

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

THIS DOCUMENT RELATES TO ALL
CASES

JENNIFER B. COFFMAN
U.S. DISTRICT JUDGE

CASE MANAGEMENT AND SCHEDULING ORDER NO. 1

I. SCOPE OF ORDER

This Case Management Order (“CMO”) applies to all actions transferred to this Court by the Judicial Panel on Multidistrict Litigation pursuant to its order of February 13, 2009, and all related actions originally filed in this Court or transferred or removed to this Court, as well as any tag-along actions transferred to this Court by the Judicial Panel on Multidistrict Litigation pursuant to Rule 7.4 of the Rules of Procedure of that Panel subsequent to the filing of the final transfer order by the Clerk of this Court, and any related actions subsequently filed in this Court or otherwise transferred or removed to this Court, against Yamaha Motor Corporation, U.S.A. (“YMUS”), Yamaha Motor Manufacturing Corporation of America (“YMMC”), Yamaha Motor Canada, Ltd. and/or Yamaha Motor Co., Ltd. (“YMC”) (collectively, the “Yamaha Defendants”); and various other non-Yamaha defendants (collectively, the “Other Defendants”) (collectively, the Yamaha Defendants and the Other Defendants referred to herein as “Defendants”) alleging personal injury and/or wrongful death related to the Yamaha Rhino (the

“Rhino”). The actions assigned to MDL 2016 are collectively referred to herein as the “Yamaha Rhino MDL Cases.”

II. CASE ADMINISTRATION

A. Stipulation Regarding Direct Filing of New Federal Cases into MDL 2016

To eliminate the delays associated with transfer of cases filed in or removed to other federal district courts to this Court as part of MDL 2016, and to promote judicial efficiency, the Yamaha Defendants have stipulated and agreed that, based on the provisions in this paragraph regarding the subsequent transfer of such cases, they will not assert any objection of improper venue pursuant to Federal Rule of Civil Procedure 12(b) as to any Rhino-related case alleging personal injury and/or wrongful death filed directly in the Western District of Kentucky that is properly included in MDL 2016, where venue would otherwise appropriately lie in a federal district outside the Western District of Kentucky. The Yamaha Defendants’ stipulation and agreement in this regard is contingent on the understanding that they do not intend to waive their rights to transfer any case in MDL 2016 to a court of proper venue under 28 U.S.C. § 1406(a), and that upon the completion of all pretrial proceedings applicable to a case directly filed in the Western District of Kentucky pursuant to this stipulation regarding filing in MDL 2016, the Court, pursuant to 28 U.S.C. § 1404(a), will transfer the case filed directly in the Western District of Kentucky 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. This stipulation and agreement is by the Yamaha Defendants only and does not apply to any other Defendant.

B. MDL No. 2016 Website

1. A website for the benefit of the Court and litigants will be set up at www.kywd.uscourts.gov/md1/2016/. The costs for establishing and maintaining the website, if any are incurred, shall be shared by the parties.

2. The website shall provide a complete set of court orders and opinions issued in MDL 2016 and a calendar of scheduled depositions in MDL 2016.

C. Master Service List.

1. Pursuant to pages 5 and 6 of the Court's previous order entered March 16, 2009, the Court maintains a service list of attorneys (including mailing address, e-mail and party(ies) represented) for MDL 2016 and each individual matter linked to it. This list is continually revised by the Court and can be accessed via a link through the Court's website by all registered ECF users or anyone with a PACER account. This list shall constitute the Master Service List for MDL 2016 and the individual cases that are part of MDL 2016.

2. Within 5 days of receipt by counsel in cases now or in the future made part of MDL 2016 of this CMO, all Counsel are required to review the then-current Master Service List to ensure that their names, addresses and e-mails are correct. Any attorney who wishes to have his/her name added to, deleted from or corrected on the Master Service List shall contact their appropriate Liaison Counsel for assistance in filing the appropriate pleading with the Court. The appropriate Liaison Counsel shall work with counsel in any cases transferred or added to MDL 2016 after the date of this CMO to ensure that they are properly registered through the ECF system with correct names, addresses and e-mails. Compliance with the provisions of this paragraph shall constitute compliance with Counsel's responsibilities with regard to a Master Service List as contemplated by the Order Regarding Responsibilities of Designated Counsel, entered by the Court on April 1, 2009.

