

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. 14**

The Court enters Case Management Order No. 14 to set and to clarify case deadlines and procedures for cases in MDL 2016. CMO No. 14 supersedes CMO 13 in its entirety, except as to deadlines that have expired and are not addressed herein. The provisions of all other Case Management Orders remain in effect, except to the extent revised by provisions of this Order. Nothing in this Order shall preclude the parties from modifying discovery deadlines upon agreement.

**I. Remand of Cases**

The Court believes that the purposes of MDL 2016, as set out by the JPML, have been or largely will be achieved upon the completion of pretrial proceedings in connection with Case Groups 1 and 2 and the effective completion of common discovery in the subsequent existing case groups. *See* JPML Order, February 13, 2009. The number of new cases transferred under 28 U.S.C. § 1407 to this Court has dropped significantly, and the number of cases in MDL 2016 that have been dismissed or settled has increased substantially. The coordination of common discovery from the Yamaha defendants and

the creation by plaintiffs of a central depository of Yamaha documents have been largely completed. Common discovery and any motions related thereto will continue to take place in the MDL. Certain other motions may be brought in the MDL, pursuant to the schedule set forth herein. Procedures for access to the depository and Yamaha documents by plaintiffs and their counsel who are not part of MDL 2016 are contained in the Common Benefit Order, entered by the Court on October 6, 2010, and can be used by plaintiffs who file Rhino cases in federal court following the effective end of MDL 2016. See paragraph IV., *infra*.

Subsequent to the completion of the pretrial matters as set forth below, the Court shall file a suggestion of remand with the U.S. Judicial Panel on Multidistrict Litigation (the "JPML") to remand the cases in each such case group to courts of proper venue. For those cases that were directly filed in the MDL pursuant to paragraph II. of CMO 1, the procedures set forth in section V, *infra*. will apply to the transfer of cases.

## **II. Case Group Deadlines<sup>1</sup>**

### **A. Expert Discovery Deadlines for Cases in Case Group 1**

The deadlines set forth below shall apply to cases in Case Group 1:

1. Deadline to depose plaintiffs' rebuttal experts – March 4, 2011.

### **B. Expert Discovery Deadlines for Cases in Case Group 2**

The deadlines set forth below shall apply to cases in Case Group 2:

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<sup>1</sup> No discovery regarding Deferred Expert Categories, including identification and deposition of Deferred Experts, will occur in the MDL. "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. Because such discovery is narrow and case-specific, discovery of Deferred Experts will occur in individual transferor courts following remand.

1. Deadline to depose plaintiffs' rebuttal experts – March 4, 2011.

**C. Expert Discovery Deadlines for Cases in Case Group 3**

The deadlines set forth below shall apply to cases in Case Group 3:

1. Deadline to depose plaintiffs' experts – February 25, 2011.
2. Defendants' expert disclosures/reports due – April 13, 2011.
3. Deadline to depose defendants' experts – May 13, 2011.
4. Plaintiffs' rebuttal reports due – May 27, 2011.
5. Deadline to depose plaintiffs' rebuttal experts – June 24, 2011.

**D. Non-Case-Specific Expert Deadlines for Cases in Case Group 4**

The deadlines set forth below shall apply to cases in Case Group 4:

1. Deadline to depose plaintiffs' Non-Case-Specific experts – February 18, 2011.
2. Defendants' Non-Case Specific expert disclosures/reports due – March 11, 2011.
3. Deadline to depose defendants' Non-Case-Specific experts – May 6, 2011.
4. Plaintiffs' Non-Case Specific rebuttal reports due – May 20, 2011.
5. Deadline to depose plaintiffs' Non-Case-Specific rebuttal experts – June 17, 2011.

**E. Fact Discovery and Non-Case-Specific Expert Deadlines for Cases in Group 5**

The deadlines set forth below shall apply to cases in Case Group 5:

1. Close of Fact Discovery – February 18, 2011.
2. Plaintiffs' expert disclosures/reports for Non-Case Specific experts due – March 4, 2011.
3. Deadline to depose plaintiffs' Non-Case Specific experts – April 1, 2011.
4. Defendants' expert disclosures/reports for Non-Case Specific experts due – April 15, 2011.
5. Deadline to depose defendants' Non-Case Specific experts – May 13, 2011.
6. Plaintiffs' rebuttal reports for Non-Case Specific experts due – May 27, 2011.
7. Deadline to depose plaintiffs' Non-Case Specific rebuttal experts – June 17, 2011.

