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT, INC.

Defendants.

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**AMENDED COMPLAINT**

AND NOW, comes the Plaintiff, James Stormer, by and through his attorneys, Schiffman & Wojdowski and Jason M. Schiffman, Esquire, and files the following Amended Complaint:

1. The Plaintiff James Stormer is an individual and a resident of the Commonwealth of Pennsylvania and County of Jefferson, residing at 481 Butler Cemetery Road, Brookville, Pennsylvania 15825.

2. The Defendant Jeffrey Carns is an individual who trades and does business as Carns Equipment Company with a place of business located at 14357 Clearfield Shawville Highway, Clearfield, Pennsylvania 16830.

3. The Defendant Arctic Cat, Inc. is a corporation with its principal place of business located at 601 Brooks Avenue South, Thief River Falls, Minnesota 56701, which at all relevant times traded and did business in the Commonwealth of Pennsylvania and County of Clearfield.

4. On or about February 10, 2007, the Plaintiff James Stormer was riding a 2007 Arctic Cat ATV, Model 650 H1 with Serial Number: 4UF07ATV57T225203 (hereinafter referred to as "ATV") which had been purchased from Carns Equipment Company on February 9, 2008 and had been delivered on February 10, 2007.

5. The Plaintiff was lawfully and carefully operating the ATV when the front wheel suddenly and unexpectedly fell off causing the Plaintiff to be thrown over the windshield and sustain serious injuries.

**COUNT I -  
JAMES STORMER VS.  
JEFFREY CARNS t/d/b/a CARNS EQUIPMENT COMPANY**

6. The Plaintiff hereby incorporates by reference paragraphs 1 through 5 of this Complaint as though the same were more fully set forth at length herein.

7. At all times relevant hereto, this Defendant was engaged in the business of selling all terrain vehicles and was a seller as defined by the Restatement (Second) Torts §402A as adopted by the Supreme Court of Pennsylvania.

8. The ATV was expected to and did reach the Plaintiff and was used by him without substantial change in the condition in which it was manufactured for sale.

9. This Defendant breached the duties owed to the Plaintiff as mandated by selling the ATV in a defective condition rendering it unreasonably dangerous to the user of the product.

10. The ATV was defective because it was manufactured and/or designed in such a manner that it would malfunction by having the wheel fall off.

11. The ATV was defective because it malfunctioned in such a manner as to have the ball joint fracture during normal and anticipated use.

12. The ATV was defective because it failed to have labels and warnings that would alert the user that parts of the ATV could break during normal intended use.

13. As the direct, legal and proximate result of the breach of the mandates of §402A by this Defendant, the Plaintiff James Stormer has sustained the following injuries:

- a. Cervical radiculopathy;
- b. Cervical sprain;
- c. Myofascial cervical strain;
- d. Ligamentous strain;
- e. Moderate left median neuropathy; and
- f. Other serious injuries.

14. As the direct, legal and proximate result of the breach of the mandates of §402A by this Defendant, the Plaintiff James Stormer has sustained the following damages:

- a. He has had to undergo medical treatment;
- b. He has suffered and will continue to suffer great pain, suffering, mental anguish and embarrassment;
- c. He has incurred medical bills for treatment;
- d. He has been unable to enjoy the ordinary pleasures of life;
- e. He has been unable to perform his normal daily activities including employment;



f. He has incurred a loss of earnings and diminution of earning capacity;  
and

g. His general health, strength and vitality have been impaired.

WHEREFORE, the Plaintiff James Stormer demands judgment in his favor and against the Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company for an amount in excess of Twenty Thousand (\$20,000.00) Dollars, exclusive of interest and costs.

**COUNT II -  
JAMES STORMER VS.  
JEFFREY CARNS t/d/b/a CARNS EQUIPMENT COMPANY**

15. The Plaintiff hereby incorporates by reference paragraphs 1 through 17 of this Complaint as though the same were more fully set forth at length herein.

16. At all times relevant hereto, this Defendant was a "merchant" within the meaning of the Pennsylvania Uniform Commercial Code.

17. The Plaintiff relied upon the Defendant's express warranties set forth in its published warranties, product information, commercials, and/or statements made by its employees. Any written warranties are not presently available to the Plaintiff and are therefore not attached.

18. These warranties were breached because the ATV was not of the quality it was purported to be.

19. As a direct and legal result of the failure of the ATV to conform to the warranties and to be of the type and quality of good the Plaintiff believed he was using, the Plaintiff has sustained the injuries and damages previously set forth.

20. The Plaintiff also relied upon an implied warranty of merchantability.

21. The Plaintiff also relied upon an implied warranty of fitness for the particular purpose for which the ATV was intended and was known to the seller.

22. These warranties are extended by law in accordance with the Pennsylvania Uniform Commercial Code to users of goods and require, in part, that the good be fit for the purpose for which it is to be used.

23. The warranty of merchantability was breached because the ATV was not fit for the ordinary purposes for which ATVs are used.

24. The warranty of merchantability was breached because the ATV was not of fair and average quality within the description of ATVs.

25. The unfit nature of the ATV in question is evidenced by its malfunction in the nature of its wheel becoming detached while the Plaintiff was operating it in a normal and anticipated manner.

26. At the time of sale, it was represented that this ATV would be used by the Plaintiff.

27. At the time of sale, it was represented that this ATV was fit for use by the Plaintiff.

28. The ATV was not fit for use by this Plaintiff as is evidenced by its wheel becoming detached during a normal and anticipated use.

29. As the direct, legal and proximate result of the breaches by this Defendant of the aforementioned express and implied warranties, the Plaintiff has sustained the damages previously set forth.

WHEREFORE, the Plaintiff James Stormer demands judgment in his favor and against the Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company for an amount in excess of Twenty Thousand (\$20,000.00) Dollars, exclusive of interest and costs.

**COUNT III -**  
**JAMES STORMER VS. ARCTIC CAT, INC.**

30. The Plaintiff hereby incorporates by reference paragraphs 1 through 31 of this Complaint as though the same were more fully set forth at length herein.

31. At all times relevant hereto, this Defendant was engaged in the business of designing, manufacturing, and/or selling ATVs and was a seller as defined by the Restatement (Second) Torts §402A as adopted by the Supreme Court of Pennsylvania.

32. This Defendant breached the duties owed to the Plaintiff as mandated by selling the ATV in a defective condition as previously set forth rendering it unreasonably dangerous to the user of the product.

33. As the direct, legal and proximate result of the breach of the mandates of §402A by this Defendant, the Plaintiff James Stormer has sustained the injuries and damages previously set forth.

WHEREFORE, the Plaintiff James Stormer demands judgment in his favor and against the Defendant, Arctic Cat, Inc. for an amount in excess of Twenty Thousand (\$20,000.00) Dollars, exclusive of interest and costs.

**COUNT IV -**  
**JAMES STORMER VS. ARCTIC CAT, INC.**

34. The Plaintiff hereby incorporates by reference paragraphs 1 through 33 of this Complaint as though the same were more fully set forth at length herein.

35. This Defendant was negligent in the following particulars:

- a. In designing, manufacturing and/or selling an ATV which would malfunction by having the wheel fall off;
- b. In designing, manufacturing and/or selling an ATV with a defective ball joint that fractured;
- c. In designing, manufacturing and/or selling an ATV without proper labels and warnings of the dangers of the wheel falling off and the ATV malfunctioning;
- d. In designing and/or manufacturing and/or incorporating into the Artic Cat a defective ball joint which would fracture and cause the wheel to fall off; and,
- e. In incorporating a defectively designed ball joint into the design for the ATV.

36. As the direct, legal and proximate result of the negligence of this Defendant as aforesaid, the Plaintiff has sustained the injuries and damages previously set forth.

WHEREFORE, the Plaintiff James Stormer demands judgment in his favor and against the Defendant, Arctic Cat, Inc. for an amount in excess of Twenty Thousand (\$20,000.00) Dollars, exclusive of interest and costs.

**COUNT V -**  
**JAMES STORMER VS. ARCTIC CAT, INC.**

37. The Plaintiff hereby incorporates by reference paragraphs 1 through 36 of this Complaint as though the same were more fully set forth at length herein.

38. At all times relevant hereto, this Defendant was a "merchant" within the meaning of the Pennsylvania Uniform Commercial Code.

39. The Plaintiff relied upon the Defendant's express warranties set forth in its published warranties, product information, and commercials. Any written warranties are not presently available to the Plaintiff and are therefore not attached.

40. These warranties were breached because the ATV was not of the quality it was purported to be.

41. As a direct and legal result of the failure of the ATV to conform to the warranties and to be of the type of good the Plaintiff believed he was using, the Plaintiff has sustained the injuries and damages previously set forth.

42. The Plaintiff also relied upon implied warranty of merchantability.

43. The warranty of merchantability was breached because the ATV was not fit for the ordinary purposes for which ATVs are used.

44. The warranty of merchantability was breached because the ATV was not of fair and average quality within the description of ATVs.

45. The warranty of merchantability was breached because the ATV was not fit for use as set forth in detail previously.

46. As the direct, legal and proximate result of the breaches by this Defendant of the implied warranty of merchantability, the Plaintiff has sustained the damages previously set forth.

WHEREFORE, the Plaintiff James Stormer demands judgment in his favor and against the Defendant Arctic Cat, Inc. for an amount in excess of Twenty Thousand (\$20,000.00) Dollars, exclusive of interest and costs.

RESPECTFULLY SUBMITTED:

SCHIFFMAN & WOJDOWSKI

By: 

Jason M. Schiffman  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury that I am this day serving a true and correct copy of the attached or foregoing Amended Complaint, upon the person(s) and in the manner indicated below:

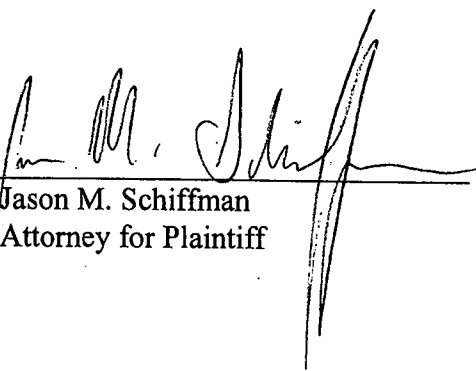
Service by first class mail, postage prepaid and addressed as follows:

Clem C. Trischler, Esquire  
Pietragallo, Gordon, Alfano,  
Bosick & Raspanti, LLP  
38<sup>th</sup> Floor, One Oxford Centre  
Pittsburgh, PA 15219

Marna K. Blackmer, Esquire  
Walsh, Collis & Blackmer, P.C.  
The Gulf Tower, Suite 1400  
707 Grant Street  
Pittsburgh, PA 15219

Date

12/10/2008



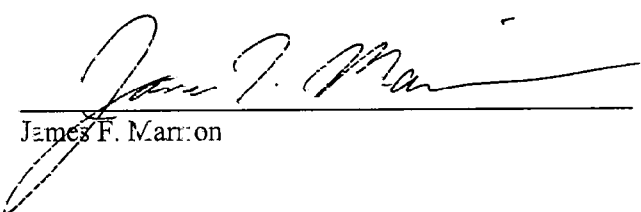
Jason M. Schiffman  
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Motion to Consolidate has been served on all counsel of record by placing same in the U.S. mail, first class, postage prepaid, this 23<sup>rd</sup> day of December, 2008:

Jason M. Schiffman, Esquire  
Schiffman & Wojdowski  
1300 Fifth Avenue  
Pittsburgh, PA 15219  
*Attorney for Plaintiff*

Marra K. Blackmer, Esquire  
Walsh, Collis & Blackmer, P.C.  
The Galf Tower  
Suite 1400  
707 Grant Street  
Pittsburgh, PA 15219  
*Attorney for Jeffrey Carns t/d/b/a  
Carns Equipment Company*

  
James F. Marron



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

Plaintiff,

v.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and ARCTIC CAT  
INC.

Defendant.

LYNN M. PATRICELLI,

Plaintiff,

v.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY  
and ARCTIC CAT INC.

Defendants.

)  
)  
)  
)  
) CIVIL DIVISION  
) NO: 08-1900-CD

)  
)  
) ARBITRATION DIVISION  
) NO: 08-2116-CD

ORDER OF COURT

AND NOW, this 2<sup>nd</sup> day of June, 2009, upon consideration of the foregoing motion, it is hereby ORDERED that Defendant's Motion for Consolidation is granted. The civil actions at C.D. 08-1900 and C.D. 08-2116 are hereby consolidated for purposes of discovery and trial. All pleadings and Motions shall be filed at C.D. 08-1900.

BY THE COURT,

Frederick J. Zimmerman, J.

FILED

01211930  
JAN 02 2009

cc  
Atty Trischler

610

William A. Shaw  
Prothonotary/Clerk of Courts

FILED

JAN 02 2009

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 1/2/09

☒ You are responsible for serving all appropriate parties.

☐ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 104756  
NO: 08-1900-CD  
SERVICES 1  
COMPLAINT

PLAINTIFF: JAMES STORMER

vs.

DEFENDANT: JEFFREY CARNS t/d/b/a CARNS EQUIPMENT COMPANY and ARCTIC CAT, INC.

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	SCHIFFMAN	17322	10.00
SHERIFF HAWKINS	SCHIFFMAN	17322	20.00

5  
**FILED**  
9/2.00 cm  
JAN 30 2009

William A. Shaw  
Prothonotary/Clerk of Courts

Sworn to Before Me This

\_\_\_\_\_ Day of \_\_\_\_\_ 2008

\_\_\_\_\_

So Answers,



Chester A. Hawkins  
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT INC.

Defendants.

-----

LYNN M. PATRICELLI,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT, INC.

Defendants.

CIVIL DIVISION

Consolidated at No: 08-1900-CD

Type of Pleading  
**Reply to New Matter**

Filed on behalf of:  
Lynn M. Patricelli, Plaintiff

Counsel of Record for this Party:  
Jason M. Schiffman, Esq.  
Pa I.D. #207103

Schiffman & Wojdowski  
Firm I.D. # 466  
1300 Fifth Avenue  
Pittsburgh, PA 15219

412/288-9444

Email: [schiffmanj@gmail.com](mailto:schiffmanj@gmail.com)

**FILED** *no cc*  
*m/j:1251*  
**FEB 09 2009** *Cell*

*S*  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

CIVIL DIVISION

Plaintiff,

vs.

Consolidated at No: 08-1900-CD

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT INC.

Defendants.

-----  
LYNN M. PATRICELLI,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT, INC.

Defendants.

**REPLY TO NEW MATTER**

AND NOW, comes the Plaintiff Lynn M. Patricelli by and through her counsel Schiffman and Wojdowski and Jason M. Schiffman, Esquire and files the within Reply to New Matter of Defendant Arctic Cat, Inc. and in support thereof avers the following:

1. The Plaintiff incorporates by reference herein the averments contained in her Complaint as though the same were more fully set forth at length herein.

2. The averments contained in paragraph 34 are denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

3. The averments contained in paragraph 35 are denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

4. The averments contained in paragraph 36 are denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

5. The averments contained in paragraph 37 are denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

6. The averments contained in paragraph 38 and subparagraphs a) through h) are denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

7. The averments contained in paragraph 39 are denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

8. The averments contained in paragraph 40 wherein it is stated that any damages which the Plaintiff claims were the result of the negligence and reckless actions of other individuals and entities from Arctic Cat is not responsible is specifically denied. To the contrary, it is averred that the conduct of this Defendant as more fully set forth in Plaintiff's Complaint was a direct, legal and proximate cause of the damages sustained by the Plaintiff.

9. The averments contained in paragraph 41 are denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

10. The new matter averred in paragraph 42 is conclusion of law to which no response is required under the Pennsylvania Rules of Civil Procedure. However, if any statement of fact is averred, the same is denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

11. The averments contained in paragraph 43 are denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

12. The averments contained in paragraph 44 are denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

13. The averments contained in paragraph 45 are denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

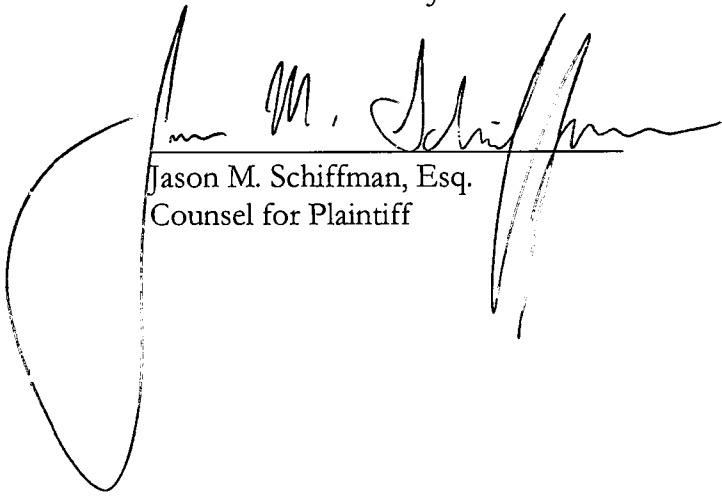
14. The averments contained in paragraph 46 are denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

15. After reasonable investigation, the Plaintiff is without knowledge or information sufficient to form a belief as to the veracity of the averments of paragraph 47 and the same are therefore specifically denied and strict proof is demanded.

WHEREFORE, the Plaintiff Lynn M. Patricelli demands judgment in her favor and against the Defendant, Artic Cat, Inc. for an amount not in excess of applicable Arbitration limits, exclusive of interest and costs.

Respectfully submitted,

SCHIFFMAN & WOJDOWSKI



Jason M. Schiffman, Esq.  
Counsel for Plaintiff

### **VERIFICATION**

The undersigned, Lynn M. Patricelli , named herein, and being authorized to make this Verification for and on her behalf, having read the foregoing REPLY TO NEW MATTER of Defendant, Arctic Cat, Inc. verify that the averments are based on information furnished to counsel, which information has been gathered by counsel in the course of this lawsuit. The language is that of counsel and not of signer. Signer verifies that she has read the foregoing, and that it is true and correct to the best of signer's knowledge, information and belief. To the extent that the contents of the foregoing document are that of counsel, verifier has relied upon counsel in making this verification. This verification is made subject to the penalties of 18 PA C.S.A. § 4904, relating to unsworn falsification to authorities.

Date 1-15-09

  
Lynn M. Patricelli



**CERTIFICATE OF SERVICE**

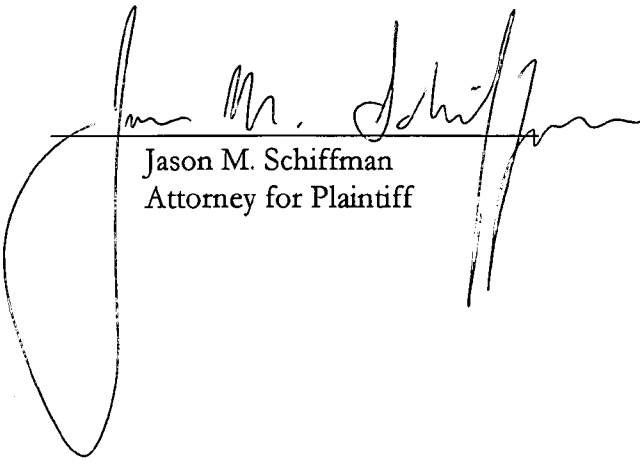
I hereby certify under penalty of perjury that I am this day serving a true and correct copy of the attached or foregoing Reply to New Matter of Defendant Arctic Cat, Inc., upon the person(s) and in the manner indicated below:

Service by first class mail, postage prepaid and addressed as follows:

Clem C. Trischler, Esquire  
Pietragallo, Gordon, Alfano,  
Bosick & Raspanti, LLP  
38<sup>th</sup> Floor, One Oxford Centre  
Pittsburgh, PA 15219

Marna K. Blackmer, Esquire  
Walsh, Collis & Blackmer, P.C.  
The Gulf Tower, Suite 1400  
707 Grant Street  
Pittsburgh, PA 15219

2/6/09  
Date

  
Jason M. Schiffman  
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

JAMES STORMER,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT INC.

Defendants.

CIVIL DIVISION

Consolidated at No: 08-1900-CD

Type of Pleading  
**Reply to New Matter**

-----  
LYNN M. PATRICELLI,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT, INC.