D. Communication with the Court

1. At a minimum, Lead and Liaison Counsel for Plaintiffs, Lead and Liaison Counsel for the Yamaha Defendants, and Lead Counsel for the Other Defendants shall participate in a status conference with the Court once a month, on such dates and at such times as the Court deems appropriate. Other counsel shall appear as appropriate. Unless otherwise directed by the Court, the monthly status conferences shall be by telephone, except that for the June and July 2009 status conferences, and thereafter once a quarter, counsel shall appear in person for the conference. At least one week prior to each status conference, Lead Counsel for Plaintiffs, the Yamaha Defendants, and the Other Defendants shall confer in an attempt to agree on a proposed agenda. The parties shall submit a joint agenda to the extent they agree, and separate agenda items on which they do not agree, not less than five (5) business days prior to the status conference. No matter, other than a procedural matter, may be raised by the parties at a Status Conference that does not appear on the Agenda adopted and issued by the Court.

2. Other than the status conferences noted in Section II.D.1., unless otherwise ordered by the Court, all substantive communications with the Court shall be in writing and e-filed.

3. This and all other Orders of the Court will be construed and administered in accord with the directive of Fed. R. Civ. P. 1 to secure the just, speedy, and inexpensive determination of these proceedings.

III. ANSWER DATES

A. Prior Orders

By Order signed March 24, 2009, the Court provided that “As of February 13, 2009, all pending deadlines and case events are **CANCELED** in any case that has been transferred, is hereafter transferred, or is in the process of being transferred to the MDL.” In some cases, orders

staying cases pending transfer to the MDL may have been entered by the transferor court.

B. Determination of Answer Dates

In order to coordinate deadlines for responding to complaints that are served before transfer of a case to the MDL, the Court hereby establishes the following uniform procedures:

1. In any case in which transfer to the MDL has been effected by the filing of a Conditional Transfer Order with the Clerk of the Western District of Kentucky on or before the date this CMO is entered, and where the summons and complaint were properly served on a Defendant but no answer or other response to the complaint has been filed, the date this CMO is entered shall be deemed the date of service on such Defendant for purposes of calculating the deadline for the previously-served Defendant to answer or otherwise respond to the complaint.

2. In any case in which transfer to the MDL is effected by the filing of a Conditional Transfer Order with the Clerk of the Western District of Kentucky after the date this CMO is entered, and where the summons and complaint are properly served on a Defendant but no answer or other response to the complaint is filed prior to the date on which the Conditional Transfer Order is filed with the Clerk of the Western District of Kentucky (the "Transfer Effective Date"), the Transfer Effective Date shall be deemed the date of service on such Defendant for purposes of calculating the deadline for the previously-served Defendant to answer or otherwise respond to the complaint.

3. In any situation where the summons and complaint are properly served on a Defendant after the Transfer Effective Date, the deadline to answer or otherwise respond to the complaint shall be determined pursuant to Fed. R. Civ. P. 12.

4. Nothing in this section shall operate to alter or override the requirements of the Stipulation and Order Regarding Service on Yamaha Motor Co., Ltd., entered by the Court on April 29, 2009.

IV. PRETRIAL PROCEDURES AND SCHEDULE

A. Applicability

Except where expressly stated in this Order, in subsequent Orders of this Court or by express written stipulation by Lead Counsel for the parties or their designees, the Federal Rules of Civil Procedure shall control the obligations, limits, sequence and timing of discovery in these cases.

B. Discovery Deadlines

1. All discovery pending as of the date of this Order in any action included in MDL 2016 is hereby stayed, and discovery shall proceed in all cases only pursuant to the terms of this Court's Orders, including this CMO.

2. Dual Discovery Tracks – Discovery will proceed simultaneously on two tracks: (i) common fact discovery and (ii) case-specific fact discovery.

3. Case Groups – The following case groups and related deadlines, which are summarized on the attached Schedule, are hereby established:

(a) **Case Group 1:** Any case pending in MDL 2016 on or before May 22, 2009, shall be part of the group designated as Case Group 1. The deadline to complete all non-expert fact discovery shall be February 1, 2010. The deadline to complete all discovery shall be April 1, 2010. Trial of the first case from Case Group 1 shall be June 1, 2010, or as soon thereafter as this Court or the Transferor Court can set the case for trial.

(b) **Case Group 2:** Any case for which a Conditional Transfer Order is filed with the Clerk of this Court or the case is transferred from within this District to the MDL after May 22, 2009, and on or before July 31, 2009, shall be designated Case Group 2. The deadline to complete all non-expert fact discovery shall be May 1, 2010. The deadline to complete all discovery shall be July 1, 2010. Trial of the first case from Case Group 2 shall be

September 1, 2010, or as soon thereafter as this Court or the Transferor Court can set the case for trial.

(c) **Case Group 3:** Any case for which a Conditional Transfer Order is filed with the Clerk of this Court or the case is transferred from within this District to the MDL after July 31, 2009 and on or before October 31, 2009 shall be designated Case Group 3. The deadline to complete all non-expert fact discovery shall be August 1, 2010. The deadline to complete all discovery shall be October 1, 2010. Trial of the first case from Case Group 3 shall be December 1, 2010, or as soon thereafter as this Court or the Transferor Court can set the case for trial.

