

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**

IN RE: YAMAHA MOTOR CORP. RHINO ATV PRODUCTS LIABILITY LITIGATION	Master File No. 3:09-MD-02016-JBC MDL No. 2016 JENNIFER B. COFFMAN U.S. DISTRICT JUDGE
TRACI ANN WHITSEL, as Next Friend to D.W, a minor, Plaintiff, v. YAMAHA MOTOR CORPORATION, U.S.A., YAMAHA MOTOR MANUFACTURING CORPORATION OF AMERICA, YAMAHA MOTOR CO., LTD., and DOES 1 through 10, inclusive, Defendants.	Civil Action No. 3:12-CV-00157-JBC ORDER APPROVING AND FUNDING MINOR SETTLEMENT AND FINAL DISMISSAL ALL OF <u>CLAIMS</u>

On this day, came on to be heard the above-entitled and numbered cause, wherein Traci Ann Whitsel, as Next Friend to D.W., a minor, is the Plaintiff, and Yamaha Motor Corporation, U.S.A., Yamaha Motor Manufacturing Corporation of America, and Yamaha Motor Co., Ltd., are the Yamaha Defendants.

Traci Ann Whitsel, as Next Friend to D.W., a minor, Plaintiff, and Sherman Whitsel, the natural father of D.W., both appeared by affidavit.

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 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 Plaintiff and Yamaha Defendants and between Plaintiff and third parties Richard Gutshall, Tammy Gutshall, and Dillon Gutshall (hereinafter collectively referred to as “the Defendants”). The total amount of the settlement with the Yamaha Defendants is confidential, the terms of which are described in a Confidential Settlement Agreement, Release and Indemnity Agreement (the “Yamaha Agreement”), a copy of which was tendered to the Court under seal but not filed. The total amount of the settlement with the third parties is set forth in the General Release, Parent and Guardian (the “Gutshall Agreement”), a copy of which was also tendered to the Court under seal, but not filed.

After reviewing the pleadings filed in this case, the Court heard evidence touching upon such compromise and settlement agreements, with reference to the material facts regarding the incident that occurred on January 30, 2009, involving the subject Rhino (the “Incident”), and all matters pertaining to the alleged liability of the Defendants and the damages to Plaintiff, 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 is in the best interest of Plaintiff and the terms of the Settlement Agreements are in all respects reasonable.

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 Plaintiff’s counsel hereby certify that a 5% assessment against the recovery from the Yamaha Defendants only in this action by Traci Ann Whitsel, as Next Friend to D.W., a

minor, has been applied to credit held by Loeff Cabraser, Heimann & Bernstein, LLP with the Common Benefit Fund.

It is understood and agreed by the Plaintiff that the payment of the monies described in the Settlement Agreements are in settlement of disputed claims, and that Defendants have denied liability and continue to deny liability of whatever nature to the Plaintiff. It is further understood and agreed that Defendants herein by the Settlement Agreements make no admission of liability to the Plaintiff, 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 Plaintiff and Defendants have satisfactorily compromised and settled all of the issues involved herein.

The Court is of the opinion that the Settlement Agreements executed by the Plaintiff are fair and equitable and that the same should be, and are hereby in all things approved and the Court hereby specifically finds that the Settlement Agreements are in the best interests of the minor, D.W. The Court further finds that each of the Defendants has given good and valuable consideration to the Plaintiff for the settlement of this lawsuit. The Court hereby further finds that the Plaintiff's Unopposed Motion to Approve and Fund the Minor's Settlement is well taken and is hereby granted. The settlement funds shall be allocated and distributed as set forth in the Plaintiff's Motion at Exhibit 1, which states that because D.W. is under the age of 18, his net share of the settlement proceeds will be placed in two custodial accounts in federally insured institutions that cannot be drawn upon except by D.W. upon reaching the age of 18 years, or with

the express permission of a Court of competent jurisdiction. The provisions of the Plaintiff's Motion to Approve and Fund the settlements is adopted and incorporated as if fully set forth herein. Upon filing of a proper Motion by the Plaintiff and for good cause shown, the Court will entertain any future requests for an early release of funds from the monies held in a custodial account solely for the benefit of D.W.

The Court approves the Settlement Agreements entered into by the Defendants defined herein and finds that the claims of Plaintiff against Defendants should be dismissed with prejudice; and that the Plaintiff's 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 Agreements provide that the taxable court costs will be paid by the party incurring same.

The Court further finds that the terms of the Settlement Agreements provide that Plaintiff will pay all fees and expenses due to Plaintiff's attorneys from the gross settlement amount as set forth in the Dispersal Statement attached to Plaintiff's Unopposed Motion to Approve and Fund the Minor's Settlement and that such attorneys' fees and expenses are justified.

The Court further finds that Plaintiff represents that there are no unresolved liens or rights of reimbursement related to the claims being settled and agree that it is Plaintiff's responsibility to pay, compromise, or otherwise satisfy any such rights out of the funds paid in connection with this settlement. Plaintiff has further agreed to indemnify completely and hold harmless the Defendants from any and all liens for medical care, health expenses, Social Security payments, disability, insurance subrogation claims, Medicare/Medicaid liens or rights of reimbursement,

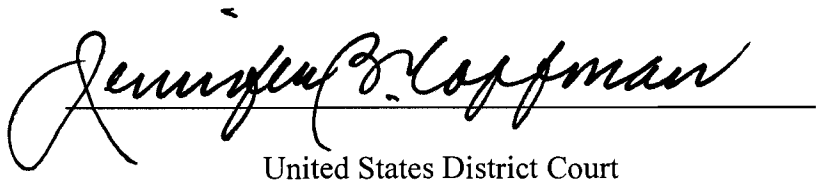
Worker's Compensation liens, child support liens, and any other form of lien which has arisen or may arise as a result of payments made, or to be made in the future, by or on behalf of any Plaintiff as a result of the Incident. The Defendants have specifically bargained for the assurance of the satisfaction of all related liens and rights of reimbursement for the full protection of their respective Releases, so that no lawsuit, claim or cause of action will ever be asserted against any of them arising out of or related to the Incident.

The Court further finds that Traci Ann Whitsel is authorized to settle and compromise all claims on behalf of the minor, D.W. 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 settlement stated above, on behalf of Defendants, and Defendants Yamaha Motor Corporation, U.S.A., Yamaha Motor Manufacturing Corporation of America, and Yamaha Motor Co., Ltd., Richard Gutshall, Tammy Gutshall and Dillon Gutshall are hereby fully and finally relieved and discharged from all liability as a result of the Incident that 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: 12/14/12


United States District Court