

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION
-Electronically Filed-

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 ORDER NO. 4

This Order supersedes paragraph G of CMO No. 2.

Pursuant to CMO No. 1 Section IV(B), the following deadlines shall govern
expert discovery:

**A. Expert Discovery And Motions In Case Group 1 Cases Not Selected For
The January 2010 Settlement Pool.**

For categories of experts other than the Deferred Expert Categories,¹ the expert
discovery and motions deadlines for Case Group 1 cases not selected for settlement
conferences shall be as follows:

1. Close of fact discovery – December 4, 2009²
2. Deadline for plaintiffs' expert disclosures/reports for non-case
specific experts – January 8, 2010

¹ "Deferred Experts" are damages experts, IMEs and related experts (e.g. rehabilitation experts), treating physicians (other than healthcare providers who provided assistance related to and within a short time following an incident), and risk analysis experts.

² With respect to medical personnel, the fact discovery deadline applies to physicians, EMTs, and other healthcare providers who provided assistance related to and within a short time following an incident (e.g. emergency room physicians). Other medical personnel, such as treating physicians who provided care after initial treatment in the emergency department, are subject to the deposition deadlines for Deferred Experts even though they might be solely fact witnesses. Nothing in this Order is intended to require fact witnesses to provide disclosures or reports under Rule 26.

3. Deadline for plaintiffs' expert disclosures/reports for case specific experts – February 9, 2010
4. Deadline to depose plaintiffs' experts – March 12, 2010
5. Defendants' expert disclosures/reports due – April 16, 2010
6. Deadline to depose defendants' experts – May 21, 2010
7. Plaintiffs' rebuttal reports due – June 4, 2010
8. Deadline to depose plaintiffs' rebuttal experts – June 25, 2010
9. Deadline to file *Daubert* and dispositive motions – July 30, 2010

B. Expert Discovery And Motions In Case Group 1 Cases Selected For January 2010 Settlement Pool

The following cases have been jointly selected by the parties as potential early settlement candidates: Billy Akins, Wayne Bayly, Heather Bennett, Danny Breedwell, Zachary Bryant, Margaret Ford, Colton Grabher, Karl Hartig, Andrew Holley, Judy Kuemper, Carla Lawson, Yoe Lopez, Lewis Maudlin, Amanda McCoy, Richard McCurdy, Christopher McKee, Michael Murrieta, Jacob O'Neal, Jennifer Ousley, Corinna Singleton, Clint Smith, and Vernon Wallace (the "Group 1 Settlement Candidate Cases"). On or before January 8, 2010, plaintiffs shall submit in the Group 1 Settlement Candidate Cases expert reports in compliance with FRCP 26(a)(2) for all experts, except experts in the Deferred Expert Categories. The parties shall participate in mediation or settlement discussions with respect to the Group 1 Settlement Candidate Cases beginning on January 18, 2010. No further expert discovery shall occur in these cases before such mediations or discussions are completed.

If, despite the good faith efforts of the parties, settlement efforts are unsuccessful as to any Group 1 Settlement Candidate Case, the case shall be placed back into the pool of unsettled Case Group 1 cases. In such cases, the deadlines for deposing plaintiffs' experts, disclosing defense experts, deposing defense experts, serving plaintiffs' rebuttal

reports, deposing plaintiffs' rebuttal experts and filing *Daubert* and dispositive motions shall be those set forth in Section A above.

C. Discovery And Motions Deadlines For Case Group 1 Cases – Deferred Expert Categories

Pursuant to paragraph IV.B.4(c) of CMO No. 1, at the conclusion of all discovery for each Case Group, the parties "shall meet and confer in an effort to select cases from the Case Group (and any others) that the parties agree may be appropriate for mediation" and such cases "shall be promptly mediated before a mediator selected by agreement of Lead Counsel for Plaintiffs and Defendants or, if agreement cannot be reached, a mediator selected by the Court." Mediation of Case Group 1 cases jointly selected for mediation shall take place following the June 25, 2010 deadline to depose plaintiffs' rebuttal experts, set forth above, and shall be completed by July 30, 2010.

For any deferred expert discovery in Case Group 1 cases that have not been resolved or dismissed, including experts in the Deferred Expert Categories, such discovery shall be completed in compliance with the following deadlines:

1. Plaintiffs' expert disclosures/reports due – August 27, 2010
2. Deadline to depose plaintiffs' experts – October 15, 2010
3. Defendants' expert disclosures/reports due – November 29, 2010
4. Deadline to depose defendants' experts – January 14, 2011
5. Plaintiffs' rebuttal reports due – February 11, 2011
6. Deadline to depose plaintiffs' rebuttal experts – March 11, 2011
7. Deadline to file *Daubert* and dispositive and other pretrial motions – April 8, 2011

D. Expert Discovery And Motions Deadlines In Case Group 1 Kentucky Cases

The expert discovery and motions deadlines for those cases in Case Group 1 properly filed and venued in Kentucky (the "Group 1 Kentucky Cases") shall be the subject of a separate order once trial dates are set by the Court.