Defendants.

Filed on behalf of:  
Lynn M. Patricelli, Plaintiff

Counsel of Record for this Party:  
Jason M. Schiffman, Esq.  
Pa I.D. #207103

Schiffman & Wojdowski  
Firm I.D. # 466  
1300 Fifth Avenue  
Pittsburgh, PA 15219

412/288-9444

Email: [schiffmanj@gmail.com](mailto:schiffmanj@gmail.com)

FILED  
MTH 2009  
FEB 09 2009  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

JAMES STORMER,

CIVIL DIVISION

Plaintiff,

vs.

Consolidated at No: 08-1900-CD

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT INC.

Defendants.

-----  
LYNN M. PATRICELLI,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT, INC.

Defendants.

**REPLY TO NEW MATTER OF  
DEFENDANT ARCTIC CAT, INC.**

AND NOW, comes the Plaintiff, James Stormer, by and through his attorneys,  
Schiffman & Wojdowski and Jason M. Schiffman, Esquire, and files the following Reply  
to New Matter of Defendant Arctic Cat, Inc.

1. The Plaintiff hereby incorporates by reference the averments of his  
Complaint as though the same were more fully set forth at length herein.

2. The averment contained in paragraph 47 is denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

3. The averment contained in paragraph 48 is denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

4. The averment contained in paragraph 49 is denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

5. The averments averred in paragraph 50 and subparagraphs a) through h) are denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

6. The averment in paragraph 51 is denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

7. The averments contained in paragraph 52 are conclusions of law to which no response is required under the Pennsylvania Rules of Civil Procedure. However, if any statement of fact is averred, the same is denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

8. The averments contained in paragraph 53 are conclusions of law to which no response is required under the Pennsylvania Rules of Civil Procedure. However, if any statement of fact is averred, the same is denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

9. The averments contained in paragraph 54 are denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

10. The averments contained in paragraph 55 are denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

11. The averments contained in paragraph 56 wherein it is stated that any injuries or damages which the Plaintiff claims to have sustained were the result of the negligent and reckless actions of other individuals and entities from Artic Cat is not responsible is specifically denied. To the contrary, it is averred that the conduct of this Defendant as more fully set forth in Plaintiff's Complaint was the direct, legal and proximate cause of the injuries and damages sustained by the Plaintiff. All further averments in this paragraph are denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

12. The averments contained in paragraph 57 are denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

13. The averments contained in paragraph 58 are conclusion of law to which no response is required under the Pennsylvania Rules of Civil Procedure. However, if any statement of fact is averred, the same is denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

14. The averments contained in paragraph 59 are denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

15. The averments contained in paragraph 60 are denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

16. The averments contained in paragraph 61 are denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

17. The averments of paragraph 62 are conclusions of law to which no response is required under the Pennsylvania Rules of Civil Procedure. However, if any statement of

fact is averred, the same is denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

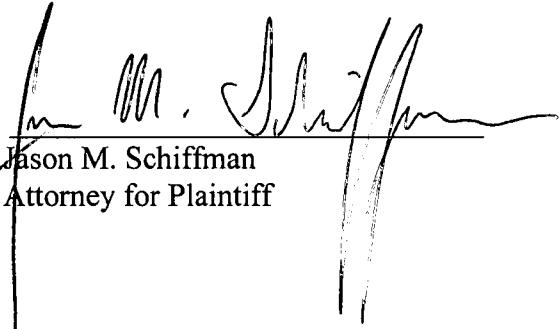
18. After reasonable investigation, the Plaintiff is without knowledge or information sufficient to form a belief as to the veracity of the averments of paragraph 63 and the same are therefore specifically denied and strict proof is demanded.

WHEREFORE, the Plaintiff James Stormer demands judgment in his favor and against the Defendants Arctic Cat, Inc., for an amount in excess of Twenty Thousand (\$20,000.00) Dollars, exclusive of interest and costs.

RESPECTFULLY SUBMITTED:

SCHIFFMAN & WOJDOWSKI

By:

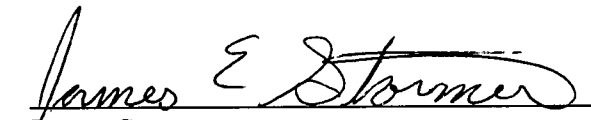
  
Jason M. Schiffman  
Attorney for Plaintiff

### VERIFICATION

The undersigned, James Stormer , named herein, and being authorized to make this Verification for and on her behalf, having read the foregoing REPLY TO NEW MATTER of Defendant, Arctic Cat, Inc. verify that the averments are based on information furnished to counsel, which information has been gathered by counsel in the course of this lawsuit. The language is that of counsel and not of signer. Signer verifies that he has read the foregoing, and that it is true and correct to the best of signer's knowledge, information and belief. To the extent that the contents of the foregoing document are that of counsel, verifier has relied upon counsel in making this verification. This verification is made subject to the penalties of 18 PA C.S.A. § 4904, relating to unsworn falsification to authorities.

Date

1-23-09

  
James Stormer

**CERTIFICATE OF SERVICE**

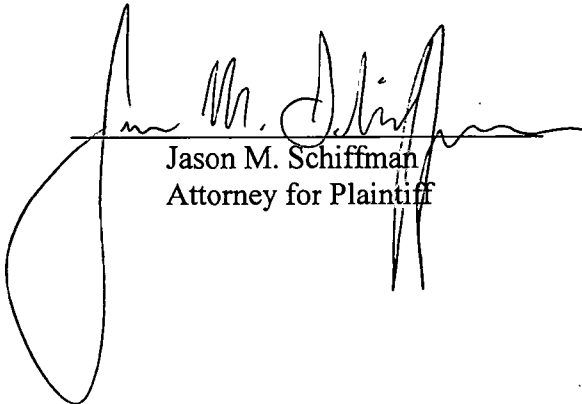
I hereby certify under penalty of perjury that I am this day serving a true and correct copy of the attached or foregoing Reply to New Matter of Defendant Arctic Cat, Inc., upon the person(s) and in the manner indicated below:

Service by first class mail, postage prepaid and addressed as follows:

Clem C. Trischler, Esquire  
Pietragallo, Gordon, Alfano,  
Bosick & Raspanti, LLP  
38<sup>th</sup> Floor, One Oxford Centre  
Pittsburgh, PA 15219

Marna K. Blackmer, Esquire  
Walsh, Collis & Blackmer, P.C.  
The Gulf Tower, Suite 1400  
707 Grant Street  
Pittsburgh, PA 15219

2/6/09  
Date

  
Jason M. Schiffman  
Attorney for Plaintiff



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and ARCTIC  
CAT, INC.,

Defendants.  
-----

LYNN M. PATRICELLI,

Plaintiff,

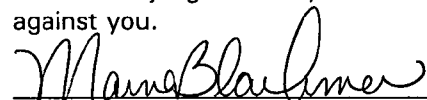
vs.

JEFFREY CARNS t/d/b/a  
CARNS EQUIPMENT COMPANY  
and ARCTIC CAT, INC.,

Defendants.

TO: PLAINTIFF AND CO-DEFENDANT

You are hereby notified to file a written  
response to the enclosed Answer  
within twenty (20) days from service  
hereof or a judgment may be entered  
against you.

  
WALSH, COLLIS & BLACKMER, P.C.

#1073

CIVIL DIVISION

Docket No.: 08-1900-CD (Consolidated)

**ANSWER, NEW MATTER AND NEW  
MATTER PURSUANT TO Pa.R.C.P.  
1031.1 TO PLAINTIFF STORMER'S  
AMENDED COMPLAINT**

(Jury Trial Demanded)

Filed on Behalf of the Defendant, Jeffrey  
Carns t/d/b/a Carns Equipment Company

Counsel of Record for This Party:

PAUL J. WALSH III, ESQUIRE  
PA I.D. #58843

MARNA K. BLACKMER, ESQUIRE  
PA I.D. # 79528

NATALIE A. TROILO, ESQUIRE  
PA I.D. #89148

WALSH, COLLIS & BLACKMER, P.C.  
The Gulf Tower, Suite 1400  
707 Grant Street  
Pittsburgh, PA 15219

(412) 258-2255

5  
**FILED** ICC 044j  
m/12:15 am Blackmer  
MAR 18 2009  


William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

CIVIL DIVISION

Plaintiff,

Docket No.: 08-1900-CD

VS.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and ARCTIC  
CAT, INC.,

Defendants.

**ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO Pa.R.C.P. 1031.1 TO  
PLAINTIFF STORMER'S AMENDED COMPLAINT**

AND NOW, comes the Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company, by and through its undersigned attorneys, Walsh, Collis & Blackmer, P.C., and Marna K. Blackmer, Esquire, and files the within Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 1031.1, and in support thereof avers as follows:

**I. ANSWER**

1. Paragraph 1 of Plaintiff's Amended Complaint is denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averment, and therefore, said averment is denied and strict proof thereof is demanded at the time of trial.

2. Paragraph 2 of Plaintiff's Amended Complaint is admitted.

3. Paragraph 3 of Plaintiff's Amended Complaint is denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averment, and therefore, said averment is denied and strict proof thereof is demanded at the time of trial.

4. Paragraph 4 of Plaintiff's Amended Complaint is admitted in part and denied in part. It is admitted that a 2007 Arctic Cat ATV, Model 650 H1 with Serial Number: 4UF07ATV57T225203 was sold by Carns Equipment Company on February 9, 2007 and delivered on February 10, 2007. This Defendant denies that it was delivered to the Plaintiff. This Defendant further denies that the ATV in question was sold or purchased on February 9, 2008. The remainder of said averment is denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averment, and therefore, said averment is denied and strict proof thereof is demanded at the time of trial.

5. Paragraph 5 of Plaintiff's Amended Complaint states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, said allegation is denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averment, and therefore, said averment is denied and strict proof thereof is demanded at the time of trial.

**COUNT I –  
JAMES STORMER VS.  
JEFFREY CARNS i/d/b/a CARNS EQUIPMENT COMPANY**

6. Paragraph 6 of the Plaintiff's Amended Complaint requires no response. To the extent, however, that a response is deemed necessary, this Defendant herein refers to and incorporates its previous set forth responses, hereinafter set forth responses, and hereinafter set forth New Matter and New Matter Pursuant to Rule 1031.1.

7. Paragraph 7 of Plaintiff's Amended Complaint states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, said averment is admitted in part and denied in part. It is admitted that this Defendant was in the business of selling ATVs. The remainder of said allegation is denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averment, and therefore, said averment is denied and strict proof thereof is demanded at the time of trial.

8. Paragraph 8 of Plaintiff's Amended Complaint states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, said averment is admitted in part and denied in part. It is admitted that this Defendant did not alter, modify or change the subject ATV in anyway, and accordingly the ATV did reach the purchaser without any alterations, modifications or changes from its condition during the time period that the ATV was in this Defendant's possession. The remainder of said allegation is denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or

falsity of said averment, and therefore, said averment is denied and strict proof thereof is demanded at the time of trial.

9. Paragraph 9 of Plaintiff's Amended Complaint states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, said allegation is denied as this Defendant did not sell the ATV in a defective condition which rendered it unreasonably dangerous to the user. Said averment is further denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averment, and therefore, said averment is denied and strict proof thereof is demanded at the time of trial.

10-14. Paragraphs 10 through 14 of Plaintiff's Amended Complaint state legal conclusions to which no responses are required. To the extent that responses are deemed necessary, said allegations are denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averments, and therefore, said averments are denied and strict proof thereof is demanded at the time of trial.

WHEREFORE, Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company, respectfully requests that this Honorable Court enter judgment in its favor, and against Plaintiff, Co-Defendant, and any hereinafter named Defendants and/or Additional Defendants, with costs and prejudice imposed.

**COUNT II –  
JAMES STORMER VS.  
JEFFREY CARNS t/d/b/a CARNS EQUIPMENT COMPANY**

15. Paragraph 15 of the Plaintiff's Amended Complaint requires no response. To the extent, however, that a response is deemed necessary, this Defendant herein refers to and incorporates its previous set forth responses, hereinafter set forth responses, and hereinafter set forth New Matter and New Matter Pursuant to Rule 1031.1.

16. Paragraph 16 of Plaintiff's Amended Complaint states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, said averment is admitted in part and denied in part. It is admitted that this Defendant was in the business of selling ATVs. The remainder of said allegation is denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averment, and therefore, said averment is denied and strict proof thereof is demanded at the time of trial. By way of further answer, this Defendant herein refers to and incorporates its previous set forth responses, hereinafter set forth responses, and hereinafter set forth New Matter and New Matter Pursuant to Rule 1031.1.

17. Paragraph 17 of Plaintiff's Amended Complaint is denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averment, and therefore, said averment is denied and strict proof thereof is demanded at the time of trial. By way of further answer, this Defendant herein refers to and incorporates its previous set forth responses, hereinafter set forth responses, and hereinafter set forth New Matter and New Matter Pursuant to Rule 1031.1.

18-19.Paragraphs 18 and 19 of Plaintiff's Amended Complaint state legal conclusions to which no responses are required. To the extent that responses are deemed necessary, said allegations are denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averments, and therefore, said averments are denied and strict proof thereof is demanded at the time of trial. By way of further answer, this Defendant herein refers to and incorporates its previous set forth responses, hereinafter set forth responses, and hereinafter set forth New Matter and New Matter Pursuant to Rule 1031.1.

20-21.Paragraphs 20 and 21 of Plaintiff's Amended Complaint are denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averments, and therefore, said averments are denied and strict proof thereof is demanded at the time of trial. By way of further answer, this Defendant herein refers to and incorporates its previous set forth responses, hereinafter set forth responses, and hereinafter set forth New Matter and New Matter Pursuant to Rule 1031.1.

22-25.Paragraphs 22 through 25 of Plaintiff's Amended Complaint state legal conclusions to which no responses are required. To the extent that responses are deemed necessary, said allegations are denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averments, and therefore, said averments are denied and strict proof thereof is demanded at the time of trial. By way of further answer, this Defendant herein refers to and incorporates its previous set forth responses, hereinafter set forth responses, and hereinafter set forth New Matter and New Matter Pursuant to Rule 1031.1.

26. Paragraph 26 of Plaintiff's Amended Complaint is denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averment, and therefore, said averment is denied and strict proof thereof is demanded at the time of trial. By way of further answer, this Defendant herein refers to and incorporates its previous set forth responses, hereinafter set forth responses, and hereinafter set forth New Matter and New Matter Pursuant to Rule 1031.1.

27. Paragraph 27 of Plaintiff's Amended Complaint is denied. It is specifically denied that this Defendant represented that the ATV was fit for use by the Plaintiff. Said averment is further denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averment, and therefore, said averment is denied and strict proof thereof is demanded at the time of trial. By way of further answer, this Defendant herein refers to and incorporates its previous set forth responses, hereinafter set forth responses, and hereinafter set forth New Matter and New Matter Pursuant to Rule 1031.1.

28-29. Paragraphs 28 and 29 of Plaintiff's Amended Complaint state legal conclusions to which no responses are required. To the extent that responses are deemed necessary, said allegations are denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averments, and therefore, said averments are denied and strict proof thereof is demanded at the time of trial. By way of further answer, this Defendant herein refers to and incorporates its previous set forth responses, hereinafter



set forth responses, and hereinafter set forth New Matter and New Matter Pursuant to Rule 1031.1.

**COUNT III –  
JAMES STORMER VS. ARCTIC CAT, INC.**

30. Paragraph 30 of the Plaintiff's Amended Complaint requires no response. To the extent, however, that a response is deemed necessary, this Defendant herein refers to and incorporates its previous set forth responses, hereinafter set forth responses, and hereinafter set forth New Matter and New Matter Pursuant to Rule 1031.1.

31-33. Paragraphs 31 through 33 of the Plaintiff's Amended Complaint are not directed toward this Defendant and, as such, require no responses. To the extent, however, that said allegations are directed toward this Defendant said allegations state legal conclusions to which no responses are required. To the extent that a further response is deemed necessary, and to the extent said allegations are directed toward this Defendant, said allegations are denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averments, and therefore, said averments are denied and strict proof thereof is demanded at the time of trial. By way of further answer, this Defendant herein refers to and incorporates its previous set forth responses, hereinafter set forth responses, and hereinafter set forth New Matter and New Matter Pursuant to Rule 1031.1.

WHEREFORE, Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company, respectfully requests that this Honorable Court enter judgment in its favor, and against Plaintiff, Co-Defendant, and any hereinafter named Defendants and/or Additional Defendants, with costs and prejudice imposed.

**COUNT IV –  
JAMES STORMER VS. ARCTIC CAT, INC.**

34. Paragraph 34 of the Plaintiff's Amended Complaint requires no response. To the extent, however, that a response is deemed necessary, this Defendant herein refers to and incorporates its previous set forth responses, hereinafter set forth responses, and hereinafter set forth New Matter and New Matter Pursuant to Rule 1031.1.

35-36. Paragraphs 35 and 36 of the Plaintiff's Amended Complaint are not directed toward this Defendant and, as such, require no responses. To the extent, however, that said allegations are directed toward this Defendant said allegations state legal conclusions to which no responses are required. To the extent that a further response is deemed necessary, and to the extent said allegations are directed toward this Defendant, said allegations are denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averments, and therefore, said averments are denied and strict proof thereof is demanded at the time of trial. By way of further answer, this Defendant herein refers to and incorporates its previous set forth responses, hereinafter set forth responses, and hereinafter set forth New Matter and New Matter Pursuant to Rule 1031.1.

WHEREFORE, Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company, respectfully requests that this Honorable Court enter judgment in its favor, and against Plaintiff, Co-Defendant, and any hereinafter named Defendants and/or Additional Defendants, with costs and prejudice imposed.

**COUNT V –  
JAMES STORMER VS. ARCTIC CAT, INC.**

37. Paragraph 37 of the Plaintiff's Amended Complaint requires no response. To the extent, however, that a response is deemed necessary, this Defendant herein refers to and incorporates its previous set forth responses, hereinafter set forth responses, and hereinafter set forth New Matter and New Matter Pursuant to Rule 1031.1.

38-46. Paragraphs 38 through 46 of the Plaintiff's Amended Complaint are not directed toward this Defendant and, as such, require no responses. To the extent, however, that said allegations are directed toward this Defendant said allegations state legal conclusions to which no responses are required. To the extent that a further response is deemed necessary, and to the extent said allegations are directed toward this Defendant, said allegations are denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averments, and therefore, said averments are denied and strict proof thereof is demanded at the time of trial. By way of further answer, this Defendant herein refers to and incorporates its previous set forth responses, hereinafter set forth responses, and hereinafter set forth New Matter and New Matter Pursuant to Rule 1031.1.

WHEREFORE, Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company, respectfully requests that this Honorable Court enter judgment in its favor, and against Plaintiff, Co-Defendant, and any hereinafter named Defendants and/or Additional Defendants, with costs and prejudice imposed.

## **II. NEW MATTER**

47. Paragraphs 1 through 46 are herein referred to and incorporated as if set forth fully at length.

48. To the extent justified by the evidence developed in discovery or testimony at the time of trial, this Defendant pleads the contributory, causal negligence of the Plaintiff and the provisions of the Pennsylvania Comparative Negligence Act as complete or partial bar to any recovery by the Plaintiff in this action.

49. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Defendant avers that the ATV in question may have been altered, abused, misused or substantially changed after the date of its original sale and this Defendant reserves the right to raise product alteration, abuse, misuse and substantial change as affirmative defenses to Plaintiff's claims.

50. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Defendant avers that the operator of the subject ATV was negligent under the circumstances.

51. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Defendant avers that the negligence of the ATV operator was the direct and proximate cause of the subject incident and alleged damage to the subject ATV.

52. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Defendant avers that the operator of the subject ATV was negligent generally and in failing to properly operate the ATV; in failing to adhere to the warnings and instructions provided with the ATV; in operating the ATV negligently, carelessly and recklessly; in operating the ATV beyond its capabilities; in failing to be

aware of all surrounding conditions; and in operating the ATV at speeds and under conditions which were inappropriate under the circumstances.

53. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, any injuries and/or damages alleged by the Plaintiff were the result of superseding, intervening, and/or independent causes over which this Defendant had no control and in no way participated.

