

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE**

**IN RE: YAMAHA MOTOR CORP.  
RHINO ATV PRODUCTS LIABILITY  
LITIGATION**

**Master File No. 3:09-MD-2016-JBC  
MDL No. 2016**

**THIS DOCUMENT RELATES TO ALL  
CASES**

**JENNIFER B. COFFMAN,  
U.S. DISTRICT JUDGE**

**CASE MANAGEMENT AND SCHEDULING ORDER NO. 3**

Case Management and Scheduling Order No. 3 (“CMO 3”) supplements and amends Case Management and Scheduling Order No. 1 (“CMO 1”) and Case Management and Scheduling Order No. 2 (“CMO 2”).

**I. CASE MANAGEMENT**

**A. Duty to Submit Fact Sheet Triggered by Service of Complaint**

A Party that has not been served with a Complaint in a particular case shall have no obligation to serve Fact Sheets in that case. The time for serving Fact Sheets set out at Paragraph IV.C. of CMO 1 shall not begin to run until such party has been served with a Complaint in that case.

**B. Fixed Fact Sheet Deadlines**

To avoid unnecessary confusion, Fact Sheets for Case Groups 3 and 4 shall be due on the following fixed dates:

1. Group 3 Cases wherein Plaintiffs’ Fact Sheets have been served as of September 15, 2009:

a. This group comprises the following cases:

<b>Plaintiffs' Name</b>	<b>Case Number</b>
Capps III, John	3:09-cv-00606
Chrystal, Trevor	3:09-cv-00631
Cloyd, Michael	3:09-cv-00612
Crisp, David	3:09-cv-00608
Cummings, Tyler	3:09-cv-00607
Frieman, Grad	3:09-cv-00615
Fronger, Bradley	3:09-cv-00616
Hallan, Dennis	3:09-cv-00602
Howard, Crystal	3:09-cv-00580
Hunter, Nathan	3:09-cv-00629
Jackson, Rodney	3:09-cv-00620
Johnson, Brett	3:09-cv-00618
Kenzy, Ryan	3:09-cv-00630
Marcellus, Dwain	3:09-cv-00601
Mayo, Paul	3:09-cv-00588
Ott, David	3:09-cv-00603
Palmer, Angela	3:09-cv-00584
Petersen, Lynette	3:09-cv-00609
Peterson, Paul	3:09-cv-00628
Robinson, Kamron	3:09-cv-00617
Sharp, John	3:09-cv-00597
Stockton, Chris	3:09-cv-00614
Tramp, Sophia	3:09-cv-00600
Upshaw, Jeremy	3:09-cv-00599
Voss, Chad	3:09-cv-00613
Williams, Michael Ray	3:09-cv-00647

b. Deadlines:

- |    |   |          |
|----|---|----------|
| a. | Plaintiffs' document production per Fact Sheet                | 10/15/09 |
| b. | YMMC and YMUS Fact Sheets                                     | 10/30/09 |
| c. | Dealer Fact Sheets, including any Common Fact Sheets required | 10/30/09 |

- d. YMC Fact Sheets 11/30/09
  
- 2. Remaining Cases in Group 3
  - a. Plaintiffs' Fact Sheets 11/30/09
  - b. YMMC and YMUS Fact Sheets 12/30/09
  - c. Dealer Fact Sheets, including any Common Fact Sheets required 12/30/09
  - d. YMC Fact Sheets 01/29/10
  
- 3. Case Group 4
  - a. Plaintiffs' Fact Sheets 02/26/10
  - b. YMMC and YMUS Fact Sheets 03/29/10
  - c. Dealer Fact Sheets, including any Common Fact Sheets required 03/29/10
  - d. YMC Fact Sheets 04/27/10

Unless otherwise specified above, subject to objections and the right of supplementation for later found documents, documents called for in each Fact Sheet shall be produced within 30 days of the deadline for submission of that completed Fact Sheet or within five (5) business days after the execution of a Confidentiality Order by the party to whom the documents are being produced, whichever comes later. All other relevant deadlines are governed by CMO 1.