**F. Fact Discovery Deadlines for Cases in Group 6**

The deadlines set forth below shall apply to cases in Case Group 6:

1. Close of Fact Discovery – May 20, 2011.

**G. Fact Discovery Deadlines for Cases in Group 7**

The deadlines set forth below shall apply to cases in Case Group 7:

1. Close of Fact Discovery – June 3, 2011.

**III. Final Case Group**

Any case in which a Conditional Transfer Order is filed with the Clerk of this Court or any case that is directly filed in the Western District of Kentucky and transferred into the MDL pursuant to Section II.A. of Case Management Order No. 1 (the "MDL Filed Date") on or after November 1, 2010, will be placed in a new Case Group 8. Case Group 8 will be the final MDL 2016 Case Group. This rolling Case Group will allow cases to gain the benefits of the common work that has been accomplished in the MDL, engage in limited discovery, including obtaining access to common discovery materials, file all necessary motions related to common matters and discovery, and be remanded to appropriately-venued transferor courts within the shortest time possible.

The following deadlines will apply to cases in Case Group 8:

1. Plaintiffs' Fact Sheets due – 30 days from date of answer.
2. Defendants' Fact Sheets Due – 30 days from date of receipt of Plaintiffs' Fact Sheets.
3. Service of any additional discovery pursuant to CMO 1, paragraph IV.D. – 45 days from date of receipt of Plaintiffs' Fact Sheets.

4. Filing of any Non-Case-Specific Motions<sup>2</sup> – 90 days from date of receipt of Plaintiffs' Fact Sheets.

Should a defendant file a motion to dismiss in lieu of an answer, the deadlines set forth herein shall apply, but they will be triggered from the date the motion to dismiss is filed, rather than from the date of answer. The motion to dismiss will be addressed by the transferor court following remand. In cases where no motions are filed under section "4" above, the case will be remanded to the transferor court or to a court of proper venue at the same time as or immediately following the remand of those cases in Case Group 1 and Case Group 2 or 180 days from the date the Conditional Transfer Order applicable to that case was filed in the clerk's office of this Court, whichever date is later. If a motion under section "4" above is filed, the case will remain in the MDL through resolution of the motion or discovery dispute and be remanded as soon thereafter as practical. Because the parties will have the benefit of common discovery previously conducted in the MDL, any request for additional common discovery – that is, discovery that addresses issues that arise in more than one MDL case and that are not unique to the facts or circumstances of the individual case, including any additional depositions of Yamaha employees or written discovery beyond that permitted by CMO 1 – must be brought before this Court in accordance with the schedule set forth herein.

#### **IV. Motions**

The Court expects that all Case-Specific Motions shall be brought before the appropriate transferor courts following remand and that all Non-Case-Specific Motions –

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<sup>2</sup> "Non-Case Specific Motions" means motions that raise issues the resolution of which would impact multiple MDL cases. In contrast, "Case-Specific Motions" are those motions that address narrow issues tied to the facts of a specific case.

including but not limited to motions addressing discovery from Yamaha and *Daubert* motions to exclude experts (whether designated as a “common” or a “case-specific” expert) that are not based on the facts of a specific case – should be brought before this Court. The Court, in its discretion, may defer hearing a Non-Case-Specific Motion and direct the parties to bring the motion in an appropriate transferor court after remand. By March 11, 2011, or, for any newly disclosed Non-Case-Specific Opinions, within 30 days after the deposition of any expert offering that newly disclosed Non-Case-Specific opinion, any party intending to file a *Daubert* motion in this Court (“the Moving Party”) directed to one or more Non-Case Specific Experts designated by the other party (“the Opposing Party”) shall file a list of such *Daubert* motions it intends to file in this Court or in any other court following remand of individual cases and to specify which of the listed *Daubert* motions it intends to file in this Court. Within five days of that filing, the Opposing Party may notify the Moving Party that it believes any *Daubert* motions directed to other Non-Case Specific Experts should also be brought in the MDL Court. If the parties are not able to resolve the dispute over the *Daubert* motions to be brought in the MDL Court within five days of such notice, the parties will promptly submit the dispute to the Court for resolution at the next available weekly Thursday conference. The failure of a party to file a *Daubert* Motion in this Court is without prejudice to the party's right following remand of a case to a court of proper venue to bring a non-duplicative, *Daubert* motion before that court. Nothing in this paragraph impacts the deadlines and obligations set out in the individual scheduling orders entered in any case set for trial in this Court.

