

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

FINAL MDL ORDER

On February 13, 2009, the Judicial Panel on Multidistrict Litigation (“JPML”) issued its Transfer Order establishing MDL 2016, *In re: Yamaha Motor Corp. Rhino ATV Products Liability Litigation*. The Panel designated this Court as the transferee court for federal cases alleging injuries from accidents involving the Yamaha Rhino off-road utility terrain vehicle (the “Rhino Cases”).

**I. STATUS OF CASES IN MDL**

Over 325 Rhino Cases were transferred to or filed directly in MDL 2016. After over three and one half years of litigation, all of the cases and claims subject to MDL 2016—other than the two cases described herein—have been resolved or remanded (or transferred) to appropriate transferor courts. Two cases that were directly filed in the MDL remain unresolved. Both cases will be transferred to a successor Judge in the Western District of Kentucky to proceed as individual cases outside the MDL.

*Dunn v. Yamaha Motor Corporation, U.S.A., et al.*, 3:09-cv-00610-JBC, was filed directly into the MDL in June 2009. The parties have agreed to settle all claims in the case but, due to issues regarding resolution of claims involving the minor plaintiff, final

settlement papers for the case have not yet been finalized and submitted. Once Plaintiff's counsel resolves all lien-related issues, the parties will file papers with the successor Court seeking approval of the minor settlement and dismissal of the case. On October 19, 2010, the Court entered an order setting out a streamlined procedure for approving settlements with minors. In order to assist the successor Court in finalizing the *Dunn* case, a copy of that order is attached hereto as Exhibit A, and the parties are directed to follow such procedures unless ordered otherwise by the successor Court.

The other case remaining in the MDL is *Quartaro v. Yamaha Motor Corporation, U.S.A., et al.*, 3:12-cv-00075, which was filed directly into the MDL in February 2012. *Quartaro* has proceeded as a Case Group 8 case, pursuant to Case Management Order No. 14 (copy attached as Exhibit B). The parties have completed the initial limited discovery contemplated by Case Management Order No. 14 and agree that the case is ready to be transferred to an appropriate venue for further pre-trial proceedings and, if necessary, trial. Following transfer, the parties shall notify the successor Court if they have reached agreement on an appropriate venue or if briefing on the venue issue will be needed.

## II. CLOSURE OF MDL

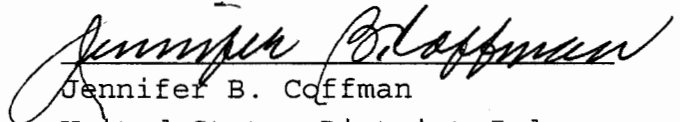
Including as set forth herein for *Dunn* and *Quartaro*, all pretrial proceedings in the Yamaha Rhino Products Liability Litigation are concluded. All of the cases and claims subject to MDL 2016 have been resolved or remanded to appropriate transferor courts or, including for directly-filed cases, transferred to courts of proper venue. No new cases have been referred to or directly filed into the MDL since February 2012.

Accordingly, it is apparent that the MDL has served its purpose and no longer needs to remain open on the docket.

**IT IS HEREBY ORDERED:**

1. MDL 2016 is closed.
2. The District Court for the Western District of Kentucky will retain jurisdiction as set out in the Suggestion of Remand and Final Pretrial Order for Remanded Cases, signed by this Court on November 3, 2011 (attached as Exhibit C).
3. The District Court for the Western District of Kentucky will also retain jurisdiction over the Common Benefit Fund as set forth in the Common Benefit Order (filed October 6, 2010)(Doc. No. 2021, attached as Exhibit D), Addendum to that Order (filed April 5, 2011)(Doc. No. 2298, attached as Exhibit E), and Suggestion of Remand (filed November 7, 2011)(Doc. No. 2779).
4. The Clerk of this Court is directed to file a copy of this Order in the general docket for MDL 2016.
5. The Clerk of this Court is directed to provide a copy of this Order to the Clerk of the Judicial Panel on Multidistrict Litigation.

Signed this 7<sup>th</sup> day of January, 2013,

  
Jennifer B. Coffman  
United States District Judge

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:

JENNIFER B. COFFMAN,  
U.S. DISTRICT JUDGE

ALL ACTIONS

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**AGREED ORDER ESTABLISHING PROCEDURE  
FOR SETTLEMENTS INVOLVING MINORS**

Plaintiffs and Yamaha Motor Co., Ltd., Yamaha Motor Corporation, U.S.A., and Yamaha Motor Manufacturing Corporation of America (the "Yamaha Defendants") agree to the following general procedure for the final approval of settlements of claims by minor Plaintiffs. Specific details related to each case will be addressed by Plaintiffs and the Yamaha Defendants on a case by case basis.

