

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION

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

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

JENNIFER B. COFFMAN, U.S.  
DISTRICT JUDGE

THIS DOCUMENT RELATES TO ALL  
CASES.

CASE MANAGEMENT ORDER NO.

COMMON BENEFIT ORDER

This Order is entered pursuant to this Court's April 1, 2009 *Order Appointing Plaintiffs' Designated Counsel and Joint Order Regarding Responsibilities of Designated Counsel*, to establish a reasonable prospective contingent assessment upon recoveries on the claims comprising this litigation, and to provide for the fair and equitable sharing among plaintiffs of the cost of services performed and expenses incurred by Plaintiffs' Lead Counsel and other attorneys designated by that Order acting for the MDL administration and common benefit of all plaintiffs in this complex litigation ("Designated Counsel").

As this Court previously ordered,

Common Benefit Fees/Costs/Assessment.

Plaintiffs' Designated Counsel shall be responsible, in the first instance, for funding common discovery and pretrial costs necessary and appropriate to their duties as set forth in this Order. As soon as practicable, based upon their evaluation of the particular circumstances of this litigation, and after consultation with the Plaintiffs' Steering Committee, Plaintiffs' Executive Committee shall submit a proposal for any reasonable prospective contingent assessment upon recoveries on the claims comprising this litigation. Such proposal will be subject to court approval and will be implemented under the equitable principles of the common

benefit doctrine that is commensurate with the benefits of economy, efficiency and value actually conferred upon Plaintiffs by these expenditures and services.

*Jt. Order Regarding Responsibilities of Designated Counsel, IV.D.*

Any disputes arising under this Order regarding Participating Parties, as defined in Paragraphs I.B.2.a. and b. of this Order, which cannot be resolved by agreement of Counsel will be resolved by this Court in the exercise of its jurisdiction over this complex litigation, under the equitable principles of the common benefit doctrine. *See, e.g., Sprague v. Ticonic National Bank*, 307 U.S. 161 (1939); *In re MGM Grand Hotel Fire Litigation*, 660 F.Supp. 522, 525-29 (MDL No. 453) (D. Nev. 1987); *In re Air Crash Disaster at Florida Everglades on December 29, 1972*, 549 F.2d 1006, 1019-21 (5th Cir. 1977).

The Court Orders as follows:

**I. COMMON BENEFIT FUND**

The Court hereby authorizes the establishment of a Yamaha Rhino MDL Common Benefit Fund (the “Common Benefit Fund”) for the purposes and pursuant to the limitations set forth in this Order. Plaintiffs’ Lead Counsel is directed to establish an account to receive and disburse funds as provided in this Order. These funds will be held as funds subject to the direction of the Court. No party or attorney has any individual right to any part of this Fund except to the extent of amounts directed to be disbursed to such person by order of the Court. These funds will not constitute the separate property of any party or attorney nor be subject to garnishment or attachment for the debts of any party or attorney except when and as directed to be disbursed as provided by Court order to a specific person. These limitations do not preclude a party or attorney from transferring, assigning, or creating a security interest in potential disbursements from the Fund if permitted by applicable state laws and if subject to the conditions and contingencies of this Order.

**A. Common Benefit Work Product**

1. All plaintiffs or claimants and their counsel of record in the MDL 2016-related cases as provided in paragraph I.B.2.a. below, and state counsel who elect to participate in this agreement as provided in paragraph I.B.2.b. below [hereinafter “Participating Parties”], shall have full access to the work product developed by, at the direction of, and in conjunction with Designated Counsel.

**B. Assessments for the Common Benefit Fund**

1. Subject to the provisions of this Order, Participating Parties who, on or after July 1, 2009, settle, compromise, dismiss, or reduce the amount of a claim against Yamaha Motor Corporation, U.S.A., Yamaha Motor Manufacturing Corporation of America, and/or Yamaha Motor Co., Ltd. (collectively, the “Yamaha Defendants”), with or without trial, with or without that claim being filed, or recover a judgment for monetary damages or other monetary relief, including compensatory and punitive damages, with respect to any Rhino claims against the Yamaha Defendants, are subject to an assessment of the gross monetary recovery on the claims as provided herein. The gross monetary recovery excludes court costs that are to be paid by the Yamaha Defendants or dealer defendants, and includes the present value of any fixed and certain payments to be made in the future.