54. To the extent justified by the evidence developed in discovery or testimony at the time of trial, this Defendant pleads a voluntarily assumption of the risk of the Plaintiff as a complete or partial bar to any recovery by the Plaintiffs in this action.

55. To the extent justified by the evidence developed in discovery or testimony at the time of trial, this Defendant avers that the Plaintiff used the ATV in question for unintended purposes and said use was unforeseeable.

56. To the extent justified by the evidence developed in discovery or testimony at the time of trial, this Defendant avers that any failure of the ATV and/or component parts attached thereto was due to the improper design and/or defects of the ATV due to the original manufacturer of the ATV and/or the manufacturers of or distributors of the component parts.

57. To the extent justified by the evidence developed in discovery or testimony at the time of trial, this Defendant avers that it did not substantially alter and/or modify the ATV and/or component parts from the condition in which it was received from the manufacturer.

58. To the extent justified by the evidence developed in discovery or testimony at the time of trial, these Defendants aver spoliation of evidence as an affirmative defense.

59. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Defendant avers the damages by the Plaintiffs were the result of a pre-existing condition of the property, unrelated to any events referred to in Plaintiffs' Complaint.

60. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Defendant believes that any injuries and/or damages alleged by the Plaintiff were caused by persons, entities, or parties not subject to the control of this Defendant and thus, this Defendant is not liable for the same.

61. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Defendant avers the injuries and damages alleged by the Plaintiff were the result of a pre-existing condition unrelated to this accident and/or occurrence.

62. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Defendant avers that Plaintiff failed to mitigate his damages by ignoring the advice of medical providers.

63. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, these Defendants aver that the Plaintiff may not recover any medical expense reimbursements in excess of amounts accepted as full payment in satisfaction by medical providers pursuant to Moorhead v. Crozer Chester Medical Center, 564 Pa. 156, 765 A.2d 786 (2001).

64. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Defendant raises all affirmative defenses set forth in Pa.R.C.P. 1030 to the Plaintiff's claims, including the legal doctrines of payment, accord and satisfaction, release, waiver, estoppel, and the statute of limitations.

65. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Defendant avers that Plaintiff failed to state a claim upon which relief can be granted for breach of express warranty.

66. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Defendant avers that Plaintiff lacks privity with this Defendant such that it cannot maintain a breach of express warranty with this Defendant.

67. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Defendant reserves the right to assert any and all other affirmative defenses which discovery may reveal appropriate and/or proper.

WHEREFORE, Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company, respectfully requests that this Honorable Court enter judgment in its favor, and against Plaintiff, Co-Defendant, and any hereinafter named Defendants and/or Additional Defendants, with costs and prejudice imposed.

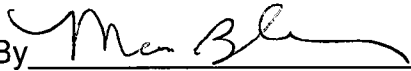
### **III. NEW MATTER PURSUANT TO P.A.R.C.P. 1031.1**

68. This Defendant denies and continues to deny that it is liable to the Plaintiff upon any theory. Should the Plaintiff be entitled to recover from this Defendant, although it is denied that Plaintiff is so entitled, then this Defendant is entitled to indemnification and/or contribution from Arctic Cat, Inc., or other co-defendants and/or additional defendants who may hereinafter be named in this action. For the purposes of asserting such rights of indemnification and contribution, this Defendant herein refers to and incorporates the Plaintiff's Amended Complaint, although by making such reference, this Defendant makes no admission as to the truth or falsity of any factual allegations contained therein.

WHEREFORE, Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company, avers that Defendant Arctic Cat, Inc., and any or all Defendants or Additional Defendants who may be joined to this action are solely liable to Plaintiff or, in the alternative, while denying liability on the part of this Defendant, Defendant Arctic Cat, Inc. and any or all Defendants or Additional Defendants who may be joined to this action are liable over to this Defendant for indemnity and/or contribution for any monies which this Defendant may be found liable and/or responsible to the Plaintiff or other parties in this suit.

Respectfully submitted,

WALSH, COLLIS & BLACKMER, P.C.

By   
Marna K. Blackmer, Esquire  
Natalie A. Troilo, Esquire  
Counsel for Defendant,  
Jeffrey Carns t/d/b/a  
Carns Equipment Company

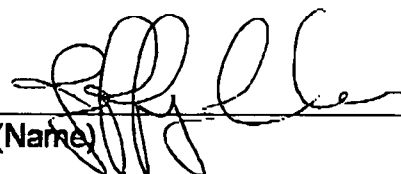


**VERIFICATION**

I, Jeffrey Carns verify that I am the owner of Jeffrey Carns t/d/b/a Carns Equipment Company, and I am authorized to execute this Verification on behalf of the Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company, that I have read the foregoing Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 1031.1 and that the statements made therein are true and correct to the best of my knowledge, information and belief. To the extent that the content of the Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 1031.1 is permitted by Pennsylvania Rules of Civil Procedure, I have relied upon counsel in verifying the same.

I understand false statements herein are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

3/2/09  
(Date)

  
(Name)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing **Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 1031.1 to Plaintiff's Amended Complaint** has been mailed by U.S. Mail to counsel of record via first class mail, postage pre-paid, this 16<sup>th</sup> day of March, 2009.

Jason M. Schiffman, Esquire  
Schiffman & Wojdowski  
1300 Fifth Avenue  
Pittsburgh, PA 15219

Clem C. Trischler, Esquire  
James F. Marrion, Esquire  
Pietragallo Gordon Alfano Bosick & Raspanti, LLP  
The Thirty-Eighth Floor  
One Oxford Centre  
Pittsburgh, PA 15219

WALSH, COLLIS & BLACKMER, P.C.

By M. Blackmer  
Marna K. Blackmer, Esquire  
Natalie A. Troilo, Esquire  
Counsel for Defendant,  
Jeffrey Carns t/d/b/a  
Carns Equipment Company

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and ARCTIC  
CAT, INC.,

Defendants.  
-----

LYNN M. PATRICELLI,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a  
CARNS EQUIPMENT COMPANY  
and ARCTIC CAT, INC.,

Defendants.

TO: PLAINTIFF AND CO-DEFENDANT

You are hereby notified to file a written  
response to the enclosed Answer  
within twenty (20) days from service  
hereof or a judgment may be entered  
against you.

  
WALSH, COLLIS & BLACKMER, P.C.

#1122

CIVIL DIVISION

Docket No.: 08-1900-CD (Consolidated)

**ANSWER, NEW MATTER AND NEW  
MATTER PURSUANT TO Pa.R.C.P.  
1031.1 TO PLAINTIFF PATRICELLI'S  
AMENDED COMPLAINT**

(Jury Trial Demanded)

Filed on Behalf of the Defendant, Jeffrey  
Carns t/d/b/a Carns Equipment Company

Counsel of Record for This Party:


PAUL J. WALSH III, ESQUIRE  
PA I.D. #58843

MARNA K. BLACKMER, ESQUIRE  
PA I.D. # 79528

NATALIE A. TROILO, ESQUIRE  
PA I.D. #89148

WALSH, COLLIS & BLACKMER, P.C.  
The Gulf Tower, Suite 1400  
707 Grant Street  
Pittsburgh, PA 15219

(412) 258-2255

<sup>5</sup>  
**FILED** ICC *Att*  
*m/12:10pm Blackmer*  
**MAR 18 2009**  
  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

Plaintiff,

CIVIL DIVISION

Docket No.: 08-1900-CD (Consolidated)

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and ARCTIC  
CAT, INC.,

Defendants.  
-----

LYNN M. PATRICELLI,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a  
CARNS EQUIPMENT COMPANY  
and ARCTIC CAT, INC.,

Defendants.

**ANSWER, NEW MATTER AND NEW MATTER PURSUANT TO Pa.R.C.P. 1031.1 TO  
PLAINTIFF PATRICELLI'S AMENDED COMPLAINT**

AND NOW, comes the Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company, by and through its undersigned attorneys, Walsh, Collis & Blackmer, P.C., and Marna K. Blackmer, Esquire, and files the within Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 1031.1, and in support thereof avers as follows:

I. **ANSWER**

1. Paragraph 1 of Plaintiff's Amended Complaint is denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averment, and therefore, said averment is denied and strict proof thereof is demanded at the time of trial.

2. Paragraph 2 of Plaintiff's Amended Complaint is admitted.

3. Paragraph 3 of Plaintiff's Amended Complaint is denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averment, and therefore, said averment is denied and strict proof thereof is demanded at the time of trial.

4-5. Paragraphs 4 and 5 of Plaintiff's Amended Complaint are admitted.

6. Paragraph 6 of Plaintiff's Amended Complaint states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, said allegation is denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averment, and therefore, said averment is denied and strict proof thereof is demanded at the time of trial.

7. Paragraph 7 of Plaintiff's Amended Complaint is admitted in part and denied in part. It is admitted that some time following this incident, Plaintiff defaulted on the loan used to purchase the ATV in question, and the ATV was then repossessed in approximately March of 2007. Since that time, the ATV has remained in storage. The

remainder of said averment is denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averment, and therefore, said averment is denied and strict proof thereof is demanded at the time of trial.

8. Paragraph 8 of Plaintiff's Amended Complaint is denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averment, and therefore, said averment is denied and strict proof thereof is demanded at the time of trial.

**COUNT I –  
LYNN M. PATRICELLI VS.  
JEFFREY CARNES t/d/b/a CARNES EQUIPMENT COMPANY**

9. Paragraph 9 of the Plaintiff's Amended Complaint requires no response. To the extent, however, that a response is deemed necessary, this Defendant herein refers to and incorporates its previous set forth responses, hereinafter set forth responses, and hereinafter set forth New Matter and New Matter Pursuant to Rule 1031.1.

10. Paragraph 10 of Plaintiff's Amended Complaint states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, said averment is admitted in part and denied in part. It is admitted that this Defendant was in the business of selling ATVs. The remainder of said allegation is denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averment, and therefore, said averment is denied and strict proof thereof is demanded at the time of trial.

11. Paragraph 11 of Plaintiff's Amended Complaint states a legal conclusion to which no response is required. To the extent that a response is deemed necessary, said allegation is denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averment, and therefore, said averment is denied and strict proof thereof is demanded at the time of trial.

12. Paragraph 12 of Plaintiff's Amended Complaint is denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averment, and therefore, said averment is denied and strict proof thereof is demanded at the time of trial.

13-14. Paragraphs 13 and 14 of Plaintiff's Amended Complaint state legal conclusions to which no responses are required. To the extent that responses are deemed necessary, said allegations are denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averments, and therefore, said averments are denied and strict proof thereof is demanded at the time of trial.

15. Paragraph 15 of Plaintiff's Amended Complaint is denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averment, and therefore, said averment is denied and strict proof thereof is demanded at the time of trial.

16-18. Paragraphs 16 through 18 of Plaintiff's Amended Complaint state legal conclusions to which no responses are required. To the extent that responses are deemed necessary, said allegations are denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averments, and therefore, said averments are denied and strict proof thereof is demanded at the time of trial.

19. Paragraph 19 of Plaintiff's Amended Complaint is denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averment, and therefore, said averment is denied and strict proof thereof is demanded at the time of trial.

20. Paragraph 20 of Plaintiff's Amended Complaint is specifically denied. This Defendant specifically denies that it stated that the ATV was fit for such use. The remainder of Paragraph 20 of Plaintiff's Amended Complaint is denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averment, and therefore, said averment is denied and strict proof thereof is demanded at the time of trial.

21-22. Paragraphs 21 and 22 of Plaintiff's Amended Complaint state legal conclusions to which no responses are required. To the extent that responses are deemed necessary, said allegations are denied pursuant to Pa.R.C.P. 1029(c) and (e).



After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averments, and therefore, said averments are denied and strict proof thereof is demanded at the time of trial.

WHEREFORE, Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company, respectfully requests that this Honorable Court enter judgment in its favor, and against Plaintiff, Co-Defendant, and any hereinafter named Defendants and/or Additional Defendants, with costs and prejudice imposed.

**COUNT II –  
LYNN M. PATRICELLI VS. ARCTIC CAT, INC.**

23. Paragraph 23 of the Plaintiff's Amended Complaint requires no response. To the extent, however, that a response is deemed necessary, this Defendant herein refers to and incorporates its previous set forth responses, hereinafter set forth responses, and hereinafter set forth New Matter and New Matter Pursuant to Rule 1031.1.

24-33. Paragraphs 24 through 33 of the Plaintiff's Amended Complaint are not directed toward this Defendant and, as such, require no responses. To the extent, however, that said allegations are directed toward this Defendant said allegations state legal conclusions to which no responses are required. To the extent that a further response is deemed necessary, and to the extent said allegations are directed toward this Defendant, said allegations are denied pursuant to Pa.R.C.P. 1029(c) and (e). After reasonable investigation, this Defendant has insufficient knowledge or information as to the truth or falsity of said averments, and therefore, said averments are denied and strict proof thereof is demanded at the time of trial. By way of further answer, this Defendant herein refers to and incorporates its previous set forth responses, hereinafter

set forth responses, and hereinafter set forth New Matter and New Matter Pursuant to Rule 1031.1.

WHEREFORE, Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company, respectfully requests that this Honorable Court enter judgment in its favor, and against Plaintiff, Co-Defendant, and any hereinafter named Defendants and/or Additional Defendants, with costs and prejudice imposed.

## **II. NEW MATTER**

34. Paragraphs 1 through 33 are herein referred to and incorporated as if set forth fully at length.

35. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Defendant avers that the ATV in question may have been altered, abused, misused or substantially changed after the date of its original sale and this Defendant reserves the right to raise product alteration, abuse, misuse and substantial change as affirmative defenses to Plaintiff's claims.

36. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Defendant avers that the operator of the subject ATV was negligent under the circumstances.

37. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Defendant avers that the negligence of the ATV operator was the direct and proximate cause of the subject incident and alleged damage to the subject ATV.

38. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Defendant avers that the operator of the subject ATV was negligent generally and in failing to properly operate the ATV; in failing to adhere to the warnings and instructions provided with the ATV; in operating the ATV negligently,

carelessly and recklessly; in operating the ATV beyond its capabilities; in failing to be aware of all surrounding conditions; and in operating the ATV at speeds and under conditions which were inappropriate under the circumstances.

39. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, any injuries and/or damages alleged by the Plaintiff were the result of superseding, intervening, and/or independent causes over which this Defendant had no control and in no way participated.

40. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Defendant raises all affirmative defenses set forth in Pa.R.C.P. 1030 to the Plaintiff's claims, including the legal doctrines of payment, accord and satisfaction, release, waiver, estoppel, and the statute of limitations.

41. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Defendant avers the damages by the Plaintiff were the result of a pre-existing condition of the property, unrelated to any events referred to in Plaintiff's Complaint as against this Defendant.

42. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Defendant avers that failed to state a claim upon which relief can be granted for breach of express warranty.

43. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Defendant maintains that the Plaintiff has failed to set forth any claim for damages.

44. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Defendant avers that Plaintiff failed to mitigate her damages.

45. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Defendant avers that there was a spoliation of evidence.

46. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Defendant reserves the right to assert any and all other affirmative defenses which discovery may reveal appropriate and/or proper.

47. To the extent justified by the evidence developed in discovery or the testimony at the time of trial, this Defendant avers that Plaintiff has failed to state a claim upon which relief can be granted.

WHEREFORE, Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company, respectfully requests that this Honorable Court enter judgment in its favor, and against Plaintiff, Co-Defendant, and any hereinafter named Defendants and/or Additional Defendants, with costs and prejudice imposed.

### **III. NEW MATTER PURSUANT TO P.A.R.C.P. 1031.1**

48. This Defendant denies and continues to deny that it is liable to the Plaintiff upon any theory. Should the Plaintiff be entitled to recover from this Defendant, although it is denied that Plaintiff is so entitled, then this Defendant is entitled to indemnification and/or contribution from Arctic Cat, Inc., or other co-defendants and/or additional defendants who may hereinafter be named in this action. For the purposes of asserting such rights of indemnification and contribution, this Defendant herein refers to and incorporates the Plaintiff's Amended Complaint, although by making such reference, this Defendant makes no admission as to the truth or falsity of any factual allegations contained therein.

WHEREFORE, Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company, avers that Defendant Arctic Cat, Inc., and any or all Defendants or Additional

Defendants who may be joined to this action are solely liable to Plaintiff or, in the alternative, while denying liability on the part of this Defendant, Defendant Arctic Cat, Inc. and any or all Defendants or Additional Defendants who may be joined to this action are liable over to this Defendant for indemnity and/or contribution for any monies which this Defendant may be found liable and/or responsible to the Plaintiff or other parties in this suit.

Respectfully submitted,

WALSH, COLLIS & BLACKMER, P.C.

By 

Marna K. Blackmer, Esquire  
Natalie A. Troilo, Esquire  
Counsel for Defendant,  
Jeffrey Carns t/d/b/a  
Carns Equipment Company

**VERIFICATION**

I, Jeffrey Carns verify that I am the Owner of Jeffrey Carns  
t/d/b/a Carns Equipment Company, and I am authorized to execute this Verification on  
behalf of the Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company, that I have  
read the foregoing Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 1031.1  
and that the statements made therein are true and correct to the best of my knowledge,  
information and belief. To the extent that the content of the Answer, New Matter and New  
Matter Pursuant to Pa.R.C.P. 1031.1 is permitted by Pennsylvania Rules of Civil  
Procedure, I have relied upon counsel in verifying the same.

I understand false statements herein are made subject to the penalties of 18  
Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

3/2/09  
(Date)

[Signature]  
(Name)

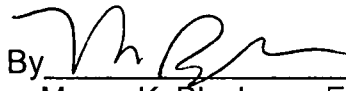
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing **Answer, New Matter and New Matter Pursuant to Pa.R.C.P. 1031.1 to Plaintiff's Amended Complaint** has been mailed by U.S. Mail to counsel of record via first class mail, postage pre-paid, this 11<sup>th</sup> day of March, 2009.

Jason M. Schiffman, Esquire  
Schiffman & Wojdowski  
1300 Fifth Avenue  
Pittsburgh, PA 15219

Clem C. Trischler, Esquire  
James F. Marrion, Esquire  
Pietragallo Gordon Alfano Bosick & Raspanti, LLP  
The Thirty-Eighth Floor  
One Oxford Centre  
Pittsburgh, PA 15219

WALSH, COLLIS & BLACKMER, P.C.

By   
\_\_\_\_\_  
Marna K. Blackmer, Esquire  
Natalie A. Troilo, Esquire  
Counsel for Defendant,  
Jeffrey Carns t/d/b/a  
Carns Equipment Company

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

Plaintiff,

v.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and ARCTIC CAT  
INC.

Defendant.

---

LYNN M. PATRICELLI,

Plaintiff,

v.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY  
and ARCTIC CAT INC.

Defendants.

) CIVIL DIVISION

) NO: 08-1900-CD

) ARCTIC CAT INC.'S REPLY TO JEFFREY  
) CARNS t/d/b/a CARNS EQUIPMENT  
) COMPANY'S PATRICELLI NEW MATTER  
) PURSUANT TO Pa.R.C.P. 1031.1

) Served on Behalf of Defendant:  
) Arctic Cat Inc.