1. Except for those cases governed by paragraph 2, *infra*, or where otherwise agreed by the parties, Plaintiffs will propose a suitable ad litem to serve in the interests of the minor Plaintiff. Plaintiffs will prepare a Motion for Appointment of Ad Litem. If there is more than one minor Plaintiff, the same ad litem will represent all minors in the action, unless the ad litem determines such representation would create a conflict or otherwise by agreement of the Parties or upon motion to the Court.

2. Except upon good cause shown, in cases where the total amount of the settlement does not exceed \$10,000, unless otherwise required by state law, the Court will not require the appointment of an ad litem.
3. If Yamaha Defendants have an objection to the proposed ad litem, they will, after conferring with Plaintiffs, present their position to the Court within Five (5) days of the filing of the Motion for Appointment of Ad Litem.
4. The Yamaha Defendants will prepare the Confidential Settlement Agreement and Release that, upon agreement, is to be signed by the representative/next friend of the minor and the ad litem.
5. Plaintiffs will prepare and confer with the Yamaha Defendants on a Motion to Approve the Minor's Settlement and Order regarding same. The Motion will be accompanied by an affidavit—the form of which will be approved by counsel for both parties—from the representative/next friend of the minor Plaintiff approving the settlement and requesting that the Court approve the settlement. Where an ad litem has been appointed, the Motion will also be accompanied by an affidavit from the ad litem stating whether the ad litem approves the settlement and finds that it is in the best interest of the minor.
6. The settlement amount is to remain confidential and shall not be stated in any public document. To the extent the settlement amount is listed in the Motion to Approve the Minor's Settlement or any attachments, those documents shall be filed under seal.

7. If a hearing is necessary on the Motion to Approve the Minor Settlement, the hearing and any testimony related thereto may be handled telephonically with the Court.
8. Any fees and costs incurred in connection with the appointment of an ad litem shall be paid from the minor's settlement proceeds, unless otherwise agreed by the parties.
9. Notwithstanding Local Rule 83.2, an attorney appointed by the Court to serve as an ad litem is hereby admitted to practice in this Court for purposes of serving as an ad litem in this MDL.
10. The parties and Court acknowledge that modification of this Order may be necessary based on experience operating under it, and any party is free to seek modification of this Order for good cause shown.

ORDERED on this the 19<sup>th</sup> day of Oct, 2010.

  
JENNIFER B. COFFMAN  
U.S. DISTRICT JUDGE

**AGREED TO:**

Dated: October 18, 2010

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**Lead Counsel for Yamaha Defendants**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION

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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 ORDER NO. 14**

The Court enters Case Management Order No. 14 to set and to clarify case deadlines and procedures for cases in MDL 2016. CMO No. 14 supersedes CMO 13 in its entirety, except as to deadlines that have expired and are not addressed herein. The provisions of all other Case Management Orders remain in effect, except to the extent revised by provisions of this Order. Nothing in this Order shall preclude the parties from modifying discovery deadlines upon agreement.

**I. Remand of Cases**

The Court believes that the purposes of MDL 2016, as set out by the JPML, have been or largely will be achieved upon the completion of pretrial proceedings in connection with Case Groups 1 and 2 and the effective completion of common discovery in the subsequent existing case groups. *See* JPML Order, February 13, 2009. The number of new cases transferred under 28 U.S.C. § 1407 to this Court has dropped significantly, and the number of cases in MDL 2016 that have been dismissed or settled has increased substantially. The coordination of common discovery from the Yamaha defendants and



the creation by plaintiffs of a central depository of Yamaha documents have been largely completed. Common discovery and any motions related thereto will continue to take place in the MDL. Certain other motions may be brought in the MDL, pursuant to the schedule set forth herein. Procedures for access to the depository and Yamaha documents by plaintiffs and their counsel who are not part of MDL 2016 are contained in the Common Benefit Order, entered by the Court on October 6, 2010, and can be used by plaintiffs who file Rhino cases in federal court following the effective end of MDL 2016. *See* paragraph IV., *infra*.

