

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

JENNIFER B. COFFMAN
U.S. DISTRICT JUDGE

THIS DOCUMENT RELATES TO

Case No. 3:09-CV-00534-JBC

JODI SCHMITZ, Individually
and as Next Friend of B.S., a Minor

v.

YAMAHA MOTOR CO., LTD., ET AL

ORDER APPROVING SETTLEMENT AND FINAL DISMISSAL OF ALL CLAIMS

On this day, came on to be heard the above-entitled and numbered cause, wherein Jodi Schmitz, individually and as Next Friend of B.S., 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.

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 the total amount of the settlement set forth in Exhibit A, the "Settlement Agreement," is below the statutory minimum requiring appointment of a *Guardian ad Litem*, the Court is satisfied that no conflict of interest exists between the adult Plaintiff, Jodi Schmitz, and the minor child, B.S., in the division of the proceeds of the settlement. Accordingly, Jodi Schmitz, individually and as next friend of Brody Schmitz, a minor, has made the decision to settle all her claims and the claims of her minor child against Defendants and has agreed to all terms set forth 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 June 24, 2005, 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.

Section 1.B.8 of MDL Common Benefit Order ("CBO"), entered in MDL No. 2016 on October 6, 2010, requires the Yamaha Defendants to withhold five percent from the

total settlement amount payable to Plaintiffs. Counsel for Plaintiffs and counsel for the Yamaha Defendants certify that a five percent (5%) assessment against the recovery in this action will be withheld and deposited into the Common Benefit Fund within 5 business days of payment to Plaintiffs or Plaintiffs' counsel in connection with this settlement. *See* Certificate of Compliance as to Jodi Schmitz, individually and as next friend of B.S., a minor at Exhibit A. The Parties are to notify the court once the funds have been deposited into the Common Benefit Fund.

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, B.S. 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 and are hereby 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 the Plaintiffs have agreed that all valid 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, whether ultimately deemed valid or invalid, 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.

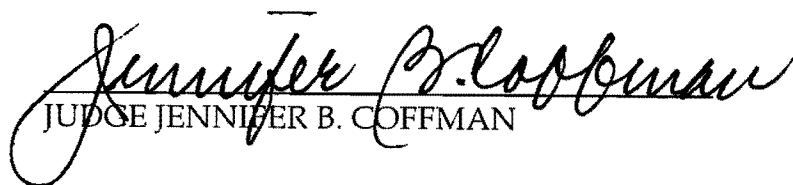
The Court further finds that Jodi Schmitz is authorized to settle and compromise all claims on behalf of minor, B.S.

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 9th day of March, 2012.


JUDGE JENNIFER B. COFFMAN

“EXHIBIT A”

CERTIFICATE OF COMPLIANCE
MDL COMMON BENEFIT ORDER

Pursuant to Section I.B.8 of the MDL Common Benefit Order (“CBO”), entered in MDL 2016 on October 6, 2010, counsel for Yamaha Motor Corporation, U.S.A., Yamaha Motor Manufacturing Corporation of America, and Yamaha Motor Company, Ltd. (the “Yamaha Defendants”) and the undersigned Plaintiff’s counsel hereby certify that a 5% assessment against the recovery in this action by Jodi Schmitz, Individually and as Next Friend of B.S., a minor, will be withheld and deposited into the Common Benefit Fund within 5 business days of payment to Plaintiffs or Plaintiffs’ counsel.

A copy of this Certificate shall accompany the Order of Dismissal in this action.

Date: 10-25-11

By: Alison C. Archer

Timothy J. Mattson

Alison C. Archer

Counsel for the Yamaha Defendants

Date: _____

By: Douglas A. Dellaccio, Jr.

Douglas A. Dellaccio, Jr

Counsel for Plaintiff(s)