) Counsel of Record for This Party:

) Clem C. Trischler, Esquire  
) PA I.D. No.: 52957

) James F. Marrion, Esquire  
) PA I.D. No.: 85181

) PIETRAGALLO GORDON ALFANO  
) BOSICK & RASPANTI, LLP  
) Firm #834

) The Thirty-Eighth Floor  
) One Oxford Centre  
) Pittsburgh, PA 15219  
) (412) 263-2000

FILED

MAR 23 2009

William A. Shaw  
Prothonotary/Clerk of Courts



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STOFMER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL DIVISION
	)	NO: 08-1900-CD
JEFFREY CARNS t/d/b/a CARNS	)	
EQUIPMENT COMPANY and ARCTIC CAT	)	
INC.	)	
	)	
Defendant.	)	
<hr/>		
LYNN M. PATRICELLI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JEFFREY CARNS t/d/b/a CARNS	)	
EQUIPMENT COMPANY	)	
and ARCTIC CAT INC.	)	
	)	
Defendants.	)	

**ARCTIC CAT INC.'S REPLY TO JEFFREY CARNS, t/d/b/a**  
**CARNS EQUIPMENT COMPANY'S PATRICELLI**  
**NEW MATTER PURSUANT TO Pa.R.C.P. 1031.1**

AND NOW comes Defendant, Arctic Cat Inc. (hereinafter "Arctic Cat"), by and through its counsel, Clem C. Trischler, Esq. of Pietragallo Gordon Alfano Bosick & Raspanti, LLP, and files this Reply to Jeffrey Carns t/d/b/a Carns Equipment Company's (hereinafter "Carns") Patricelli New Matter Pursuant to Pa.R.C.P. 1031.1. Arctic Cat denies any and all liability to plaintiff, Lynn M. Patricelli, and denies any and all liability to Carns on its Cross-Claim for sole liability, contribution or indemnity. Arctic Cat incorporates by reference its Answer and New Matter to plaintiff's Amended Complaint and specifically responds to the Cross-Claim of Carns as follows:

**REPLY TO NEW MATTER**  
**PURSUANT TO Pa.R.C.P. 1031.1**

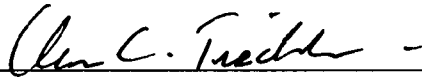
1. Paragraph 48 of the Cross-Claim against Arctic Cat on behalf of Carns is denied. The averments of paragraph 48 of the Cross-Claim state conclusions of law to which no responsive pleading is required. To the extent a response may be required, all of the averments of paragraph 48 are denied. By way of further response, Arctic Cat denies that it is liable to the plaintiff, Lynn M. Patricelli, in any manner or liable to Carns in any manner. Additionally, it is denied that Arctic Cat is liable to the plaintiff and Carns on any cause of action, claim or theory and it is further denied that this defendant is liable to Carns for contribution and indemnity.

WHEREFORE, defendant, Arctic Cat Inc. denies any and all liability to the plaintiff, Lynn M. Patricelli, and demands the entry of judgment in its favor against the plaintiff, Lynn M. Patricelli. By way of further response, Arctic Cat Inc. denies any and all liability to Jeffrey Carns t/d/b/a Carns Equipment Company on its claim for sole liability, contribution or indemnity and demands the entry of judgment in its favor on all claims raised in this action.

**A JURY TRIAL IS DEMANDED.**

Respectfully submitted,

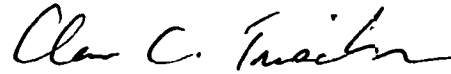
PIETRAGALLO GORDON ALFANO  
BOSICK & RASPANTI, LLP

By:   
Clem C. Trischler, Esquire  
One Oxford Centre, 38<sup>th</sup> Floor  
Pittsburgh, PA 15219  
(412) 263-2000

*Attorney for Defendant,  
Arctic Cat Inc.*

**VERIFICATION**

I, Clem C. Trischler, serve as counsel to Arctic Cat Inc.. As such, I am authorized by Arctic Cat Inc. to execute this Verification on its behalf. I have read the foregoing REPLY TO JEFFREY CARN t/d/b/a CARNS EQUIPMENT COMPANY'S PATRICELLI NEW MATTER PURSUANT TO Pa.R.C.P. 1031.1. The statements therein are correct to the best of my personal knowledge, information and belief. This statement and Verification are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn fabrication to authorities which provides that if I knowingly make false averments, I may be subject to criminal penalties.



\_\_\_\_\_  
Clem C. Trischler

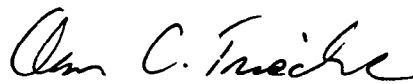
Dated: 3/19/09

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **ARCTIC CAT INC.'S  
REPLY TO JEFFREY CARNS t/d/b/a CARNS EQUIPMENT COMPANY'S PATRICELLI NEW  
MATTER PURSUANT TO Pa.R.C.P. 1031.1** has been served upon all parties listed below, via  
first-class mail, postage prepaid, on this 19<sup>th</sup> day of March, 2009 as follows:

Jason M. Schiffman, Esquire  
Schiffman & Wojdowski  
1300 Fifth Avenue  
Pittsburgh, PA 15219  
*Attorney for Plaintiff*

Marna K. Blackmer, Esquire  
Walsh, Collis & Blackmer, P.C.  
The Gulf Tower  
Suite 1400  
707 Grant Street  
Pittsburgh, PA 15219  
*Attorney for Jeffrey Carns t/d/b/a  
Carns Equipment Company*



---

Clem C. Trischler, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

Plaintiff,

v.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and ARCTIC CAT  
INC.

Defendant.

---

LYNN M. PATRICELLI,

Plaintiff.

v.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY  
and ARCTIC CAT INC.

Defendants.

) CIVIL DIVISION

) NO: 08-1900-CD

) ARCTIC CAT INC.'S REPLY TO JEFFREY  
) CARNS t/d/b/a CARNS EQUIPMENT  
) COMPANY'S STORMER NEW MATTER  
) PURSUANT TO Pa.R.C.P. 1031.1

) Served on Behalf of Defendant:  
) Arctic Cat Inc.

) Counsel of Record for This Party:

) Clem C. Trischler, Esquire  
) PA I.D. No.: 52957

) James F. Marrion, Esquire  
) PA I.D. No.: 85181

) PIETRAGALLO GORDON ALFANO  
) BOSICK & RASPANTI, LLP  
) Firm #834

) The Thirty-Eighth Floor  
) One Oxford Centre  
) Pittsburgh, PA 15219  
) (412) 263-2000

FILED  
MAR 23 2009

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL DIVISION
	)	NO: 08-1900-CD
JEFFREY CARNS t/d/b/a CARNS	)	
EQUIPMENT COMPANY and ARCTIC CAT	)	
INC.	)	
	)	
Defendant.	)	
	)	
LYNN M. PATRICELLI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JEFFREY CARNS t/d/b/a CARNS	)	
EQUIPMENT COMPANY	)	
and ARCTIC CAT INC.	)	
	)	
Defendants.	)	

**ARCTIC CAT INC.'S REPLY TO JEFFREY CARNS, t/d/b/a**  
**CARNS EQUIPMENT COMPANY'S STORMER**  
**NEW MATTER PURSUANT TO Pa.R.C.P. 1031.1**

AND NOW comes Defendant, Arctic Cat Inc. (hereinafter "Arctic Cat"), by and through its counsel, Clem C. Trischler, Esq. of Pietragallo Gordon Alfano Bosick & Raspanti, LLP, and files this Reply to Jeffrey Carns t/d/b/a Carns Equipment Company's (hereinafter "Carns") Stormer New Matter Pursuant to Pa.R.C.P. 1031.1. Arctic Cat denies any and all liability to plaintiff, James Stormer, and denies any and all liability to Carns on its Cross-Claim for sole liability, contribution or indemnity. Arctic Cat incorporates by reference its Answer and New Matter to plaintiff's Amended Complaint and specifically responds to the Cross-Claim of Carns as follows:

**REPLY TO NEW MATTER**  
**PURSUANT TO Pa.R.C.P. 1031.1**

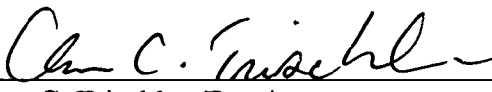
1. Paragraph 68 of the Cross-Claim against Arctic Cat on behalf of Carns is denied. The averments of paragraph 68 of the Cross-Claim state conclusions of law to which no responsive pleading is required. To the extent a response may be required, all of the averments of paragraph 68 are denied. By way of further response, Arctic Cat denies that it is liable to the plaintiff, James Stormer, in any manner or liable to Carns in any manner. Additionally, it is denied that Arctic Cat is liable to the plaintiff and Carns on any cause of action, claim or theory and it is further denied that this defendant is liable to Carns for contribution and indemnity.

WHEREFORE, defendant, Arctic Cat Inc. denies any and all liability to the plaintiff, James Stormer, and demands the entry of judgment in its favor against the plaintiff, James Stormer. By way of further response, Arctic Cat Inc. denies any and all liability to Jeffrey Carns t/d/b/a Carns Equipment Company on its claim for sole liability, contribution or indemnity and demands the entry of judgment in its favor on all claims raised in this action.

**A JURY TRIAL IS DEMANDED.**

Respectfully submitted,


PIETRAGALLO GORDON ALFANO  
BOSICK & RASPANTI, LLP

By:   
Clem C. Trischler, Esquire  
One Oxford Centre, 38<sup>th</sup> Floor  
Pittsburgh, PA 15219  
(412) 263-2000

*Attorney for Defendant,  
Arctic Cat Inc.*

**VERIFICATION**

I, Clem C. Trischler, serve as counsel to Arctic Cat Inc.. As such, I am authorized by Arctic Cat Inc. to execute this Verification on its behalf. I have read the foregoing REPLY TO JEFFREY CARN t/d/b/a CARNS EQUIPMENT COMPANY'S STORMER NEW MATTER PURSUANT TO Pa.R.C.P. 1031.1. The statements therein are correct to the best of my personal knowledge, information and belief. This statement and Verification are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn fabrication to authorities which provides that if I knowingly make false averments, I may be subject to criminal penalties.

  
\_\_\_\_\_  
Clem C. Trischler

Dated: 3/19/09



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing ARCTIC CAT INC.'S  
REPLY TO JEFFREY CARNS t/d/b/a CARNS EQUIPMENT COMPANY'S STORMER NEW  
MATTER PURSUANT TO P.E.R.C.P. 1031.1 has been served upon all parties listed below, via  
first-class mail, postage prepaid, on this 19<sup>th</sup> day of March, 2009 as follows:

Jason M. Schiffman, Esquire  
Schiffman & Wojdowski  
1300 Fifth Avenue  
Pittsburgh, PA 15219  
*Attorney for Plaintiff*

Marna K. Blackmer, Esquire  
Walsh, Collis & Blackmer, P.C.  
The Gulf Tower  
Suite 1400  
707 Grant Street  
Pittsburgh, PA 15219  
*Attorney for Jeffrey Carns t/d/b/a  
Carns Equipment Company*

  
\_\_\_\_\_  
Clem C. Trischler, Esquire

#1496201

9 FILED  
MAR 25 2009  
m/1:00/c  
William A. Shaw  
Prothonotary/Clerk of Courts  
Sent to Mr

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

CIVIL DIVISION

Plaintiff,

vs.

Consolidated at No: 08-1900-CD

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT INC.

Defendants.

Type of Pleading  
**Notice of Service of Interrogatories  
Directed to Defendant Jeffrey Carns  
t/d/b/a Carns Equipment Company**

-----  
LYNN M. PATRICELLI,

Plaintiff,

vs.

Filed on behalf of:  
James Stormer, Plaintiff

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT, INC.

Defendants.

Counsel of Record for this Party:  
Jason M. Schiffman, Esq.  
Pa I.D. #207103

Schiffman & Wojdowski  
Firm I.D. # 466  
1300 Fifth Avenue  
Pittsburgh, PA 15219

412/288-9444

Email: [schiffmanj@gmail.com](mailto:schiffmanj@gmail.com)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

CIVIL DIVISION

Plaintiff,

vs.

Consolidated at No: 08-1900-CD

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT INC.

Defendants.

-----  
LYNN M. PATRICELLI,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT, INC.

Defendants.

**NOTICE OF SERVICE OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF  
DOCUMENTS**

TO THE PROTHONOTARY:

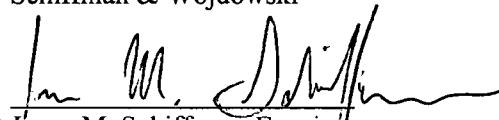
Notice is hereby given that on the 24<sup>th</sup> day of March, 2009, an original and one copy of Interrogatories and Request for Production of Documents Directed to Defendant Jeffrey Carns t/d/b/a Carns Equipment Company were served upon:

Pietragallo Gordon Alfano  
Bosick & Raspanti, LLP  
Attn: Clem Trischler, Esquire  
38<sup>th</sup> Floor, One Oxford Centre  
Pittsburgh, PA 15219

Marna K. Blackmer, Esquire  
Walsh, Collis & Blackmer, P.C.  
The Gulf Tower, Suite 1400  
707 Grant Street  
Pittsburgh, PA 15219

by mailing the same, postage pre-paid, and said Interrogatories contained a Notice to Defendant to answer the same within thirty (30) days.

Respectfully submitted,  
Schiffman & Wojdowski

  
Jason M. Schiffman, Esquire  
Attorney for Plaintiff

FILED  
MAR 25 2009  
William A. Shaw  
Prothonotary/Clerk of Court

FILED  
MAR 25 2005  
11:00  
Prothonotary/Clerk of Court  
1 sent to  
atty

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

CIVIL DIVISION

Plaintiff,

vs.

Consolidated at No: 08-1900-CD

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT INC.

Defendants.

Type of Pleading  
**Notice of Service of Interrogatories  
Directed to Defendant  
Arctic Cat, Inc.**

-----  
LYNN M. PATRICELLI,

Plaintiff,

vs.

Filed on behalf of:  
James Stormer, Plaintiff

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT, INC.

Defendants.

Counsel of Record for this Party:  
Jason M. Schiffman, Esq.  
Pa I.D. #207103

Schiffman & Wojdowski  
Firm I.D. # 466  
1300 Fifth Avenue  
Pittsburgh, PA 15219

412/288-9444

Email: [schiffmanj@gmail.com](mailto:schiffmanj@gmail.com)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

CIVIL DIVISION

Plaintiff,

vs.

Consolidated at No: 08-1900-CD

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT INC.

Defendants.

-----  
LYNN M. PATRICELLI,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT, INC.

Defendants.

**NOTICE OF SERVICE OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF  
DOCUMENTS**

TO THE PROTHONOTARY:

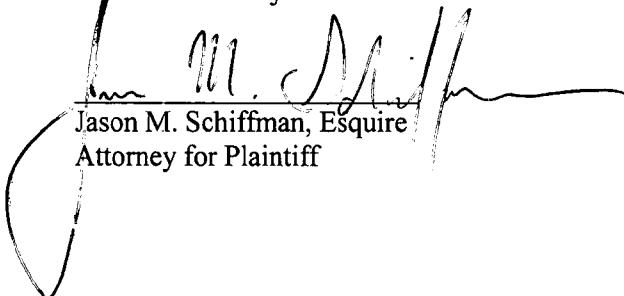
Notice is hereby given that on the 24<sup>th</sup> day of March, 2009, an original and one copy of Interrogatories and Request for Production of Documents Directed to Defendant Arctic Cat, Inc. were served upon:

Pietragallo Gordon Alfano  
Bosick & Raspanti, LLP  
Attn: Clem Trischler, Esquire  
38<sup>th</sup> Floor, One Oxford Centre  
Pittsburgh, PA 15219

Marna K. Blackmer, Esquire  
Walsh, Collis & Blackmer, P.C.  
The Gulf Tower, Suite 1400  
707 Grant Street  
Pittsburgh, PA 15219

by mailing the same, postage pre-paid, and said Interrogatories contained a Notice to Defendant to answer the same within thirty (30) days.

Respectfully submitted,  
Schiffman & Wojdowski

  
Jason M. Schiffman, Esquire  
Attorney for Plaintiff

UP

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

Plaintiff,

v.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and ARCTIC  
CAT INC.

Defendant.

---

LYNN M. PATRICELLI,

Plaintiff,

v.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY  
and ARCTIC CAT INC.

Defendants.

) CIVIL DIVISION

)

) NO: 08-1900-CD

)

) **STIPULATION AND**  
) **PROTECTIVE ORDER**

)

) Served on Behalf of Defendant:  
) Arctic Cat Inc.

)

) Counsel of Record for This Party:

)

) Clem C. Trischler, Esquire  
) PA I.D. No.: 52957

)

) James F. Marrion, Esquire  
) PA I.D. No.: 85181

)

) PIETRAGALLO GORDON ALFANO  
) BOSICK & RASPANTI, LLP  
) Firm #834

)

) The Thirty-Eighth Floor  
) One Oxford Centre  
) Pittsburgh, PA 15219  
) (412) 263-2000

4 FILED ice  
01/4/00 CD Atty  
JAN 11 2000  
William A. Shaw  
Prothonotary/Clerk of Courts  
Marrion

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL DIVISION
	)	NO: 08-1900-CD
JEFFREY CARNS t/d/b/a CARNS	)	
EQUIPMENT COMPANY and ARCTIC	)	
CAT INC.	)	
	)	
Defendant.	)	
	)	
LYNN M. PATRICELLI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JEFFREY CARNS t/d/b/a CARNS	)	
EQUIPMENT COMPANY	)	
and ARCTIC CAT INC.	)	
	)	
Defendants.	)	

**STIPULATION AND PROTECTIVE ORDER**  
**REGARDING CONFIDENTIALITY OF DOCUMENTS AND MATERIALS**

WHEREAS, JAMES STORMER and LYNN M. PATRICELLI (hereafter collectively "plaintiffs"), by and through their attorneys, and defendant JEFFREY CARNS, t/d/b/a CARNS EQUIPMENT COMPANY ("Dealer"), by and through his attorneys, have served discovery upon defendant ARCTIC CAT INC. ("Arctic Cat") in the above-captioned matter, and have requested Arctic Cat to make available for inspection and/or copying, documents and various materials, including, but not limited to documents and materials regarding the development, design, testing, manufacturing, and marketing of the ATV that is the subject of the instant lawsuit; and



WHEREAS, Arctic Cat contends that some of the requested documents, information and other materials are or contain, in whole or in part, proprietary information, trade secrets, confidential research, development, commercial or financial information of Arctic Cat, or its subsidiaries; and

WHEREAS, Arctic Cat requires that the confidentiality of such information, as well as its existence and identity, be protected from unauthorized disclosure; and

WHEREAS, plaintiffs and plaintiffs' attorneys, and Dealer and Dealer's attorneys have agreed to protect the confidentiality of such information as hereafter stipulated;

IT IS HEREBY STIPULATED THAT:

Plaintiffs, Dealer and their respective attorneys, hereby agree to protect the confidentiality of the hereafter defined "Protected Information" disclosed by or received from Arctic Cat concerning the above-captioned matter, as follows:

"Protected Information" shall consist of and include any and all information, documents and materials which are or contain, in whole or in part, proprietary information, trade secrets, confidential research, development, commercial or financial information of Arctic Cat Inc., or its subsidiaries. Protected Information shall be subject to protection hereunder without regard to the form it is stored, memorialized or contained, including but not limited to records, drawings, documents, communications, deposition testimony, discovery responses, videos, photographs, specifications, reports, or computer, magnetic, digital or electronic storage media.

Records, documents and other tangible things containing Protected Information shall be designated or marked as "Confidential" by Arctic Cat at the time of disclosure or production to plaintiffs or Dealer in the above-captioned matter. Any and all records, documents or tangible

things so designated or marked shall be subject to protection as Protected Information hereunder unless otherwise ordered by the Court.

Plaintiffs, Dealer and their respective attorneys shall not disclose, copy or reproduce any Protected Information disclosed by or received from Arctic Cat in relation to the above-captioned matter except as provided herein.

Plaintiffs, Dealer and their respective attorneys may disclose, copy or reproduce the Protected Information only as follows:

1. Except as otherwise provided herein, plaintiffs and Dealer, including Dealer's Claim Representative, Sentry Insurance Company, and their respective attorneys, may only disclose or provide Protected Information to the following persons (hereafter "Authorized Persons") for the purposes hereafter described:

- a) All parties in the above-referenced lawsuit; and
- b) All parties' respective attorneys and employees of their respective attorneys who assist in preparation, trial or settlement of the claims in the above-captioned matter; and
- c) Experts and consultants retained by the respective parties' for preparation, trial or settlement of s claims in the above-captioned matter, provided that no disclosure of Protected Information shall be made to any expert or consultant who is employed by a competitor of Arctic Cat; and
- d) Any other person or entity approved in advance, in writing, by Arctic Cat on such terms and conditions acceptable to Arctic Cat in its discretion.

2. Authorized Persons shall use Protected Information only for the purpose of prosecution and/or defense of the above-captioned matter, including but not limited to all discovery and pre-trial proceedings, motions, hearings, appeals and retrials, mediation, arbitration or other settlement proceedings in the above-captioned matter, and shall not use such information for any other purpose.