Subsequent to the completion of the pretrial matters as set forth below, the Court shall file a suggestion of remand with the U.S. Judicial Panel on Multidistrict Litigation (the "JPML") to remand the cases in each such case group to courts of proper venue. For those cases that were directly filed in the MDL pursuant to paragraph II. of CMO 1, the procedures set forth in section V, *infra*. will apply to the transfer of cases.

## **II. Case Group Deadlines<sup>1</sup>**

### **A. Expert Discovery Deadlines for Cases in Case Group 1**

The deadlines set forth below shall apply to cases in Case Group 1:

1. Deadline to depose plaintiffs' rebuttal experts – March 4, 2011.

### **B. Expert Discovery Deadlines for Cases in Case Group 2**

The deadlines set forth below shall apply to cases in Case Group 2:

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<sup>1</sup> No discovery regarding Deferred Expert Categories, including identification and deposition of Deferred Experts, will occur in the MDL. "Deferred Experts" are damages experts, IMEs and related experts (e.g., rehabilitation experts), treating physicians (other than healthcare providers who provided assistance related to and within a short time following an incident), and risk analysis experts. Because such discovery is narrow and case-specific, discovery of Deferred Experts will occur in individual transferor courts following remand.

1. Deadline to depose plaintiffs' rebuttal experts – March 4, 2011.

**C. Expert Discovery Deadlines for Cases in Case Group 3**

The deadlines set forth below shall apply to cases in Case Group 3:

1. Deadline to depose plaintiffs' experts – February 25, 2011.
2. Defendants' expert disclosures/reports due – April 13, 2011.
3. Deadline to depose defendants' experts – May 13, 2011.
4. Plaintiffs' rebuttal reports due – May 27, 2011.
5. Deadline to depose plaintiffs' rebuttal experts – June 24, 2011.

**D. Non-Case-Specific Expert Deadlines for Cases in Case Group 4**

The deadlines set forth below shall apply to cases in Case Group 4:

1. Deadline to depose plaintiffs' Non-Case-Specific experts – February 18, 2011.
2. Defendants' Non-Case Specific expert disclosures/reports due – March 11, 2011.
3. Deadline to depose defendants' Non-Case-Specific experts – May 6, 2011.
4. Plaintiffs' Non-Case Specific rebuttal reports due – May 20, 2011.
5. Deadline to depose plaintiffs' Non-Case-Specific rebuttal experts – June 17, 2011.

**E. Fact Discovery and Non-Case-Specific Expert Deadlines for Cases in Group 5**

The deadlines set forth below shall apply to cases in Case Group 5:

1. Close of Fact Discovery – February 18, 2011.
2. Plaintiffs' expert disclosures/reports for Non-Case Specific experts due – March 4, 2011.
3. Deadline to depose plaintiffs' Non-Case Specific experts – April 1, 2011.
4. Defendants' expert disclosures/reports for Non-Case Specific experts due – April 15, 2011.
5. Deadline to depose defendants' Non-Case Specific experts – May 13, 2011.
6. Plaintiffs' rebuttal reports for Non-Case Specific experts due – May 27, 2011.
7. Deadline to depose plaintiffs' Non-Case Specific rebuttal experts – June 17, 2011.

**F. Fact Discovery Deadlines for Cases in Group 6**

The deadlines set forth below shall apply to cases in Case Group 6:

1. Close of Fact Discovery – May 20, 2011.

**G. Fact Discovery Deadlines for Cases in Group 7**

The deadlines set forth below shall apply to cases in Case Group 7:

1. Close of Fact Discovery – June 3, 2011.

**III. Final Case Group**

Any case in which a Conditional Transfer Order is filed with the Clerk of this Court or any case that is directly filed in the Western District of Kentucky and transferred into the MDL pursuant to Section II.A. of Case Management Order No. 1 (the "MDL Filed Date") on or after November 1, 2010, will be placed in a new Case Group 8. Case Group 8 will be the final MDL 2016 Case Group. This rolling Case Group will allow cases to gain the benefits of the common work that has been accomplished in the MDL, engage in limited discovery, including obtaining access to common discovery materials, file all necessary motions related to common matters and discovery, and be remanded to appropriately-venued transferor courts within the shortest time possible.

The following deadlines will apply to cases in Case Group 8:

1. Plaintiffs' Fact Sheets due – 30 days from date of answer.
2. Defendants' Fact Sheets Due – 30 days from date of receipt of Plaintiffs' Fact Sheets.
3. Service of any additional discovery pursuant to CMO 1, paragraph IV.D. – 45 days from date of receipt of Plaintiffs' Fact Sheets.