(d) **Additional Case Groups:** Additional cases for which a Conditional Transfer Order is filed with the clerk of this Court shall be designated by sequential number for each 90-day period thereafter, and the deadlines to complete non-expert discovery and all discovery for each such group shall likewise extend 90 days from the deadline for the immediately preceding Case Group. The date for trial of the first case in each subsequent Case Group shall likewise extend 90 days from the date of the first trial set in the immediately preceding Case Group.

4. **Mediation/Case Resolution**

(a) The parties remain free and are encouraged to seek resolution of some or all of the cases as they deem appropriate at an early date. Nothing in this Order shall be construed to prevent resolution of any case at any time. On or before September 30, 2009, Lead Counsel for the parties will confer, and report to the Court, in person on the prospects for, and timing of, a comprehensive case resolution program for the MDL cases, alone or in coordination with cases pending in other courts. Lead Counsel shall also propose a mediator or special

master. The Court will determine whether and when to implement such a program and whether to designate one or more mediators or special masters to conduct or facilitate it. Unless and until such a program is ordered, the following procedure shall apply:

(b) **At Conclusion of Non-Expert Fact Discovery:** At least 30 days before each deadline for the completion of non-expert fact discovery for each Case Group as set forth in paragraphs IV.B.(3), Lead Counsel for Plaintiffs and Defendants shall begin a meet and confer process in an effort to resolve those cases in the Case Group (and any others) that the parties agree may be appropriate to resolve. For any cases in the Case Group that cannot be resolved, Lead Counsel for Plaintiffs and Defendants shall agree on a schedule for the completion of all remaining discovery, including expert discovery, in compliance with the deadlines set forth on Schedule A. The parties shall report the results of the meet and confer process required by this section to the Court.

(c) **At Conclusion of All Discovery:** At the conclusion of all discovery, including expert discovery, in compliance with the deadlines set forth on Schedule A, Lead Counsel for Plaintiffs and Defendants shall meet and confer in an effort to select cases from the Case Group (and any others) that the parties agree may be appropriate for mediation. All cases from the Case Group selected for mediation shall be promptly mediated before a mediator selected by agreement of Lead Counsel for Plaintiffs and Defendants or, if agreement cannot be reached, a mediator selected by the Court. In the event any case in the Case Group is not selected for mediation or is not resolved in such mediation, Lead Counsel for Plaintiffs and Defendants shall agree on a plan to complete pretrial matters for all such cases. Any such plan should include appropriate deadlines for *Daubert* motions, and other pretrial tasks in each of the cases that have not been resolved with the objective that they will be ready for trial by the date

set forth in Schedule A. The parties anticipate that the timing of the trials may need to be coordinated among the various actions in each such Case Group to take into account the timing and procedures for remanding or otherwise setting individual cases for trial. If there is disagreement regarding the schedules for final pretrial matters, Lead Counsel for Plaintiffs and Defendants shall submit separate proposals (with briefs not to exceed three double-spaced pages) and set the matter for hearing no later than 30 days after the deadline for all discovery set forth in Schedule A. While the substance of mediation discussions shall remain confidential, the parties shall report which cases were selected for mediation and whether such mediation was successful, together with the results of the meet and confer process required by this section, to the Court.

C. Stipulated Discovery/Fact Sheets

1. The Court shall require all parties to provide sworn answers to interrogatories and to produce documents in response to document requests in the form of Plaintiff Facts Sheets, Common Fact Sheets for the Yamaha Defendants, and Case-Specific Defendant Fact Sheets for the Yamaha Defendants and Dealer Defendants, in the forms approved by the Court. The form of the Fact Sheets may be modified by agreement of the parties or on motion for good cause shown. The answers provided on the Fact Sheets shall be deemed interrogatory responses pursuant to Fed. R. Civ. P. 33, and may be used at trial accordingly, and the production of documents in conjunction with the Fact Sheets shall be deemed made pursuant to Fed. R. Civ. P. 34. Accordingly, each Fact Sheet shall be subject to enforcement pursuant to Fed. R. Civ. P. 37.

2. Timing of Responses/Case Group 1

(a) Plaintiffs shall serve their completed Plaintiff Fact Sheets on Lead and Liaison Counsel for Plaintiffs and Defendants and, if different, defense counsel for the specific case, no later than thirty (30) days after approval of the Fact Sheet by the Court.