**C. Resolution of Fact Sheet Deficiencies**

With respect to alleged deficiencies in Fact Sheets that apply to multiple cases, to the extent not resolved through informal means, the party raising the issue shall do so at regularly scheduled telephonic or live hearings, in accordance with the procedures specified in the Court's July 21, 2009 Order.

With respect to resolving alleged deficiencies in the Fact Sheets specific to an individual case, the following procedure shall be followed:

- Local counsel shall send to opposing local counsel (with a copy to Lead and Liaison Counsel or their designees) a letter identifying any alleged deficiencies;
- Opposing local counsel shall respond in writing regarding the alleged deficiencies within 10 business days; such response shall be copied to Lead and Liaison Counsel or their designees;
- To the extent alleged deficiencies have not been resolved through informal means, such as telephonic meet and confer sessions, which are encouraged, local counsel raising the alleged deficiencies shall send to opposing local counsel a brief not exceeding four pages addressing the alleged deficiencies;
- Opposing local counsel shall send a response not exceeding four pages;
- Local counsel raising the alleged deficiencies shall prepare a reply not exceeding two pages and shall send copies of the entire package of briefs to Lead and Liaison Counsel for the parties or their designees. After receiving copies of all briefing, Lead and/or Liaison Counsel or their designees shall meet and confer to assist in resolution of the alleged deficiencies;
- If no further agreement can be reached, local counsel raising the alleged deficiencies shall email, but not file, the entire package of briefs, including the relevant Fact Sheet, to the Court, with copies to Lead and Liaison Counsel for the parties or their designees; and
- The Court will schedule a hearing (telephonic or in-person as appropriate) to resolve the issues.

**D. Protocol for Multiple Day Common Discovery Depositions**

To avoid unnecessary expense, any common discovery deposition that may be taken for more than one seven-hour day pursuant to Paragraph IV(H)(G) of CMO #1 shall be taken on

consecutive days, absent order of the Court or agreement of the parties. Agreement of the parties shall be freely given where MDL counsel have made reasonable efforts, but been unable, to arrange consecutive day depositions. Consecutive day depositions will also not be required where that requirement would result in undue delay.

**E. Filing procedures**

To reduce the number of unnecessary notifications circulated to counsel in individual cases and reduce the burden on the ECF filing system, the Court orders as follows:

1. All complaints, amendments thereto, service documents (service of process), and answers shall be filed in the relevant member action only and not in the Master Case file.
2. Case-specific motions, responses, replies, and documents in support thereof shall be filed both in the Master Case file and in the relevant member action. All other filings shall be filed in the Master Case file only. The spread text feature in CM/ECF will no longer be available for use by counsel.
3. Pursuant to FRCP 5(d), all discovery, including discovery requests and responses, notices of depositions, etc., shall not be filed in either the Master Case file or the relevant member action.
4. The Clerk shall remove all individual counsel from the Master Case docket, except for those counsel and their support staff identified by Lead and Liaison Counsel for the Plaintiffs, the Yamaha Defendants, and the Other Defendants. The Clerk is further instructed to add Lead and Liaison counsel to all individual cases. For filings in the Master Case docket that relate to all cases, Lead and Liaison Counsel will be responsible for service upon all other attorneys and parties. Individual case counsel shall be responsible for service on appropriate parties of all case-specific filings.


**F. Corporate Disclosure Statements**

Yamaha Defendants, as defined in sec. I of CMO 1, shall not file corporate disclosure statements pursuant to FRCP 7.1 in cases centralized in these proceedings unless there is a change in ownership of an entity otherwise subject to disclosure or supplementation under this rule.

**II. MODIFICATION**

The Parties and Court acknowledge that modification of this CMO may be necessary based on experience operating under it, and any party is free to seek modification of this Order on appropriate notice and for good cause shown.

ORDERED on this 6<sup>th</sup> day of October, 2009.

  
Jennifer B. Coffman, Judge  
United States District Court