4. Filing of any Non-Case-Specific Motions<sup>2</sup> – 90 days from date of receipt of Plaintiffs' Fact Sheets.

Should a defendant file a motion to dismiss in lieu of an answer, the deadlines set forth herein shall apply, but they will be triggered from the date the motion to dismiss is filed, rather than from the date of answer. The motion to dismiss will be addressed by the transferor court following remand. In cases where no motions are filed under section "4" above, the case will be remanded to the transferor court or to a court of proper venue at the same time as or immediately following the remand of those cases in Case Group 1 and Case Group 2 or 180 days from the date the Conditional Transfer Order applicable to that case was filed in the clerk's office of this Court, whichever date is later. If a motion under section "4" above is filed, the case will remain in the MDL through resolution of the motion or discovery dispute and be remanded as soon thereafter as practical. Because the parties will have the benefit of common discovery previously conducted in the MDL, any request for additional common discovery – that is, discovery that addresses issues that arise in more than one MDL case and that are not unique to the facts or circumstances of the individual case, including any additional depositions of Yamaha employees or written discovery beyond that permitted by CMO 1 – must be brought before this Court in accordance with the schedule set forth herein.

#### **IV. Motions**

The Court expects that all Case-Specific Motions shall be brought before the appropriate transferor courts following remand and that all Non-Case-Specific Motions –

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<sup>2</sup> "Non-Case Specific Motions" means motions that raise issues the resolution of which would impact multiple MDL cases. In contrast, "Case-Specific Motions" are those motions that address narrow issues tied to the facts of a specific case.

including but not limited to motions addressing discovery from Yamaha and *Daubert* motions to exclude experts (whether designated as a “common” or a “case-specific” expert) that are not based on the facts of a specific case – should be brought before this Court. The Court, in its discretion, may defer hearing a Non-Case-Specific Motion and direct the parties to bring the motion in an appropriate transferor court after remand. By March 11, 2011, or, for any newly disclosed Non-Case-Specific Opinions, within 30 days after the deposition of any expert offering that newly disclosed Non-Case-Specific opinion, any party intending to file a *Daubert* motion in this Court (“the Moving Party”) directed to one or more Non-Case Specific Experts designated by the other party (“the Opposing Party”) shall file a list of such *Daubert* motions it intends to file in this Court or in any other court following remand of individual cases and to specify which of the listed *Daubert* motions it intends to file in this Court. Within five days of that filing, the Opposing Party may notify the Moving Party that it believes any *Daubert* motions directed to other Non-Case Specific Experts should also be brought in the MDL Court. If the parties are not able to resolve the dispute over the *Daubert* motions to be brought in the MDL Court within five days of such notice, the parties will promptly submit the dispute to the Court for resolution at the next available weekly Thursday conference. The failure of a party to file a *Daubert* Motion in this Court is without prejudice to the party's right following remand of a case to a court of proper venue to bring a non-duplicative, *Daubert* motion before that court. Nothing in this paragraph impacts the deadlines and obligations set out in the individual scheduling orders entered in any case set for trial in this Court.

The following schedule shall govern Non-Case-Specific Motions for cases in Case Groups 1 through 7 brought before this Court:

1. Deadline to file Non-Case-Specific Motions – April 25, 2011.
2. Deadline to file responses to Non-Case-Specific Motions – May 16, 2011.
3. Deadline to file replies regarding Non-Case-Specific Motions – May 27, 2011.

**V. Transfer of Directly-Filed Cases**

Pursuant to paragraph II. of CMO 1, certain cases in the MDL were directly filed in the MDL Court. To effectuate the dictates of CMO 1 that such cases be remanded to “a federal district court of proper venue as defined in 28 U.S.C. § 1391, based on the recommendations of the parties to that case, or on its own determination after briefing from the parties if the parties cannot agree,” plaintiff in each such case shall inform the defendants of their proposed court of proper venue. If the proposed court is agreeable to the defendants, the parties will file a joint stipulation for transfer to that court. If the parties cannot agree on the court of proper venue, the parties will brief the issue to the Court for resolution prior to the date of remand/transfer for the applicable Case Group. The deadlines for raising this issue are as follows:

	<b>Plaintiffs Propose Court of Proper Venue to Defendants</b>	<b>Parties Submit Joint Stipulation for Transfer or Plaintiffs Submit Motion to Transfer</b>
Case Groups 1 to 7	March 21, 2011	April 4, 2011

**VI. Continued Efforts to Streamline MDL 2016**

The parties agree, and the Court hereby directs, that discussions among the parties shall continue in an effort to streamline and, if appropriate, further shorten MDL 2016.

