

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

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THIS DOCUMENT RELATES TO ALL  
CASES

JENNIFER B. COFFMAN,  
U.S. DISTRICT JUDGE

**ORDER REGARDING PRACTICE AND PROCEDURE UPON TRANSFER  
AND  
SETTING INITIAL CONFERENCE**

This cause is hereby scheduled for a preliminary status conference on Tuesday, March 24, 2009, at 9:00 a.m. EDT in United States District Court, 601 W. Broadway, Louisville, Kentucky. To minimize costs and facilitate a manageable conference, parties shall appear at the conference by counsel only. Parties with similar interests are encouraged to agree to the extent practicable on a single attorney to act on their behalf at the conference. By designating an attorney to represent its interests at the conference, a party will not be precluded from other direct participation in the various stages of this litigation. Attendance at the conference will not constitute a waiver of objection to jurisdiction, venue, or service.

The court has received a letter which purported to represent the interests of all plaintiffs and defendants in the above MDL proceeding. The letter is attached to

this order as Attachment B. The parties are directed to advise the court as follows:

- (1) The parties shall advise whether they have already agreed on plaintiffs' lead counsel and/or plaintiffs' steering committee, as well as plaintiffs' liaison counsel.
- (2) If the parties have agreed on this matter, they shall report the specifics to the court no later than March 20, 2009. If no such agreement has been made, then any applications or nominations for lead counsel, steering committee, and liaison counsel shall be made no later than March 20, 2009.
- (3) Regardless of any such agreement, the main criteria for these appointments are (a) willingness and ability to commit to a time-consuming process; (b) ability to work cooperatively with others; (c) professional experience in this type of litigation; and (d) access to sufficient resources to advance the litigation in a timely manner. [Applications should also set forth attorney fee proposals, rates, and percentages that applicants expect to seek if the litigation succeeds in creating a common fund.]

#### PRE-CONFERENCE SUBMISSIONS

In order to familiarize the court with the pending cases, on or before March 20, 2009, counsel for the plaintiff(s) and defendant(s) in each case transferred to this court shall submit<sup>1</sup> to the court a brief (not to exceed three pages) summary of the case. If the parties have agreed upon lead counsel, it is necessary for only such counsel to make these submissions. The summary shall not be filed with the Clerk, but it shall be distributed to the other parties; it will not be binding, will not be considered to waive any claims or defenses, and may not be offered in evidence against a party in later proceedings. The summary should include the following:

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<sup>1</sup> Submissions for the purpose of this order shall be made to the following email address: Coffman\_Chambers@kyed.uscourts.gov

- (1) a brief synopsis of the factual allegations involved in the case;
- (2) a brief summary of the legal issues involved in the case;
- (3) a brief description of any discovery which has been completed, including any depositions which have been taken;
- (4) if the case has been filed as a class action, a description of the proposed class and an indication of any discovery which will be necessary before the class certification issue can be briefed, along with an anticipated schedule for that discovery;
- (5) a list of pending motions, with an indication as to whether they are fully briefed;
- (6) any other matter which counsel believes requires the immediate attention of the court.

Counsel are also requested to notify the Court whether they plan to attend the conference and, if so, to provide the name of counsel who will appear.

#### AGENDA FOR INITIAL CONFERENCE

The initial conference is to permit counsel to meet with the judicial officer assigned to this case and to raise for discussion any matters requiring immediate attention by the court. In addition, counsel are invited to suggest in general terms any proposals for the organization and structure of the pretrial phases of this litigation, by which counsel and the court will attempt to efficiently manage its development. Any party wishing to address the court and/or to advance such a proposal is requested to submit a succinct, written description of the proposal with the court on or before March 20, 2009. Such proposal should include a discussion

of its anticipated benefits to the litigants in managing the fees and costs associated with litigation of this magnitude. The communication attached as Attachment B discusses a proposed case management order. The parties may submit a specific proposed case management order for consideration. Such proposed case management order shall be submitted to the email address provided in footnote 1 no later than March 20, 2009. Counsel will also be invited at the Initial Conference to propose a schedule of future conferences with the court as well as topics for inclusion on the agenda of the next scheduled conference.

PRACTICE AND PROCEDURE ORDER UPON TRANSFER  
PURSUANT TO 28 U.S.C. 1407(a)

Those 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, shall all be governed by the following practices and procedures:

(1) The actions described above are consolidated for pretrial purposes.

