

KAWASAKI JET-SKI ACCIDENT VERDICT HAS IMPORTANT LEGAL IMPLICATIONS FOR PERSONAL WATERCRAFT INDUSTRY

By: Robert L. Parks¹

A recent jury verdict in Georgia has put the manufacturers of personal watercraft (PWC) on notice that their current warning labels are inadequate. Now, it remains to be seen if they will respond appropriately – not just with better warning notices, but with tangible product design improvements to reduce the accident risks for both operators and passengers.

Highly popular in tourist destinations like Florida, The Bahamas and the Caribbean, personal watercraft are very dangerous products – particularly for a passenger riding behind the operator. Sudden acceleration, a sharp turn, an unexpected wave or running aground in shallow water – to name just a few common occurrences – can result in the passenger being ejected from the PWC. If the passenger falls behind the PWC, the high-pressure jet of water can result in severe damage to the lower part of the body, resulting in permanent disability or death.

That's what happened to Bahamian Megan Sands, who suffered serious injuries while riding a Kawasaki Jet-Ski on May 21, 2006. A 21-year-old resident of Nassau, Sands decided to spend an afternoon boating with family and friends on nearby Rose Island.

Sands was wearing a two-piece bikini when she boarded the Jet-Ski from the passenger side. A friend, who was operating the watercraft, proceeded slowly along the beach for about 100 to 200 feet. Then, the watercraft stopped and Sands spent several minutes talking with her friends, before deciding to head back.

The operator asked Sands if she was ready to return to the family boat. Believing the return would be as slow, she answered yes, and was not holding on. However, the operator hit the throttle on the handlebar and lost control of the watercraft. The Jet Ski suddenly accelerated and the front pitched up in the air. At this point, Sands slid off the back of the Jet Ski, directly into the path of the high-pressure stream of water, and suffered vaginal and anal damage. She was taken to a hospital in Nassau, where she was treated for her acute injuries, and received a colostomy bag. Since her accident, she has been hospitalized 19 times, but has made a remarkable recovery. She enrolled at Georgia Southern University, earned her bachelor's and master's degree and is now on track to obtain a doctorate in

counseling. She is to be congratulated for her resilience in the face of such a devastating injury.

A \$3 million verdict

Five years after the Kawasaki Jet-Ski accident, I represented Sands in a civil trial in Savannah, Georgia. On August 9, a jury in U.S. District Court Judge William Moore's courtroom, ordered Kawasaki to pay \$3 million to Sands. That award was reduced by half to \$1.5 million for plaintiff liability.

We sued Kawasaki on the basis of strict liability, which means that the Jet Ski, as designed, was unreasonably dangerous to users such as Sands. We also felt the current warning that advises operators and passengers to wear a protective neoprene wet suit – a requirement since the early 2000s – was inadequate. In this case, Sands was not able to see the warning when she boarded the PWC from the side.

The jury agreed with our argument, and cited Kawasaki for design negligence. In a special verdict (answering certain questions about the case), the jury found that the 2003 Jet Ski was particularly unsafe because it lacked a rear seat guard to prevent passengers from falling backward into the dangerous jet thrust.

Through the years, PWC manufacturers have shown a reluctance to add these types of safety features that could offer better protection for passengers. Newer models now have a scalloped seat that improves the chances for a rider to fall off to the side, rather than directly astern into the jet stream. However, seat backs have been designed and developed that could be mounted on the stern of a PWC that would reduce that risk even further, and provide a back support for a passenger when the front of the craft rises upward.

In a finding with even greater implications for PWC manufacturers, the jury in the Sands case found that the Jet Ski's current warning about wearing a wet suit was inadequate. We believe that is a significant accomplishment and hope that manufacturers respond promptly and appropriately.

Clearly, today's personal watercraft need to be designed with better safety features and more visible warning notices. The Sands case should be a wake-up call for the industry.

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