

IN THE 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: G. V. YAMAHA MOTOR CORPORATION, USA, ET AL.	JENNIFER B. COFFMAN, U.S. DISTRICT JUDGE
CASE NO. 4:07-1845	

ORDER APPROVING SETTLEMENT AND FINAL DISMISSAL OF ALL CLAIMS

On this day, came on to be heard the above-entitled and numbered cause, wherein William Gannon, Sr., individually and as Next Friend of G., a minor, are Plaintiffs, and Yamaha Motor Corporation, U.S.A., Yamaha Motor Manufacturing Corporation of America, and Yamaha Motor Co., Ltd., are the Defendants.

William Gannon, Sr., Plaintiff, appeared in by affidavit and G., a minor, appeared through the affidavit of A. Mick Henderson, heretofore appointed *Guardian ad Litem* by the Court.

The parties made known to the Court that any previously made jury demands are waived, and that all matters of fact and things in controversy are submitted to the Court. The named parties announced to the Court that they had agreed to settle and compromise all issues, claims and causes of action now existing or that may hereafter arise between Plaintiffs and Defendants.

The total amount of the settlement is confidential, the terms of which are described in a Confidential Settlement Agreement, Release and Indemnity Agreement (the "Settlement Agreement"), a copy of which was tendered to the Court under seal .

It having appeared to the Court that a potential conflict of interest exists between the adult Plaintiff, William Gannon, Sr., and the minor child, G., in the division of the proceeds of the settlement, the Court has appointed A. Mick Henderson, a practicing attorney in Missouri, duly licensed and in good standing with the State Bar of Missouri, as *Guardian ad Litem* to represent the interests of G., a minor; and said *Guardian ad Litem* has been apprised of all matters of fact concerning this controversy and settlement thereof and has recommended on behalf of minor Plaintiff G., that the Court approve the settlement as described in the Settlement Agreement.

After reviewing the pleadings filed in this case, the Court heard evidence touching upon such compromise and Settlement Agreement, with reference to the material facts regarding the incident that occurred on May 20, 2007, involving the subject Rhino (the "Incident"), and all matters pertaining to the alleged liability of Defendants and the damages to Plaintiffs, as well as the capacity of the parties to prosecute this action as stated herein. Upon hearing the evidence, the Court is of the opinion that such Settlement Agreement is in the best interest of Plaintiffs and the terms of the Settlement Agreement are in all respects reasonable.

Pursuant to Section 1.B.8 of MDL Common Benefit Order ("CBO"), entered in MDL No. 2016 on October 6, 2010, and as supplemented on April 1, 2011, 5% of the Settlement Payment will be offset against funds advanced by Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball, LLP to pay for common benefit costs in lieu of a direct payment to the Common Benefit Fund. *See* Certificate of Compliance as to G., a minor, at Exhibit A.

It is understood and agreed by the Plaintiffs that the payment of the monies described in the Settlement Agreement are in settlement of disputed claims, and that Defendants have denied liability and continue to deny liability of whatever nature to the Plaintiffs. It is further

understood and agreed that Defendants herein by the Settlement Agreement make no admission of liability to the Plaintiffs, nor to any other person, firm, corporation or other entity who did not assert a claim or file a lawsuit against Defendants, but rather that Defendants make this settlement solely to purchase their peace and to avoid the vexation and expense of further litigation.

Accordingly, the Court makes the following findings and Orders:

The Court finds that Plaintiffs and Defendants have satisfactorily compromised and settled all of the issues involved herein.

The Court is of the opinion that the Settlement Agreement executed by the Plaintiffs is fair and equitable and that the same should be, and is hereby in all things approved and the Court hereby specifically finds that the Settlement Agreement is in the best interests of the minor, G. The Court further finds that each of the Defendants has given good and valuable consideration to each of the Plaintiffs for the settlement of this lawsuit. The Court hereby further finds that the minor Plaintiff's allocation of the sums agreed upon as a compromise settlement figure in this action between the parties should be paid as set forth in the Settlement Agreement.