(b) YMUS and YMMC shall serve their completed Common Fact Sheets no later than forty-five (45) days after approval of the Fact Sheet by the Court, and YMC shall serve its completed Common Fact Sheet no later than seventy-five (75) days after approval of the Fact Sheet by the Court. The completed Yamaha Defendants' Common Fact Sheets shall be served on Plaintiffs' Liaison Counsel, who shall be responsible for providing the completed Common Fact Sheets to Plaintiffs' counsel in all cases now or hereinafter part of this MDL, and on Lead Counsel for the Other Defendants, who shall be responsible for providing the completed Common Fact Sheets to all Other Defendants' counsel in all cases now or hereinafter part of this MDL.

(c) Each Defendant other than YMC shall serve its completed Case-Specific Fact Sheets no later than thirty (30) days after receipt of the completed Plaintiffs' Fact Sheets, and YMC shall provide its completed Case-Specific Fact Sheet no later than sixty (60) days after receipt of the completed Plaintiffs' Fact Sheets. Completed Defendants' Case-Specific Fact Sheets shall be served on Plaintiffs' Liaison Counsel and, if different, counsel for the specific case. In any case where there is a Defendant other than the Yamaha Defendants, the Yamaha Defendants' completed Case-Specific Fact Sheets shall also be served on Lead Counsel for the Other Defendants and, if different, counsel for any other Defendant in the specific case. Any Dealer Defendants' Case-Specific Fact Sheets shall also be served on Liaison Counsel for the Plaintiffs' and Yamaha Defendants and, if different, counsel for the specific case.

(d) Subject to objections and the right of supplementation for later found documents, the documents called for in each Fact Sheet shall be produced within 30 days of the submission of the completed Fact Sheet or within five (5) business days after the execution of a Confidentiality Order by the party to whom the documents are being produced, whichever

comes later. To the extent the party producing information or documents has an objection, the producing party may seek a protective order from the Court within 10 days of the production or otherwise waive its objection. The objecting party does not waive the objection by waiting to file its motion for protective order until after production of the information or documents. It is specifically intended that the parties shall exercise their obligation under the Rules to meet and confer in an effort to resolve any objection. Any unresolved objection will be determined by the Court, telephonically or by other convenient means.

3. Timing of Responses/Other Case Groups

(a) For cases other than Case Group 1, Plaintiffs shall serve their completed Plaintiff Fact Sheets on Liaison Counsel for the Yamaha Defendants and, in any case where there is a Defendant other than the Yamaha Defendants, on Lead Counsel for the Other Defendants, within 30 days of the approval of the Fact Sheet by the Court or within 30 days of the date the Transfer Order is filed in the Clerk's office of this District or within 30 days of the date the first of the Yamaha Defendants is served with the complaint and summons, whatever date is later.

(b) For cases other than Case Group 1, each Defendant other than YMC shall serve its completed Case-Specific Fact Sheet no later than thirty (30) days after receipt of each completed Plaintiff's Fact Sheet, and YMC shall provide its completed Case-Specific Fact Sheet no later than sixty (60) days after receipt of each completed Plaintiff's Fact Sheet. Defendants' completed Case-Specific Fact Sheets shall be served on Plaintiffs' Liaison Counsel and, if different, counsel for the specific case. In any case where there is a Defendant other than the Yamaha Defendants, the Yamaha Defendants' completed Case-Specific Fact Sheets shall also be served on Lead Counsel for the Other Defendants and, if different, counsel

for any other Defendant in the specific case. Any Dealer Defendants' Case-Specific Fact Sheets shall also be served on Liaison Counsel for the Plaintiffs and Yamaha Defendants.

(c) Subject to objections and the right of supplementation for later found documents, documents called for in each Fact Sheet shall be produced within 30 days of the submission of that completed Fact Sheet or within five (5) business days after the execution of a Confidentiality Order by the party to whom the documents are being produced, whichever comes later. To the extent the party producing information or documents has an objection, the producing party may seek a protective order from the Court within 10 days of the production or otherwise waive its objection. The objecting party does not waive its objection by waiting to file its motion for protective order until after production of the information or documents. It is specifically intended that the parties shall exercise their obligation under the Rules to meet and confer in an effort to resolve any objection. Any unresolved objection will be determined by the Court, telephonically or by other convenient means.

D. Initial Disclosures and Additional Discovery

1. Initial Disclosures – In light of the discovery plan set forth herein, the parties in all cases pending or transferred to MDL 2016 are relieved from complying with the initial disclosure requirements of Federal Rule of Civil Procedure 26(a).

