

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:
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

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NOV 06 2008
William A. Shaw
Prothonotary/Clerk of Courts
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ICC Any
ICC Sheriff

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

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

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

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 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 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.

**COUNT I –
LYNN M. PATRICELLI 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. This Defendant was negligent in selling an ATV manufactured of defective materials whose ball joint was prone to fracture and which did not have proper labels and warnings.

9. This Defendant also negligently failed to advise the Plaintiff of the dangers of the ATV.

10. As the direct, legal and proximate result of the negligence of this Defendant as aforesaid, the Plaintiff has lost the use and value of the 2007 Arctic Cat ATV, Model 650 H1 with Serial Number: 4UF07ATV57T225203 and has accrued interest charges on the payments for the ATV which she was unable to use.

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.
JEFFREY CARNS t/d/b/a CARNS EQUIPMENT COMPANY

11. The Plaintiff hereby incorporates by reference paragraphs 1 through 10 of this Complaint as though the same were more fully set forth at length herein.

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

13. Being within the ambit of the foreseeable operation and use of the ATV, the Plaintiff Lynn M. Patricelli 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.

14. 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, 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 III –
LYNN M. PATRICELLI VS. ARCTIC CAT, INC.

15. The Plaintiff hereby incorporates by reference paragraphs 1 through 14 of this Complaint as though the same were more fully set forth at length herein.

16. 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; and
 - d. In failing to properly test the ATV before marketing.

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

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

COUNT IV –
LYNN M. PATRICELLI VS. ARCTIC CAT, INC.

18. 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.

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

20. Being within the ambit of the foreseeable operation and use of the ATV, the Plaintiff Lynn M. Patricelli 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.

21. 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, Arctic Cat, Inc. for an amount not in excess of applicable Arbitration limits, exclusive of interest and costs.

**COUNT V –
LYNN M. PATRICELLI VS.
JEFFREY CANN t/d/b/a CARNS EQUIPMENT COMPANY
AND ARCTIC CAT, INC.**

22. The Plaintiff hereby incorporates by reference paragraphs 1 through 21 of this Complaint as though the same were more fully set forth at length herein.

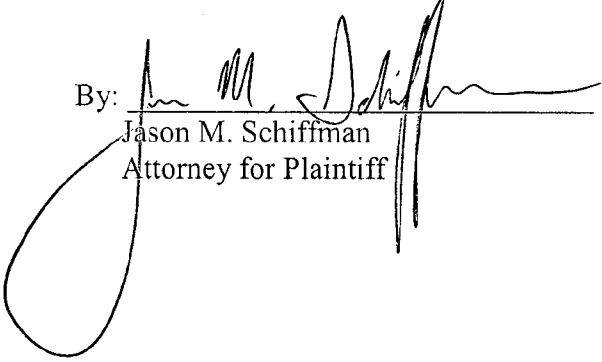
23. As the direct, legal and proximate result of the joint and/or several negligence of these Defendants and the joint and/or several breaches of warranties by these Defendants, the Plaintiff has sustained the damages previously set forth.

WHEREFORE, the Plaintiff Lynn M. Patricelli 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 not in excess of applicable Arbitration limits, exclusive of interest and costs.

RESPECTFULLY SUBMITTED:

SCHIFFMAN & WOJDOWSKI

By:



Jason M. Schiffman
Attorney for Plaintiff

VERIFICATION

The undersigned, Lynn M. Patricelli, Plaintiff named herein, and being authorized to make this Verification for and on her 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 she 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:

Oct 29 - 2008


Lynn M. Patricelli

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LYNN M. PATRICELLI,

Plaintiff,

v.

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

Defendants.

) ARBITRATION DIVISION

) NO: 03-2116-CD

) **PRAECIPE FOR APPEARANCE**

) 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. Marrior, 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

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William A. Shaw
Prothonotary/Clerk of Courts

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IN THE COURT OF COMMON PLEAS FOR CLEARFIELD COUNTY, PENNSYLVANIA

LYNN M. PATRICELLI,

Plaintiff,

v.

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

Defendants.

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) No.: 08-2116-CD
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PRAECIPE FOR APPEARANCE


TO: The Prothonotary of Clearfield County

Kindly enter the appearance of Clem C. Trischler, Esquire and James F. Marrion,
Esquire of Pietragallo Gordon Alfano Bosick & Raspanti, LLP as counsel for Defendant,
Arctic Cat Inc.

A JURY TRIAL IS DEMANDED.

Respectfully submitted,

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

By: 
Clem C. Trischler, Esquire
Pa. I.D. #52957
James F. Marrion, Esquire
Pa. I.D. #85181

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


***Attorneys for Defendant,
Arctic Cat Inc.***

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PRAECIPE FOR APPEARANCE** has been served upon all parties listed below, via first-class mail, postage prepaid, on November 18, 2008:

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

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


Clem C. Trischler, Esquire

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:
AFFIDAVIT OF SERVICE
FOR DEFENDANT ARCTIC
CAT, INC.

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

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William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
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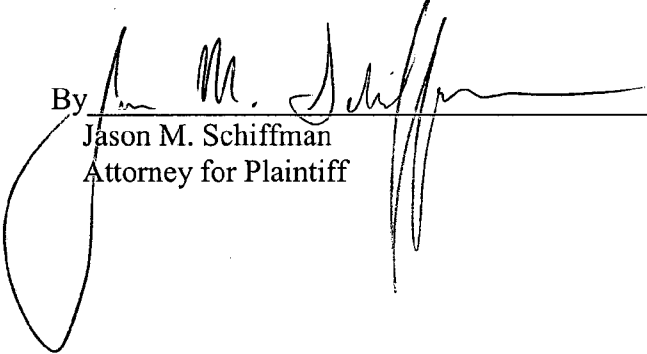
Defendants.

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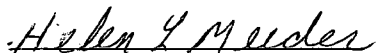
AFFIDAVIT OF SERVICE FOR DEFENDANT
ARCTIC CAT, INC.

COMMONWEALTH OF PENNSYLVANIA) SS:
COUNTY OF ALLEGHENY)

Before me, the undersigned authority, personally appeared Jason M. Schiffman, Esquire, attorney for Plaintiff Lynn M. Patricelli, 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 November 13, 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 18th day
of November, 2008.



Notary Public
COMMONWEALTH OF PENNSYLVANIA

Notarial Seal
Helen L. Meeder, Notary Public
City Of Pittsburgh, Allegheny County
My Commission Expires Oct. 9, 2011

Member, Pennsylvania Association of Notaries

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Arctic Cat, Inc.
Attn: Legal Department
601 Brooks Avenue South
Thief River Falls, MN
56701

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Shawn Platen*

☐ Agent☐ Addressee

B. Received by (Printed Name)

SHAWN PLATEN

C. Date of Delivery

11-13-88

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☒ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

7007 2560 0002 6775 8631 111

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

EXHIBIT

"A"

tabbles

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

LYNN M. PATRICELLI,

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and ARCTIC CAT INC.

Defendants.

) ARBITRATION DIVISION

)

) NO: 08-2116-CD

)

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)

) **PRELIMINARY OBJECTIONS TO**

) **PLAINTIFF'S COMPLAINT**

) **PURSUANT TO 46 J.D.R.C.P.**

) **1028(c)**

)

)

)

) 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

)

)

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William A. Shaw
Prothonotary/Clerk of Courts

2. Plaintiff filed this Complaint averring causes of action based on negligence in Count III of her Complaint against Arctic Cat, seeking recovery of money damages for “complete destruction of the ATV” which is the subject of this lawsuit. See paragraph 6 of the Complaint attached hereto as Exhibit “A.”

3. The plaintiff's Complaint **does not** claim personal injuries to her or any party to this lawsuit. See Exhibit "A."

4. The economic loss doctrine does not allow the Plaintiff to recover purely economic damages on a tort theory. See, Wervinski v. Ford Motor Co., 286 F.3d 661 (3d Cir. 2002); Szivaak v. Burks Ridge Corp., Inc., 402 Pa. Super. 73, 586 A.2d 402 (1990); General Public Utilities v. Glass Kitchens of Lancaster, Inc., 374 Pa. Super. 203, 542 A.2d 567 (1988); Aikens v. Baltimore and Ohio R.R. Co., 348 Pa. Super. 17, 501 A.2d 277 (1985); Nowicki v. First Union Nat'l Bank, 2004 Phila. Ct. Com. Pl. LEXIS 110 (April 15, 2004); Yorkwood, LF v. Kee Corp., 2004 Phila. Ct. Com. Pl. LEXIS 19 (April 13, 2004); and Erie Insurance Group v. Ford Motor Co., 51 Pa. D.&C.4th 220 (March 21, 2001). See also, Duquesne Light Company v. Pennsylvania American Water Company, 2004 Pa. Super 160, 850 A.2d 701 (2004); Ashburner Concrete and Masonry Supply, Inc. v. O'Connor Truck Sales, Inc., 2001 Phila. Ct. Com. Pl. LEXIS 91 (August 10, 2001); David Pflumm Paving & Excavating, Inc. v. Foundation Services Company, F.T. Kitlinski & Associates, Inc., Basco Associates, P.C., Inc. and Buchart-Horn, Inc., 2003 Pa. Super. 41, 816 A.2d 1164 (2003); Robert Debbs and Louise Crawley v. Chrysler Corp. and Bryn Mawr Chrysler Plymouth, Inc., 2002 Pa. Super 326, 810 A.2d 137 (2002)

5. The economic loss doctrine does not allow the plaintiff to recover damages under a negligence theory. Therefore, Counts III of the Complaint must be dismissed.

6. Therefore, Plaintiff's Complaint at Count III is insufficient as a matter of law and must be dismissed pursuant to Pa.R.Civ.P. 1028(a)(4).

COUNT IV OF PLAINTIFF'S COMPLAINT MUST BE STRICKEN
FOR FAILURE TO CONFORM TO RULE OF COURT
AND BECAUSE IT LACKS SPECIFICITY

7. Plaintiff's Complaint at Count IV alleges a claim based upon the Pennsylvania Uniform Commercial Code. See Exhibit "A." In paragraphs 19 through 21 of the Complaint, plaintiff fails to set forth with any particularity of specificity, any of the express or implied warranties which Arctic Cat allegedly violated.

8. Similarly, Count IV of the plaintiff's Complaint does not specify which express warranty, or for that matter implied warranty, Arctic Cat failed to live up to.

9. Furthermore, plaintiff's Count IV alleges a breach of express warranties which would constitute a writing with the transfer of the at-issue ATV to the plaintiff with enumerated express limited warranties from Arctic Cat. However, plaintiff fails to conform the pleading to the Rules of Court by not attaching a copy of the writing, i.e., the limited warranty, to her Complaint as required by Pa.R.Civ.P. 1019(i).

10. Because plaintiff failed to plead with any particularity, the specific express and implied warranties which Arctic Cat allegedly breached pursuant to Pa.R.Civ.P. 1028(a)(3), Count IV of the plaintiff's Complaint must be dismissed.

11. Count IV of the plaintiff's Complaint specifically, paragraphs 20 and 21, fail to conform to a Rule of Court and must be dismissed pursuant to Pa.R.Civ.P. 1028(a)(2).

**COUNT V OF THE PLAINTIFF'S COMPLAINT LACKS SPECIFICITY AND IS
LEGALLY INSUFFICIENT**

12. The plaintiff's Complaint at Count V, paragraph 23 states:

As the direct, legal and proximate result of the joint and/or several negligence of these Defendants and the joint and/or several breaches of warranty by these Defendants, the Plaintiff has sustained the damages previously set forth.

See Exhibit "A", paragraph 23.

13. As previously established in these Preliminary Objections, plaintiff's negligent cause of action is a legally insufficient claim because of Pennsylvania's economic loss doctrine.

14. Similarly, plaintiff's lack of specificity regarding her breach of warranty claims against Arctic Cat is legally insufficient as well as lacks specificity.

15. Nevertheless, plaintiff's catch all paragraph at Count V, paragraph 23 of the Complaint, lacks specificity in and of itself as it does not aver facts that have proven may establish a cause of action for any claim nor does it identify any substantive allegations directed to Arctic Cat which would allow Arctic Cat to assert a defense to properly defend itself.

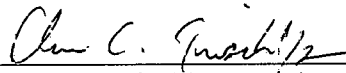
16. At a minimum, plaintiff's Count V, paragraph 23, should be dismissed based on the Pennsylvania Supreme Court's holding in Connor v. Allegheny General Hospital, 501 Pa. 306, 461 A.2d 600 (1983) (objections to specificity of a catch all clause in a Complaint should be made at the pleading stage). Id., 501 Pa. at 311n.3, 461 A.2d at 602n.3.

17. Accordingly, plaintiff's Complaint at Count V is legally insufficient as a matter of law and lacks specificity, and must be dismissed pursuant to Pa.R.Civ.P. 1028(a)(3) and 1028(a)(4).

WHEREFORE, Arctic Cat Inc. requests the entry of an Order dismissing Counts III, IV and V of the Complaint with prejudice.

Respectfully submitted,

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

By: 
Clem C. Trischler, Esquire
Pa. I.D. #52957
James F. Marrion, Esquire
Pa. I.D. #85181

The Thirty-Eighth Floor
One Oxford Center
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,

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vs.

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

Defendants.

ARBITRATION DIVISION

CASE NUMBER: 08-2116-CD

TYPE OF PLEADING:
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

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

NOV 06 2008

Attest,

Patricia J. [Signature]
Patricia J. [Signature]
Clerk of Courts

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

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 2007 Arctic Cat ATV, Model 650 H1 with Serial Number: 4UF07ATV57T225203 from Carns Equipment Company.

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COUNT I--
LYNN M. PATRICELLI 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. This Defendant was negligent in selling an ATV manufactured of defective materials whose ball joint was prone to fracture and which did not have proper labels and warnings.

9. This Defendant also negligently failed to advise the Plaintiff of the dangers of the ATV.

10. As the direct, legal and proximate result of the negligence of this Defendant as aforesaid, the Plaintiff has lost the use and value of the 2007 Arctic Cat ATV, Model 650 H1 with Serial Number: 4UF07ATV57T225203 and has accrued interest charges on the payments for the ATV which she was unable to use.

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.
JEFFREY CARNS t/d/b/a CARNS EQUIPMENT COMPANY

11. The Plaintiff hereby incorporates by reference paragraphs 1 through 10 of this Complaint as though the same were more fully set forth at length herein.

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

13. Being within the ambit of the foreseeable operation and use of the ATV, the Plaintiff Lynn M. Patricelli 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.

14. 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, 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 III -
LYNN M. PATRICELLI VS. ARCTIC CAT, INC.

15. The Plaintiff hereby incorporates by reference paragraphs 1 through 14 of this Complaint as though the same were more fully set forth at length herein.

16. 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; and
- d. In failing to properly test the ATV before marketing.

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

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LYNN M. PATRICELLI VS. ARCTIC CAT, INC.

18. 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.

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

COUNT V -
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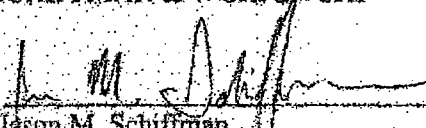
22. The Plaintiff hereby incorporates by reference paragraphs 1 through 21 of this Complaint as though the same were more fully set forth at length herein.

23. As the direct, legal and proximate result of 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 damages previously set forth.

WHEREFORE, the Plaintiff Lynn M. Patricelli 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 not in excess of applicable Arbitration limits, exclusive of interest and costs.

RESPECTFULLY SUBMITTED:

SCHIFFMAN & WOJDOWSKI


By: 
Jason M. Schiffman
Attorney for Plaintiff

VERIFICATION

The undersigned, Lynn M. Patricelli, Plaintiff named herein, and being authorized to make this Verification for and on her 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 she 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:

Oct 29 - 2008

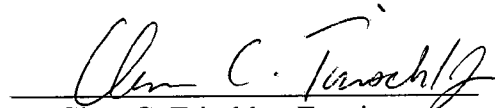

Lynn M. Patricelli

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT PURSUANT TO 46 J.D.R.C.P. 1028(c)** have been served upon all parties listed below, via first-class mail, postage prepaid, on November 21, 2008:

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

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


Clem C. Trischler, Esquire
James F. Marrion, Esquire

#1443712

IN THE COURT OF COMMON PLEAS FOR CLEARFIELD COUNTY,
PENNSYLVANIA

LYNN M. PATRICELLI,

Plaintiff,

v.

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

Defendants.

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No.: 08-2116-CD

ORDER OF COURT

AND NOW, to-wit, this ____ day of _____, 200__, upon
consideration of defendant Arctic Cat Inc.'s Preliminary Objections to plaintiff's Complaint,
it is hereby ORDERED, ADJUDGED and DECREED that the Preliminary Objections to
Counts III, IV and V are granted and plaintiff's Complaint at Counts III, IV and V are
dismissed with prejudice.

BY THE COURT:

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

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

)

)

)

) **PRAECIPE FOR ARGUMENT**

)

)

)

) 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

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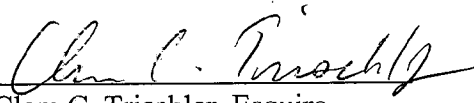
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PRAECIPE FOR ARGUMENT** has been served upon all parties listed below, via first-class mail, postage prepaid, on November 21, 2003:

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

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


Clem C. Trischler, Esquire
James F. Marion, Esquire

#1443716

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LYNN M. PATRICELLI,

CIVIL DIVISION

Plaintiff,

Docket No.: 08-2116 CD

vs.

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

Defendants.

PRAECIPE FOR APPEARANCE
(Jury Trial Demand)

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

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

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

(412) 258-2255

#1122

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NOV 25 2008 *Copy to C/A*

William A. Shaw
Prothonotary/Clerk of Courts
(G10)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LYNN M. PATRICELLI,

CIVIL DIVISION

Plaintiff,

Docket No.: 08-2116 CD

vs.

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

Defendants.

PRAECIPE FOR APPEARANCE

TO: THE PROTHONOTARY

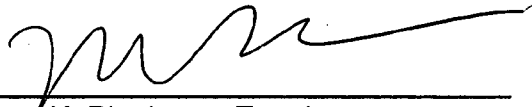
Kindly enter the Appearance of the undersigned, Marna K. Blackmer, Esquire, and
Natalie A. Troilo, Esquire, of the law firm of Walsh, Collis & Blackmer, P.C., on behalf of
the Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company, in the above case.

JURY TRIAL DEMANDED

Respectfully submitted,

WALSH, COLLIS & BLACKMER, P.C.

By


Marna K. Blackmer, Esquire
Natalie A. Troilo, Esquire
Counsel for Defendant,
Jeffrey Carns t/d/b/a
Carns Equipment Company

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 day of November, 2008.

Jason M. Schiffman, Esquire
Schiffman & Wojdowski
1300 Fifth Avenue
Pittsburgh, PA 15219

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

5

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

LYNN M. PATRICELLI

vs.

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

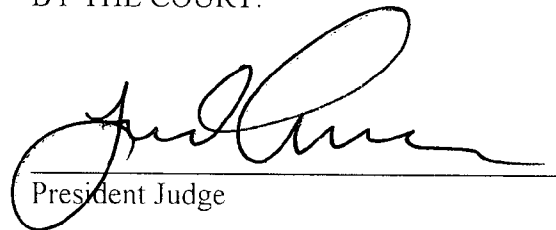
No.: 08-2116-CD

O R D E R

AND NOW this 25 day of Nov 2008, upon consideration of Defendant's Preliminary Objections in the above matter, it is the Order of the Court that argument shall and is hereby scheduled for the **18TH day of December 2008 at 11:00 A.M.** in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

It is the responsibility of the moving parties Counsel to serve certified copy of said scheduling Order on opposing parties Counsel.

BY THE COURT:



President Judge

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3CC
Amy Trischler
(64)

William A. Shaw
§ Prothonotary/Clerk of Courts

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.

CIVIL DIVISION

Docket No.: 08-2116 CD

PRAECIPE FOR ARGUEMENT
(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

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

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

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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

LYNN M. PATRICELLI,

CIVIL DIVISION

Plaintiff,

Docket No.: 08-2116 CD

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. Please note that Preliminary Objections on this matter have already been scheduled for December 18, 2008 at 11:00 a.m. in Courtroom No. 1.

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 2 day of December, 2008.

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

LYNN M. PATRICELLI,

CIVIL DIVISION

Plaintiff,

Docket No.: 08-2116 CD

vs.

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

Defendants.

**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. # 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

#1122

FILED

DEC 05 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

LYNN M. PATRICELLI,

CIVIL DIVISION

Plaintiff,

Docket No.: 08-2116 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 on February 10, 2007 her 2007 Artic Cat ATV was completely destroyed after the front wheel of the ATV allegedly fell off while James Stormer was riding it from a fractured ball joint. See Plaintiff's Complaint, ¶16, a true and correct copy of which is attached as Exhibit A.

2. Plaintiff allegedly purchased the ATV from this Defendant on February 9, 2007, and Plaintiff further claims that the ATV was delivered to her on February 10, 2007. See Exhibit A, ¶¶ 4 and 5.

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

4. Count I seems to set forth a claim for negligence, Count II for breach of "express warranties and/or implied warranties of merchantability and fitness", and Count V for "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).

MOTION TO STRIKE PURSUANT TO Pa.R.C.P. 1028(a)(2)

6. Paragraph 6 of Plaintiff's Complaint sets forth:

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.

See Exhibit A, Paragraph 6.

7. However, Lynn Patricelli is the only Plaintiff listed in this lawsuit, and appears to be making only a claim for property damage.

8. As such, any reference to James Stormer sustaining bodily injury in the Complaint is scandalous and impertinent matter.

9. To be scandalous and impertinent, the allegations must be immaterial and inappropriate to the proof of the cause of action. Common Cause/Pennsylvania v. Commonwealth, 710 A.2d 108, 115 (Pa.Comm.w.1998) (citation omitted), *aff'd*, 562 Pa. 632, 757 A.2d 367 (2000).

10. Clearly, allegations of James Stormer sustaining personal injury are immaterial to the Plaintiff's lawsuit and inappropriate to the proof of her case.

WHEREFORE, Defendant, Jeffrey Carns t/d/b/a Carns Equipment Company, respectfully requests that this Honorable Court grant his preliminary objections and strike the words "injury to the rider" from Paragraph 6 of Plaintiff's Complaint.

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

11. Plaintiff appears to be claiming negligence against this Defendant in Count I of the Complaint.

12. However, Plaintiff is only claiming damages for the ATV purchased from this Defendant.

13. The economic loss doctrine precludes the recovery of economic damages in tort when the harm is only the product itself and not to other property. See Aikens v. Baltimore and Ohio Railroad Company, 348 Pa.Super. 17, 20, 501 A.2d 277, 278 (1985), Waterware v. Ametek/U.S. Guage Division, 2001 WL 1112975 (Pa.Comm.Pl.2001) and Werwinski v. Ford Motor Corp., 286 F.3d 661, 671 (3d Cir. 2002).

14. The purpose of the economic loss doctrine is to maintain the separate spheres of the law of contract [warranty] and tort. New York State Electric & Gas Corp. v. Westinghouse Electric Corp., 387 Pa.Super. 537, 564 A.2d 919, 925 (1989).

15. As recovery for Plaintiff's claim for negligence as set forth in Count I of the Complaint is precluded by the economic loss doctrine, Count I of Plaintiff's Complaint should be dismissed with prejudice.

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 Plaintiff's Complaint with prejudice.

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

16. 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 she states that she “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, ¶13.

17. 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).

18. 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.

19. “Material facts” are “ultimate facts,” *i.e.*, those facts essential to support the claim. Id.

20. 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).

A. Breach of Express Warranty

21. 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.

22. 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).

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

24. 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.

25. 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.

26. 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

27. 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.

28. 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).

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

30. In looking at the Complaint in its entirety, it is also stated that the product is defective as it was made of defective materials and did not have proper warnings or labels.

31. However, the Complaint contains no additional specificity with regard to what materials were defective, how the labels or warnings were not proper or how any implied warranty was breached.

32. 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.

33. 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.

34. 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

35. 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.

36. 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 of the Plaintiff, or how the implied warranty was breached, and therefore the Complaint is legally insufficient.

37. 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.

38. 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 II of Plaintiff's Complaint. In the alternative, Plaintiff should be required to file a more specific pleading with regard to Count II.

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

39. Lastly, Plaintiff includes one final Count against this Defendant, Count V, which appears to be a catchall paragraph, which merely states, "as the direct, legal and proximate result of 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, ¶23.

40. 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.

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

42. Accordingly, Count V 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 V of Plaintiff's Complaint. In the alternative, Plaintiff should be required to file a more specific pleading with regard to Count II.

Respectfully submitted,

WALSH, COLLIS & BLACKMER, P.C.

By



Maria 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

LYNN M. PATRICELLI,

CIVIL DIVISION

Plaintiff,

Docket No.: 08-2116 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:

1. The words "injury to the rider" are stricken from Paragraph 6 of Plaintiff's Complaint;
2. Count I of Plaintiff's Complaint is dismissed with prejudice;
3. Count II of Plaintiff's Complaint is dismissed, or in the alternative, Plaintiff is required to file a more specific pleading; and,
4. Count V of Plaintiff's Complaint is dismissed, or in the alternative, Plaintiff is required to file a more specific pleading.

BY THE COURT:

_____, J.

CERTIFICATE OF SERVICE

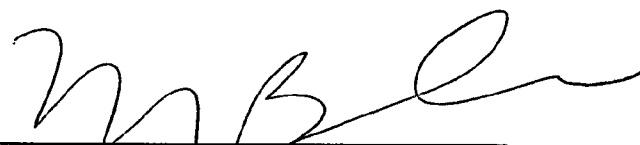
I HEREBY CERTIFY that a true and correct copy of the foregoing **Preliminary Objections and Brief in Support** has been mailed by U.S. Mail to counsel of record via first class mail, postage pre-paid, this 2 day of December, 2008.

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

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

FILED No CC,
m/jl:47cm
DEC 12 2008

S William A. Shaw
Prothonotary/Clerk of Courts

(610)

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

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.

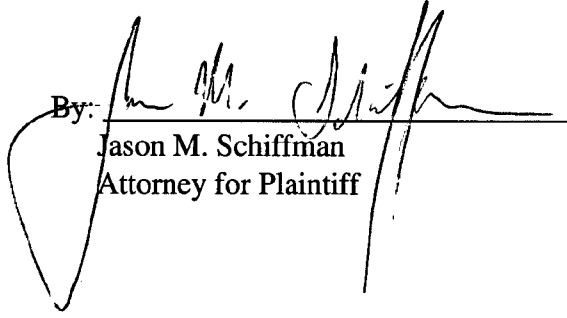
32. The warranty of merchantability was breached because the ATV was not of fair and average quality within the description of ATVs.

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

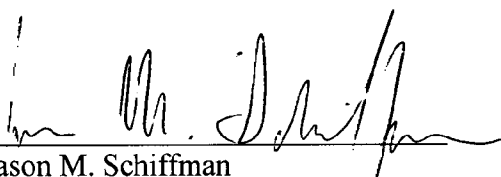
I hereby certify under penalty of perjury that I am this day serving a true and correct copy of the attached or foregoing Amended Complaint, upon the person(s) and in the manner indicated below:

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

Clem C. Trischler, Esquire
Pietragallo, Gordon, Alfano,
Bosick & Raspanti, LLP
38th 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
NO: 08-2116-CD

LYNN M. PATRICELLI

vs

SERVICE # 1 OF 1

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

COMPLAINT

SERVE BY: 12/06/2008

HEARING:

PAGE: 104888

DEFENDANT: JEFFREY CARNS T/D/B/A CARNS EQUIPMENT CO.
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

SHERIFF'S RETURN

NOW, this 26th day of Nov 2008 AT 9:45 (AM) PM SERVED THE WITHIN

COMPLAINT ON JEFFREY CARNS T/D/B/A CARNS EQUIPMENT CO., DEFENDANT

BY HANDING TO BRAD KRATZ 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 CO.

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 CO.