**VII. Notice for Cancellation of Depositions**

To prevent parties from needlessly spending money to prepare for depositions that do not occur, a party cancelling or rescheduling a deposition will use best efforts to do so at least 72 hours prior to the date the deposition is scheduled. If a party fails to provide 48 hours notice – other than in cases of death of a family member, illness, required court appearance arising less than 48 hours before the scheduled deposition or for good cause shown – the other party may petition the Court to recover costs consistent with Federal Rule of Civil Procedure 30(g).

**VIII. Mediation/Resolution of Cases**

Since CMO 10 was entered in April 2010, the parties have conferred on numerous cases and successfully settled in excess of 100 cases. Because this informal settlement process is proceeding well and continues to result in a substantial number of settlements, there is no longer a need at this time for the formal mediation process set out in Section IX of CMO 10.

In an effort to advance such settlement efforts, the parties have agreed that if settlement is being discussed in a particular case and if Lead Counsel for Plaintiff and Lead Counsel for the Yamaha Defendants agree in writing that settlement discussions are serious, then all discovery will be stayed as to that case. If either party subsequently determines that settlement discussions are no longer serious, Lead Counsel for that party shall alert the opposing party in writing. The parties shall then work together to immediately restart discovery. While a specific time frame for such discovery will be worked out in each individual case and will vary depending on the stage of the case when

discovery was stayed and the length of the stay, the parties agree that they will work together to complete such discovery expeditiously. Every effort should be made to complete discovery by the original deadlines applicable to the Case Group to which the case was assigned at the time discovery was stayed, or within 30 days thereafter.

This modification does not foreclose any party from seeking Court assistance, such as referral to a magistrate judge, regarding the resolution of specific cases as necessary or appropriate.

**IX. 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 for good cause shown.

ORDERED on this the 7<sup>th</sup> day of March, 2011.

  
JENNIFER B. COFFMAN  
U.S. DISTRICT JUDGE



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 :  
THE CASES IN EXHIBIT A

JENNIFER B. COFFMAN  
U.S. DISTRICT JUDGE

**SUGGESTION OF REMAND AND FINAL  
MDL PRETRIAL ORDER FOR REMANDED CASES**

Pursuant to Rule 10(b) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation ("JPML" or "Panel"), the undersigned transferee judge submits this Suggestion of Remand and Final MDL Pretrial Order for Remanded Cases to the Panel, recommending that the Panel remand the MDL 2016 cases listed on Exhibit A,<sup>1</sup> to the indicated courts of proper jurisdiction (the "Transferor Courts"). This Suggestion of Remand and Final MDL Pretrial Order describes the proceedings that have taken place to date in MDL 2016, provides information of potential assistance to the Transferor Courts, and sets forth recommendations to the Transferor Courts and courts in future cases to expedite the resolution and trial of cases involving the Yamaha Rhino. A copy of this Order, along with the case files and materials, will be available to the Transferor Courts.

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<sup>1</sup> Some cases remain pending in MDL 2016 and should not be remanded. The vast majority of these are cases where settlement has been reached and the dismissal papers are in process such that remand is not necessary. A very few additional cases will be retained in the MDL to address pending motions. The Court will file a subsequent suggestion of remand to address any such cases that are not subsequently resolved in the MDL.

## I. INTRODUCTION

On February 13, 2009, the Panel designated this Court as the transferee court for federal cases alleging injuries from accidents involving the Yamaha Rhino off-road utility terrain vehicle (the "Rhino Cases"). The Panel transferred 55 pending Rhino Cases<sup>2</sup> to this Court and noted that eight additional Rhino Cases would be treated as potential tag-along actions, along with any subsequently-filed similar cases. Over 325 Rhino Cases were transferred to or filed directly in MDL 2016. Only 52 cases remain unresolved.

## II. SUGGESTION OF REMAND

The Panel created MDL 2016 by order filed February 13, 2009, stating that

"Centralization under Section 1407 will eliminate duplicative Yamaha discovery; prevent inconsistent pretrial rulings; and conserve the resources of the parties, their counsel and the judiciary."