(2) All documents filed in these actions shall bear the identification "MDL Docket No. 2016," and shall indicate to which of these actions it applies. Counsel are urged to use the caption as it appears above. The notation "ALL CASES" shall be used where appropriate; alternatively, if any filing does not relate to all of these

actions, the individual docket numbers assigned to those actions by the Clerk of this court (as listed in Schedule A) shall be listed. An abbreviated caption for each of those actions may be listed opposite its cause number. Cause numbers assigned by transferor courts shall not be used in filings with this court. Any filing should be filed in the master file, 3:09-md-2016-JBC, and in the relevant individual cases as well. All pleadings and submissions in these actions shall be electronically filed in both the master docket and in the individual case docket(s) to which the submission pertains. Electronically filing<sup>2</sup> in the master file will present the option to spread the entry to any individual case(s).

(3) Any paper which is to be filed in any of these actions shall be filed with the Clerk of this Court and not with the transferor district court.

(4) Counsel who appeared in the transferor district court prior to the transfer need not enter a separate appearance before this Court. Non-resident attorneys in any of these actions shall not be required to apply for permission to appear or obtain local counsel in this district and the requirements of Joint Local Rules 83.1 and 83.2 of the Eastern and Western Districts of Kentucky are waived as to any attorney appearing in these actions who is duly admitted to practice before any United States District Court.

(5) These cases are subject to Electronic Case Filing ("ECF"), pursuant to Joint General Order 05-03, which requires that all documents in such a case be filed electronically. All attorneys of record shall register to become an ECF User. Forms and instructions can be found on the Court's website at <https://kywd.uscourts.gov/CMECFWelcome.php>. All attorneys must be registered with this Court's CM/ECF system no later than **30 days from the entry of this order**, absent application to the Court for relief from this requirement, and all filings must be made electronically pursuant to the Court's CM/ECF system. The login and password issued by the Western District of Kentucky upon such registration will be used only for the purpose of filing documents in the Yamaha Motor Corp. Rhino ATV Products Liability Litigation and related cases. Said login and password are not to be used to file documents in any other case in the Western District of Kentucky unless the attorney is admitted or becomes admitted to practice in this District pursuant to LR 83.1.

(6) Service of all papers shall be made on each of the attorneys on the Panel Attorney Service List. The service list is attached to this order as Attachment C,

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<sup>2</sup> Filers with questions regarding procedures for electronic filing in the Western District of Kentucky are directed to call the ECF Help Desk Mon. - Fri. 8:00 a.m to 6:00 p.m. ET at 1-866-822-8305.

and a continually revised form can be accessed via a link to the Multidistrict Litigation website which is posted on the court's webpage. A distribution list should not be included on documents filed in this court; rather, a certificate of service stating that all attorneys appearing on the Panel Attorney Service List were served is sufficient. Any attorney who wishes to have his/her name added or deleted from such Panel Attorney Service List may do so upon request of the Clerk of this Court with notice to all other persons on such service list, provided, however, that at least one counsel for each party separately represented must remain on the list.<sup>3</sup> Service shall be deemed sufficient if made upon all attorneys on the Panel Attorney Service List. That list will be updated as counsel enter appearances and/or as tag-along cases are transferred to this court and, in particular, after the Initial Conference.

(7) Where counsel for more than one party plan to file substantially identical papers, they shall join in the submission of such papers and shall file only one paper on behalf of the parties so joined.

(8) The court will be guided in its management of this litigation by the Manuel for Complex Litigation, Fourth which has been approved by the Judicial Conference of the United States. Counsel are directed to familiarize themselves with that reference. The court wishes to express clearly its expectations that professionalism, courtesy, and civility will endure throughout these proceedings. The *Manuel for Complex Litigation, Fourth* at section 10.21 captures the spirit in these terms:

The added demands and burdens of complex litigation place a premium on attorney professionalism, and the judge should encourage counsel to act responsibly. The certification requirements of the Federal Rules of Civil Procedure 11 and 26(g) reflect some of the attorneys' obligations as officers of the court.

Because of the high level of competence and experience that the attorneys ordinarily bring to this type of litigation, the court is confident that this objective will be achieved without judicial intervention.



(9)The Clerk is directed to serve this order on counsel of record in the above cases and on counsel in any additional case that may be filed in, removed from, or transferred to this action.

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<sup>3</sup>This requirement does not in any way amend the duties and requirements of counsel under Local Rule 83.6 with regard to the withdrawal of counsel.

IT IS SO ORDERED.