This obligation attaches in the following instances:

2. Participating Parties

a. MDL 2016-Related Cases: (i) All cases transferred to this MDL, except those remanded by order of this Court to state court for lack of jurisdiction; (ii) all cases filed in federal court but not yet transferred, except those dismissed for lack of jurisdiction; and (iii) all cases subsequently filed in or transferred to this Court, AND, which are settled,

compromised, dismissed, or which have had the amount of the claim reduced, with or without trial, recovered a judgment for monetary damages or other monetary relief, including compensatory and punitive damages, based upon alleged injury (including death) arising from a Yamaha Rhino incident. Such cases will be subject to an assessment of five percent (5%) of the gross monetary recovery, said assessment to be withheld by the Yamaha Defendants and paid into the Common Benefit Fund. The five percent (5%) assessment will be divided proportionally: two percent (2%) coming from the plaintiffs' share of any recovery and three percent (3%) coming from the share of any recovery payable to plaintiffs' attorney as attorneys' fees. For example, on a recovery of \$1,000 with an attorneys fee of forty percent (40%), and without any consideration of case-specific out-of-pocket costs paid or advanced by the individual attorney (for purposes of this example only), two percent (2%) or \$20 would come from the plaintiffs' sixty percent (60%) share and three percent (3%) or \$30 from the attorneys' forty percent (40%) share.

b. Non-MDL Cases and Claims: For cases and claims not covered by paragraph I.B.2.a. above, plaintiffs and their counsel may elect, within 60 days of the entry of this Order, to enter into an appropriate *Participation Agreement* [attached hereto as Exhibit A], for five percent (5%) of the gross monetary recovery, divided proportionally as set forth in paragraph I.B.2.a. above. Later Participating Parties may be assessed a percentage of the "gross monetary recovery" to be established and agreed to by the Plaintiffs' Executive Committee ("PEC"), based on the then-existing and anticipated time and costs of the litigation. Such percentage may exceed the 5% assessment (should the Court so approve). For purposes of the Yamaha Defendants' obligations under paragraph I.B.6., a plaintiff or claimant and his or her counsel shall not be considered a Participating Party pursuant to this section unless a copy of the

executed Participation Agreement is provided to Lead Counsel for the Yamaha Defendants prior to or at the time any settlement agreement is executed.

3. Advancement of Funds for Common Benefit Expenses Approved by Lead Counsel. Designated Counsel who have advanced funds to the Plaintiff's common benefit assessment account during the pendency of the litigation that have been utilized to pay for common benefit expenses approved by Lead Counsel shall receive a credit against their assessment payments.

4. Non-Participating Parties

a. Counsel for any plaintiff who has a case or claim in any state court and who chooses not to execute a Participation Agreement with the PEC (hereinafter a "Non-Participating Party") may seek access from the PEC to MDL and/or PEC non-work product materials by contacting Plaintiffs' Lead Counsel in writing. The PEC, however, shall have no obligation to allow such attorney access to any MDL materials. Further, nothing in this Order shall limit the PEC's right or ability to seek an equitable contribution from a Non-Participating Party who has requested in writing and was provided access to MDL work product.

b. Any Non-Participating Party who utilizes, in connection with his or her state court claims, common benefit work product created in this litigation shall be deemed to have agreed to participate as set forth in paragraph I.B.2.b. above and shall be responsible to withhold the assessment set forth in paragraphs I.B.2.a. and b. above.

5. Coordination with State Courts. The assessment described in this Order is not intended to be cumulative of any assessment imposed in any coordinated state proceedings (including, but not limited to, the California JCCP and Georgia Coordinated Proceedings). Cases and claims subject to an assessment by virtue of paragraph I.B.1. above shall be subject to only