Transfer Order at 2. The Panel further stated its belief that it was viable in this MDL

"to accommodate common and individual discovery tracks, gaining the benefits of centralization without delaying or compromising consideration of claims on their individual merits."

(*Id.*) This dual track approach was implemented and the stated purposes of MDL 2016 have been effectively accomplished.

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<sup>2</sup> The Panel determined that two pending Rhino Cases would not be transferred into the MDL because they were relatively well advanced, with discovery nearing completion and trial dates set, and no responding party in either action favored transfer. These cases were *Paul Clark, et al. v. Yamaha Motor Co., Ltd., et al.*, C.A. No. 5:07-1220 (N.D. Alabama) and *Tony White v. Yamaha Motor Corp., USA, et al.*, C.A. No. 2:08-66 (N.D. Texas). (Transfer Order at 2, 3.)

Accordingly, based on the parties' recommendations, and the Court's own assessment of the current status of MDL 2016, the Court is satisfied that MDL 2016 has successfully run its course. The Court submits this Suggestion of Remand to the JPML to facilitate the prompt remand of the remaining, unresolved cases in MDL 2016 (as listed in Exhibit A) by the JPML to Transferor Courts for further proceedings. This Suggestion of Remand and Order, along with any supplements and amendments, shall be filed in all cases on Exhibit A for which the Panel issues an Order for Remand.

### **III. OVERVIEW OF MDL 2016 PROCEEDINGS**

#### **A. Initial Order And Conference**

By Order dated March 24, 2009, following an Initial Conference, the Court appointed attorneys to various leadership positions and ordered the parties to (i) preserve all relevant evidence, (ii) advise the Court and other counsel regarding pending motions and the status of briefing thereon, and (iii) meet and formulate a proposed Confidentiality Order and Case Management Order (and file motions stating their respective positions on any matters not agreed to). The Order also canceled all pending deadlines and case events in the pending cases, and set the next Status Conference for April 22, 2009.

#### **B. Counsel Leadership Positions**

On April 1, 2009, the Court entered a Joint Order Regarding Responsibilities of Designated Counsel (Doc. No. 41), identifying the Court's appointments of counsel to various leadership positions and detailing their responsibilities. The leadership positions and attorneys filling them are set forth below:

**Plaintiffs' Lead Counsel**

Elizabeth Cabraser (Lieff, Cabraser, Heimann & Bernstein, LLP)

**Plaintiffs' Liaison Counsel**

Jennifer Moore (Grossman & Moore, PLLC)

**Plaintiffs' Executive Committee**

Robert Ammons (Ammons Law Firm)

Elizabeth Cabraser (Lieff, Cabraser, Heimann & Bernstein, LLP)

Anthony Klein (Klein and DeNatale, LLP)

Troy Rafferty (Levin, Papantonio, Thomas, Mitchell, Echsner & Proctor)

Jason Shamblin (Cory, Watson, Crowder & Degaris, PC)

Sean Tracey (Tracey Law Firm)

**Plaintiffs' Steering Committee**

George Chandler (Chandler Law Offices)

C. Andrew Childers (Childers & Schlueter, LLP)

Nghana Lewis Gauff (Becnel Law Firm, LLC)

Eric Hageman (Pritzker, Ruohonen Law Firm)

Steven Kramer (Law Office of Steven P. Kramer)

Jerry Miniard (Miniard & Associates)

David Zoll (Zoll & Kranz)

**Plaintiffs' State-Federal Coordinator**

C. Andrew Childers (Childers & Schlueter, LLP)

**Yamaha Defendants' Lead Counsel**

Thomas Fennell ( Jones Day)

**Yamaha Defendants' Liaison Counsel**

Linsey West (Dinsmore & Shohl LLP)

**Non-Yamaha Defendants' Lead Counsel**

Karen Chrisman (McBrayer, McGinnis, Leslie & Kirkland)

The "Non-Yamaha Defendants" consist of certain dealerships which sold the Yamaha Rhinos involved in certain cases, as well as other individuals in certain of the Rhino Cases who allegedly caused or contributed to the tipover incident and the

Plaintiff's injuries, *e.g.*, persons who were operating or owned the Rhino, or who owned the property where the tipover incident occurred.<sup>3</sup>

**C. Agreed Protective Order**

The parties negotiated and submitted to the Court a Stipulation and Agreed Protective Order Regarding the Confidentiality of Documents and Materials, which the Court signed and entered as an Order of the Court (filed on May 11, 2009) (Doc. No. 144). This Order sets forth procedures for the designation, challenge of designation, determination, treatment, handling and use of categories of information and documents defined in the Order as "Confidential Information" and "Protected Documents."