2. Subject to the terms and limitations contained in this CMO, the parties may serve the following additional non-duplicative discovery: (i) each Plaintiff may serve up to 10 case-specific contention interrogatories on the Yamaha Defendants collectively and up to 10 case-specific contention interrogatories each on any Dealer Defendants; (ii) the Yamaha Defendants collectively may serve up to 10 case-specific contention interrogatories on each Plaintiff; (iii) any Other Defendant may serve up to 10 case-specific contention interrogatories on each Plaintiff; (iv) any Third-Party Plaintiff may serve up to 10 case-specific contention

interrogatories on each Third-Party Defendant; and (v) each Third-Party Defendant may serve up to 10 case-specific contention interrogatories on each Third-Party Plaintiff. Any such contention interrogatories shall be served no later than 30 days before the close of non-expert fact discovery in that case, with responses due by the close of non-expert fact discovery in that case. The responses to the contention interrogatories may be supplemented as necessary no later than the close of all discovery in that case.

3. Any party seeking written discovery in addition to that provided for herein may do so only by agreement of the parties or by motion to the Court upon a showing of good cause.

E. Confidentiality Order

Discovery in these proceedings, including written discovery responses, depositions, and documents, may be subject to the Confidentiality Order entered by the Court on May 11, 2009. Liaison Counsel for the Yamaha Defendants shall take responsibility for preparing a separate copy of the Confidentiality Order for filing in each case that is or becomes part of MDL 2016.

F. Record Authorizations

As to each Plaintiff Fact Sheet, the Plaintiff shall provide signed and notarized record release authorizations, in accordance with applicable law, as agreed upon by counsel or if agreement cannot be reached, as designated by the Court, for the release of records regarding any Plaintiff claiming injury due to the Rhino (“Record Authorizations”).

G. Vehicle and Incident Scene Inspections

Plaintiffs shall make reasonable efforts to assist Defendants in arranging early vehicle and accident scene inspections.

1. **Vehicle and Incident Scenes Under Plaintiff's Custody, Possession, Or Control**

(a) Where the Rhino, the incident scene, or both are in a Plaintiff's possession, custody, or control (including in the possession, custody, or control of Plaintiff's counsel or experts), Plaintiff shall make those available to Defendants for a reasonable number of inspections (the "Inspections") upon written notice to all parties from Counsel seeking the inspections ("Inspection Notice"). The parties shall meet and confer within 15 days of the Inspection Notice to select a mutually agreeable date for the Inspections, and attendance at such Inspections shall be limited to a reasonable number of people. Plaintiffs retain the right to seek a Protective Order from the Court regarding the number of inspections or persons in attendance in any particular case if Plaintiffs believe Defendants are not proceeding in a reasonable manner.

(b) Plaintiffs and others over whom they have control shall not, without prior express written agreement or a Court order, inspect, disassemble or modify the subject Rhino vehicle or any component parts without providing an Inspection Notice so that each party, with its representatives, has an adequate opportunity to be present and to observe and/or document such activities. The parties shall meet and confer within 15 days of the Inspection Notice to select a mutually agreeable date for the Inspections, and attendance at such Inspections shall be limited to a reasonable number of people.

2. **Vehicle and Incident Scenes Not Under Plaintiff's Custody, Possession, Or Control**

Where the Rhino, the incident scene, or both are not under Plaintiff's possession, custody, or control, Plaintiff shall make all reasonable efforts to encourage the person or entity controlling the Rhino or incident scene to make them available to Defendants for the Inspections. If such person or entity requires a subpoena to permit Defendants to conduct the Inspections, Defendants will serve a subpoena on the person or entity and, within three (3) business days of

receipt of service of the subpoena, Plaintiff will provide written notice that Plaintiff does not object to the subpoena or the Inspections. Any party seeking to inspect the subject vehicle or incident scene not in Plaintiffs' possession shall provide the other parties with an Inspection Notice and shall confer with all parties to the specific case to find a mutually agreeable date for such Inspections. Attendance at such inspections shall be limited to a reasonable number of people.

3. Public Locations.

This CMO does not restrict any party's right to visit or inspect an incident scene that is on public property, but such party shall not alter the incident scene during any such visit or inspection.

H. Depositions

1. Counsel are expected to cooperate in scheduling depositions. Absent unusual and compelling circumstances, at least 45 days' written notice should be provided for any deposition.

2. Depositions in MDL 2016 may be videotaped by so indicating in the deposition notice. Service of a document subpoena or notice to produce on a deponent shall be made at least 45 days before the scheduled deposition, and copies of the responsive documents should be served at least five (5) business days before the scheduled deposition. Any such document subpoena shall be limited to documents in the possession, custody, and control of the witness and shall not be used as a substitute for the Fact Sheets and formal document requests provided for in this CMO.