The Court approves the settlement entered into by the parties named herein and finds that the claims of Plaintiffs against Defendants should be dismissed with prejudice; and that the Plaintiffs' claims, asserted or which could have been asserted herein against Defendants are fully satisfied in all respects, and that no execution shall ever issue herein.

The Court finds that the terms of the Settlement Agreement provide that the taxable court costs will be paid by the party incurring same.

The Court further finds that the terms of the Settlement Agreement provides that Plaintiffs will pay all fees due to their attorneys from the settlement amount set forth in the Settlement Agreement.

The Court further finds that A. Mick Henderson's fee of \$750.00 for services provided as Guardian *ad Litem* is reasonable, and finds that the fee will be taxed against Plaintiff's settlement.

The Court further finds that the Plaintiffs have agreed that all medical aid, hospital services, doctor services, psychiatric or psychological services, chiropractor services, nursing, drugs, funeral and burial expenses, property damage, worker's compensation, and Medicare, Medicaid and hospital liens past, present, and future arising as a result of the underlying accident have been or will be paid or compromised by Plaintiffs. Plaintiffs have further agreed to INDEMNIFY and HOLD HARMLESS Defendants from any and all such claims, demands, actions, and causes of action of any nature or character and any other claims, demands, actions, and causes of action which may have been or may hereafter be asserted against Defendants as a result of the underlying Incident by any person, insurer, firm, company, and/or corporation (including, but not limited to, any and all Medicare/Medicaid liens) claiming by, through or under Plaintiffs, claiming under any alleged subrogation rights, including, but not limited to property damage, worker's compensation liens, child support liens or judgments, attorney fees, and/or hospitals' or doctors' liens.

The Court further finds that William Gannon, Sr. is authorized to settle and compromise all claims on behalf of minor, G.

The Court further finds that no execution or other process shall ever issue against the Defendants and that the Defendants are fully and finally released.


The Court further finds that this Judgment has been fully and finally satisfied upon funding of the settlements stated above, on behalf of Defendants, and Defendants Yamaha Motor Corporation, U.S.A., Yamaha Motor Manufacturing Corporation of America, Yamaha Motor Co., Ltd., are hereby fully and finally relieved and discharged from all liability as a result of the Incident made the basis of this lawsuit once such funding occurs.

The Court further finds that this Judgment fully and finally disposes of all parties and all claims and that this shall constitute the Court's FINAL JUDGMENT.

Signed this 10th day of November, 2011.


JUDGE JENNIFER B. COFFMAN

APPROVED AS TO FORM:

By:  _____

Attorneys for Plaintiffs, William Gannon, Sr.,
individually and as next friend of G., a Minor

A. Mick Henderson

BY: _____

Attorney/Guardian ad Litem for G.

BY: _____

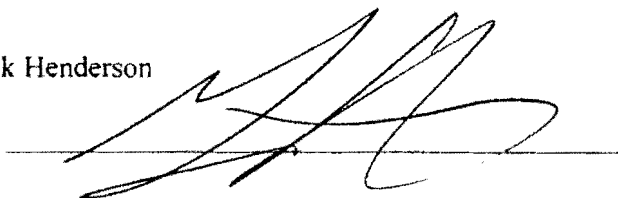
Attorney for Defendants, Yamaha Motor Co., Ltd., Yamaha Motor Corporation, U.S.A.,
and Yamaha Motor Manufacturing Corporation of America

APPROVED AS TO FORM:

By: 

Attorneys for Plaintiffs, William Gannon, Sr.,
individually and as next friend of G., a Minor

A. Mick Henderson


BY: 

Attorney/Guardian ad Litem for G.

BY: _____

Attorney for Defendants, Yamaha Motor Co., Ltd., Yamaha Motor Corporation, U.S.A.,
and Yamaha Motor Manufacturing Corporation of America

APPROVED AS TO FORM:


By: 

Attorneys for Plaintiffs, William Gannon, Sr.,
individually and as next friend of G., a Minor

A. Mick Henderson

BY: _____

Attorney/Guardian ad Litem for G.

BY: 

Attorney for Defendants, Yamaha Motor Co., Ltd., Yamaha Motor Corporation, U.S.A.,
and Yamaha Motor Manufacturing Corporation of America