**D. Case Management Orders**

The primary orders governing the pretrial management of MDL 2016 are a series of 14 Case Management Orders ("CMOs"). The CMOs and the general matters covered in each are set forth below.

**CMO No. 1 (5/28/09, Doc. No. 229)** – set forth the parties' stipulation regarding direct filing of new federal cases into MDL 2016; provided for an MDL 2016 website and master service list; set forth procedures for in-person and telephonic status conferences and for the determination of answer dates; established separate case groups by date of case filing; established procedures for discovery, including dual-track common fact discovery and case-specific fact discovery, established the use of fact sheets for written discovery, provided for the coordination of deposition discovery with pending state court cases (for details see Discovery Section below); set up a procedure for mediation of cases selected by the parties and solicited input from the parties on other possible case-

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<sup>3</sup> By Order filed on June 24, 2010 (Doc No. 1784), Karen Chrisman was granted leave to withdraw as Lead and Liaison Counsel for the Non-Yamaha Defendants. The Court invited applications for a new counsel to replace Ms. Chrisman, but no applications were received. Accordingly, the Court entered Case Management Order No. 12 (filed October 14, 2010) (Doc. No. 2046), setting forth procedures to ensure that all counsel for the Non-Yamaha Defendants were served with all necessary papers and notices, and had the opportunity to participate in both telephonic and in-person hearings.

resolution procedures; and set an initial schedule aimed at having cases in Case Group 1 ready for trial approximately one year from the entry of CMO No. 1.

**CMO No. 2 (7/27/09, Doc. No. 485)** – lifted the stay of discovery entered by the Court at the outset of MDL 2016 and established various discovery deadlines; clarified choice of law issues regarding cases filed directly into MDL 2016; and established a production protocol for materials produced by all parties in MDL 2016.

**CMO No. 3 (10/6/09, Doc. No. 1135)** – established a procedure for efficient resolution of alleged fact sheet deficiencies; set a protocol for multiple-day common discovery depositions; and revised certain filing procedures and discovery deadlines.

**CMO NO. 4 (12/9/09, Doc. No. 1338)** – revised expert discovery deadlines to provide for separate disclosure deadlines for “common” (non-case specific) experts who address common issues applicable in all cases (*e.g.*, general vehicle design issues) as opposed to case-specific experts (*e.g.*, accident reconstruction experts) who address the specific circumstances of a specific case; established a separate category of “Deferred Experts” defined as damages experts such as doctors who conducted independent medical examinations and rehabilitation experts; and set deadlines for filing *Daubert* and dispositive motions. (Details regarding expert discovery will be discussed in the Discovery Section below.)

**CMO No. 5 (12/14/09, Doc. No. 1353)** – clarified that Plaintiffs with loss of consortium claims must also complete and serve fact sheets; and clarified the parties’ discovery obligations in seeking information requested in fact sheets.

**CMO No. 6 (12/17/09, Doc. No. 1364)** – clarified due dates for fact sheets in certain cases in Case Group 3.

**CMO No. 7 (2/3/10, Doc. No. 1445)** – set dates for settlement conferences or mediations for cases in Case Groups 1 through 5; and established procedures for mediations.

**CMO No. 8 (2/25/10, Doc. No. 1499)** – established procedures to avoid duplicative depositions and questioning of common experts who were previously deposed on their disclosed common opinions; required supplementation of common expert reports where a common expert made additions or changes to his or her opinions or other matters in the report; and provided for depositions of common experts on such supplemental material.

**CMO No. 9 (3/24/10, Doc. No. 1554)** – revised the expert discovery deadlines and deadlines to file *Daubert* and dispositive motions for cases in all case groups.

**CMO No. 10 (4/27/10, Doc. No. 1634)** – revised and restated in one order all discovery deadlines and deadlines to file *Daubert* and dispositive motions for cases in Case Groups 1 through 6, as well as the schedule for settlement conferences or mediations in those cases.

**CMO No. 11 (7/26/10, Doc. No. 1848)** – set all discovery deadlines and deadlines for *Daubert* and dispositive motions for Case Groups 7 and 8, as well as the schedule for settlement conferences or mediations in those cases.

