

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

IN RE: YAMAHA MOTOR CORP. RHINO ATV PRODUCTS LIABILITY LITIGATION <hr/> THIS DOCUMENT RELATES TO: ADORNO V. YAMAHA MOTOR CORPORATION, USA, ET AL. CASE NO. 3:09-CV-00134-JBC	Master File No. 3:09-MD-2016-JBC MDL No. 2016 JENNIFER B. COFFMAN, U.S. DISTRICT JUDGE
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SCHEDULING ORDER

Pursuant to the Court's Order of December 4, 2009, this matter remains scheduled for a jury trial in United States District Court for the Eastern District of Kentucky at Lexington beginning **October 18, 2010 at 9:00 a.m.** The anticipated length of trial is fifteen (15) trial days, through **November 5, 2010.**

The following schedule and deadlines shall apply:

(1) No later than **February 26, 2010**, the plaintiffs shall designate which of the common liability experts whose reports were submitted on January 8, 2010 in MDL 2016 as common liability experts plaintiffs intend to call to testify in this action. No later than **March 15, 2010**, plaintiffs shall disclose the identity of all case-specific expert witnesses, on all issues, whom plaintiffs intend to call to testify in this action by submitting reports of all retained experts in compliance with Rule 26(a)(2). This designation shall include any IME witnesses and/or treating physicians who are not

retained experts and from whom plaintiffs intend to offer opinion testimony and shall include opinions intended to be obtained and/or elicited from such witnesses and/or treating physicians not contained in the treating physicians' medical records previously provided to the defendants, but there shall be no requirement to submit reports for such non-retained experts under Rule 26(a)(2)(B). The March 15 designation shall also include any experts providing opinions on any alleged other similar incident ("OSI"), including the identification of all other Yamaha Rhino accidents or incidents which plaintiffs contend arose under circumstances substantially similar to the Adorno incident, which plaintiffs intend to introduce at trial or make reference to in any manner, for any purpose, at trial through such expert witness. Defendants may take additional fact discovery with respect to OSIs by agreement of the parties or on motion for good cause shown.

(2) All plaintiffs' liability and damages experts shall be made available for depositions at mutually convenient reasonable times and at agreed-upon locations so that defendants can complete the depositions of plaintiffs' experts by **April 14, 2010**.

(3) No later than **April 19, 2010**, the defendant shall complete any IMEs or other damages evaluations in this action, with IME reports and reports of other damages experts to be provided to the plaintiffs no later than **May 17, 2010**.

(4) No later than **May 3, 2010**, the defendants shall designate which of the common liability experts whose reports are submitted on April 16, 2010 in MDL 2016 as common liability experts defendants intend to call to testify in this action. No later than

May 17, 2010, defendants also shall disclose the identity of all case-specific expert witnesses, on all issues, whom defendants intend to call to testify in this action by submitting reports by the experts in compliance with Rule 26(a)(2). This designation shall include any IME witnesses and/or treating physicians who are not retained experts and from whom defendants intend to offer opinion testimony and shall include opinions intended to be obtained and/or elicited from such witnesses and/or treating physicians not contained in the treating physicians' medical records previously provided to the defendants, but there shall be no requirement to submit reports for such non-retained experts under Rule 26(a)(2)(B).

(5) No later than May 17, 2010, Plaintiffs shall identify any alleged other similar incident ("OSI") witnesses other than experts designated pursuant to paragraph (1) above and any other Yamaha Rhino accidents or incidents which plaintiffs contend arose under circumstances substantially similar to the Adorno incident, which plaintiffs intend to introduce at trial or make reference to in any manner, for any purpose, at trial through anyone other than an expert witness designated pursuant to paragraph (1). Defendants may take additional fact discovery with respect to such OSIs by agreement of the parties or on motion for good cause shown.

(6) All defendants' liability and damages experts designated in this action shall be made available for depositions at mutually convenient reasonable times and at agreed-upon locations so that plaintiffs can complete the depositions of defendants' experts by June 11, 2010.

(7) Any plaintiffs' expert who intends to offer opinions in this action solely to contradict or rebut new evidence first disclosed by defendants' experts shall submit by June 23, 2010, a report setting forth all such rebuttal opinions in compliance with the requirements of Rule 26(a)(2). Any plaintiffs' expert offering rebuttal opinions shall be made available for deposition at mutually convenient reasonable times and at an agreed-upon location so that the defendants can complete the depositions of all of plaintiffs' rebuttal experts by July 12, 2010.

(8) Copies of all materials relied on by an expert in formulating his or her opinions and all materials that an expert intends to rely on at trial shall be produced at least five (5) business days prior to the scheduled deposition of the expert or, if previously produced in MDL 2016, clearly identified in a list submitted by the expert, including an identification of where and when each item was previously produced, at least ten (10) business days prior to the scheduled deposition.

(9) A final pretrial conference with motion hearings if necessary is assigned for September 16, 2010, at 1:30 p.m. at Lexington, Kentucky.

(10) No later than August 2, 2010, the parties shall file a final witness list pursuant to Rule 26 (a)(3)(A) with a brief summary of the expected testimony of each witness. Pursuant to Rule 26 (a)(3)(B), the witness list shall include the designation of those witnesses whose testimony is expected to be presented by deposition, with references to pages and the questions and answers to be presented; and, if the deposition was not taken stenographically, a transcript of the pertinent portions of the

deposition testimony shall be attached to the witness list. No later than August 17, 2010, all counter-designations of deposition testimony must be filed, with references to the pages and the questions and answers to be presented.

(11) No later than August 2, 2010, the parties shall file a final exhibit list pursuant to Rule 26 (a)(3)(C), with exhibits to be pre-marked pursuant to Rule 83.10 of the Joint Local Rules for the United States District Courts of the Eastern and Western Districts of Kentucky, and shall exchange copies of all such exhibits intended to be used at trial. Non-evidentiary demonstrative exhibits shall be exchanged on a date to be determined by the Court at the final pretrial conference.

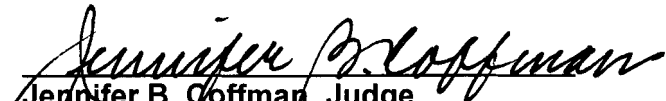
(12) No later than August 2, 2010, the parties shall file all motions to exclude expert testimony pursuant to *Daubert v. Merrell Dow Pharm.*, 509 U.S. 579 (1993), with said motions to be styled as motions in limine. All other motions in limine shall also be filed no later than August 2, 2010, except for motions addressed below in paragraph 13. The deadlines for response and reply briefs shall be governed by Local Rule 7.1(c).

(13) No later than August 25, 2010, the parties shall file any objections to testimony of non-expert witnesses or the use of depositions or designations of deposition testimony or to the admissibility of exhibits pursuant to Rule 26 (a)(3). Such objections shall be in the form of motions in limine. Objections not then disclosed, other than objections based on Federal Rules of Evidence 402 and 403, shall be deemed waived unless excused by the Court for good cause shown. Responses to motions filed

pursuant to this paragraph 13 shall be filed no later than September 3, 2010, and replies shall be filed no later than September 11, 2010.

(14) No later than September 9, 2010, the parties shall conduct a conference in person or by telephone to formulate agreed proposed jury instructions on the substantive law of the case and to agree on a statement of the case suitable for reading to the prospective jurors on voir dire. If the parties cannot agree on jury instructions and/or an agreed statement of the case for voir dire, no later than September 13, 2010, the parties shall file, submit to the Court and exchange by service their separately proposed instructions and/or statements of the case for voir dire, with supporting authorities.

ORDERED THIS 22nd DAY OF February, 2010.


Jennifer B. Coffman, Judge
United States District Court