The following schedule shall govern Non-Case-Specific Motions for cases in Case Groups 1 through 7 brought before this Court:

1. Deadline to file Non-Case-Specific Motions – April 25, 2011.
2. Deadline to file responses to Non-Case-Specific Motions – May 16, 2011.
3. Deadline to file replies regarding Non-Case-Specific Motions – May 27, 2011.

**V. Transfer of Directly-Filed Cases**

Pursuant to paragraph II. of CMO 1, certain cases in the MDL were directly filed in the MDL Court. To effectuate the dictates of CMO 1 that such cases be remanded to “a federal district court of proper venue as defined in 28 U.S.C. § 1391, based on the recommendations of the parties to that case, or on its own determination after briefing from the parties if the parties cannot agree,” plaintiff in each such case shall inform the defendants of their proposed court of proper venue. If the proposed court is agreeable to the defendants, the parties will file a joint stipulation for transfer to that court. If the parties cannot agree on the court of proper venue, the parties will brief the issue to the Court for resolution prior to the date of remand/transfer for the applicable Case Group. The deadlines for raising this issue are as follows:

	<b>Plaintiffs Propose Court of Proper Venue to Defendants</b>	<b>Parties Submit Joint Stipulation for Transfer or Plaintiffs Submit Motion to Transfer</b>
Case Groups 1 to 7	March 21, 2011	April 4, 2011

**VI. Continued Efforts to Streamline MDL 2016**

The parties agree, and the Court hereby directs, that discussions among the parties shall continue in an effort to streamline and, if appropriate, further shorten MDL 2016.

## **VII. Notice for Cancellation of Depositions**

To prevent parties from needlessly spending money to prepare for depositions that do not occur, a party cancelling or rescheduling a deposition will use best efforts to do so at least 72 hours prior to the date the deposition is scheduled. If a party fails to provide 48 hours notice – other than in cases of death of a family member, illness, required court appearance arising less than 48 hours before the scheduled deposition or for good cause shown – the other party may petition the Court to recover costs consistent with Federal Rule of Civil Procedure 30(g).

## **VIII. Mediation/Resolution of Cases**

Since CMO 10 was entered in April 2010, the parties have conferred on numerous cases and successfully settled in excess of 100 cases. Because this informal settlement process is proceeding well and continues to result in a substantial number of settlements, there is no longer a need at this time for the formal mediation process set out in Section IX of CMO 10.

In an effort to advance such settlement efforts, the parties have agreed that if settlement is being discussed in a particular case and if Lead Counsel for Plaintiff and Lead Counsel for the Yamaha Defendants agree in writing that settlement discussions are serious, then all discovery will be stayed as to that case. If either party subsequently determines that settlement discussions are no longer serious, Lead Counsel for that party shall alert the opposing party in writing. The parties shall then work together to immediately restart discovery. While a specific time frame for such discovery will be worked out in each individual case and will vary depending on the stage of the case when



discovery was stayed and the length of the stay, the parties agree that they will work together to complete such discovery expeditiously. Every effort should be made to complete discovery by the original deadlines applicable to the Case Group to which the case was assigned at the time discovery was stayed, or within 30 days thereafter.

This modification does not foreclose any party from seeking Court assistance, such as referral to a magistrate judge, regarding the resolution of specific cases as necessary or appropriate.

**IX. Modification**

The parties and Court acknowledge that modification of this CMO may be necessary based on experience operating under it, and any party is free to seek modification of this Order for good cause shown.

ORDERED on this the 7<sup>th</sup> day of March, 2011.

  
JENNIFER B. COFFMAN  
U.S. DISTRICT JUDGE