3. If any Protected Information is to be attached to or incorporated into any pleading, motion, affidavit, deposition, transcript, or other paper filed with the Court, such Protected Information shall be filed or attached in a sealed envelope marked "Confidential - Subject to Protective Order."

4. If any Protected Information is used in the taking of depositions, or recorded pre-trial statements or testimony, the same shall remain subject to the provisions of this Stipulation and Protective Order, along with the transcript pages of the deposition testimony disclosing or revealing Protected Information. If any Protected Information is offered or admitted into evidence at any hearing or trial, the Protected Information and so much of the record of proceedings disclosing the Protected Information shall be sealed unless otherwise ordered by the Court.

5. Authorized Persons may copy or reproduce Protected Information only as necessary for the purposes permitted under paragraph 2. All copies and reproductions of Protected Information shall maintain and display all original "Confidential" stampings, markings or writings as appear on the original Protected Information disclosed or provided by Arctic Cat.

6. Neither Plaintiffs or Dealer shall disclose Protected Information to any person or entity described in paragraph 1(c) (consultants and experts) and 1(d) (other persons consented to by Arctic Cat) acting on their respective behalf, unless and until such person or entity has first a) been provided a copy of this Stipulation and Protective Order, and b) executed a written agreement in the form set forth in Exhibit "A" attached hereto. The original Exhibit "A" agreements shall be retained by the attorneys for party making the disclosure to such person or entity.

7. Plaintiffs, Dealer, their respective attorneys and all other Authorized Persons shall return all Protected Information contained in tangible or reproducible form, together with any copies and reproductions, to Arctic Cat's attorneys within thirty (30) days of settlement or other final disposition of the above-captioned matter. Concurrently therewith, each person or entity executing an Exhibit "A" agreement as set forth in paragraph 6 shall also execute an Affidavit in the form in Exhibit "B" attached hereto, and cause the same to be delivered to Arctic Cat's attorneys.

8. The provisions of this Stipulation and Protective Order shall continue and survive settlement or other final disposition of the above-captioned matter. The parties agree that the Court in the above-captioned matter shall have jurisdiction over the parties, Authorized Persons and other recipients of Protected Information for purposes of enforcement of the Stipulation and Protective Order.


9. Nothing herein shall impair or waive any party's rights or objections concerning discovery of Protected Information or other information in relation to the above-captioned matter.

10. The parties agree that this Stipulation shall be submitted to the Court in the above-captioned matter for approval by the Court, and further stipulate that a Protective Order

incorporating the terms of this Stipulation may be entered by the Court on the terms and conditions contained herein, without further notice or hearing.

DATED this 25 day of May, 2009.

WALSH, COLLIS & BLACKMER, PC

By:   
Marna K. Blackmer, Esq.  
Attorneys for Defendant  
Jeffrey Carns, t/d/b/a  
Carns Equipment Company

SCHIFFMAN & WOJDOWSKI

By: \_\_\_\_\_  
Jason M. Schiffman, Esq.  
Attorney for Plaintiff James Stormer  
and Plaintiff Lynn M. Patricelli

PIETRAGALLO GORDON ALFANO  
BOSICK & RASPANTI, LLP

By: \_\_\_\_\_  
Clem C. Trischler, Esq.  
Attorneys for Defendant  
Arctic Cat Inc.

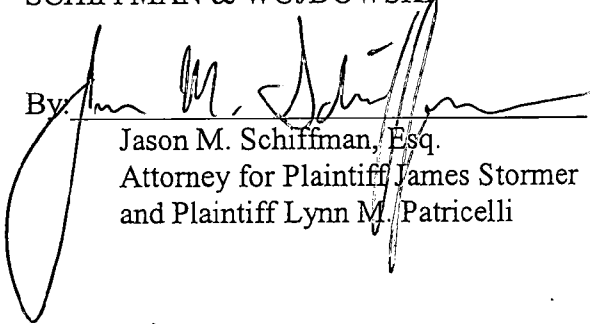
incorporating the terms of this Stipulation may be entered by the Court on the terms and conditions contained herein, without further notice or hearing.

DATED this 26<sup>th</sup> day of May, 2009.


WALSH, COLLIS & BLACKMER, PC

SCHIFFMAN & WOJDOWSKI

By: \_\_\_\_\_  
Marna K. Blackmer, Esq.  
Attorneys for Defendant  
Jeffrey Carns, t/d/b/a  
Carns Equipment Company

By:  \_\_\_\_\_  
Jason M. Schiffman, Esq.  
Attorney for Plaintiff James Stomer  
and Plaintiff Lynn M. Patricelli

PIETRAGALLO GORDON ALFANO  
BOSICK & RASPANTI, LLP

By:  \_\_\_\_\_  
Clem C. Trischler, Esq.  
Attorneys for Defendant  
Arctic Cat Inc.

**EXHIBIT A**

**AUTHORIZED PERSON CERTIFICATION**

I have read, understood, and agree to be bound by the terms and conditions of the Stipulation and Protective Order entered in this lawsuit. I am receiving disclosure of Protected Information on behalf of the following party in the action, \_\_\_\_\_, in the capacity of an Authorized Person under paragraph 1 of the Stipulation and Protective Order. I agree that I am subject to the jurisdiction and venue of the Court in the above-captioned matter for purposes of enforcement of this agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Address:  
\_\_\_\_\_

**EXHIBIT B**

**AFFIDAVIT RE PROTECTED INFORMATION**

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

\_\_\_\_\_, being first duly sworn, upon his or her oath,  
deposes and says:

1. I have been provided Protected Information subject to a Stipulation and Protective Order in the above-captioned action as a consultant or expert for the following party in this lawsuit: \_\_\_\_\_.

2. I have complied with all of the provisions of the Stipulation and Protective Order concerning the Protected Information. I have not disclosed, copied, reproduced or used any Protected Information except as permitted under the Stipulation and Protective Order.

3. I have returned all original, copies, reproductions and tangible things consisting of or containing Protected Information to the attorneys for the party indicated in Paragraph 1.

\_\_\_\_\_  
SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

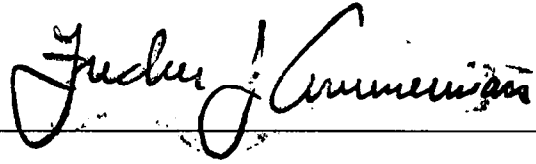
My Commission Expires:  
\_\_\_\_\_



**ORDER OF COURT**

AND NOW, this 10<sup>th</sup> day of JUNE, 2009, the foregoing Stipulation is hereby adopted and accepted as the Order of this Court.

By The Court:

  
J.

**FILED**

JUN 11 2009

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 6/11/09

☒ You are responsible for serving all appropriate parties.

☐ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and ARCTIC  
CAT, INC.,

Defendants.  
-----

LYNN M. PATRICELLI,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a  
CARNS EQUIPMENT COMPANY  
and ARCTIC CAT, INC.,

Defendants.

CIVIL DIVISION

Docket No.: 08-1900-CD

**PRAECIPE FOR ARGUMENT**  
(Jury Trial Demanded)

Filed on Behalf of the Defendant, Jeffrey  
Carns t/d/b/a Carns Equipment Company

Counsel of Record for This Party:

MARNA K. BLACKMER, ESQUIRE  
PA I.D. # 79528

WALSH, COLLIS & BLACKMER, P.C.  
The Gulf Tower, Suite 1400  
707 Grant Street  
Pittsburgh, PA 15219

(412) 258-2255

#1073

FILED <sup>ice</sup>  
m/12:53 <sup>Att</sup>  
JUL 08 2009 <sup>Blackmer</sup>  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

CIVIL DIVISION

Plaintiff,

Docket No.:

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and ARCTIC  
CAT, INC.,

Defendants.  
-----

LYNN M. PATRICELLI,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a  
CARNS EQUIPMENT COMPANY  
and ARCTIC CAT, INC.,

Defendants.

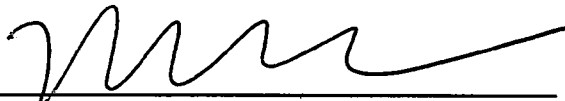
**PRAECIPE FOR ARGUMENT**

**TO THE COURT ADMINISTRATOR:**

Kindly place Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company's Motion  
to Compel on the next available argument list.

Respectfully submitted,

WALSH, COLLIS & BLACKMER, P.C.

By   
Marna K. Blackmer, Esquire  
Counsel for Defendants

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing **Praecipe for Argument** has been mailed by U.S. Mail to counsel of record via first class mail, postage pre-paid, this 6<sup>th</sup> day of July, 2009.

Jason M. Schiffman, Esquire  
Schiffman & Wojdowski  
1300 Fifth Avenue  
Pittsburgh, PA 15219  
(Counsel for Plaintiff)

James F. Marrion, Esquire  
Pietragallo, Bosick & Gordon, LLP  
One Oxford Centre  
301 Grant Street; 38<sup>th</sup> Floor  
Pittsburgh, PA 15219-1407  
(Counsel for Defendant, Arctic Cat, Inc.)

Scott Garrett Olds, Esquire  
Olds & Associates, P.A.  
204 N. Meadow Street  
Grangeville, ID 83530  
(Counsel for Defendant, Arctic Cat, Inc.)

WALSH, COLLIS & BLACKMER, P.C.

By 

Marna K. Blackmer, Esquire  
Natalie A. Troilo, Esquire  
Counsel for Defendants

## IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

CIVIL DIVISION

Plaintiff,

Docket No.: 08-1900-CD (Consolidated)

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and ARCTIC  
CAT, INC.,**MOTION TO COMPEL**  
(Jury Trial Demanded)Defendants.  
-----

LYNN M. PATRICELLI,

Plaintiff,

Filed on Behalf of the Defendant, Jeffrey  
Carns t/d/b/a Carns Equipment Company

vs.

JEFFREY CARNS t/d/b/a  
CARNS EQUIPMENT COMPANY  
and ARCTIC CAT, INC.,

Counsel of Record for This Party:

PAUL J. WALSH III, ESQUIRE  
PA I.D. #58843

Defendants.

MARNA K. BLACKMER, ESQUIRE  
PA I.D. # 79528NATALIE A. TROILO, ESQUIRE  
PA I.D. #89148WALSH, COLLIS & BLACKMER, P.C.  
The Gulf Tower, Suite 1400  
707 Grant Street  
Pittsburgh, PA 15219

(412) 258-2255

#1073

FILED 1cc  
 3/12/33 10:11 AM  
 03-08-2009  
 William A. Shaw  
 Prothonotary/Clerk of Courts  
 Blackmer (60)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

Plaintiff,

CIVIL DIVISION

Docket No.: 08-1900-CD (Consolidated)

vs.

JEFFREY CARNES t/d/b/a CARNES  
EQUIPMENT COMPANY and ARCTIC  
CAT, INC.,

Defendants.  
-----

LYNN M. PATRICELLI,

Plaintiff,

vs.

JEFFREY CARNES t/d/b/a  
CARNES EQUIPMENT COMPANY  
and ARCTIC CAT, INC.,

Defendants.

**MOTION TO COMPEL**

AND NOW, comes the Defendant, Jeffrey Carnes t/d/b/a Carnes Equipment Company, by and through its attorneys, Walsh Collis & Blackmer, P.C., and Marna K. Blackmer, Esquire, and brings the within Motion to Compel and in support thereof avers as follows:

1. The above-captioned matter arises out of an ATV accident which occurred on or about February 9, 2007.
2. On March 19, 2009, counsel for the Defendant Carnes forwarded to counsel for Plaintiffs, Interrogatories and a Request for Production of Documents.

3. On May 29, 2009, counsel for the Defendant forwarded to counsel for the Plaintiffs correspondence inquiring into the status of the discovery responses. Attached hereto and marked as Exhibit "A" is a true and correct copy of the May 29, 2009 correspondence.

4. To date, no responses have been provided.

5. It is necessary for a proper defense of this lawsuit that Plaintiffs file full and complete responses to the Interrogatories and a Request for Production of Documents.

WHEREFORE, the Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company, respectfully request this Honorable Court issue an Order compelling the Plaintiffs to provide full and complete responses to Defendant's discovery requests within twenty (20) days of the date of this Order.

Respectfully submitted,

WALSH, COLLIS & BLACKMER, P.C.

By Marna K. Blackmer  
Marna K. Blackmer, Esquire /s/  
Counsel for Defendants



# Walsh, Collis & Blackmer, P.C.

Paul J. Walsh III +  
Pamela V. Collis  
Marna K. Blackmer  
Adam M. Barnes +  
Trisha A. Gill  
Steven L. Minnich

The Gulf Tower  
Suite 1400  
707 Grant Street  
Pittsburgh, Pennsylvania 15219

Phone: (412) 258-2255  
Facsimile: (412) 263-5632

Gina M. Zumpella \*  
Natalie A. Troilo \*  
Thomas E. Zumpella  
David J. Fisher  
John M. Polena  
Tammy D. Schall ^

+ Admitted to Practice in Ohio and West Virginia  
\* Admitted to Practice in West Virginia  
■ Admitted to Practice in New Jersey  
^ Admitted to Practice in New York

Of Counsel:  
Anne M. Paul ■

May 29, 2009

Jason M. Schiffman, Esquire  
Schiffman & Wojdowski  
1300 Fifth Avenue  
Pittsburgh, PA 15219

In re: Stormer v. Carns, et al.  
Docket No. : 08-1900-CD  
Our File No. : 1073

Dear Mr. Schiffman:

Back on March 19, 2009, I served you with discovery requests. To date, I have not received your responses. Please advise me when I may expect to receive the same. If I do not receive the discovery responses within the next two (2) weeks, it is my intention to proceed with a Motion to Compel.

Thank you.

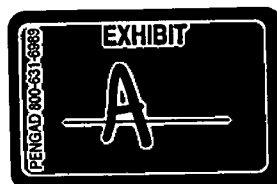
Sincerely,



Marna K. Blackmer

MKB/slh

cc: James F. Marrion, Esquire



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing **MOTION TO COMPEL** has been mailed by U.S. Mail to counsel of record via first class mail, postage pre-paid, this 6<sup>th</sup> day of July, 2009.

Jason M. Schiffman, Esquire  
Schiffman & Wojdowski  
1300 Fifth Avenue  
Pittsburgh, PA 15219  
(Counsel for Plaintiff)

James F. Marrion, Esquire  
Pietragallo, Bosick & Gordon, LLP  
One Oxford Centre  
301 Grant Street; 38<sup>th</sup> Floor  
Pittsburgh, PA 15219-1407  
(Counsel for Defendant, Arctic Cat, Inc.)

Scott Garrett Olds, Esquire  
Olds & Associates, P.A.  
204 N. Meadow Street  
Grangeville, ID 83530  
(Counsel for Defendant, Arctic Cat, Inc.)

WALSH, COLLIS & BLACKMER, P.C.

By Marna K. Blackmer  
Marna K. Blackmer, Esquire kt  
Natalie A. Troilo, Esquire  
Counsel for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

CIVIL DIVISION

Plaintiff,

Docket No.: 08-1900-CD (Consolidated)

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and ARCTIC  
CAT, INC.,

Defendants.

-----  
LYNN M. PATRICELLI,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a  
CARNS EQUIPMENT COMPANY  
and ARCTIC CAT, INC.,

Defendants.

FILED  
07/11/30/09  
JUL 11 2009  
William A. Shaw  
Prothonotary/Clerk of Court  
1CC Atty Blackmer

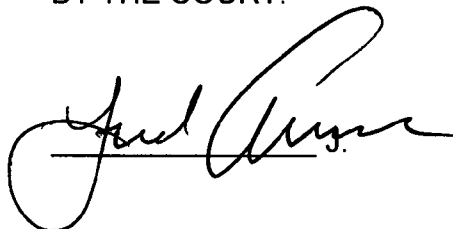
ORDER OF COURT

AND NOW, to-wit, this 13 day of July, 2009, it is hereby Ordered,

Adjudged and Decreed that the Defendant Carns' Motion to Compel is hereby **GRANTED**.

Plaintiffs are to provide full and complete Responses to the Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company's Interrogatories and Request for Production of Documents within twenty (20) days of the date of this Order.

BY THE COURT:



FILED

JUL 13 2009

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 7/13/09

☒ You are responsible for serving all appropriate parties.  
\_\_\_\_ The Prothonotary's office has provided service to the following parties:  
\_\_\_\_ Plaintiff(s) \_\_\_\_ Plaintiff(s) Attorney \_\_\_\_ Other  
\_\_\_\_ Defendant(s) \_\_\_\_ Defendant(s) Attorney  
\_\_\_\_ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT INC.

Defendants.  
-----

LYNN M. PATRICELLI,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT, INC.

Defendants.

CIVIL DIVISION

Consolidated at No: 08-1900-CD

Type of Pleading  
**Reply to New Matter &  
New Matter Pursuant to Pa.R.C.P.  
1031.1 of Defendant Jeffrey Carns  
t/d/b/a Carns Equipment Company**

Filed on behalf of:  
Lynn M. Patricelli, Plaintiff

Counsel of Record for this Party:  
Jason M. Schiffman, Esq.  
Pa I.D. #207103

Schiffman & Wojdowski  
Firm I.D. # 466  
1300 Fifth Avenue  
Pittsburgh, PA 15219

412/288-9444

Email: [schiffmanj@gmail.com](mailto:schiffmanj@gmail.com)

5 **FILED** NO CC  
m11215481  
AUG 03 2009  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

CIVIL DIVISION

Plaintiff,

vs.

Consolidated at No: 08-1900-CD

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT INC.

Defendants.

-----  
LYNN M. PATRICELLI,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT, INC.

Defendants.

**REPLY TO NEW MATTER & NEW MATTER PURSUANT TO PA. R.C.P. 1031.1 OF  
DEFENDANT JEFFREY CARNS t/d/b/a CARNS EQUIPMENT COMPANY**

AND NOW, comes the Plaintiff Lynn M. Patricelli by and through her counsel Schiffman and Wojdowski and Jason M. Schiffman, Esquire and files the within Reply to New Matter & New Matter Pursuant to Pa. R.C.P. 1031.1 of Defendant Jeffrey Carns t/d/b/a Carns Equipment Company and in support thereof avers the following:

1. The Plaintiff incorporates by reference herein the averments contained in her Complaint as though the same were more fully set forth at length herein.

2. The averments contained in paragraph 35 are denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

3. The averments contained in paragraph 36 are denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

4. The averments contained in paragraph 37 are denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

5. The averments contained in paragraph 38 are denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

6. The averments contained in paragraph 39 wherein it is stated that any injury or damages alleged by the Plaintiff were the result of superseding, intervening, and/or independent causes over which this Defendant had not control and in no way participated is specifically denied. To the contrary, the conduct of this Defendant as more fully set forth in Plaintiff's Complaint was the direct, legal, and proximate cause of the injuries and damages sustained by the Plaintiff.

7. The New Matter averred in paragraph 40 is a conclusion of law to which no response is required under the Pennsylvania Rules of Civil Procedure. However, if any statement of fact is averred, the same is denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

8. The averments contained in paragraph 41 are denied generally pursuant to Rule 1029(3) of the Pennsylvania Rules of Civil Procedure. .

9. The averments contained in paragraph 42 are denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

10. The new matter averred in paragraph 43 is denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

11. The averments contained in paragraph 44 are denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

12. The averments contained in paragraph 45 are denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

13. The New Matter averred in paragraph 46 is a conclusion of law to which no response is required under the Pennsylvania Rules of Civil Procedure. However, if any statement of fact is averred, the same is denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

14. The averments contained in paragraph 47 are denied generally pursuant to Rule 1029(e) of the Pennsylvania Rules of Civil Procedure.

WHEREFORE, the Plaintiff Lynn M. Patricelli hereby demands judgment in her favor and against the Defendants, Jeffrey Carns t/d/b/a Carns Equipment Company and Arctic Cat, Inc. both jointly and/or severally for an amount in excess of the applicable arbitration limits, exclusive of interest and costs.

**ANSWER TO NEW MATTER PURSUANT TO PA. R.C.P. 1031.1**

15. The Plaintiff incorporates by reference herein the averments contained in her Complaint and the above New Matter as though the same were more fully set forth at length herein.