3. Depositions shall be coordinated to the maximum extent possible between MDL 2016, *In re Coordinated Yamaha Rhino Litigation*, Judicial Council Coordination Proceeding No. 4561, currently pending in the Superior Court for the State of California, County

of Orange (“California Coordination Proceeding”), and *In re Yamaha Rhino Litigation*, Master File No. 09-[master file no.]-2, currently pending in State Court of Gwinnett County, Georgia (“Georgia Coordinated Proceeding”) and any other Rhino-related state court cases. A deposition taken in MDL 2016 of an individual or of an entity under F.R.C.P. 30(b)(6) may be used in any case currently part of or subsequently added to MDL 2016, and shall be made available for use in the California Coordination Proceeding, the Georgia Coordinated Proceeding and any other Rhino-related state court case as if taken in that case, subject to applicable State law and court orders, including protective orders. Depositions taken in the California Coordination Proceeding, the Georgia Coordinated Proceeding and any other Rhino-related state court cases may be used in any case currently part of or subsequently added to MDL 2016, subject to applicable law and this Court’s Orders. A deposition notice served in MDL 2016 may be cross-noticed by any party in the California Coordination Proceeding, the Georgia Coordinated Proceeding and any other Rhino-related state court case, subject to all rules, stipulations, agreements, and orders applicable to those cases.

4. Except by agreement of the parties, as provided herein, or for good cause shown, no witness subject to these protocols shall be deposed more than once on the same subject matter. This restriction does not apply to persons rendering case-specific expert opinions. Where the party producing the witness 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 the MDL, to Lead Counsel for the deposing side no later than 10 days after issuance of the Notice of Deposition.

5. In any deposition, no more than two attorneys for the Plaintiffs and two attorneys for the Defendants may question the deponent. The Plaintiffs' two questioners for each deposition shall be designated by Plaintiffs' Lead Counsel. In the case of any deposition noticed by a Defendant, the questioners shall be selected by Lead Counsel for the Yamaha Defendants after consultation with Lead Counsel for the Other Defendants and, if different, the party serving the notice of deposition. Questioners shall not ask repetitive or redundant questions.

Questioners should divide their time by agreement; disagreements as to the division of time that require Court intervention are strongly discouraged. Reasonably in advance of the date scheduled for a deposition, any attorney designated as a questioner for that deposition shall coordinate with the other counsel whose interests they represent regarding the areas of examination and questions to be asked. In some depositions, there may be sufficient divergence of positions among various parties that additional examiners may be appropriate on non-redundant (*i.e.*, new subject) matters. In those instances, upon agreement of the parties or with leave of Court in advance of the deposition and upon good cause shown, additional attorneys will be permitted to question the deponent on non-redundant matters.

6. Unless otherwise agreed to by the parties or ordered by the Court for good cause shown, depositions of case-specific fact witnesses shall be limited to one seven-hour day, excluding time for breaks, and depositions of common fact witnesses may be deposed for two seven-hour days, excluding time for breaks. Any expert for Plaintiffs or Defendants providing only expert testimony that is not tied to any particular case may be deposed only one time, and the deposition shall be limited to two seven-hour days, except on agreement of the parties or

upon a showing of good cause. The deposition of any expert for Plaintiffs or Defendants providing expert testimony regarding a particular case shall be limited to one seven-hour day in each case, except that where the expert has been designated in multiple cases the first two scheduled depositions of the expert shall be limited to two seven-hour days. While the non-noticing parties may use as much of the deposition time as is not used by the noticing parties, one hour of a seven-hour deposition and two hours of a 14 hour deposition shall be reserved for the non-noticing parties to ask non-repetitive questions.

7. All objections in depositions taken in cases in MDL 2016 are preserved except as to form of the question and responsiveness of the answer and shall comply with Fed. R. Civ. P. 30(c)(2). Any objection made at a deposition shall be deemed to have been made on behalf of all other parties on the same side, unless counsel for a party specifically excepts from the objection.

8. Any person or entity who was not a party to MDL 2016 when a deposition was taken, may within 60 days of becoming a party, after coordination with Lead Counsel for the appropriate group, request permission of counsel for the deponent (and of the Court, if necessary) to conduct a supplemental deposition of the deponent. If permitted or ordered, the supplemental deposition shall be treated as the resumption of the deposition originally noticed and shall not include examination on topics addressed in the prior portion of the deposition or otherwise be repetitive of the prior interrogation.

9. Counsel for Plaintiffs and counsel for Defendants shall be entitled to attend such depositions. While a deponent is being examined about any stamped confidential document or the confidential information contained therein, persons to whom disclosure is not authorized under the Confidentiality Order may not attend during such examination.