one assessment per settlement or disposition, and shall not be subject to assessment in the California JCCP or any other coordinated state court proceeding. In the event there is a dispute regarding where a particular case or claim should be assessed as between the JCCP, the MDL, or another state coordinated proceeding, Plaintiffs' Lead Counsel shall resolve the matter with plaintiffs' counsel of record in the specific case and shall instruct the Yamaha Defendants which fund is to receive the assessment. The Court recognizes that some Designated Counsel and other firms are performing court-ordered or informal common benefit work in these state court coordinated proceedings, and that common benefit work product and activities generated in one proceeding may and should be utilized and made available, on equitable terms, to plaintiffs in the others. To the extent that any State Court imposes any assessments in those proceedings, MDL Designated Counsel shall work with designated counsel in such coordinated proceedings to coordinate the use of common benefit assessment funds obtained from cases and claims filed in those State Courts, to coordinate their common benefit efforts, and to minimize duplication of effort and expense, such that necessary and appropriate work of common benefit to plaintiffs is reimbursed and compensated, fully and without duplication regardless of the location where the work was conducted. The Court may confer with the California JCCP Court and other state courts regarding common benefit applications, and Designated Counsel shall submit, to this Court, copies of all requests and applications for common benefit awards made in other Courts.

6. From the date this Order is signed forward, the Yamaha Defendants are directed to withhold the amount of the Common Benefit Fund assessment from any amounts paid by the Yamaha Defendants to plaintiffs and their counsel in any case involving a Participating Party, and to pay such withheld funds directly into the Common Benefit Fund as a credit against the settlement or judgment. Unless extraordinary circumstances prevent such payment, payment

into the Common Benefit Fund shall be made within five business days of the payment to any plaintiff or plaintiff's counsel in connection with a settlement that is subject to this Order. In the event that payment cannot be made into the Common Benefit Fund within five business days, the Yamaha Defendants' counsel shall notify Plaintiffs' Lead Counsel of the delay and the reason for the delay. If for any reason the assessment is not or has not been so withheld, the plaintiffs and plaintiffs' counsel of record in the specific case are jointly responsible for paying the assessment into the Common Benefit Fund promptly. Despite the effective date of this Order as set out in paragraph I.B.1., assessments upon any resolutions consummated prior to the date this Order is signed by the Court are the responsibility of plaintiffs' counsel in such cases. The Yamaha Defendants shall not be liable for any assessments or actions taken in connection with settlements to which this Order would apply prior to the date this Order is signed.

7. If the terms of the settlement are confidential, the amounts paid into the Common Benefit Fund by the Yamaha Defendants shall be confidential and shall not be disclosed by the Court-appointed Escrow Agent of the Fund ("Escrow Agent") (see section I.D) other than to the Court upon request by the Court except that the total amounts received in the aggregate may be disclosed by the Escrow Agent, but only on a quarterly basis. Even if the terms of the settlement are confidential, Yamaha Defendants' Counsel shall notify Plaintiffs' Lead Counsel of the fact of a settlement of a case involving a Participating Party, including the case name and docket number, within five business days of the settlement.

8. Any order of dismissal of any Participating Parties claim in which any recovery is received shall be accompanied by a certificate of plaintiff's and the Yamaha Defendants' counsel, if applicable, that the assessment has been withheld and deposited into the Common Benefit Fund.

9. The Plaintiffs' Lead Counsel shall provide Defendants' Liaison Counsel and the Escrow Agent (see section I.D) with a list of Participating Parties. This Court shall have exclusive and continuing jurisdiction over any and all disputes relating to this Order and the assessment process with respect to Participating Parties. In the event a dispute arises regarding a Non-Participating Party under the provisions of Paragraph I.4. a. and b., this Court will determine at that time whether it can and should exercise jurisdiction to resolve the dispute or whether such dispute should be handled in state court with jurisdiction over the particular case. In the event there is a dispute as to whether a case should be assessed, the Plaintiffs' Executive Committee shall first attempt to resolve the matter with the particular plaintiff's counsel either informally or upon motion in the appropriate court. Other than the responsibilities described in this Order, the Yamaha Defendants shall have no duties or responsibilities to any parties or their counsel arising out of the administration of the Common Benefit Fund. The Yamaha Defendants shall have no obligation to take assessments from Non-Participating Parties unless subsequently ordered to do so by the appropriate Court. In the event the Yamaha Defendants violate any provision of this Order, the Yamaha Defendants may be subject to sanctions as determined by the Court. However, no other liability shall be imposed in connection with the Yamaha Defendants' performance of their obligations under this Order. If the Yamaha Defendants learn at any time that a mistake has been made with respect to the amount collected, the Yamaha Defendants shall inform Plaintiffs' Lead Counsel and the Escrow Agent (see section I.D).