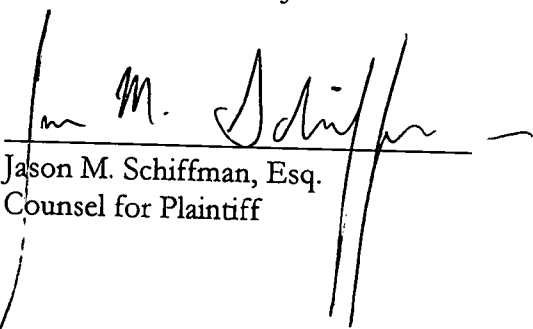
16. The New Matter averred in paragraph 48 is directed to a party other than the Plaintiff and, therefore, requires no response from the Plaintiff.



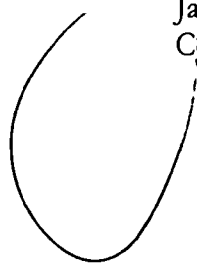
WHEREFORE, the Plaintiff Lynn M. Patricelli hereby demands judgment in her favor and against the Defendants, Jeffrey Carns t/d/b/a Carns Equipment Company and Arctic Cat, Inc. both jointly and/or severally for an amount in excess of the applicable arbitration limits, exclusive of interest and costs.

Respectfully submitted,

SCHIFFMAN & WOJDOWSKI



Jason M. Schiffman, Esq.  
Counsel for Plaintiff



**VERIFICATION**

The undersigned, Lynn M. Patricelli, named herein, and being authorized to make this Verification for and on her behalf, having read the foregoing REPLY TO NEW MATTER & NEW MATTER PURSUANT TO PA R.C.P. 1031.1 OF DEFENDANT JEFFREY CARNS t/d/b/a CARNS EQUIPMENT SERVICE verifies that the averments are based on information furnished to counsel, which information has been gathered by counsel in the course of this lawsuit. The language is that of counsel and not of signer. Signer verifies that she has read the foregoing, and that it is true and correct to the best of signer's knowledge, information and belief. To the extent that the contents of the foregoing document are that of counsel, verifier has relied upon counsel in making this verification. This verification is made subject to the penalties of 18 PA C.S.A. § 4904, relating to unsworn falsification to authorities.

Date 6-1-09

  
Lynn M. Patricelli

**CERTIFICATE OF SERVICE**

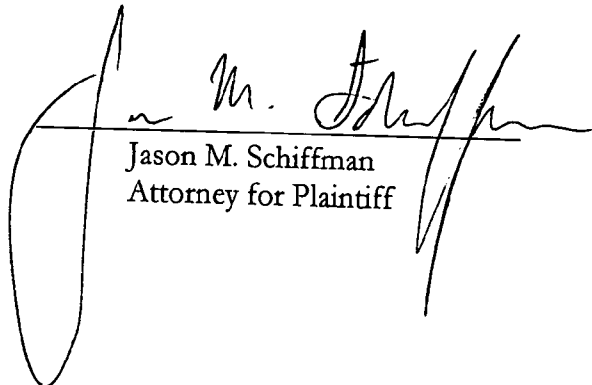
I hereby certify under penalty of perjury that I am this day serving a true and correct copy of the attached or foregoing Reply to New Matter & New Matter Pursuant to Pa. R.C.P. 1031.1 of Defendant Jeffrey Carns t/d/b/a Carns Equipment Company, upon the person(s) and in the manner indicated below:

Service by first class mail, postage prepaid and addressed as follows:

Clem C. Trischler, Esquire  
Pietragallo, Gordon, Alfano,  
Bosick & Raspanti, LLP  
38<sup>th</sup> Floor, One Oxford Centre  
Pittsburgh, PA 15219

Marna K. Blackmer, Esquire  
Walsh, Collis & Blackmer, P.C.  
The Gulf Tower, Suite 1400  
707 Grant Street  
Pittsburgh, PA 15219

7-29-09  
Date

  
\_\_\_\_\_  
Jason M. Schiffman  
Attorney for Plaintiff



2. On March 13, 2009, Arctic Cat served its First Set of Interrogatories and First Request for Production of Documents Directed to Plaintiff James Stormer, and First Set of Interrogatories Directed to Plaintiff Lynn M. Patricelli.

3. Accordingly, Plaintiffs' Answers to Interrogatories, Responses to Requests for Production of Documents and responsive documents were due thirty (30) days therefrom, or on April 13, 2009. See P. A. R. C. P. 4006 and 4009.12.

4. The Plaintiffs have not responded to any of the above-referenced discovery and such responses are well past due.

5. Accordingly, Defendant Arctic Cat requests that the Court enter an Order compelling the Plaintiffs to respond to the discovery.

WHEREFORE, Defendant Arctic Cat Inc. respectfully requests that this Honorable Court grant its Motion to Compel and enter an Order requiring Plaintiffs to serve answers to Interrogatories, responses to Requests for Production of Documents and all documents responsive thereto within twenty (20) days.

**A JURY TRIAL IS DEMANDED.**

Respectfully submitted,

PIETRAGALLO GORDON ALFANO  
BOSICK & RASPANTI, LLP

By: \_\_\_\_\_

Clem C. Trischler, Esquire  
James F. Marrion, Esquire  
Brett C. Shear, Esquire  
One Oxford Centre, 38<sup>th</sup> Floor  
Pittsburgh, PA 15219  
(412) 263-2000

*Attorney for Defendant,  
Arctic Cat Inc.*

**CERTIFICATION PURSUANT TO LOCAL RULE 208.2(d)**

I, Brett C. Shear, Esquire, counsel for Defendant Arctic Cat Inc. in this matter, certify that I conferred with Plaintiffs' counsel regarding the attached Motion to Compel Discovery. While Plaintiffs' counsel recognized that the Plaintiffs' discovery responses are past due, the parties were not able to agree on the number of days the Plaintiffs should be given by the Court to respond to the discovery.

By: \_\_\_\_\_

Brett C. Shear, Esquire

**CERTIFICATION PURSUANT TO LOCAL RULE 208.2(e)**

I, Brett C. Shear, Esquire, am counsel for Defendant Arctic Cat Inc. in this matter. I have conferred with Plaintiffs' counsel regarding the Plaintiffs' outstanding discovery responses by letter dated August 3, 2010 and by telephone on September 15, 2010. Our Firm has also granted the Plaintiffs extensions of time to respond to discovery, but as of the date of this Certification the Plaintiffs have not served their discovery responses.

By: \_\_\_\_\_

Brett C. Shear, Esquire

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **ARCTIC CAT INC.'S MOTION TO COMPEL DISCOVERY** has been served upon all parties listed below, via first-class mail, postage prepaid, on this 22<sup>nd</sup> day of September, 2010 as follows:

Jason M. Schiffman, Esquire  
Schiffman & Wojdowski  
1300 Fifth Avenue  
Pittsburgh, PA 15219  
*Attorney for Plaintiff*

Marna K. Blackmer, Esquire  
Walsh, Collis & Blackmer, P.C.  
The Gulf Tower  
Suite 1400  
707 Grant Street  
Pittsburgh, PA 15219  
*Attorney for Jeffrey Carns t/d/b/a  
Carns Equipment Company*



---

Brett C. Shear, Esq.





FILED

SEP 27 2010

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 9/27/10

☒ You are responsible for serving all appropriate parties.

☐ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT INC.

Defendants.

-----

LYNN M. PATRICELLI,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT, INC.

Defendants.

CIVIL DIVISION

Consolidated at No: 08-1900-CD

Type of Pleading  
**PRAECIPE TO SETTLE &  
DISCONTINUE**

Filed on behalf of:  
James Stormer, Plaintiff

Counsel of Record for this Party:  
Jason M. Schiffman, Esq.  
Pa I.D. #207103

Schiffman & Wojdowski  
Firm I.D. # 466  
1300 Fifth Avenue  
Pittsburgh, PA 15219

412/288-9444

Email: [schiffmanj@gmail.com](mailto:schiffmanj@gmail.com)

**FILED** NO  
JUN 16 2011 CC  
S  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

CIVIL DIVISION

Plaintiff,

vs.

Consolidated at No: 08-1900-CD

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT INC.

Defendants.

-----  
LYNN M. PATRICELLI,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT, INC.

Defendants.

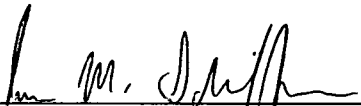
**PRAECIPE TO SETTLE & DISCONTINUE**

TO THE PROTHONOTARY:

Kindly mark the above captioned matter settled and discontinued with respect to all defendants.

Respectfully submitted,

SCHIFFMAN & WOJDOWSKI

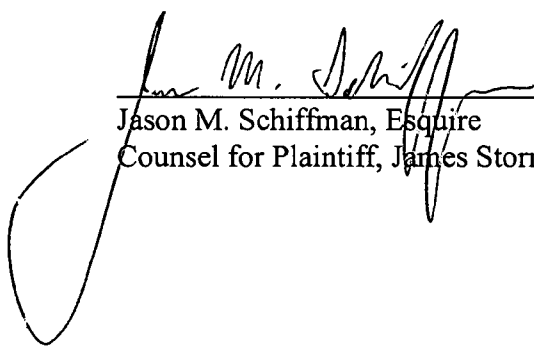
  
\_\_\_\_\_  
Jason M. Schiffman, Esq.  
Counsel for Plaintiff, James Stormer

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing PRAECIPE TO SETTLE & DISCONTINUE has been served upon all parties listed below, via first class mail, postage pre-paid, this 4 day of June, 2011.

James F. Marrion, Esquire  
Pietragallo, Gordon, Alfano  
Bosick & Raspanti, LLP  
One Oxford Centre, 38<sup>th</sup> Floor  
Pittsburgh, PA 15219  
(Attorney for Defendant  
Arctic Cat Inc.)

Marna K. Blackmer, Esquire  
Walsh, Collis & Blackmer, P.C.  
The Gulf Tower  
Suite 1400  
707 Grant Street  
Pittsburgh, PA 15219  
(Attorney for Jeffrey Carns t/d/b/a  
Carns Equipment Company)



Jason M. Schiffman, Esquire  
Counsel for Plaintiff, James Stormer

FILED  
M/11-15  
Walter A. Stone  
Prothonotary/Clerk of Courts  
1 CENT TO  
ATT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,

Plaintiff,

v.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and ARCTIC  
CAT INC.,

Defendant.

---

LYNN M. PATRICELLI,

Plaintiff,

v.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY  
and ARCTIC CAT INC.,

Defendants.

) CIVIL DIVISION

)

) No: 08-1900-CD

) (consolidated)

)

)

)

)

) **ARCTIC CAT INC'S CONSENTED**

) **MOTION TO ENFORCE SETTLEMENT**

)

)

) Served on Behalf of Defendant:

) Arctic Cat Inc.

)

) Counsel of Record for This Party:

)

) Clem C. Trischler, Esquire

) PA I.D. No.: 52957

)

) James F. Marrion, Esquire

) PA I.D. No.: 85181

)

) Brett C. Shear, Esquire

) PA I.D. No.: 92244

)

) PIETRAGALLO GORDON ALFANO

) BOSICK & RASPANTI, LLP

) Firm #834

) One Oxford Centre, 38<sup>th</sup> Floor

) Pittsburgh, PA 15219

) (412) 263-2000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL DIVISION
	)	NO: 08-1900-CD
JEFFREY CARNS t/d/b/a CARNS	)	
EQUIPMENT COMPANY and ARCTIC	)	
CAT INC.,	)	
	)	
Defendant.	)	
<hr/>		
LYNN M. PATRICELLI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JEFFREY CARNS t/d/b/a CARNS	)	
EQUIPMENT COMPANY	)	
and ARCTIC CAT INC.,	)	
	)	
Defendants.	)	

**ARCTIC CAT INC'S CONSENTED MOTION TO ENFORCE SETTLEMENT**

AND NOW, come the parties by and through their counsel and file this Consented Motion to Enforce Settlement and in support submit the following:

**I. Introduction**

This consolidated case involves the purchase of a 2007 Arctic Cat all-terrain vehicle, Model 650 H1, Serial No.: 4UF07ATV57T225203 from defendant, Carns Equipment Company. The all-terrain vehicle ("ATV") was purchased on or about February 9, 2007, by plaintiff, Lynn M. Patricelli. The ATV was delivered to Ms. Patricelli on or about February 10, 2007. According to the Amended Complaint and testimony from James Stormer, Ms. Patricelli's

former boyfriend, Mr. Stormer was riding the ATV when the accident occurred and the ATV was damaged.

Mr. Stormer filed a Complaint in this Court at Civil Action No.: 08-1900-CD, for his alleged injuries sustained in the ATV accident. Mr. Stormer's Complaint was filed on or about October 6, 2008. Carns Equipment Company ("Carns") filed Preliminary Objections which were granted by this Court on November 26, 2008. Thereafter, Mr. Stormer filed an Amended Complaint on or about December 10, 2008, alleging damages from the aforementioned ATV accident.

Similarly, Ms. Patricelli filed a Complaint on or about November 14, 2008, and an Amended Complaint on or about December 31, 2008. The essence of Ms. Patricelli's cause of action against the two (2) defendants was for breach of warranty. See Patricelli's Amended Complaint at "Exhibit A."

An Order granting Arctic Cat's Motion to Consolidate was entered on January 2, 2009. The two (2) cases were consolidated at Civil Action No.: 08-1900-CD, as the facts and circumstances giving rise to the two (2) Complaints arose from the same transaction regarding the purchase and sale of the subject ATV and events surrounding the alleged accident.

## **II. Brief Description of Relevant Settlement Negotiations and Settlement Agreement**

To start, the matters on behalf of Mr. Stormer and Ms. Patricelli were negotiated in good faith and settled in good faith among the parties. The cases were settled together but due to Ms. Patricelli and Mr. Stormer no longer being in a relationship as boyfriend and girlfriend the settlement amounts were kept separate and apart, and confidential between the plaintiffs



Full and Final Confidential and General Releases and Settlement Agreements were sent to both Ms. Patricelli and Mr. Stormer on May 24, 2011. See correspondence dated May 24, 2011 and Release on behalf of Ms. Patricelli attached at "Exhibit B." A copy of Mr. Stormer's Full and Final Confidential and General Release and Settlement Agreement has not been attached to the Confidentiality.

Mr. Stormer executed the Release on June 9, 2011, and a Praecipe to Settle and Discontinue was filed on June 12, 2011, and completed W-9 form was returned on Mr. Stormer's behalf to effectuate the settlement and to distribute the settlement proceeds.

To-date Ms. Patricelli has not returned the Full and Final Confidential and General Release and Settlement Agreement ("Release") despite her counsel's repeated attempts to contact her. However, through a series of telephone calls and email correspondences the final global settlement was negotiated and agreed to. To that end, on behalf of Ms. Patricelli, it was expressly stated that if a certain amount could be obtained the settlement was a "go." See email correspondence dated May 11, 2011, at 1:31 P.M. at "Exhibit C." Regrettably, that subject line regarding the email correspondences between parties was for "ATV / Patricelli." See "Exhibit C."

Following the acknowledgment that if certain settlement proceeds could be obtained the settlement on behalf of Ms. Patricelli was a "go" a confirming email correspondence also was circulated among the parties. See email correspondence dated May 11, 2011, at 2:01 P.M. at "Exhibit D." This confirming correspondence also requested the amounts for each settlement on behalf of Ms. Patricelli and Mr. Stormer.

The next day counsel on behalf of Ms. Patricelli, and Mr. Stormer, acknowledged that the plaintiffs were "willing to sign Confidentiality Agreements" but there must be two (2) settlement

checks reflecting the amount which each plaintiff would receive. See email correspondence dated May 12, 2011, at 12:54 P.M. at "Exhibit E." Shortly thereafter an acknowledgement and confirming email correspondence was sent back to Ms. Patricelli's counsel regarding the Releases and breakdown amounts for the plaintiffs. See email correspondence dated May 12, 2011, at 1:04 P.M. at "Exhibit F."

On May 17, 2011, an email correspondence was circulated regarding the Releases being drafted on behalf of Ms. Patricelli and Mr. Stormer and request to have the Releases signed and Discontinuance filed so the settlement funds could be provided – which again was acknowledged on behalf of Ms. Patricelli. See "Exhibit G."

Thereafter, correspondences were circulated dated June 21, 2011, June 30, 2011, and August 15, 2011, regarding not receiving an executed copy of Ms. Patricelli's Release. See email correspondences dated June 21, 2011, June 30, 2011, and August 15, 2011, at "Exhibit H."

Communications among the parties revealed that Ms. Patricelli has not been responding to her counsel's five (5) letters and numerous phone calls regarding returning her Release. Ms. Patricelli is aware that she has accepted the offer some time ago based on the consideration from the defendants and her acceptance was communicated to the defendants to effectuate a settlement.

As an aside, the subject ATV was being stored at Carns during this litigation at no cost to Ms. Patricelli. Although Ms. Patricelli has been out of communication with her counsel and has not returned her signed Release she took possession of the ATV on or about May 14, 2011.

As such, the parties simply request this settlement be finalized and enforced by this Court based on the parties' negotiations, representations and understanding – as well as the agreed to consideration to release Ms. Patricelli's warranty claim. Ms. Patricelli will not be harmed by this

enforcement of settlement considering: (1) she has possession of this subject ATV; and, (2) her counsel negotiated in good faith a settlement amount of \$1,200.00 to be paid by the defendants as set forth in the Release.

Therefore, to allow the parties to close their files and more importantly because the parties entered into the settlement negotiations in good faith resulting in an agreement, the parties file this Consented Motion to Enforce Settlement because of Ms. Patricelli's lack of communication with her counsel. Finally, it has been agreed that the settlement proceeds would be distributed to plaintiff's counsel with the settlement drafts made payable to "Schiffman & Wojdowski, and Lynn M. Patricelli" whereby Ms. Patricelli's settlement funds due, and owed to her, can be held in an escrow or IOLTA account by her counsel.

Counsel requests that this Court order that the settlement proceeds be distributed to plaintiff's counsel with the settlement drafts made payable to "Schiffman & Wojdowski or Lynn M. Patricelli" whereby Ms. Patricelli's settlement funds due, and owed to her, can be held in an escrow or IOLTA account by her counsel.

### **III. Legal Argument**

"In Pennsylvania, it is well settled that the effect of a release is to be determined by the ordinary meaning of its language [and the] enforceability of settlement agreements is governed by principles of contract law." Pennsbury Vill. Associates, LLC v. Aaron McIntyre, 11 A.3d 906, 914 (Pa. 2011). "Courts will enforce a settlement agreement if all its material terms have been agreed upon by the parties [and] will not be set aside absent a clear showing of fraud, duress, or mutual mistake" Id. citing Century Inn, Inc. v. Century Inn Realty, Inc., 358 Pa. Super. 53, 58, 516 A.2d 765, 767 (Pa. Super. Ct. 1985) ("If all of the material terms of the bargain are agreed upon [Pennsylvania] courts will enforce the settlement.").

“A contract is formed if the parties agree on essential terms and intend them to be binding even though they intend to adopt a formal document with additional terms at a later date.” Mastroni-Mucker v. Allstate Ins. Co., 2009 Pa. Super 101, 976 A.2d 510, 518 (Pa. Super. 2009), *appeal denied*, 605 Pa. 715, 991 A.2d 313 (2010) (noting that “the law of this Commonwealth establishes that . . . there is a strong judicial policy in favor of voluntarily settling lawsuits because it reduces the burden on the courts and expedites the transfer of money into the hands of a complainant.”); *See also* Step Plan Services, Inc. v. Koresko, 12 A.3d 401, 409 (Pa. Super 2010), *reargument denied* (Feb. 22, 2011) (Where a settlement agreement contains all of the requisites for a valid contract, a court must enforce the terms of the agreement; this is true even if the terms of the agreement are not yet formalized in writing); Kazanjian v. New England Petroleum Corporation, 332 Pa. Super. 1, 480 A.2d 1153 (1984) (“Preliminary negotiations do not constitute a contract. However if the parties orally agree to all the terms of a contract between them and mutually expect the imminent drafting of a written contract reflecting their previous understanding, the oral contract may be enforceable.”).

