

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. 2

I. CASE MANAGEMENT

A. Stay of Proceedings Lifted

By agreement of the Parties as acknowledged by the Court on April 22, 2009, all discovery was stayed. The Parties hereby agree that the stay of discovery is lifted and shall proceed to the extent permitted by and consistent with Case Management and Scheduling Order No. 1 (“CMO #1”) and otherwise as may be directed by the Court.

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

The MDL Plaintiffs and Defendants stipulate and agree that any case filed in the Western District of Kentucky pursuant to Section II(A) of CMO #1 shall be deemed to operate under the choice of law principles of the State in which the Plaintiff resides or the Subject Incident occurred, as designated in the Complaint, until such time as an alternative venue is either agreed upon or determined by this or another Court of competent jurisdiction after motion by any party. If Plaintiff fails to designate in the Complaint which choice of law principles apply, then the choice of law principles of the State where the Subject Incident occurred will apply, until such time as an

alternative venue is either agreed upon or determined by this or another Court of competent jurisdiction after motion by any party.

C. Case Group 1 and 2 Deadlines

Section IV(C)(3)(a) of CMO #1 sets forth the deadlines for cases that fall in groups other than Case Group 1. Because the fact sheets were not approved until after the entry of CMO #1, Plaintiff Fact Sheets in some cases in Case Group 2 would have been due on the same day or before those in Case Group 1. To stagger the production of such discovery, this Order amends CMO #1 as follows: All Plaintiff Fact Sheets in Case Group 2 must be served no later than August 15, 2009, or pursuant to Section IV(C)(3)(a) of CMO #1, whichever is later.

Because many of Plaintiffs' fact sheets have not yet been received by Defendants, each of the deadlines for the service of fact sheets set out in Section IV(C)(2) for Group 1 cases, except as provided below, is extended by fourteen (14) days. To eliminate any future confusion regarding due dates for the service of fact sheets, Plaintiff and Defendant Case Specific Fact Sheets for all Group 1 cases shall now be served by email or overnight mail on or before the following dates:

- Plaintiff Fact Sheets – July 31, 2009
- All Defendant Case Specific Fact Sheets other than YMC – August 31, 2009
- YMC Case Specific Fact Sheets – September 30, 2009

D. Document Production Protocol

Common discovery fact sheets, documents and any associated privilege logs produced in MDL 2016 shall be served on Lead and Liaison Counsel for the Plaintiffs and the Yamaha Defendants, and on Lead Counsel for the Other Defendants. Such production shall discharge the producing party's duty to produce the materials in MDL 2016 as of the date of such service, including as to Parties in MDL cases filed thereafter. Plaintiffs' Liaison Counsel shall make available common discovery documents produced by the Defendants to all MDL Plaintiffs'

counsel of record only as allowed by and in compliance with the Stipulation and Agreed Protective Order Regarding Confidentiality of Documents and Materials and subject to appropriate cost-sharing provisions, if any are subsequently entered by this Court.

Case-Specific Fact Sheets must be served either by e-mail or overnight mail on all counsel of record in the specific case and on Liaison Counsel for Plaintiffs and Lead Counsel for the Yamaha Defendants, and where a non-Yamaha Defendant is a party, Lead Counsel for the Other Defendants. Executed medical and other record authorizations and document productions made in connection with Case-Specific Fact Sheets need only be served on all counsel of record in the specific case and must be served by email or overnight delivery. Associated case-specific privilege logs, however, must be served on all counsel of record in the specific case and Liaison Counsel for the Plaintiffs and Yamaha Defendants and, where a non-Yamaha Defendant is a party, on Lead Counsel for the Other Defendants. As with Case-Specific Fact Sheets, case-specific privilege logs must be served by e-mail or overnight mail.

Fact sheet responses and documents and information produced in MDL 2016 may be shared by Plaintiffs' counsel with other parties and their counsel only pursuant to and in compliance with the Stipulation and Agreed Protective Order Regarding Confidentiality of Documents and Materials dated May 6, 2009 and subject to appropriate cost-sharing provisions, if any are subsequently entered by this Court. Plaintiffs' counsel shall not share Case-specific Plaintiff Fact Sheets and associated documents, containing personal health information, with Parties that were not served with them, except on express written consent of the Plaintiff.

E. Dealer Defendant Common Fact Sheet Deadline

Dealer Defendant Common Fact Sheets shall be due within 30 days after the Plaintiff Fact Sheet is served in the case in which the Dealer is a party. The completed Dealer Defendant

Common Fact Sheet and any associated documents and privilege logs shall be served according to paragraph I(D) above and in accordance with the provisions of CMO #1.

F. Communications with Represented Individual and Plaintiffs

Any written or oral communication received by a Defendant directly from an individual or Plaintiff with a pending claim who was represented by counsel at the time of such communication, in response to a communication from or on behalf of any Defendant made directly to the individual or Plaintiff and not through counsel, may not be used or referred to for any purposes in any litigation.

G. Expert Discovery Deadlines

Pursuant to CMO #1 Section IV(B)(4)(b), the following deadlines shall govern expert discovery:

1. Case Group 1 Cases

- a. Close of Non-Expert Fact Discovery – December 4, 2009
- b. Plaintiffs' expert disclosures/reports due - January 8, 2010
- c. Deadline to depose plaintiffs' experts - February 12, 2010
- d. Defendants' expert disclosures/reports due - March 5, 2010
- e. Deadline to depose defendants' experts - April 2, 2010
- f. Plaintiffs' rebuttal reports due – April 16, 2010
- g. Deadline to Depose Plaintiffs' rebuttal experts – April 30, 2010

2. Case Group 2 Cases

- a. Close of Non-Expert Fact Discovery – March 5, 2009
- b. Plaintiffs' expert disclosures/reports due – April 9, 2010
- c. Deadline to depose plaintiffs' experts – May 14, 2010
- d. Defendants' expert disclosures/reports due – June 4, 2010
- e. Deadline to depose defendants' experts – July 2, 2010
- f. Plaintiffs' rebuttal reports due – July 16, 2010
- g. Deadline to Depose Plaintiffs' rebuttal experts – July 30, 2010

3. Case Group 3 Cases

- a. Close of Non-Expert Fact Discovery – June 4, 2009
- b. Plaintiffs' expert disclosures/reports due - July 9, 2010

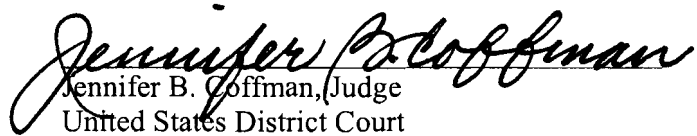
- c. Deadline to depose plaintiffs' experts - August 13, 2010
- d. Defendants' expert disclosures/reports due – September 3, 2010
- e. Deadline to depose defendants' experts – October 1, 2010
- f. Plaintiffs' rebuttal reports due – October 15, 2010
- g. Deadline to Depose Plaintiffs' rebuttal experts – October 29, 2010

4. Additional Cases: For cases in subsequent Case Groups, the deadlines to complete expert discovery for each case group shall extend 90 days from the deadline for the immediately preceding Case Group.

II. 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 on appropriate notice and for good cause shown.

ORDERED on this 27th day of July, 2009.


Jennifer B. Coffman, Judge
United States District Court