10. The Yamaha Defendants shall bear no out-of-pocket costs in connection with the administration of the Common Benefit Fund. All out of pocket costs (exclusive of attorney time), including those associated with the withholding and/or collection of assessments, the submission of certifications, reports and/or statements required by this Order, and any other



cost that may be incurred by the Yamaha Defendants in the administration of the Fund, shall be chargeable to the Common Benefit Fund.

**C. Disbursements from Common Benefit Fund.**

1. Upon approval of the Plaintiffs' Executive Committee (PEC) and on order of this Court, payments may be made from the fund to attorneys who provide services or incur expenses for the joint and common benefit of plaintiffs in addition to their own client or clients. Attorneys eligible are limited to Plaintiffs' Lead and Liaison Counsel, members of the Plaintiffs' Executive and Steering Committees, and other attorneys designated by the PEC to assist in performing their responsibilities. Only work authorized by the PEC in writing may be compensated from the Common Benefit Fund. All time and expenses are subject to proper submission of records which have been timely received by Lead Counsel.

2. Payments will be allowed only to entities for services performed, and to reimburse for expenses incurred, for the joint and common benefit of all plaintiffs.

3. Payments will not exceed the fair value of the services performed (plus any court approved multiplier) or the reasonable amount of the expenses incurred, and, depending upon the amount of the fund, may be limited to a part of the value of such services and expenses.

4. If the Fund exceeds the amount needed to make all payments as provided in this Order (for court approved costs, fees, and any court approved multiplier on any fees), the Court may order a refund to those who have contributed to the Fund. Any such refund will be made in proportion to the amount of the contributions. If the Fund is inadequate to make all payments as provided in this order, the PEC may request and the Court may order an increase to the assessment from those who have contributed to the Fund.

**D. Third Party Escrow Agent to Protect Confidentiality of Settlements**

1. In cases as to which the settling parties have agreed upon confidentiality of settlement terms, the details of any individual settlement agreement and individual settlement amount shall remain confidential and shall not be disclosed to Plaintiffs' Designated Counsel or the Court. In order to protect the confidentiality of these settlements, the Court, upon the joint recommendation of the Yamaha Defendants and Plaintiffs' Lead Counsel, hereby appoints the following neutral third party to serve as Escrow Agent of the Common Benefit Fund: Citibank, N.A., Escrow Agent Services. The Escrow Agent shall be bound by the terms of this Order and shall execute the acknowledgement, attached hereto as Exhibit B, to that effect.

2. The Yamaha Defendants' counsel shall provide to the Escrow Agent, within five business days of the payment to any plaintiff or plaintiff's counsel in connection with a settlement of a case involving a Participating Party, notice of the names and docket numbers of the cases for which assessment payments have been made, the amounts of the assessment, and the amount of the settlement. The Escrow Agent shall then provide a summary quarterly report to Plaintiffs' Lead Counsel that: (a) verifies that the amounts withheld by the Yamaha Defendants from any settlements comply with the terms of this Order and (b) discloses the total amounts in the Fund at that time. For cases as to which the settling parties have agreed upon confidentiality of settlement terms, the Escrow Agent shall not disclose the terms or amounts of the individual settlements to Designated Counsel, nor shall the Escrow Agent disclose the aggregate additions to the Fund for any period other than as set forth in this subsection. It is the position of Plaintiffs' Lead Counsel that, if an accounting of the Common Benefit Fund becomes necessary, Plaintiffs' Lead Counsel or Designated Counsel shall be entitled to seek such an accounting upon a showing of good cause. It is the Yamaha Defendants' position that the confidential terms and amounts of any settlements should not be disclosed to Plaintiffs' Lead or

Designated Counsel under any circumstance, and therefore reserve the right to oppose any application seeking such an accounting.

3. The Common Benefit Fund shall be set up so that all regular statements generated in connection with the Fund, including those showing any deposits made, shall be issued solely to the Escrow Agent and shall not be shared with any party or counsel (unless the statements reflect only deposits made from settlement(s) where the terms of the settlement were not confidential).