The Mastroni-Mucker court further held that the settlement agreement was valid and binding despite the absence of any written release to any specific language where the parties expressed their intention to settle the case just before jury deliberation as there was an agreed to amount of money, where plaintiff/appellants never rejected the proffered written draft or made any proposal for a more limited release than was already agreed to during recess. Mastroni-Mucker, 976 A.2d at 524.

Further, in Pennsylvania settlement agreements are enforceable where the parties agree to all the material terms through the exchange or correspondence during settlement negotiations. *See* Pulcinello v. Consol. Rail Corp., 2001 PA Super 254, 784 A.2d 122 (Pa. Super. Ct. 2001) (Oral agreement between employee and employer settling FELA claim was valid, although employee refused to sign release, where settlement offer was made, employee's counsel had

authority to negotiate and settle claim, offer was accepted, and signing release was not a condition of settlement); McGinley v. Medina, 1995 WL 361084, 1995 U.S. Dist. Lexis 3355 (E.D.Pa. June 15, 1995) (finding an enforceable settlement in correspondence exchanged during settlement negotiations); *affirmed*, No. 95-1585, 1996 U.S.App. Lexis 15027 (3d Cir.1996); Verizon Pennsylvania Inc. v. Lynch, 11907 of 2008, C.A., 2010 WL 1988411 (Pa. Com. Pl. Feb. 8, 2010) *citing Pulcinella*, 784 A.2d at 124 (granting Defendant's Motion to Enforce Settlement Agreement where the record established that communication between parties made an enforceable oral agreement despite defendant's repeated attempts, and plaintiffs' failure to sign release agreement. Trial court held that the absence of a signed release does not prevent the enforcement of an otherwise valid settlement agreement).

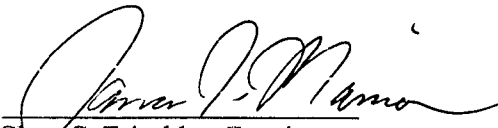
#### **IV. Conclusion**

In the instant matter, the parties entered into a settlement agreement where Ms. Patricelli receives \$1,200.00 to release and discharge defendants from any and all liability in connection with her warranty claim. The Release circulated among the parties was accepted by Ms. Patricelli but has yet to be returned to her counsel or defendants. As it appears Ms. Patricelli has no interest in returning the Release, the parties must request this Court to finalize and enforce this settlement. Ms. Patricelli's lack of interest in following through with the procedures to finalize the settlement is evident since it has been over four (4) months since she accepted the terms of this settlement and agreed to resolve her claims with the defendants. Finally, a copy of this Motion has been sent directly to Ms. Patricelli's last known address (please see Certificate of Service). As such, the time, place and date of the presentation of this Motion will be sent directly to Ms. Patricelli's last known address upon the Court setting a hearing date.

WHEREFORE, the undersigned wishes to deem this case settled and respectfully requests this Court enter the proposed Order distributing the settlement funds to plaintiff, Lynn M. Patricelli's counsel.

Respectfully submitted,


PIETRAGALLO GORDON ALFANO  
BOSICK & RASPANTI, LLP

By:   
Clem C. Trischler, Esquire  
James F. Marrion, Esquire  
Brett C. Shear, Esquire  
One Oxford Centre, 38<sup>th</sup> Floor  
Pittsburgh, PA 15219  
(412) 263-2000  
*Attorneys for Defendant  
Arctic Cat Inc.*

SCHIFFMAN & WOJDOWSKI

By: \_\_\_\_\_  
Jason M. Schiffman, Esquire  
1300 Fifth Avenue  
Pittsburgh, PA 15219  
*Attorney for Plaintiffs*

WALSH, COLLIS & BLACKMER, P.C.

By:   
Paul Walsh, Esquire  
The Gulf Tower, Suite 1400  
707 Grant Street  
Pittsburgh, PA 15219  
*Attorney for Defendant,  
Jeffrey Carns t/d/b/a  
Carns Equipment Company*


WHEREFORE, the undersigned wishes to deem this case settled and respectively requests this Court enter the proposed Order distributing the settlement funds to plaintiff, Lynn M. Patricelli's counsel.

Respectfully submitted,

PIETRAGALLO GORDON ALFANO  
BOSICK & RASPANTI, LLP

By: \_\_\_\_\_  
Clem C. Trischler, Esquire  
James F. Marrion, Esquire  
Brett C. Shear, Esquire  
One Oxford Centre, 38<sup>th</sup> Floor  
Pittsburgh, PA 15219  
(412) 263-2000  
*Attorneys for Defendant  
Arctic Cat Inc.*

SCHIFFMAN & WOJDOWSKI

By:   
Jason M. Schiffman, Esquire  
1300 Fifth Avenue  
Pittsburgh, PA 15219  
*Attorney for Plaintiffs*

WALSH, COLLIS & BLACKMER, P.C.

By: \_\_\_\_\_  
Paul Walsh, Esquire  
The Gulf Tower, Suite 1400  
707 Grant Street  
Pittsburgh, PA 15219  
*Attorney for Defendant,  
Jeffrey Carns v/d/b/a  
Carns Equipment Company*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LYNN M. PATRICELLI,

Plaintiff,

vs.

JEFFREY CARNS t/d/b/a CARNS  
EQUIPMENT COMPANY and  
ARCTIC CAT, INC.

Defendants.

ARBITRATION DIVISION

CASE NUMBER: 08-2116 CD

TYPE OF PLEADING:  
AMENDED COMPLAINT

FILED ON BEHALF OF:  
Lynn M. Patricelli, Plaintiff

COUNSEL OF RECORD:  
Jason M. Schiffman, Esquire  
Pa. I.D. #207103

SCHIFFMAN & WOJDOWSKI  
1300 Fifth Avenue  
Pittsburgh, PA 15219  
412/288-9444

FIRM I.D. #466

12/31

RECEIVED DEC 1 2009

EXHIBIT "A"



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
ARBITRATION DIVISION

LYNN M. PATRICELLI,	)	
	)	
Plaintiff,	)	NO.:
	)	
vs.	)	
	)	
JEFFREY CARNS t/d/b/a CARNS	)	
EQUIPMENT COMPANY and	)	
ARCTIC CAT, INC.	)	
	)	
Defendants.	)	

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR PHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

DANIEL NELSON, COURT ADMINISTRATOR  
CLEARFIELD COUNTY COURTHOUSE  
230 E. MARKET STREET, SUITE 228  
CLEARFIELD, PA 16830  
(814) 765-2641, Ext. 5982

RECEIVED DEC 11 2008

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
ARBITRATION DIVISION

LYNN M. PATRICELLI,	)	
	)	
Plaintiff,	)	NO.:
	)	
vs.	)	
	)	
JEFFREY CARNS t/d/b/a CARNS	)	
EQUIPMENT COMPANY and	)	
ARCTIC CAT, INC.	)	
	)	
Defendants.	)	

**AMENDED COMPLAINT**

AND NOW, comes the Plaintiff, Lynn M. Patricelli, by and through her attorneys, Schiffman & Wojdowski and Jason M. Schiffman, Esquire, and files the following Amended Complaint:

1. The Plaintiff Lynn M. Patricelli is an individual and a resident of the Commonwealth of Pennsylvania and County of Jefferson, residing at 121 Playground Road, Rockport, Pennsylvania 15823.

2. The Defendant Jeffrey Carns is an individual who trades and does business as Carns Equipment Company with a place of business located at 14357 Clearfield Shawville Highway, Clearfield, Pennsylvania 16830.

3. The Defendant Arctic Cat, Inc. is a corporation with its principal place of business located at 601 Brooks Avenue South, Thief River Falls, Minnesota 56701, which at all

relevant times traded and did business in the Commonwealth of Pennsylvania and County of Clearfield.

4. On or about February 9, 2007, Plaintiff, Lynn M. Patricelli purchased a new 2007 Arctic Cat ATV, Model 650 H1 with Serial Number: 4UF07ATV57T225203 from Carns Equipment Company.

5. On or about February 10, 2007 the ATV was delivered to Miss. Patricelli.

6. On or about February 10, 2007, James Stormer was riding the ATV when the ball joint fractured causing the front wheel to fall off causing injury to the rider and complete destruction of the ATV.

7. Since some time shortly following the aforementioned incident, Defendant Carns has maintained possession of the aforementioned ATV.

8. Since some time shortly following the aforementioned incident, Defendant Arctic Cat, Inc. has maintained possession of the aforementioned fractured ball joint.

**COUNT I –  
LYNN M. PATRICELLI VS.  
JEFFREY CARNS t/d/b/a CARNS EQUIPMENT COMPANY**

9. The Plaintiff hereby incorporates by reference paragraphs 1 through 8 of this Complaint as though the same were more fully set forth at length herein.

10. At all times relevant hereto, this Defendant was a “merchant” within the meaning of the Pennsylvania Uniform Commercial Code for goods of this type.

11. The Plaintiff contracted for and expected to purchase a properly designed and manufactured ATV which would be able to be used for the intended purpose for which it was purchased.

12. The Plaintiff Lynn M. Patricelli relied upon the Defendant's express warranties set forth in its published warranties, product information, commercials, and/or statements made by its employees. Any written warranties are not presently available to the Plaintiff and are therefore not attached.

13. These warranties were breached because the ATV was not of the quality it was purported to be.

14. As a direct and legal result of the failure of the ATV to conform to the warranties and to be of the type of good the Plaintiff believed she was purchasing, the Plaintiff has an ATV which broke and was completely destroyed leaving it with no value and has lost the use of the ATV and incurred incidental and consequential costs.

15. The Plaintiff also relied upon implied warranties of merchantability and fitness for particular purpose for which the ATV was intended.

16. These warranties are extended by law in accordance with the Pennsylvania Uniform Commercial Code to purchasers of goods and require that the good be fit for the purpose for which it is to be used.

17. The warranty of merchantability was breached because the ATV was not fit for the ordinary purposes for which ATVs are used.

18. The warranty of merchantability was breached because the ATV was not of fair and average quality within the description of ATVs.

19. At the time of the sale, Plaintiff Lynn M. Patricelli indicated to the agents, servants, and/or employees that the ATV in question was being purchased for the specific purpose of being used by her friend who is a male of greater weight than she.

20. At the time of the sale, agents, servants and/or employees of this Defendant indicated that this specific ATV was fit for the aforementioned known purpose.

21. The warranty of fitness for particular purpose was breached because the ATV was not fit for this known purpose.

22. As the direct, legal, and proximate result of the aforementioned breaches by this Defendant, the Plaintiff has sustained the damages previously set forth.

WHEREFORE, the Plaintiff Lynn M. Patricelli demands judgment in her favor and against the Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company for an amount not in excess of applicable Arbitration limits, exclusive of interest and costs.

**COUNT II –**  
**LYNN M. PATRICELLI VS. ARCTIC CAT, INC.**

23. The Plaintiff hereby incorporates by reference paragraphs 1 through 22 of this Complaint as though the same were more fully set forth at length herein.

24. At all times relevant hereto, this Defendant was a “merchant” within the meaning of the Pennsylvania Uniform Commercial Code for goods of this type.

25. The Plaintiff contracted for and expected to purchase a properly designed and manufactured ATV which would be able to be used for the intended purpose for which it was purchased.

26. The Plaintiff Lynn M. Patricelli relied upon the Defendant’s express warranties set forth in its published warranties, product information, and commercials. Any written warranties are not presently available to the Plaintiff and are therefore not attached.

27. These warranties were breached because the ATV was not of the quality it was purported to be.

28. As a direct and legal result of the failure of the ATV to conform to the warranties and to be of the type of good the Plaintiff believed she was purchasing, the Plaintiff has an ATV which broke and was completely destroyed leaving it with no value and has lost the use of the ATV and incurred incidental and consequential costs.

29. The Plaintiff also relied upon the implied warranty of merchantability.

30. This warranty is extended by law in accordance with the Pennsylvania Uniform Commercial Code to purchasers of goods and requires, in part, that the good be fit for the purpose for which it is to be used.

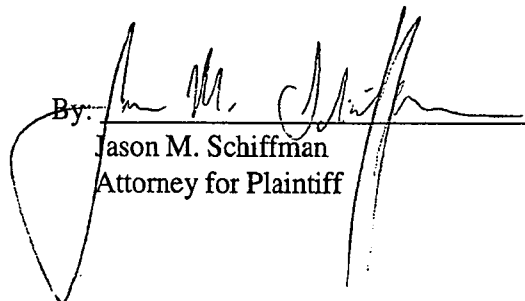
31. The warranty of merchantability was breached because the ATV was not fit for the ordinary purposes for which ATVs are used.

32. The warranty of merchantability was breached because the ATV was not of fair and average quality within the description of ATVs.

33. As the direct, legal and proximate result of the breaches by this Defendant of the warranties, the Plaintiff has sustained the damages previously set forth.

WHEREFORE, the Plaintiff Lynn M. Patricelli demands judgment in her favor and against the Defendant, Artic Cat, Inc. for an amount not in excess of applicable Arbitration limits, exclusive of interest and costs.

RESPECTFULLY SUBMITTED:  
SCHIFFMAN & WOJDOWSKI

By:   
Jason M. Schiffman  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

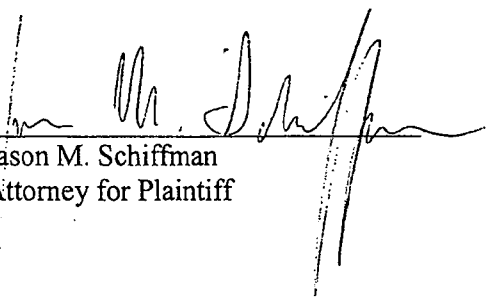
I hereby certify under penalty of perjury that I am this day serving a true and correct copy of the attached or foregoing Amended Complaint, upon the person(s) and in the manner indicated below:

Service by first class mail, postage prepaid and addressed as follows:

Clem C. Trischler, Esquire  
Pietragallo, Gordon, Alfano,  
Bosick & Raspanti, LLP  
38<sup>th</sup> Floor, One Oxford Centre  
Pittsburgh, PA 15219

Marna K. Blackmer, Esquire  
Walsh, Collis & Blackmer, P.C.  
The Gulf Tower, Suite 1400  
707 Grant Street  
Pittsburgh, PA 15219

12/10/2008  
Date

  
Jason M. Schiffman  
Attorney for Plaintiff

**PIETRAGALLO**  
PIETRAGALLO GORDON ALFANO  
BOSICK & RASPANTI, LLP

ATTORNEYS AT LAW

38TH FLOOR ONE OXFORD CENTRE PITTSBURGH, PA 15219  
412.263.2000 FAX: 412.263.2001  
[WWW.PIETRAGALLO.COM](http://WWW.PIETRAGALLO.COM)

DIRECT DIAL NO.: 412.263.4342  
DIRECT FAX DIAL NO.: 412.263.4226  
FILE NO.: ACAT-84218  
E-MAIL: [JFM@Pietragallo.com](mailto:JFM@Pietragallo.com)

May 24, 2011

*Via Facsimile Transmission  
412-288-9455, and Regular Mail*

Jason M. Schiffman, Esquire  
**Schiffman & Wojdowski**  
1300 Fifth Avenue  
Pittsburgh, PA 15219

**RE: James Stormer v. Jeffrey Carns, t/d/b/a Carns Equipment  
Company and Arctic Cat Inc.  
Lynn M. Patricelli v. Jeffrey Carns, t/d/b/a Carns Equipment  
Company and Arctic Cat Inc.  
No. 08-1900-CD**

Dear Mr. Schiffman:

Enclosed for signature by your clients are the Full and Final Confidential and General Releases and Settlement Agreements relative to the above-referenced matter. Settlement funds will be disbursed upon receipt of the signed Releases and Notice of Discontinuance and Order verifying same.

W-9 forms were previously provided. We await return of same along with instructions as to how settlement check(s) should be made payable.

If you have any questions regarding the above, please do not hesitate to contact me at any time.

Very truly yours,

James F. Marrion

JFM:mt  
Enclosures

OHIO

PENNSYLVANIA

WEST VIRGINIA

EXHIBIT "B"



Jason M. Schiffman, Esquire  
Schiffman & Wojdowski  
May 24, 2011  
Page 2

cc: Paul J. Walsh, III, Esquire  
*Via Facsimile Transmission*  
*412-263-5632 and Regular Mail*

#1998638

**FULL AND FINAL CONFIDENTIAL AND GENERAL  
RELEASE AND SETTLEMENT AGREEMENT**

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, Lynn M. Patricelli, individually (hereinafter "Releasor"), being of full legal age and of sound mind, for the consideration set forth herein, do hereby completely release and forever discharge Arctic Cat Inc., a Minnesota corporation, Arctic Cat Sales Inc., a Minnesota corporation, Jeffrey Carns, t/d/b/a Carns Equipment Company and Sentry Insurance Company (hereinafter "Releasees") as well as any additional insurers, affiliated, parent or subsidiary corporations of Releasees and their heirs, successors, assigns and all other persons, firms, corporations or other entities from any and all past, present or future liability, claims, causes of action, damages, costs, expenses, obligations or demands of any kind whatsoever, in law or in equity, whether based on a tort, contract or other theory of recovery, against Releasees which Releasors ever had, now have or which Releasors may have in the future or which Releasors' heirs, executors, successors, assigns or other interested persons can or may have arising or which may arise as a result of or which may be in any way connected with the February 10, 2007, accident (hereinafter "subject accident") and purchase involving a 2007 Arctic Cat TRV, Model 650H1, Serial No.: 4UF07ATV57T225203, purchased on or about February 9, 2007 (hereinafter "subject TRV"), that is the subject of Releasor's Complaint filed in the Court of Common Pleas of Clearfield County, Pennsylvania, consolidated at No. 08-1900 CD (hereinafter "subject litigation").

Releasor does hereby further forever waive and release any and all claims, past, present and future, against Releasees of any nature and kind, arising directly or indirectly from Releasor's continued ownership or operation of the subject TRV after the subject accident.

It is fully understood and agreed that this Confidential and General Release shall be a fully binding and complete settlement between the parties. By this Confidential and General

Release and Settlement Agreement, the undersigned, Releasor does hereby release and forever discharge Releasees as well as their affiliated and related companies and all other persons, firms, corporations or other entities from any and all liability, claims, obligations, causes of action or demands of any kind whatsoever, including, but not limited to, any and all claims for damages to Releasor or Releasor's kin or are alleged to have arisen as a result of the subject accident and subject litigation.

By the terms of this Confidential and General Release and Settlement Agreement, it is expressly agreed and understood that Releasor hereby releases and forever discharges Releasees and all other persons from any and all past, present or future liability, claims, causes of action, damages, costs, expenses, obligations or demands of any kind whatsoever, in law or in equity, whether based on a tort, contract or other theory of recovery, which were or could have been asserted in connection with the subject litigation.

Likewise, Releasor fully acknowledges and agrees that this Confidential and General Release and Settlement Agreement sets forth the understanding, agreement and information between the Releasor and Releasees and that Releasor and/or Releasor's counsel will indemnify and hold harmless Releasees, their related entities and insurers from any and all claims including claims from any next of kin or entity or governmental entity or agency claiming a direct action, subrogation or reimbursement relative to the payments made to the Releasor in connection with this executed Confidential and General Release and Settlement Agreement.

Furthermore, Releasor represents and warrants that no other person, including Releasor's kin or entity has or has had any interest in the claims, demands, obligations or causes of action referred to in this settlement agreement and that Releasor has the sole right and exclusive authority to execute this settlement agreement and to receive the sum specified herein.

The payment made to me is upon my warranty that I have not received heretofore any consideration whatsoever for, nor have I released heretofore any person, firm or corporation from any claim or liability for any injuries to person or property or other damages arising from the aforementioned TRV sale and accident and I agree to defend, indemnify and hold harmless Releasees of and from any and all loss, claim, liability, cost or expense arising out of any claim against them or either of them for contribution by any alleged joint tortfeasor under the Uniform Contribution Among Tortfeasors Act of the Commonwealth of Pennsylvania.

In consideration of this Confidential and General Release, the Releasees agree to pay a total of ONE THOUSAND TWO HUNDRED DOLLARS (\$1,200.00) with payment as follows:

- Arctic Cat Inc., agrees to pay Releasor the sum of SEVEN HUNDRED DOLLARS (\$700.00);
- Jeffrey Carns, t/d/b/a Carns Equipment Company and Sentry Insurance Company agree to pay Releasor the sum of FIVE HUNDRED DOLLARS (\$500.00).

