

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**

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

**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**

SCHEDULING ORDER

The Court being sufficiently advised, this matter is reassigned for a jury trial in United States District Court for the Eastern District of Kentucky at Lexington beginning February 14, 2011 at 9:00 a.m. The anticipated length of trial is fifteen (15) trial days, through March 4, 2011.

The following schedule and deadlines shall apply:

(1) No later than May 28, 2010, plaintiffs shall designate and disclose the identity of all retained expert witnesses not previously disclosed in this case by identifying any common liability experts whose reports have been submitted previously in MDL 2016 or by submitting reports by case-specific experts in compliance with Rule 26(a)(2).

(2) No later than May 28, 2010, plaintiffs shall identify any alleged other similar incident ("OSI") fact witnesses 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 Rule 26(a)(2). Defendants may take additional fact discovery with respect to such OSIs by agreement of the parties or on motion for good cause shown.

(3) 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 June 30, 2010.

(4) No later than July 30, 2010, defendants shall disclose the identity of all liability expert witnesses by submitting reports by the experts in compliance with Rule 26(a)(2).

(5) No later than July 30, 2010, defendants 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 plaintiff no later than August 20, 2010.

(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 September 15, 2010.

(7) Any Third Party Defendants' proposed expert witnesses shall be disclosed with reports provided in compliance with Rule 26(a)(2) by October 8, 2010, with any

Third Party Defendants' experts to be made available for deposition at mutually convenient reasonable times and at an agreed-upon location so that depositions of Third Party Defendants' experts can be completed by October 29, 2010.

(8) Any plaintiffs' expert who will offer opinions or evidence solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B) and any defendants' expert who will offer opinions or evidence solely to contradict or rebut evidence on the same subject matter identified by a third-party defendants' expert shall submit by November 5, 2010, a report setting forth all such rebuttal evidence or new opinions in compliance with the requirements of Rule 26(a)(2). Any experts offering opinions or evidence under this paragraph shall be made available for deposition at mutually convenient reasonable times and at an agreed-upon location so that the depositions can be completed by December 1, 2010.

(9) 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 identification of where and when each item was previously produced, at least ten (10) business days prior to the scheduled deposition.

(10) No later than December 8, 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 December 22, 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 December 22, 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.

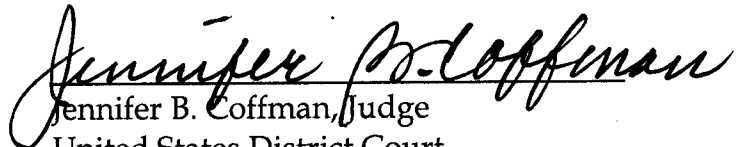
(12) No later than January 7, 2011, the parties shall file any objections to testimony of non-expert witnesses or the use of depositions or designations of deposition testimony or to the admissibility of exhibits pursuant to Rule 26 (a)(3). Such objections shall be in the form of motions in limine. Objections 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 shall be filed no later than January 17, 2011, and replies shall be filed no later than January 24, 2011.

(13) No later than December 10, 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 be filed no later than December 22, 2010, except for motions addressed above in paragraph 12. The deadlines for responses and reply brief shall be governed by Local Rule 7.1(c).

(14) No later than December 17, 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 January 10, 2011, 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.

(15) A final pretrial conference with motion hearings if necessary is assigned for Wednesday, January 26, 2011, at 1:00 p.m. at Lexington, Kentucky.

ORDERED THIS 17th DAY OF MAY, 2010.


Jennifer B. Coffman, Judge
United States District Court
Western District of Kentucky