OBJECTION, AMBIGUOUS: NEVER ASSUME A VEHICLE'S IDENTITY

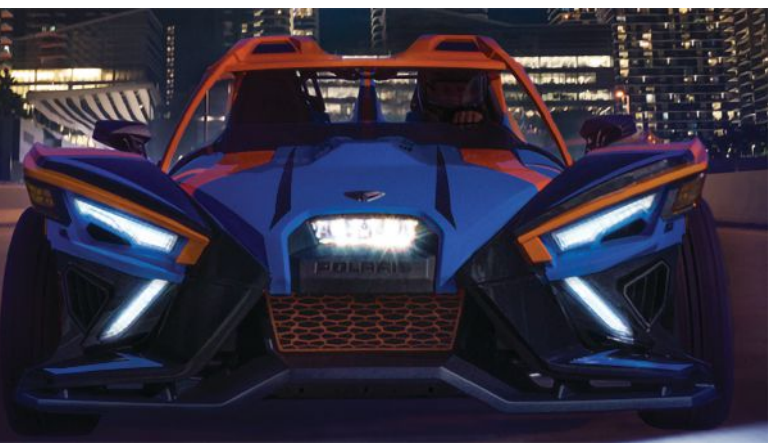
by Poorad Razavi

There is an emerging trend of three-wheeled motorcycles, also known as motorized tricycles or motor trikes, proliferating on the roadways. Some may even offer the appearance of a car, yet with all the hazards of a motorcycle. Interestingly enough, three-wheeled ATVs were banned in the United States in 1988, due to a rash of injuries and death, leading to the now standard four-wheeled machines.

Yet, time and time again, three-wheeled vehicles demonstrate why they pose a serious danger due to their uneven weight distribution and ambiguous nature. This article addresses the liability concerns surrounding the Polaris Slingshot, whose 2015 model was its first edition into the U.S. market.

The Slingshot seeks to appeal to both the car and motorcycle markets. It is in this identity ambiguity that the liability issues for these motor trikes come about. While motorcycle advertising tends to focus on the entirety of the vehicle and experience, the three-wheeled vehicle marketing often focuses on the driver's engagement with the steering wheel, akin to traditional car advertising.

The Slingshot is unique in that it seeks to emulate a car in most respects, except safety. The first concern that naturally arises is that users are being potentially misled into operating this vehicle like a car. In fact, deep in its owners' manual is an admission that the Slingshot "handles differently than two-wheel motorcycles, other three-wheel vehicles and four-wheel vehicles." In essence, it is a brand-new, street-legal driving experience for motorists. Almost forebodingly, Polaris itself lists out 14 distinct characteristics of this vehicle that are novel for motorists:



How does a Slingshot differ from a two-wheel motorcycle?

- Low center of gravity
- Steering wheel
- Foot controls (brake, clutch, accelerator)
- Front suspension and steering
- Side-by-side operator and passenger seats
- Seat belts for both riders
- Lighting
- One rear drive wheel and two front wheels

The unique handling characteristics of the Slingshot include:

- More stability in turns
- Vehicle stability at rest
- Flat cornering
- Turns in direction of wheel
- Quick response to steering changes
- Like all on-road vehicles, the Slingshot can hydroplane (lose traction) when encountering a layer of water on the driving surface. Every vehicle has a unique hydroplane speed and response, driven by vehicle weight, tire configuration and tire condition. The Slingshot may hydroplane at lower speeds and react differently to hydroplaning than most motorcycles.

It is clear that some of the Slingshot's novel distinctions are designed to encourage riskier maneuvering and driving by motorists. Polaris specifically emphasizes fast and sudden driving in a product that it knows offers virtually none of the protections of a car. Their inevitable Assumption of the Risk defense must be met with an equally aggressive Misrepresentation of the Risk reply by a plaintiff in any lawsuit.

Any motorcyclist will attest to the fact that operating a motorcycle is a significantly different experience than driving a car. The experience of a car is radically more forgiving and requires exceptionally less persistent focus. A car will not tip over when lightly tapped. A car will not tip over when stationary. A car driver is never at risk of being run over. A car driver is never at risk of falling down on a tight turn. More importantly, a car driver has airbags, seatbelt pretensioners, a crashworthy roof and occupant compartment, as well as various other embedded safety features.

In states like Florida, these disparate risks, and many more, are demonstrated in the different requirements for a driver's license versus a motorcycle license (or "motorcycle endorsement"). Unlike with cars, motorcyclists must complete a certified rider training course. This course strictly enforces and embeds the notion of relentless attention to traffic in a way that far eclipses even an optional driver's education program for a car. However, Polaris, through its novel vehicle design, seeks to both ignore and conflate these distinctions that the Florida Department of Motor Vehicles holds paramount to driver licensure, and with little regard of consequence.

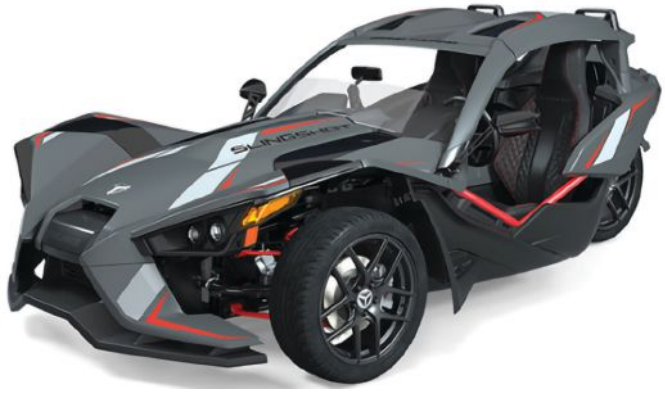
Not only does Polaris encourage riskier behavior with a more dangerous vehicle, the owner's manual also buries two exceptionally vital pieces of information about this vehicle:

ALWAYS:

- Wear a full-face helmet (DOT-certified in the U.S.) and eye protection that meets or exceeds established safety standards. This vehicle is not equipped with airbags.

Again, these warnings are contradicted by any reasonable expectation of the performance of the Slingshot based not just on aesthetics, but on the actual marketing of the product. Yet these two lifesaving phrases are inserted almost as a casual reminder rather than the alarming warnings they should be. Therefore, there initially remains a viable failure to warn claim regarding helmet usage, as a reasonable consumer would not expect to need to wear a helmet with a car-shaped vehicle.

The next issue is crashworthiness. As mentioned above, although consumers have come to expect airbag usage in vehicles since they became mandatory on September 1, 1998,

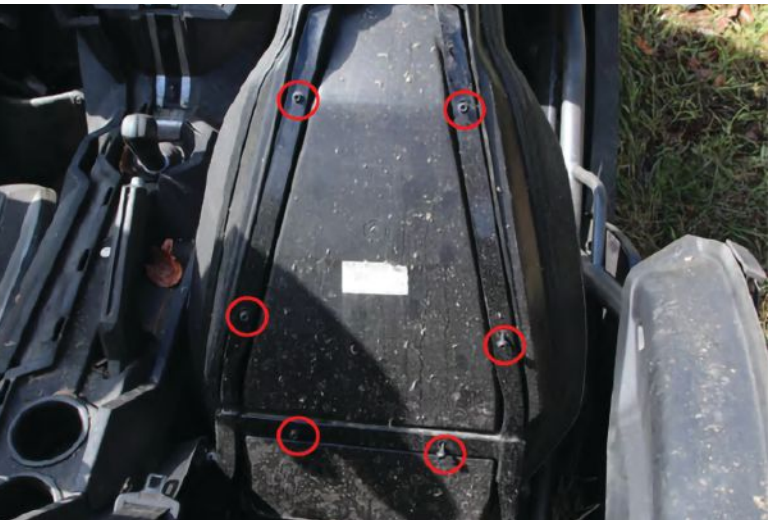


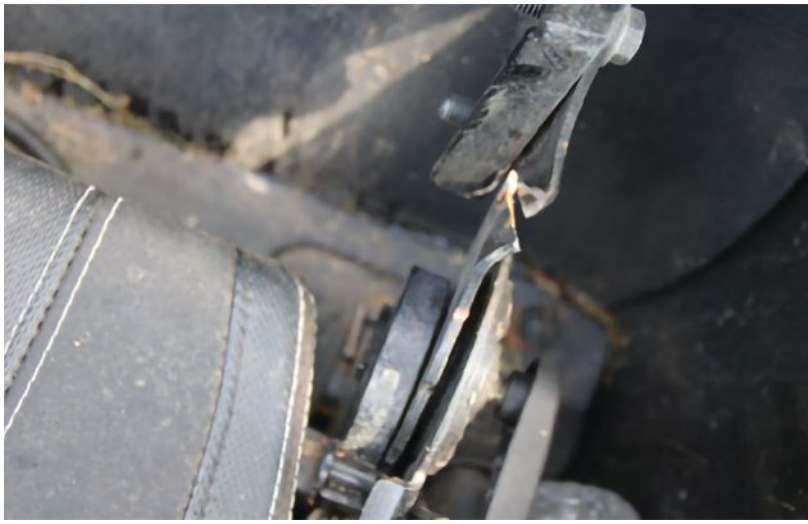
Polaris has omitted them from the Slingshot's ambiguous vehicle design. Again, its technical position will be that the Slingshot is not a car, and thus not subject to the same safety criteria, such as FMVSS 208 frontal impact tests. This technicality will be an inevitable major point of contention in future litigation. The roof of the vehicle is also not subject to minimum federal guideline testing, and thus both the roof and the occupant compartment are at risk of being compromised during any significant impacts.

The Slingshot also fails to incorporate a seatbelt pretensioner, which is a safety device that has been used in vehicles since 1981. The purpose of a pretensioner is typically to trigger a pyrotechnic device to fire in order tighten the seatbelt quickly in certain types of dangerous crashes in order to reduce slack and, thereby, minimize injuries. Despite being standard equipment in nearly every vehicle, the Polaris Slingshot failed to incorporate this feature. Depending on the model year, there may also be a failure to incorporate a dynamic locking latch plate argument, which can contribute to initially enabling slack to generate in the seatbelt prior to impact.

These seatbelt concerns are compounded by the fact that the D-Ring/retractor is positioned on the Slingshot's inboard, rather than outboard, location in the vehicle. Typically, a proper seatbelt would be anchored to the outboard side to mitigate potential ejection. As a result, even if the Slingshot seatbelt "properly" functions, it could lead to an increased risk of ejection.

However, even more troubling is that — not only does the vehicle lack basic and fundamental safety features — its limited safety design also contains glaring and potentially fatal defects. The driver and passenger seats are prone to failure in various ways in frontal impacts. In at least one impact, the driver's seat frame buckled during the collision. This defect is consistent with the general crashworthiness issues that have arisen with the Slingshot.





Additionally, the seatback is attached by inadequate screws that can readily break free from their mounting points during impact, allowing the seat to partially separate and move vertically, contributing to occupant ejection. The small screws are attached into the plastic of the seatback. This risk is further exacerbated by the aforementioned lack of a seatbelt pretensioner to keep the occupant further restrained.

When investigating Polaris Slingshot accidents, since ejection can occur from the seat failure even when seatbelt usage exists, it is important to review the EMS and fire rescue records to identify all evidence of belt usage, especially if the first responders unbuckled the belt for other reasons.

Also, given that the Slingshot is not subject to the same litany of crashworthiness tests as a standard car, its electronic stability control, if present, is highly questionable. The same concerns also exist for any anti-lock brakes. Both of these are likely legacy systems from cars that are being inputted for this unique design.

Recent model years of the Slingshot also suffer from an epidemic of safety related recalls as follows:

Increased Risk of Loss of Control

1. Reduced braking
   - https://static.nhtsa.gov/odi/rcl/2016/RCL-RPT-16V752-7969.PDF
2. Reduced steering/suspension
   - https://static.nhtsa.gov/odi/rcl/2017/RCL-RPT-17V158-2269.pdf
3. Loss of braking
   - https://static.nhtsa.gov/odi/rcl/2018/RCL-RPT-18V321-6737.PDF
4. Loss of power steering
   - https://static.nhtsa.gov/odi/rcl/2019/RCL-RPT-19V750-8128.PDF
5. Loss of stability
   - https://static.nhtsa.gov/odi/rcl/2016/RCL-RPT-16V755-8707.PDF
6. Loss of ABS
   - https://static.nhtsa.gov/odi/rcl/2017/RCL-RPT-17V357-2432.PDF

Compromised SRS

7. Seatbelt failure
   - https://static.nhtsa.gov/odi/rcl/2018/RCL-RPT-18V531-5130.pdf
8. Seatback failure
   - https://static.nhtsa.gov/odi/rcl/2018/RCL-RPT-18V195-2581.PDF

Fire Risk

9. Fuel leak
   - https://static.nhtsa.gov/odi/rcl/2016/RCL-RPT-16V754-6348.PDF

At its core, the Polaris is a vehicle that appears more suited for off-road usage, yet its ambiguous design is being specifically marketed for roadway and highway travel, posing a threat to its operators and other motorists alike. All consumers should be on the lookout for these troubling issues surrounding the vehicle.

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an EAGLE® Sponsor, is an attorney at Cohen Milstein and a member of the firm's complex tort litigation practice. Razavi's practice focuses on products liability, vehicle defects, roadway design and maintenance defects, trucking and car accidents, negligent security, and wrongful death and catastrophic injury suits. Razavi is a frequent speaker in the legal community and has repeatedly been selected as a "Rising Star" by *Florida Super Lawyers* and a "Legal Elite Up and Comer" by Florida Trend. He is also AV rated by Martindale-Hubbell. His other memberships include: ABA, AAJ, PBCJA, PBCBA, and the California Bar.