Each Releasee shall be deemed for all purposes fully released on full tender of their respective settlement payment to Releasor. The settlement payments shall be paid within a reasonable period of time following the execution of this settlement agreement with the parties agreeing to waive Pa.R.C.P. 229.1(c).

It is further acknowledged, agreed and understood that the Release set forth herein is a general release which Releasor has knowingly and voluntarily entered into on her own behalf for the purpose of fully, finally and completely resolving any and all claims which Releasor may have against any party, specifically including, but not limited to, all claims directly or indirectly arising from the subject accident, subject TRV and subject litigation. By entering into this Confidential and General Release and Settlement Agreement, Releasor expressly waives and assumes the risk of any and all claims for damages which exist as of this date, but of which the

undersigned does not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, and which, if known, would materially affect our decision to enter into this settlement agreement. Releasor further agrees that Releasor has accepted payment of the sum specified herein as a complete compromise of matters involving disputed issues of law and fact, and Releasor assumes the risk that the facts or law may be otherwise than as believed.

It is further understood and agreed that the acceptance of this sum is in full accord and satisfaction of a disputed claim and the payment of this sum is not to be construed as an admission of liability on the part of Releasees and any liability is hereby expressly denied.

Releasor and Releasees, and each of them, by the execution of this Confidential and General Release and Settlement Agreement, further agree to forthwith dismiss the subject litigation, and all claims, cause of action against the others, with prejudice, with each party bearing their own costs and attorney fees, and further authorize their respective attorneys to execute and seek a dismissal of the subject litigation on their behalf.

It is understood and agreed that this is a complete Confidential and General Release and Settlement Agreement, and that there is no written or oral understanding or agreement, directly or indirectly, connected with this Confidential and General Release and Settlement Agreement that is not incorporated herein.

Releasor declares that she fully understand the terms of this Confidential and General Release and Settlement Agreement, and that the amount stated herein is the sole consideration for this release and that she has voluntarily accepted this sum for the purpose of making a full and complete compromise and settlement of any and all claims of any nature, including for property damage, economic damage, financial and credit damage, and personal injury, allegedly occurring as a result of the purchase of the subject TRV and the subject accident.

For and in consideration of the mutual promises and covenants contained herein and with the intent to be legally bound hereby, Releasees do each on behalf of themselves, their present and past subsidiaries, affiliates, related companies, partners, joint ventures, predecessors, successors, assigns, independent contractors, consultants, employees, directors, officers, shareholders, representatives, agents, insurers, and attorneys of each of them, do hereby completely release and forever discharge the other from any and all claims, cross claims, or third party claims, which were raised or could have been raised in the subject litigation including, but not limited to, any claims for indemnification or contribution.

Releasor and her attorney(s) agree to keep the amount of this settlement, as well as any negotiations relating hereto, forever confidential, and they further agree not to divulge such information to others including, but not limited to, any experts, consultants, witnesses, attorneys, and/or agents or representatives of the press core or media and to use their best efforts to prevent the disclosure or dissemination of information relating to this settlement. In consideration for this confidentiality agreement, the parties mutually agree to be bound by the confidential nature of this Confidential and General Release and Settlement Agreement.

In addition, Releasor and her attorney(s) agree not to divulge or make any suggestion or reference to the amount of this settlement to anyone and, in consideration of the confidential nature of this Confidential and General Release and Settlement Agreement, the Releasees agree to the same. Releasor and her attorney(s) hereby warrant that they have not divulged or made any suggestion or reference to the amount of this settlement, or any negotiations relating thereto, to any individual except for Releasor's family members and their attorney's office employees or other individuals necessary to effectuate the settlement and approval by the court, as of the date hereof, and the Releasor's attorney's office employees have been cautioned as to the confidentiality of this Confidential and General Release and Settlement Agreement and the

amount of this settlement, as well as any negotiations relating thereto, and have agreed to maintain such strict confidentiality as due Releasor in consideration for the confidential nature of this Confidential and General Release and Settlement Agreement. This Confidential and General Release and Settlement Agreement will remain confidential insofar as practical in the event that Releasor, Releasees and/or their attorney or representatives are required by any court or legislative administrative body (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation demand or similar process), to disclose any confidential information.

The mutual nature of the confidentiality is the sole consideration for this agreement of confidentiality between and amongst the parties to this litigation. Although the parties to this litigation agree to the mutual nature of the aforementioned confidentiality provision, the terms of this Confidential and General Release and Settlement Agreement may be disclosed to facilitate the resolution of any outstanding liens and/or other expenses related to the underlying case, as well as to any governmental entity to facilitate the same.

This Confidential and General Release and Settlement Agreement shall be construed that, wherever applicable, the use of the singular shall include the plural and the masculine gender shall be construed to include the feminine or neuter gender.

In entering into this Confidential and General Release and Settlement Agreement, Releasor represents that Releasor has relied upon the advice of legal counsel, who is Releasor's attorney of choice, and that the terms of this Confidential and General Release and Settlement Agreement have been completely read and explained to Releasor by her counsel and that those terms are fully understood and voluntarily accepted.

**I HAVE READ THE ABOVE, UNDERSTAND THE SAME AND AGREE TO BE  
MUTUALLY BOUND BY ALL OF THE TERMS OF THIS CONFIDENTIAL AND  
GENERAL RELEASE AND SETTLEMENT AGREEMENT.**

IN WITNESS WHEREOF, I have heretofore set my hand and seal this \_\_\_\_\_ day of  
\_\_\_\_\_, 2011.

\_\_\_\_\_  
LYNN M. PATRICELLI

COMMONWEALTH OF PENNSYLVANIA :  
:   
COUNTY OF :

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me personally  
appeared \_\_\_\_\_, to me known, and known to me to be the same person  
described herein and who executed the above instrument and acknowledged to me that she  
executed the same.

\_\_\_\_\_  
Notary Public



JEFFREY CARNS, t/d/b/a CARNS EQUIPMENT  
COMPANY

By: \_\_\_\_\_

Title: \_\_\_\_\_

COMMONWEALTH OF PENNSYLVANIA :

COUNTY OF :

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me personally  
appeared to me known, and known to me to be the same person described herein and who  
executed the above instrument and acknowledged to me that he/she executed the same.

\_\_\_\_\_  
Notary Public

[ARCTIC CAT INC. SIGNATURE ON NEXT PAGE]

ARCTIC CAT INC.,  
A Minnesota corporation,

By: \_\_\_\_\_  
Fred Bernier  
Authorized Representative

SUBSCRIBED & SWORN TO BEFORE ME  
this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public, State of Minnesota  
Commission expires: \_\_\_\_\_

**Jim F. Marrion**

---

**From:** Jason Schiffman [schiffmanj@gmail.com]  
**Sent:** Wednesday, May 11, 2011 1:31 PM  
**To:** Jim F. Marrion  
**Subject:** Re: ATV / Patracelli

If you can get it, it is a "go".

-Jason

On Wed, May 11, 2011 at 1:10 PM, Jim F. Marrion <[JFM@pietragallo.com](mailto:JFM@pietragallo.com)> wrote:  
Jasor.: What's the word? Is the demand a firm                      Thanks,

Jim F. Marrion, Esquire  
Pietragallo Gordon Alfano Bosick & Raspanti, LLP  
One Oxford Centre, 38th Floor  
Pittsburgh, PA 15219  
Office: (412) 263-4342 | Fax: (412) 263-4226  
<http://www.Pietragallo.com>  
[JFM@Pietragallo.com](mailto:JFM@Pietragallo.com) | BIO

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**Jim F. Marrion**

---

**From:** Jim F. Marrion  
**Sent:** Wednesday, May 11, 2011 2:01 PM  
**To:** 'Jason M. Schiffman'  
**Cc:** 'Paul Walsh'  
**Subject:** RE: Patricelli & Stormer v. Carns, Arctic Cat - Case Settled

Dear Jason:

Please allow this email to confirm that this case, on behalf of both plaintiffs (Stormer and Patricelli) and both defendants (Carns and Arctic Cat), is settled for a global settlement amount of

I will prepare a Confidential General Release and Settlement Agreement to be executed by all parties dismissing the plaintiffs' claims and cross-claims.

Please advise how you wish for the settlement amounts to be set forth in Release on behalf of each plaintiff.

Please contact me if you (or Paul) have any questions.

Thank you,

Jim F. Marrion, Esquire  
Pietragallo Gordon Alfano Bosick & Raspanti, LLP One Oxford Centre, 38th Floor Pittsburgh, PA 15219  
Office: (412) 263-4342 | Fax: (412) 263-4226 <http://www.Pietragallo.com> [JFM@Pietragallo.com](mailto:JFM@Pietragallo.com) | BIO

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**Jim F. Marrion**

---

**From:** Jason M. Schiffman [schiffmanj@gmail.com]  
**Sent:** Thursday, May 12, 2011 12:54 PM  
**To:** Jim F. Marrion  
**Subject:** RE: Patricelli & Stormer v. Carns, Arctic Cat - Case Settled

Jim,

My clients are both willing to sign confidentiality agreements. Their must be two settlement sheets. One should be to James Stormer and the amount should be The other should be to Lynn Patracelli and the amount should be \$1,200.00.

The clients should not be aware of the settlement attained on the part of the other party-plaintiff.

Thanks in advance and I look forward to speaking with you regarding this matter.

--

Jason M. Schiffman  
Schiffman & Wojdowski  
1300 Fifth Avenue  
Pittsburgh, PA 15219  
Phone: (412)288-9444  
Fax: (412)288-9455

<http://www.thecivilpractice.com/>

On Wed, 2011-05-11 at 18:01 +0000, Jim F. Marrion wrote:

> Dear Jason:

>

> Please allow this email to confirm that this case, on behalf of both plaintiffs (Stormer and Patricelli) and both defendants (Carns and Arctic Cat), is settled for a global settlement amount of

>

> I will prepare a Confidential General Release and Settlement Agreement to be executed by all parties dismissing the plaintiffs' claims and cross-claims.

>

> Please advise how you wish for the settlement amounts to be set forth in Release on behalf of each plaintiff.

>

> Please contact me if you (or Paul) have any questions.

>

> Thank you,

>

> Jim F. Marrion, Esquire

> Pietragallo Gordon Alfano Bosick & Raspanti, LLP One Oxford Centre,

> 38th Floor Pittsburgh, PA 15219

> Office: (412) 263-4342 | Fax: (412) 263-4226

> <http://www.Pietragallo.com> [JFM@Pietragallo.com](mailto:JFM@Pietragallo.com) | BIO

>

>

**Jim F. Marrion**

---

**From:** Jim F. Marrion  
**Sent:** Thursday, May 12, 2011 1:04 PM  
**To:** 'Jason M. Schiffman'  
**Subject:** RE: Patricelli & Stormer v. Carns, Arctic Cat - Case Settled

Thanks Jason. Understood. I will get you two Releases per the breakdown amounts you have identified. Talk soon.

Jim F. Marrion, Esquire  
Pietragallo Gordon Alfano Bosick & Raspanti, LLP One Oxford Centre, 38th Floor Pittsburgh, PA 15219  
Office: (412) 263-4342 | Fax: (412) 263-4226 <http://www.Pietragallo.com> [JFM@Pietragallo.com](mailto:JFM@Pietragallo.com) | BIO

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-----Original Message-----

**From:** Jason M. Schiffman [<mailto:schiffmanj@gmail.com>]  
**Sent:** Thursday, May 12, 2011 12:54 PM  
**To:** Jim F. Marrion  
**Subject:** RE: Patricelli & Stormer v. Carns, Arctic Cat - Case Settled

Jim,

My clients are both willing to sign confidentiality agreements. Their must be two settlement sheets. One should be to James Stormer and the amount should be The other should be to Lynn Patracelli and the amount should be \$1,200.00.

The clients should not be aware of the settlement attained on the part of the other party-plaintiff.

Thanks in advance and I look forward to speaking with you regarding this matter.

--

Jason M. Schiffman  
Schiffman & Wojdowski  
1300 Fifth Avenue

**Jim F. Marrion**

---

**From:** Jason M. Schiffman [schiffmanj@gmail.com]  
**Sent:** Tuesday, May 17, 2011 5:22 PM  
**To:** Jim F. Marrion  
**Subject:** RE: stormer + patracelli

Sounds good to me. I will look forward to hearing from you.

--

Jason M. Schiffman  
Schiffman & Wojdowski  
1300 Fifth Avenue  
Pittsburgh, PA 15219  
Phone: (412)288-9444  
Fax: (412)288-9455

<http://www.thecivilpractice.com/>

On Tue, 2011-05-17 at 20:32 +0000, Jim F. Marrion wrote:

> The Releases are drafted and will be circulated shortly. Jason, we  
> will send a W-9 to be completed and returned. Also, after releases  
> are signed please file the discontinuance. I am not permitted to send  
> settlement funds until the Praeipce is filed. Thanks,

>

>

>

> Jim F. Marrion, Esquire  
> Pietragallo Gordon Alfano Bosick & Raspanti, LLP One Oxford Centre,  
> 38th Floor Pittsburgh, PA 15219  
> Office: (412) 263-4342 | Fax: (412) 263-4226  
> <http://www.Pietragallo.com> [JFM@Pietragallo.com](mailto:JFM@Pietragallo.com) | BIO

>

>

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> avoiding any penalties that may be imposed on such taxpayer by the  
> Internal Revenue Service. In addition, if any such tax advice is used  
> or referred to by other parties to promote, market, or recommend any  
> transaction or investment, then (i) the advice should be construed as  
> written in connection with the promotion or marketing by others of the  
> transaction(s) or matter(s) addressed in this communication and (ii)

**Jim F. Marrion**

---

**From:** Jim F. Marrion  
**Sent:** Tuesday, June 21, 2011 9:13 AM  
**To:** 'schiffmanj@gmail.com'; 'pwalsh@wcblaw.net'  
**Cc:** Mary Troyan  
**Subject:** RE: Stormer & Patricelli v. ACAT

Jason: We need Patricelli's executed release to issue the checks.

Paul: Did your client send back a signed copy of the Releases that you could also provide?

Please let me know if you have any questions.

Thank you,

**Jim F. Marrion, Esquire**

Pietragallo Gordon Alfano Bosick & Raspanti, LLP  
One Oxford Centre, 38th Floor  
Pittsburgh, PA 15219  
Office: (412) 263-4342 | Fax: (412) 263-4226  
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[JFM@Pietragallo.com](mailto:JFM@Pietragallo.com) | [BIO](#)



**PIETRAGALLO**  
PIETRAGALLO GORDON ALFANO BOSICK & RASPANTI, LLP  
PITTSBURGH, PA 15219

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**From:** Mary Troyan  
**Sent:** Monday, June 20, 2011 12:07 PM  
**To:** 'schiffmanj@gmail.com'; 'pwalsh@wcblaw.net'  
**Cc:** Jim F. Marrion  
**Subject:** Stormer & Patricelli v. ACAT

Gentleman:

Enclosed is Arctic Cat Inc.'s signature page regarding the Stormer Release.

**Mary Troyan**

Legal Assistant  
Pietragallo Gordon Alfano Bosick & Raspanti, LLP  
One Oxford Centre, 38th Floor



## Jim F. Marrion

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**From:** Jason M. Schiffman [schiffmanj@gmail.com]  
**Sent:** Tuesday, June 21, 2011 1:34 PM  
**To:** Jim F. Marrion  
**Subject:** RE: Stormer & Patricelli v. ACAT

I have not received an executed copy from Patricelli yet. I will ask my secretary to follow up. Sorry for the delay.

--

Jason M. Schiffman  
Schiffman & Wojdowski  
1300 Fifth Avenue  
Pittsburgh, PA 15219  
Phone: (412)288-9444  
Fax: (412)288-9455

<http://www.thecivilpractice.com/>

On Tue, 2011-06-21 at 13:13 +0000, Jim F. Marrion wrote:

> Jason: We need Patricelli's executed release to issue the checks.  
>  
>  
>  
> Paul: Did your client send back a signed copy of the Releases that  
> you could also provide?  
>  
>  
>  
> Please let me know if you have any questions.  
>  
>  
>  
> Thank you,

> Jim F. Marrion, Esquire  
> Pietragallo Gordon Alfano Bosick & Raspanti, LLP One Oxford Centre,  
> 38th Floor Pittsburgh, PA 15219  
> Office: (412) 263-4342 | Fax: (412) 263-4226  
> <http://www.Pietragallo.com> [JFM@Pietragallo.com](mailto:JFM@Pietragallo.com) | BIO

>  
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## Jim F. Marrion

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**From:** Jim F. Marrion  
**Sent:** Thursday, June 30, 2011 11:29 AM  
**To:** 'Paul Walsh'; 'Jason M. Schiffman'  
**Cc:** 'Marna Blackmer'; Mary Troyan  
**Subject:** RE: Stormer & Patricelli v. ACAT

Jason: Please forward Patricelli's signed Release as soon as possible.

Paul: Please provide copies of the signed Releases as well.

Thank you,

### Jim F. Marrion, Esquire

Pietragallo Gordon Alfano Bosick & Raspanti, LLP  
One Oxford Centre, 38th Floor  
Pittsburgh, PA 15219  
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**PIETRAGALLO**  
PIETRAGALLO GORDON ALFANO  
BOSICK & RASPANTI, LLP

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**Jim F. Marrion**

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**From:** Mary Troyan  
**Sent:** Monday, August 15, 2011 4:20 PM  
**To:** 'schiffmanj@gmail.com'  
**Cc:** 'pwalsh@wcblaw.net'; Jim F. Marrion  
**Subject:** Stormer & Patricelli v. ACAT

Dear Ms. Schiffman:

We are still awaiting receipt of Ms. Patricelli's executed Release.

Please advise regarding status.

Thank you,

**Mary Troyan**

Legal Assistant

Pietragallo Gordon Alfano Bosick & Raspanti, LLP

One Oxford Centre, 38th Floor

Pittsburgh, PA 15219

Office: (412) 263-2000 Ext.1289 | Fax: (412) 263-2001

<http://www.Pietragallo.com>

[MT@Pietragallo.com](mailto:MT@Pietragallo.com)

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of **ARCTIC CAT INC'S CONSENTED MOTION TO ENFORCE SETTLEMENT** has been served upon all parties listed below, via first-class mail, postage prepaid, on this 23rd day of September, 2011 as follows:

Jason M. Schiffman, Esquire  
Schiffman & Wojdowski  
1300 Fifth Avenue  
Pittsburgh, PA 15219  
*Attorneys for Plaintiff*

Lynn M. Patricelli  
121 Playground Road  
Brockport, PA 15823  
*Plaintiff*

Paul Walsh, Esquire  
Walsh, Collis & Blackmer, P.C.  
The Gulf Tower, Suite 1400  
707 Grant Street  
Pittsburgh, PA 15219  
*Attorney for Defendant,*  
*Jeffrey Carns t/d/b/a*  
*Carns Equipment Company*

PIETRAGALLO GORDON ALFANO  
BOSICK & RASPANTI, LLP

By: Clem C. Trischler  
Clem C. Trischler, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JAMES STORMER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL DIVISION
	)	NO: 08-1900-CD
JEFFREY CARNS t/d/b/a CARNS	)	
EQUIPMENT COMPANY and ARCTIC	)	
CAT INC.,	)	
	)	
Defendant.	)	
_____	)	
LYNN M. PATRICELLI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JEFFREY CARNS t/d/b/a CARNS	)	
EQUIPMENT COMPANY	)	
and ARCTIC CAT INC.,	)	
	)	
Defendants.	)	

**NOTICE OF PRESENTMENT**

PLEASE BE ADVISED that the within will be presented before the Honorable  
\_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, at  
\_\_\_\_\_ or as soon thereafter as is convenient for the Court.

Respectfully submitted,

PIETRAGALLO GORDON ALFANO  
BOSICK & RASPANTI, LLP

By: \_\_\_\_\_  
Clem C. Trischler, Esquire

*John C. Krumm*

FILED

SEP 29 2011

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 9/29/11

☒ You are responsible for serving all appropriate parties.

☐ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions: