

**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. 8**

Case Management and Scheduling Order No. 8 (“CMO 8”) expands upon the provisions of prior CMOs, including paragraphs IV.H.4 and 6 of CMO 1, regarding the procedures for noticing and taking depositions of common experts (i.e., those experts not offering case specific opinions) and establishes specific requirements regarding the supplementation of expert reports.

1. The provisions of CMO 1, paragraph IV.H.4., prohibit questioning any witness, including a common expert witness, but excluding case-specific experts, on subject matters on which the witness has been previously deposed except by agreement of the parties or for good cause shown. This prohibition applies whether the deposition was taken in MDL 2016, the California Coordination Proceeding, the Georgia Coordinated Proceeding, or any other Rhino-related state court case. Where the party producing the common expert states that the witness has been deposed previously, in MDL 2016 or otherwise, the deposing party has an obligation to review all prior depositions and not cover subject matters previously covered absent the agreement of the parties, or if there is no agreement, by Order of the Court following a showing of good cause. The party producing the witness shall produce all previous depositions and accompanying exhibits, to the extent not previously produced in MDL 2016, to Lead Counsel for

the deposing side no later than 10 days after issuance of the Notice of Deposition. Depositions are permitted as to matters where the common expert has changed or added to his or her expert opinions, the support for those opinions or reliance materials, or where the prior deposition of the expert on a matter was limited to the facts of a specific case.

2. Where a party believes in good faith that it has grounds to notice the deposition of a common expert to ask questions on matters where there has been additional work or changes, the party may notice the deposition and is not required to confer with the party producing the witness in advance of the deposition with respect to the matters to be covered at the deposition. If the deposition is not conducted in good faith and in accordance with CMO 1 and paragraph 1 above, the producing party may file a motion for costs or other appropriate relief.

3. At a deposition of a common expert noticed consistent with this Order, the questioning party may, as to previously covered matters, ask questions to confirm that the expert has not done additional work or otherwise changed or altered his or her opinions, the support for those opinions or the reliance materials related to those opinions. A common expert deposition may not be noticed, however, for the sole purpose of confirming that the witness has not done any additional work or otherwise changed or altered any of his or her opinions, the support for those opinions or the reliance materials related to those opinions.

4. In the event that a party does not believe that there is evidence of additional work or changes or new matters to justify a deposition of a common expert designated by another party, the party choosing not to notice or take the deposition may request that Lead Counsel for the party that designated the common expert provide a declaration signed by the expert that he or she has, in fact, not done any additional work or otherwise changed or altered his or her opinions, the support for those opinions or the reliance materials related to those opinions. Such

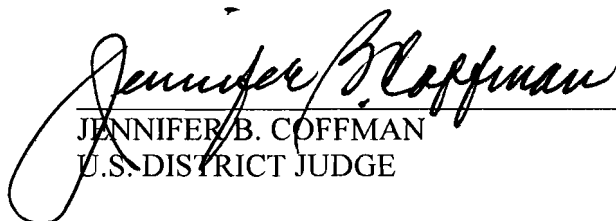
certification, or a notice that the expert has done additional work or otherwise changed or altered his or her opinions, the support for those opinions or the reliance materials related to those opinions, shall be provided within ten (10) business days of such a request.

5. The party designating a common expert shall have the obligation to provide a supplemental expert report where there have been any additions or changes to any of the matters required to be disclosed in the expert's report pursuant to Rule 26(a)(2)(B) or to the expert's testimony at deposition. Except by agreement of the parties or for good cause shown, the supplementation as required by this paragraph shall be made in a timely manner, with a final supplementation due no later than 60 days before the date set by Order of this Court for the filing of the last *Daubert*, dispositive and pretrial motions for that case. For example, under the current schedule established by CMO No. 4, the final expert supplementation for Case Group 1 Cases would be 60 days prior to April 8, 2011. A party shall be entitled to take additional discovery based on supplementation of an expert report pursuant to this paragraph either by agreement of the parties or upon good cause shown. Any information included in the supplementation of an expert report pursuant to this paragraph may be made the subject of motions filed by the final *Daubert*, dispositive and pretrial motion deadline. In the event supplementation is not provided in compliance with this paragraph and the applicable civil rules, the expert shall not be permitted to testify as to any matter required to be disclosed in the expert's report pursuant to Rule 26(a)(2)(B) that was not previously contained in the expert's Rule 26(a)(2)(B) written report in MDL 2016, as supplemented, or in a deposition taken in MDL 2016 or provided to the deposing party pursuant to paragraph 1 above, except for good cause shown.

6. All case-specific expert reports shall be labeled with the specific case name and caption to which they apply, and shall be served by electronic mail to the correct email address

of the appropriate Plaintiffs' or Defendants' Counsel in the specific case as provided in Section VIII of Case Management and Scheduling Order No. 1, with a copy provided to Lead Counsel for all other parties in MDL 2016.

This the 24<sup>th</sup> day of February, 2010.

  
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JENNIFER B. COFFMAN  
U.S. DISTRICT JUDGE