I. Production of Documents

1. The parties shall meet and confer regarding the form of production of documents.
2. Except as set forth herein and subject to the Order of the Court during the April 22, 2009 hearing, regarding documents with duplicate Bates Numbers, all documents produced in this MDL shall have their pages numbered sequentially by the party producing the documents using a Bates-numbering convention that identifies the party producing the documents. Documents produced by the Yamaha Defendants in response to requests in the Common Fact Sheets will have uniform Bates numbering applicable to all cases consistent with the Bates numbering practice that the Yamaha Defendants have been following to date in Rhino-related cases. To the extent not already provided, the Yamaha Defendants shall collect information, to the extent available after reasonable inquiry, regarding the source and custodian for the documents already produced and provide such information to Lead Counsel for Plaintiffs. The parties shall meet and confer in an effort to agree upon a Bates numbering convention.
3. The same documents produced by a party in a Yamaha Rhino Case need not be produced in a Yamaha Rhino MDL Case where one or more of the opposing party's counsel appears of record in both cases. Documents produced in one Yamaha Rhino MDL Case may be used, in compliance with the terms of the Confidentiality Order entered by the Court on May 11, 2009, in any other Yamaha Rhino Case for any purpose permitted under the Federal Rules of Civil Procedure and any applicable protective order, as if they were produced in the other case. The admissibility of any document at trial must be established before the Court that is presiding over the trial of that particular case.

J. Privileged Information**1. Inadvertent Disclosure**

If a party inadvertently produces documents or information subject to a claim of privilege or work product protection, that production will not waive otherwise applicable claims of privilege or work product protection to the extent provided for under Federal Rule of Evidence 502(b). Upon discovery by the receiving party, or receipt of written notice from the producing party identifying privileged or protected documents that were inadvertently produced, whichever first occurs, the receiving party shall within 7 days: either (a) return the subject documents and all copies, and destroy any portions of any work product containing or reflecting the contents of the subject materials; or (b) after attempting to resolve any dispute with opposing counsel informally, file a motion challenging the assertion of privilege and tender the subject documents for *in camera* review with the motion. The receiving party shall do nothing to compromise the privilege claim until the issue is resolved.

2. Privilege Log

Subject to the exceptions below and without affecting the parties' obligations or court rulings regarding privilege logs produced in any action outside MDL 2016, any documents withheld from production or redacted in part on the grounds of attorney-client privilege, the work product doctrine or any other privilege or protection from disclosure, shall be listed on a privilege log providing sufficient information to allow the receiving party to determine the basis of the privilege asserted, including identification of the document, the date, author(s), recipient(s), a brief description of the document (e.g., correspondence, memo, etc.), and the basis for withholding the document (e.g., attorney-client privilege, attorney work product, etc.). The privilege log shall be provided within fifteen (15) days of the production to which it applies. The following categories of documents protected from disclosure on grounds of privilege or work

product need not be included on any such privilege log: (i) communications between a party and its outside counsel that have not been disclosed in a manner that would destroy privilege; (ii) outside counsel communications, work product and materials generated by or for outside counsel, including communications with and materials prepared by consulting experts regarding Yamaha Rhino-related litigation or claims, but not including regulatory actions; (iii) communications between a party's employees and the party's in-house counsel related to or regarding one or more Rhino-related actions or claims, but not including regulatory actions; and (iv) communications based upon a common interest privilege among Plaintiffs' counsel or among Defendants' counsel. Upon a showing of good cause, a party may later move the Court to modify this provision to require that some specified portion of the communications referred to above be added to another party's privilege logs or that additional categories of documents be exempted from privilege logs.

K. Examinations Under Federal Rule of Civil Procedure 35

Where Plaintiff has put his or her physical condition in controversy, and subject to a Plaintiff's right to seek a protective order, the Court finds that, pursuant to Fed. R. Civ. P. 35, there is good cause to permit Defendants to have a non-invasive physical examination, which would not normally cause a reasonable person significant pain, by a healthcare professional of each Plaintiff regarding the injury the Plaintiff claims is due to the Yamaha Rhino. Such examinations will be governed by and conducted pursuant to the provisions of Fed. R. Civ. P. 35, except that (1) only one such examination will be permitted without agreement of the parties or leave of Court; (2) the examination shall be scheduled for a mutually agreeable date; (3) the examination shall be by written notice at least 30 days before the scheduled examination rather than by motion; and (4) no one other than the healthcare professional and his or her staff, the person to be examined, and in the case of a minor, a parent or guardian, shall be present for the

examination except by agreement of the parties or order of the Court upon good cause shown. Such notice shall include the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it, consistent with Fed. R. Civ. P. 35(a)(2)(B). The party to be examined shall not be required to travel more than 75 miles from the party's residence. Notwithstanding the foregoing, requests for examination of a Plaintiff's physical condition under terms and conditions different from the above, or of a Plaintiff's mental condition shall be by motion pursuant to the terms of Fed. R. Civ. P. 35.

L. Exchange of Documents Obtained Through Subpoenas

Any party that obtains copies of documents by subpoena that may have application to more than a single, specific case shall provide copies of such documents to Lead Counsel for the other parties within 30 days of receipt, without need for a request, and shall be entitled to reimbursement for duplication at cost. Any party that obtains copies of documents by subpoena that are relevant to only a specific case shall provide copies of such documents to the appropriate parties in that specific case within 30 days of receipt, without need for a request, and shall be entitled to reimbursement for duplication at cost.