Signed on March 16, 2009

  
  
**Jennifer B. Coffman, Judge**  
**United States District Court**

**IN RE: YAMAHA MOTOR CORP. RHINO ATV  
PRODUCTS LIABILITY LITIGATION**

MDL No. 2016

**SCHEDULE A**

Northern District of Alabama

Richard A. McCurdy v. Yamaha Motor Co., Ltd., et al., C.A. No. 2:07-2096  
Margaret Ashley Ford v. Yamaha Motor Co., Ltd., et al., C.A. No. 2:08-782

District of Arizona

Myron Jones, et al. v. Yamaha Motor Co., Ltd., et al., C.A. No. 2:07-1718  
Brandon Boyd v. Yamaha Motor Co., Ltd., et al., C.A. No. 2:08-220  
Daniel Widney v. Yamaha Motor Co., Ltd., et al., C.A. No. 2:08-812  
Alexandria daCosta, et al. v. Yamaha Motor Corp., USA, et al., C.A. No. 2:08-1583

Eastern District of Arkansas

Colton Grabher v. Yamaha Motor Corp., USA, et al., C.A. No. 4:08-285

Central District of California

Larry Anderson v. Yamaha Motor Corp., USA, et al., C.A. No. 2:08-6312  
Julie Wright v. Yamaha Motor Corp., USA, et al., C.A. No. 2:08-6438

District of Colorado

Alejandro Sosa v. Yamaha Motor Corp., USA, et al., C.A. No. 1:07-2721

Southern District of Florida

Evan R. Acevedo, et al. v. Yamaha Motor Corp., USA, C.A. No. 0:08-61602

Northern District of Georgia

Brian Q. Giannoni v. Yamaha Motor Corp., USA, et al., C.A. No. 4:09-6

Eastern District of Kentucky

Clark Watterson, et al. v. Yamaha Motor Corp., USA, et al., C.A. No. 5:08-329  
Donna L. Adorno, etc. v. Yamaha Motor Corp., USA, et al., C.A. No. 6:08-205



**MDL No. 2016 Schedule A (Continued)**

Eastern District of Kentucky (Continued)

Anthony C. Ritchie v. Yamaha Motor Corp., USA, et al., C.A. No. 6:08-285  
Kristy Holliday, et al. v. Yamaha Motor Co., Ltd., et al., C.A. No. 7:08-107  
Jennifer Ousley v. Yamaha Motor Co., Ltd., et al., C.A. No. 7:08-143

Eastern District of Louisiana

Chastity Gerald, et al. v. Yamaha Motor Corp., USA, et al., C.A. No. 2:08-1660

Western District of Louisiana

Anthony Chamblee v. Yamaha Motor Co., Ltd., et al., C.A. No. 5:08-1351

District of Maryland

Karl Hartig v. Yamaha Motor Corp., USA, et al., C.A. No. 1:08-858  
William E. Berry, Jr., et al. v. Yamaha Motor Manufacturing Corp. of America, et al.,  
C.A. No. 1:08-2938

Western District of Michigan

Jeremy Tohtz v. Yamaha Motor Corp., USA, et al., C.A. No. 1:07-992

Northern District of Mississippi

Bettina Lynn Tucker, et al. v. Yamaha Motor Corp., USA, et al., C.A. No. 3:07-143

Southern District of Mississippi

Andrew J. Holley v. Yamaha Motor Corp., USA, et al., C.A. No. 1:08-223  
Danny Ray Roberts, et al. v. Yamaha Motor Corp., USA, et al., C.A. No. 3:08-544

Eastern District of Missouri

Dixie Farris, et al. v. Yamaha Corp. of America, et al., C.A. No. 1:08-135  
William Gannon, etc. v. Yamaha Motor Corp., USA, et al., C.A. No. 4:07-1845

**MDL No. 2016 Schedule A (Continued)**

Western District of Missouri

Zachary Murray v. Yamaha Motor Corp., USA, et al., C.A. No. 4:07-785

District of Montana

James H. Shaw, et al. v. Yamaha Motor Corp., USA, et al., C.A. No. 9:08-102

District of Nebraska

Edwin Hartley, et al. v. Yamaha Motor Corp., USA, et al., C.A. No. 8:08-183

District of Nevada

Lela Whitlock, etc. v. Yamaha Motor Corp., USA, et al., C.A. No. 2:07-632  
Joseph Monaco v. Yamaha Motor Corp., USA, et al., C.A. No. 2:08-675

Southern District of New York

Bruce Kehr, et al. v. Yamaha Motor Corp., USA, et al., C.A. No. 1:08-7379

Northern District of Ohio

Christopher Smith v. Yamaha Motor Corp., USA, et al., C.A. No. 3:08-1863  
Angelo M. Zolna, et al. v. Yamaha Motor Co., Ltd., et al., C.A. No. 4:08-882

