

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

THIS DOCUMENT RELATES
TO ALL CASES

JENNIFER B. COFFMAN,
U.S. DISTRICT JUDGE

STIPULATION AND ORDER AS TO SERVICE
ON, AND TAKING OF TESTIMONIAL EVIDENCE FROM,
YAMAHA MOTOR COMPANY, LTD.

This Stipulation and Order is entered into by and among Defendant Yamaha Motor Co., Ltd. (“YMC”) and Plaintiffs (collectively, the “Parties”) in *In re Yamaha Motor Corp. Rhino ATV Products Liability Litigation*, which is pending in the Western District of Kentucky before Judge Jennifer Coffman, Master File No. 3:09-MDL-2016-JBC (the “MDL proceeding”). The Parties hereby stipulate:

1. It has always been YMC's position that YMC is a separate corporate entity from Yamaha Motor Manufacturing Corporation of America and Yamaha Motor Corporation, USA., and that YMC must be served with process separately from those other entities. YMC is a Japanese corporation, which typically must be served in compliance with Article 2 of the Hague Convention on the Service Abroad of Extrajudicial Documents pursuant to Federal Rule of Civil Procedure 4(h)(1)(B).

2. YMC has previously been properly served under Article 2 of the Hague Convention in the majority of cases pending in the MDL proceeding. YMC is thus already a defendant in certain cases and is already required to participate in discovery in those cases.

3. For purposes of the MDL proceeding, and the MDL proceeding only, YMC will not object to service of a summons and complaint for a case included in the MDL proceeding on YMC by overnight mail to:

Linsey W. West
Woodward, Hobson & Fulton, L.L.P.
101 South Fifth Street
2500 National City Tower
Louisville, KY 40202-3175

4. Copies of a summons and complaint must be simultaneously sent by email to YMC at pl_liaison@gext.yamaha-motor.co.jp.

5. Service will be deemed complete when Linsey West receives the original and the emailed copy is sent to YMC.

6. YMC does not waive any objections it may have to personal jurisdiction or venue for any cases in the MDL proceeding or elsewhere.

7. This Stipulation applies only to cases now or in the future pending in the MDL proceeding and is not an admission of YMC in this proceeding or for purposes of any other case. Plaintiffs agree not to rely on or characterize the entry of this Stipulation as a waiver or alteration of YMC's position as to its right to insist on proper service under Article 2 of the Hague Convention in cases that are not part of the MDL proceeding.

8. Linsey West is not an agent of YMC and is not authorized to accept service on behalf of YMC for any case not included in the MDL proceeding.

9. Because Japan is not a party to the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters, the taking of testimonial evidence from YMC on Japanese soil is typically governed by Article 17 of the U.S.-Japan bilateral Consular Convention of 1963 (15 UST 768), which requires, among other things, that depositions be taken on U.S. consular premises pursuant to a commission and that a U.S. consular officer preside over the deposition.

10. To facilitate the taking of evidence from YMC, for purposes of the MDL proceeding and the MDL proceeding only, YMC will allow all depositions of YMC employees to be taken at a mutually convenient location in the State of California.

11. This Stipulation applies only to cases pending in the MDL proceeding and is not an admission of YMC in this proceeding or for purposes of any other case. Plaintiffs agree not to rely on or characterize the entry of this Stipulation as a waiver or alteration of YMC's position as to the exercise of its rights under Article 17 of the Japanese Consular Convention in cases that are not part of the MDL proceeding.

12. YMC does not hereby waive any evidentiary or other testimonial objections that are unrelated to Article 17 that it may have in individual depositions taken pursuant to this Stipulation, or any other case.

13. All default judgments, if any, against YMC that have been entered in any case in this MDL proceeding are hereby set aside, and all pending applications for default judgments in this MDL proceeding, including but not limited to the application in Bryant v. Yamaha Motor Corporation, U.S.A., et al., Case No. SACV08-01398 CAS (PJWx) (C.D. Cal.), are hereby withdrawn and will not be re-noticed.

Dated: April 2, 2009

COUNSEL FOR DEFENDANT
YAMAHA MOTOR CO., LTD.

Respectfully submitted,

/s/ Thomas E. Fennell (by Jennifer Moore with permission)

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Dated: April 2, 2009

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Dated: April 2, 2009

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IT IS SO ORDERED.

Dated: April 6th, 2009


Honorable Jennifer B. Coffman
United States District Judge