E. Case Group 2 Cases Selected For Settlement Conferences

No later than March 1, 2010, the parties shall confer, orally or in writing, to discuss which Case Group 2 cases may be ready for a settlement conference in April 2010. Nothing need be filed in the record. No later than March 8, 2010, the parties shall file, jointly or separately, a list of cases that will be ready for settlement conference in April 2010 (the "Group 2 Settlement Candidate Cases"). The Court will schedule a hearing thereafter, if needed, to address the parties' reports.

The parties shall engage in mediations or settlement discussions with respect to the Group 2 Settlement Candidate Cases following plaintiffs' April 9, 2010 submission of expert reports in the Group 2 Settlement Conference Cases pursuant to Section F below. Such mediations or discussions should be completed by April 30, 2010. No further expert discovery shall occur in the Group 2 Settlement Conference Cases before such discussions are completed.

If, despite the good faith efforts of the parties, settlement efforts are unsuccessful as to any Group 2 Settlement Candidate Case, the case shall be placed back into the pool of unsettled Case Group 2 cases. In such cases, the deadlines for deposing plaintiffs'

experts, disclosing defense experts, deposing defense experts, serving plaintiffs' rebuttal reports, deposing plaintiffs' rebuttal experts and filing *Daubert* and dispositive motions shall be those set forth in Section F below.

E. Expert Discovery And Motions Deadlines In Case Group 2 Cases Not Selected For Settlement Conferences

For categories of experts other than the Deferred Expert Categories in those Group 2 cases that are not Group 2 Settlement Conference Cases, the expert discovery deadlines shall be as follows:

1. Close of non-expert fact discovery – March 5, 2010
2. Plaintiffs' expert disclosures/reports due for non-case specific experts – April 9, 2010
3. Plaintiffs' expert disclosures/reports for case specific experts – May 10, 2010
4. Deadline to depose plaintiffs' experts – June 11, 2010
5. Defendants' expert disclosures/reports due – July 9, 2010
6. Deadline to depose defendants' experts – August 13, 2010
7. Plaintiffs' rebuttal reports due – August 31, 2010
8. Deadline to depose plaintiffs' rebuttal experts – September 24, 2010
9. Deadline to file *Daubert* and dispositive motions – October 29, 2010

F. Discovery And Motions Deadlines For Case Group 2 Cases – Deferred Expert Categories

Pursuant to paragraph IV.B.4(c) of CMO No. 1, at the conclusion of all discovery, the parties “shall meet and confer in an effort to select cases from the case group (and any others) that the parties agree may be appropriate for mediation” and such cases “shall be promptly mediated before a mediator selected by agreement of Lead Counsel for Plaintiffs and Defendants or, if agreement cannot be reached, a mediator selected by the Court.” Mediation of Case Group 2 cases jointly selected for mediation shall take place between September 30, 2010 and October 29, 2010.

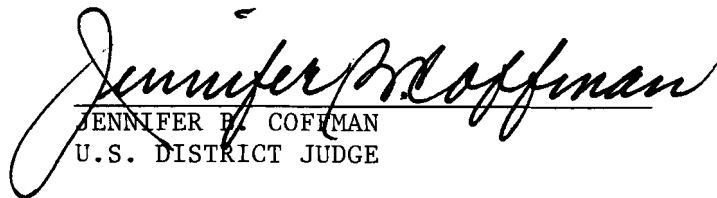
For any deferred expert discovery in Group 2 cases that have not been resolved or dismissed, including experts in the Deferred Expert Categories, such expert discovery shall be completed in compliance with the following deadlines:

1. Plaintiffs' expert disclosures/reports due – November 26, 2010
2. Deadline to depose plaintiffs' experts – January 14, 2011
3. Defendants' expert disclosures/reports due – February 28, 2011
4. Deadline to depose defendants' experts – April 15, 2011
5. Plaintiffs' rebuttal reports due – May 13, 2011
6. Deadline to depose plaintiffs' rebuttal experts – June 10, 2011
7. Deadline to file *Daubert* and dispositive and other pretrial motions – July 15, 2011

G. Deadlines For Cases In Subsequent Case Groups

For cases in subsequent Case Groups, the deadlines to submit reports regarding early settlement candidates and to complete expert discovery for each case group shall be set 90 days from the deadline for the immediately preceding Case Group.

This the 9th day of December, 2009.


JENNIFER B. COFFMAN
U.S. DISTRICT JUDGE