Eastern District of Oklahoma

Bobby Williams v. Yamaha Motor Co., Ltd., et al., C.A. No. 6:08-392

Northern District of Oklahoma

Roger Ayers, et al. v. Yamaha Motor Corp., USA, et al., C.A. No. 4:07-434

Eastern District of Pennsylvania

Ryan Emery v. Yamaha Motor Corp., USA, et al., C.A. No. 2:08-3153

**MDL No. 2016 Schedule A (Continued)**

District of South Carolina

Kenneth Daugherty v. Yamaha Motor Corp., USA, et al., C.A. No. 8:08-3130

Eastern District of Tennessee

Yoe Lopez, Jr. v. Yamaha Motor Corp., USA, et al., C.A. No. 3:08-244

Middle District of Tennessee

Darla O'Neal, etc. v. Yamaha Motor Corp., USA, et al., C.A. No. 2:08-63

Edwin R. Rutherford v. Yamaha Motor Corp., USA, et al., C.A. No. 3:07-1259

Michael Wilhite, et al. v. Yamaha Motor Corp., USA, et al., C.A. No. 3:08-622

Greg Mitchell, et al. v. Yamaha Motor Co., Ltd., et al., C.A. No. 3:08-1077

Western District of Tennessee

Grant Pesgrove, et al. v. Yamaha Motor Corp., USA, et al., C.A. No. 2:07-2727

Eastern District of Texas

Christopher McKee, et al. v. Yamaha Motor Corp., USA, et al., C.A. No. 1:08-227

Ryan Rogers, et al. v. Yamaha Motor Corp., USA, et al., C.A. No. 2:08-219

Billy J. Akins v. Yamaha Motor Co., Ltd., et al., C.A. No. 5:08-62

Levi McDermott v. Yamaha Motor Co., Ltd., et al., C.A. No. 5:08-148

Sandra Dougan, et al. v. Yamaha Motor Corp., USA, et al., C.A. No. 5:08-154

Southern District of Texas

Virginia Curtis v. Yamaha Motor Corp., USA, et al., C.A. No. 4:08-1998

Eastern District of Washington

Sally Ann Osburn v. Yamaha Motor Corp., USA, et al., C.A. No. 2:07-5052

Western District of Washington

David William Bednarik v. Yamaha Motor Corp., USA, et al., C.A. No. 3:07-5651

**SCHEDULE CTO-1 - TAG-ALONG ACTIONS**

<b><u>DIST. DIV. C.A. #</u></b>	<b><u>CASE CAPTION</u></b>
ALABAMA NORTHERN ALN 5 08-2395	Danny R. Breedwell v. Yamaha Motor Co., Ltd., et al.
ARIZONA AZ 2 08-1474	Morgan G. O'Malley v. Yamaha Motor Co., Ltd., et al.
CALIFORNIA CENTRAL CAC 8 08-1398 CAC 8 08-1404	Zachary Bryant v. Yamaha Motor Corp., USA, et al. Corinna Kay Singleton v. Yamaha Motor Corp., USA, et al.
MINNESOTA MN 0 09-283	Eric Huff v. Yamaha Motor Corp, USA, et al.
NEW YORK SOUTHERN NYS 1 08-10193	Carla Lawson v. Yamaha Motor Corp., USA, et al.
TENNESSEE EASTERN TNE 1 08-266	Crystal Ann Cox, et al. v. Yamaha Motor Corp., USA
TEXAS EASTERN TXE 2 09-10 TXE 6 08-481	Vicki Joyce, etc. v. Yamaha Motor Corp., USA, et al. Chris Hewett v. Yamaha Motor Corp., USA, et al.



WOODWARD  
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March 10, 2009

The Honorable Jennifer B. Coffman  
Judge, United States District Court  
Gene Snyder United States Courthouse  
601 West Broadway, Room 252  
Louisville, KY 40202-2227

In Re: Yamaha Motor Corp. Rhino ATV Products Liability Litigation  
Case No. 3:09-MD-02016-JBC

Dear Judge Coffman,

This is a joint letter from Linsey West, who represents the Yamaha entities involved in the above MDL proceeding, and Elizabeth Cabraser, who represents many of the plaintiffs and who has been given authority for this communication by all plaintiffs' counsel. As we began discussions on a proposed case management order in connection with this MDL, based on recent MDL case management orders from this District and the particular circumstances of this litigation, it occurred to us that the Court may have preferences and/or be in the process of preparing its own. Accordingly, please be advised that we stand ready to assist the Court however the Court determines would be helpful.

We await the Court's further guidance and instructions.

Respectfully,

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