REASON UNABLE TO LOCATE _____

SWORN TO BEFORE ME THIS

_____ DAY OF _____ 2008

So Answered CHESTER A. HAWKINS, SHERIFF

BY:

George F. DelHaven
Deputy Signature

George F. DelHaven
Print Deputy Name

DEC 26 2008

William A. Shaw
Prothonotary/Clerk of Courts

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.

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FILED

DEC 26 2008

M/10:40/W

William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL WITH

CASE # 08-1900-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

FILED

DEC 26 2008

William A. Shaw
Prothonotary/Clerk of Courts

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

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, Esquire
PA I.D. No.: 52957

James F. Marriam, 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

A JURY TRIAL IS DEMANDED

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.


ATTORNEY FOR ARCTIC CAT INC.

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.

7. Paragraph 7 of the Plaintiff's Complaint is denied. After reasonable investigation, this Defendant is presently without knowledge concerning all of the facts and circumstances alleged in paragraph 7; therefore, all of the averments of paragraph 7 are denied.

8. Paragraph 8 of the Plaintiff's Complaint is denied. After reasonable investigation, this Defendant avers that it is not in possession of the allegedly fractured ball joint; therefore, all of the averments of paragraph 8 are denied.

ANSWER TO COUNT I

9. – 22. Paragraphs 9 through 22 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 9 through 22 allege or infer any negligent, tortious or improper conduct on the part of this Defendant, all of these averments are denied.

ANSWER TO COUNT II

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

24. Paragraph 24 of the Plaintiff's Amended 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 Amended 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 Amended 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.

27. Paragraph 27 of the Plaintiff's Amended Complaint is denied. The averments of paragraph 27 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 27 are denied. By way of further response, this defendant avers that its actions conformed to the applicable limited written express vehicle warranty and provisions of law.

28. Paragraph 28 of the Plaintiff's Amended 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, this defendant avers that its actions conformed to provisions of law.

29. Paragraph 29 of the Plaintiff's Amended 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.

30. Paragraph 30 of the Plaintiff's Amended Complaint is denied. The averments of paragraph 30 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 30 are denied.

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.

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, Lynn M. Patricelli.

A JURY TRIAL IS DEMANDED.

NEW MATTER

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

35. 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.

36. The operator of the subject ATV was negligent under the circumstances.

37. The negligence of the ATV operator was the direct and proximate cause of the subject incident and alleged damage to the subject ATV

38. The operator of the subject ATV 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.

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

40. The incident of February 10, 2007, and the allegedly resultant damages, were not caused by any act or omission on the part of Arctic Cat. Any 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.

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

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

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

44. 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.

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

46. Plaintiff cannot recover for any items of incidental or consequential damages pursuant to the terms of the limited warranty and disclaimers and/or limitation of liability.

provision of the limited warranty that limits Plaintiff's damages and precludes the claims alleged in Plaintiff's Complaint.

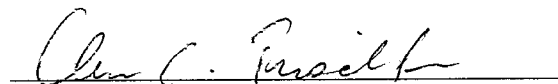
47. This action should be consolidated with the action filed at Case Number: 08-1900-CD; James Stormer v. Jeffrey Carns t/d/b/a Carns Equipment Company and Arctic Cat Inc., in the Court of Common Pleas of Clearfield County, Pennsylvania.

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 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 23rd day of December, 2008.

ARCTIC CAT INC.

By: 

FRED BERNIER

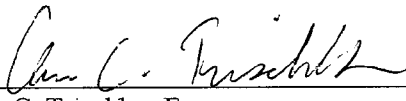
Director of Product Safety & Validation

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 23rd day of December 2008:

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

Mama 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.

LA

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 2nd day of January 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,

Justice J. Zimmerman, J.

FILED 100
JAN 02 2009
William A. Shaw
Prothonotary/Clerk of Courts
Amy Trischler
610

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 104888
NO: 08-2116-CD
SERVICES 1
COMPLAINT

PLAINTIFF: LYNN M. PATRICELLI

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	17392	10.00
SHERIFF HAWKINS	SCHIFFMAN	17392	22.42

S FILED
01/11:03cm
FEB 17 2009
William A. Shaw
Prothonotary/Clerk of Courts

Sworn to Before Me This

_____ Day of _____ 2008

So Answers,

Chester A. Hawkins

Chester A. Hawkins
Sheriff