M. Discovery Motions

All discovery motions regarding the MDL Case Groups, other than those involving (i) depositions that occur in the last 60 days before the deadline for non-expert discovery and (ii) expert discovery, shall be set for hearing no later than 30 days before the deadline for non-expert discovery applicable to the case in which such motion is brought.

V. TRIAL PLAN

A. Early Trial Date

It is the intention of the Court that an initial trial of one or more cases from each Case Group shall be set to begin on or about the dates set in Schedule A.

B. Case Selection for Trial

No later than thirty (30) days before the deadline for completion of all discovery set forth in Schedule A, Lead Counsel for Plaintiffs and Defendants shall meet and confer regarding a plan for the selection of one or more cases from the applicable Case Group for trial on or about the dates set forth in Schedule A. If no agreement is reached, the parties shall submit their respective proposals to the Court by the discovery deadline, with a brief not to exceed three double-spaced pages.

VI. AUTHENTICATION OF DOCUMENTS

A. Documents

Documents and other materials authored and produced by any Plaintiff or the Yamaha Defendants in connection with their Fact Sheets or subsequent document requests are true and genuine (or correct) copies of documents and other materials from the records of such Plaintiff or the Yamaha Defendants and their employees, respectively.

B. Record Authorizations

Records collected pursuant to Record Authorizations shall be deemed authentic, as long as produced pursuant to an executed certificate of authentication.

C. Preservation of Other Objections

Documents authenticated in this manner must meet all other requirements for admissibility before they will be admitted into evidence, and all objections other than those resolved by the preceding two paragraphs are preserved. True and correct copies of documents covered by the preceding two paragraphs shall be treated as if they are originals.

VII. COORDINATION WITH OTHER ACTIONS

A. Intention to Coordinate with State Court Cases

The Court is aware of numerous cases pending in state courts nationwide that fall within

the subject matter definition of MDL 2016, including but not limited to the California Coordination Proceeding and the Georgia Coordinated Proceeding. To achieve the full benefits of this MDL proceeding, this Court intends to coordinate with State courts presiding over Rhino-related cases, to the extent such State courts so desire. The Court intends to urge the State courts presiding over such State court cases to enter into informal discovery coordination arrangements that (a) will allow counsel in those cases to participate in the discovery activities in MDL 2016 (as though their cases were part of this proceeding), (b) will allow the parties in those cases to fully utilize the fruits of any discovery that is developed in MDL 2016, and (c) will minimize the waste and inconvenience that would result if parallel discovery proceeded unabated in all cases. It is contemplated by the Court and the parties that all discovery conducted in MDL 2016 may be utilized in any Rhino-related State court action, in accordance with the other Orders of this Court and that State's law and rules of evidence, and vice versa. Plaintiffs may in the future file a motion regarding possible cost-sharing provisions, which the Court will address at that time.

B. Pledge of Cooperation

The Court pledges its full cooperation with any court that agrees to this informal discovery coordination approach and urges all counsel in this proceeding to accord a full participatory role to the counsel in the pending state court cases, subject to the terms of this Order.

VIII. ELECTRONIC SERVICE

After service of the original summons and complaint, every subsequent pleading, motion, and order shall be deemed served when filed by ECF. Any document not filed by ECF shall be served by electronic mail to the correct email address of Lead and Liaison Counsel, if being served in "all cases," or to the appropriate Plaintiffs' or Defendants' Counsel if case specific.

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 28th day of May, 2009.


Jennifer B. Goffman, Judge
United States District Court

In Re: Yamaha Rhino ATV Prod. Liab. Litigation, MDL 2016
APPLICABLE DISCOVERY DEADLINES

Case Group	Transfer Dates¹	Target Date for First Trial from Case Group	Deadline to Meet and Confer re: Resolution or Schedule for Expert Discovery	Non-Expert Discovery Completion Deadline	Discovery Deadline
1	On or before 05/22/09	06/01/10	01/05/10	02/01/10	04/01/10
2	05/23/09-07/31/09	09/01/10	04/01/10	05/01/10	07/01/10
3	08/01/09-10/31/09 ²	12/01/10	07/01/10	08/01/10	10/01/10

¹ A case is deemed transferred to MDL 2016 under this Schedule when a Conditional Transfer Order listing it is filed in the W.D. Kentucky Clerk's Office.

² Additional cases for which a Conditional Transfer Order is filed shall be designated by sequential numbers for each 90-day period, and the deadlines provided herein for each such group shall extend 90 days from the corresponding deadline for the immediately preceding Case Group.