4. It is anticipated that the parties will enter into an agreement with the Escrow Agent, setting forth the terms and conditions for the administration of the Fund. To the extent the terms of the escrow agreement are in conflict with any provision of this Order, the terms of this Order shall govern.

## **II. PLAINTIFFS' COMMON COST FUND AND SUBMISSION OF TIME AND EXPENSES.**

### **A. Time and Expense Submissions of Plaintiffs' Counsel**

Reimbursement for costs and/or fees for services of all Plaintiffs' counsel performing functions in accordance with this Order will be set at a time and in a manner established by the Court after due notice to all counsel and after a hearing. The following standards and procedures are to be utilized by any counsel who will seek fees and/or expense reimbursement.

#### 1. General Standards

a. All time and expenses submitted must be incurred only for work authorized in writing by the Plaintiffs' Executive Committee.

b. These Time and Expense Guidelines are intended for all activities performed and expenses incurred by counsel that relate to matters common to all claimants in MDL 2016.

c. Time and expense submissions must be made on the forms prepared by Plaintiffs' Lead Counsel.

d. Time and expense submissions must be submitted timely to Plaintiffs' Lead Counsel so they can be compiled. It is therefore essential that each firm timely submit its records, and shall do so quarterly on a schedule to be established by Plaintiffs' Lead Counsel.

2. Time Reporting

a. Only time spent on common benefit work will be considered in determining fees. No time spent on developing or processing individual issues in any case for an individual client (claimant) will be considered or should be submitted, unless that case is determined by the PEC to be a bellwether case that serves the common benefit of all plaintiffs in the litigation. No time for reading or reviewing materials shall be compensated unless such review is specifically required to conduct PEC-authorized common benefit work.

b. All time must be accurately maintained. Time shall be kept according to these guidelines. All counsel shall keep a record of their time spent in connection with common benefit work on this litigation, indicating with specificity the hours, location and particular activity (such as "conduct of deposition of A.B.").

c. All common benefit work time for each firm shall be maintained in a quarter-of-an-hour or smaller increments.

d. All time records for common benefit work shall be summarized by accumulated total of all time incurred by the firm during the particular reporting period and in prior periods. The summary report form may then be obtained from Plaintiffs' Lead Counsel.

**B. Expense Reporting: Shared and Held Costs**

1. Advanced costs will be deemed as either “Shared” or “Held.”

a. Shared Costs are costs that are paid out of a separate Plaintiffs’ Executive Committee MDL 2016 Fund account that has been established by Plaintiffs’ Lead Counsel at Citibank, N.A., and funded by all members of the PEC and PSC and others as determined by the PEC. The PEC MDL 2016 Fund account is administered by Lief, Cabraser, Heimann & Bernstein, LLP.

b. Held Costs are those that will be carried by each attorney in MDL 2016 and reimbursed from the Common Benefit Fund pursuant to Section II.A. above.

2. Each member of the PEC has and will continue to contribute to the Plaintiffs’ Executive Committee MDL 2016 Common Benefit Fund at times and in amounts sufficient to cover Plaintiffs’ expenses for the administration of the MDL. PSC members may also be required to contribute to the Common Benefit Fund. The timing and amount of each assessment will be determined by the PEC, and each assessment will be paid to Plaintiffs’ Lead Counsel for deposit to the PEC MDL 2016 Common Benefit Fund. Failure to pay assessments will be grounds for suspension from the PEC/PSC.

3. Shared Costs

a. Shared Costs are costs incurred for the common benefit of the litigation as a whole. No client-related costs can be considered as Shared Costs unless they are approved costs associated with a specific trial. All costs of a substantial nature that meet these requirements and fall under the following categories shall be considered Shared Costs and qualify to be submitted and paid directly from the MDL account. All Shared Costs must be approved by Plaintiffs’ Lead Counsel prior to payment. Shared Costs include:

- i. Court, filing and service costs for common (not case specific) items;
- ii. Deposition and court reporter costs for common (i.e. not case specific) depositions or hearings;
- iii. Plaintiffs' Liaison and Lead Counsel administrative matters (e.g., expenses for equipment, technology, courier services, long distance, telecopier, electronic service, photocopy and printing, secretarial/temporary staff, etc.);
- iv. PEC and PSC group administration matters such as meetings and conference calls;
- v. Legal and accountant fees;
- vi. Expert witness and consultant fees and expenses for common experts, or for experts in any specific case approved by the PEC;
- vii. Printing, copying, coding, scanning (out of house or extraordinary firm costs);
- viii. Research by outside third party vendors/consultants/attorneys;
- ix. Common witness expenses including travel;
- x. Translation costs;
- xi. Bank or financial institution charges; and
- xii. Investigative services of benefit to all cases.

b. Plaintiffs' Lead Counsel shall prepare and be responsible for distributing to the appropriate plaintiffs' counsel and the PEC reimbursement procedures and the forms associated therewith. Request for payments described include sufficient information to

allow their accountant to account properly for costs and to provide adequate detail to the Court upon request. All requests shall be subject to review and approval by Plaintiffs' Lead Counsel.

4. Held Costs

a. Held Costs are costs incurred for the common benefit of the MDL.

Held Costs are those that do not fall into the above Shared Costs categories but are incurred for the benefit of all plaintiffs in general. No specific client-related costs can be considered as held Costs. For example, held costs include travel-related costs necessary and appropriate to common benefit activities. Counsel are expected to economize to the extent practicable with respect to such costs submitted for reimbursement. For example, as to airfare, first class airfare will not be reimbursed. Only the price of a business or full fare coach seat for a reasonable itinerary will be reimbursed. Only hotel room charges for appropriate room rates at business hotels convenient to the activity will be reimbursed. All costs of a substantial nature that meet these requirements shall be considered Held Costs and qualify to be submitted for consideration by the PEC and the Court for future reimbursement.

b. Held Cost records shall be submitted to Plaintiffs' Lead Counsel

on a quarterly basis with any time reports.

**C. Procedures To Be Established by Plaintiffs' Lead Counsel for Cost and Time Submission**

Plaintiffs' Lead Counsel shall establish forms and procedures to implement and carry out the time and expense submissions described in II.A.1-2. above, and for reimbursement from the PEC MDL 2016 Shared Costs Fund. These forms may be obtained from Plaintiffs' Lead Counsel.

Questions regarding the guidelines or procedures or the completion of any forms should be directed to Plaintiffs' Lead Counsel.

SO ORDERED.

Date 10/6/10

  
HONORABLE JENNIFER B. COFFMAN  
United States District Court



**Participation Agreement**

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 200 \_\_, by and between the Plaintiffs' Executive Committee ("PEC") appointed by the United States District Court for the Western District of Kentucky in MDL No. 2016 and [FILL IN THE NAME OF THE FIRM EXECUTING THE AGREEMENT] (hereafter "the Participating Attorneys") on behalf of the clients listed on the attached Exhibit(s) (hereinafter "the Participating Parties").

WHEREAS, the United States District Court for the Western District of Kentucky has appointed Elizabeth J. Cabraser, Robert Ammons, Anthony Klein, Troy Rafferty, Jason Shamblin, and Sean Tracey, to serve as members of the PEC to facilitate the conduct of pretrial proceedings in the federal actions relating to the purchase or use of the Rhino;

WHEREAS, the PEC in association with other attorneys working for the common benefit of plaintiffs have developed and are in the process of developing work product which will be valuable in the litigation of federal and state court proceedings involving Rhino-related injuries (the "PEC Work Product"); and

WHEREAS, the Participating Attorneys are desirous of acquiring the PEC Work Product and establishing an amicable, working relationship with the PEC for the mutual benefit of their clients;

NOW, THEREFORE, in consideration of the covenants and promises contained herein, and intending to be legally bound hereby, the parties agree as follows:

1. With respect to each Participating Party who they represent in connection with Rhino-related claim, whether currently a filed claim in state or federal court or unfiled, each of the Participating Attorneys shall deposit or cause to be deposited in an MDL Common Benefit Fund Account a percentage of the gross monetary recovery by each such Participating Party

which is equal to five percent (5%). A three percent (3%) assessment shall be deemed fees to be subtracted from the attorneys' fees portions of individual fee contracts, and a two percent (2%) assessment shall be deemed costs to be subtracted from the client portion of individual fee contracts unless these percentages are modified by agreement of counsel or by the Court upon showing of good cause. For purposes of this Agreement, the gross monetary recovery shall not include court costs to be paid by the defendants, if any, but shall include the present value of any fixed and certain payments to be made to the plaintiff or claimant in the future. It is the intention of the parties that such assessment shall be in full and final satisfaction of any present or future obligation on the part of each Participating Party and/or Participating Attorney to contribute to any fund for the payment or reimbursement of any legal fees, services or expenses incurred by, or due to, the MDL and/or any Common Benefit Attorneys.

2. The Participating Attorneys, on behalf of themselves, their affiliated counsel, and their clients listed on the attached Exhibit(s), hereby grant and convey to the PEC a lien upon and/or a security interest in any recovery by any such client in connection with any Rhino related injury, to the full extent permitted by law, in order to secure payment in accordance with the provisions of paragraph 1 of this Agreement. The Participating Attorneys will undertake all actions and execute all documents which are reasonably necessary to effectuate and/or perfect this lien and/or security interest.

3. In accordance with the Common Benefit Order and any related orders, the amounts deposited in the MDL Common Benefit Fund shall be available for distribution to attorneys who have performed professional services or incurred expenses for the benefit of the plaintiffs in MDL 2016 and any state court litigation pursuant to written authorization from Lead Counsel for the PEC. Such sums shall be distributed only upon an Order of the Court in MDL

2016 which will be issued in accordance with applicable law governing the award of fees and costs in cases involving the creation of a common benefit. Appropriate consideration will be given to the experience, talent and contribution made by all of those authorized to perform activities for the common benefit, including the Participating Attorneys.

4. As the litigation progresses and work product of the same type and kind continues to be generated, the PEC will make available such work product and will otherwise cooperate with the Participating Attorneys to coordinate the MDL litigation and the state litigation for the benefit of the plaintiffs.

5. Upon execution of this Agreement, the PEC will provide to the Participating Attorneys, to the extent developed, the PEC Work Product, including access to the PEC's virtual depository.

6. The Participating Attorneys shall have the following rights the clients listed on the Exhibit(s) hereto:

- a. Access to testing information and other expert discovery materials relevant to the various defect issues alleged in the Rhino litigation;
- b. Briefing on common legal issues arising in individual cases;
- c. Deposition database of all common discovery depositions related to the Rhino litigation and exemplar case-specific depositions;
- d. Transcript database of trial and court proceedings in Rhino litigation to the extent permissible; and
- e. Any MDL trial package as it is developed or assistance with trial-related matters to the extent has not been completed.
- f. Any further work product developed by or in conjunction with the PEC as

it relates to this litigation.

7. Both the PEC and the Participating Attorneys recognize the importance of individual cases and the relationship between case-specific clients and their attorneys. Regardless of the type of settlement or conclusion eventually made in either state or federal matters, the PEC will recommend to Judge Coffman that appropriate consideration will be given to individual case contracts between attorneys and their clients and to work that has been performed by attorneys in their individual cases.

8. The Participating Attorneys represent that the list appended hereto as Exhibit "A" correctly sets forth the name of each client represented by them who has filed a civil action arising from the use of a Rhino with the Court and docket number of each such case and that the list attached hereto as Exhibit "B" contains the name and social security number of each client represented by them who has not yet filed a civil action arising from the use a Rhino.

9. The Participating Attorneys shall supplement the lists appended hereto as Exhibit "A" and "B" on a quarterly basis when new retentions or associations have been entered into.

10. This Agreement shall apply to each and every claim or action (whether state or federal, filed or unfiled) relating to the clients listed on the attached Exhibit(s) and arising from the use of a Rhino in which the Participating Attorneys have a right or claim to a fee recovery beginning from February 13, 2009, the date that MDL No. 2016 was assigned by the MDL Panel to this Court.

PLAINTIFFS' EXECUTIVE COMMITTEE

By: \_\_\_\_\_

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AND

By: \_\_\_\_\_

Participating Attorney  
[Firm Name]

On behalf of:

On Behalf Of Clients Listed  
On Attached Exhibit(s)