**CMO No. 12 (10/14/10, Doc. No. 2046)** – subsequent to the Court granting leave to Karen Chrisman to withdraw as Lead and Liaison Counsel for the Non-Yamaha Defendants, CMO No. 12 set forth procedures to ensure that all counsel for the Non-Yamaha Defendants were served with all necessary discovery, pleadings, papers and notices, and had the opportunity to participate in both telephonic and in-person hearings.

**CMO No. 13 (12/7/10, Doc. No. 2118) and CMO No. 14 (3/9/11, Doc. No. 2235)** – based upon agreed proposals submitted by the parties, and given that a large number of cases in MDL 2016 had reached agreed resolutions through settlements and dismissals, and the number of new cases being filed and transferred into MDL 2016 had dropped significantly, these CMOs established a procedure and timetable by which appropriate MDL common pretrial activities for cases in Case Groups 1 through 7 would be completed during the summer of 2011, and remand of those cases would thereafter be sought from the JPML. CMOs 13 and 14 also contained a procedure for a final Case Group 8. CMO No. 14 contained some revisions to these procedures and superseded CMO No. 13 in its entirety. The procedures under CMO 14, and particularly the pretrial activities to be completed for each Case Group upon remand, will be discussed in detail below.

#### **E. Final Preservation Order**

On November 13, 2009, following extensive negotiation between the parties and review by the Court, the Court signed the Agreed Final Order for Preservation of Documents and Tangible Items (Doc. No. 1265). That order superseded prior orders of this Court on preservation of documents or tangible items, including the April 6, 2009 Interim Preservation Order and set out the parties' preservation.

**F. Status Conferences**

During the course of MDL 2016, the Court has held regular status conferences with Lead and Liaison Counsel, and other counsel, to discuss issues related to the Rhino litigation and rule on matters as needed. The Court also scheduled a weekly telephonic status conference with Lead and Liaison Counsel to discuss and resolve issues quickly to promote continued efficient progress in discovery and other activities. These weekly telephonic conferences were passed when not needed. The Court also held hearings, both in-person and telephonic, on specific motions as needed.

**G. Common Benefit Fund**

The Court entered a Common Benefit Order (filed on October 6, 2010) (Doc No. 2021) and an Addendum to that Order (filed on April 5, 2011) (Doc. No. 2298). The Common Benefit Order ("CBO"): (i) established a Yamaha Rhino MDL Common Benefit Fund (the "Fund") to be financed by, among other things, money received through settlement of or recovery of monetary relief on individual claims; (ii) set procedures for the payment of monies from the Fund to authorized counsel who provide approved services or incur expenses for the joint and common benefit of Plaintiffs; and (iii) set procedures and guidelines for authorized counsel to make time and expense submissions to seek reimbursement for costs and/or fees in accordance with the terms of the CBO. The April 5, 2011 Addendum (Doc. No. 2298) addressed procedures to authorize Yamaha to forego common benefit assessments in cases where the plaintiff's counsel had an existing "credit" with the Fund. This Court intends that the Common Benefit Order will remain in full force and effect following remand, including the



provisions for Court approval of disbursements from the Common Benefit Fund pursuant to paragraph I.C.1. of the CBO, and this Court will retain jurisdiction over the Common Benefit Fund, any disputes that might arise under the Common Benefit Order, and the ultimate termination of the Common Benefit Fund.

#### **H. Coordinated State Court Proceedings**

At the time MDL 2016 was initiated, there already were in existence two state court coordinated proceedings involving Rhino Cases: Judicial Council Coordination Proceeding No. 4561 (Superior Court for the State of California, Orange County); and In re Yamaha Rhino Litigation, Master File No. 09-C-08254-2 (State Court of Gwinnett County, Georgia). Early in MDL 2016, the Court advised the parties that direct contact by this Court with the judges handling those state court coordinated proceedings was desirable in order to promote coordination among these matters to the extent possible. The parties indicated they had no objections, and accordingly the Court did have occasional direct contacts with those state court judges and certain other state court judges to discuss and promote coordination among the federal and state court proceedings.

#### **I. Rulings On Motions**

The Court has ruled on numerous motions during the course of MDL 2016, including motions to dismiss some or all counts of various individual Plaintiffs' complaints. Occasionally, for various reasons, the Court denied such motions without prejudice to their reassertion at a later time, because, under the circumstances presented, a transferor trial court would be uniquely well-suited to rule on the issues

presented, and resolving the issue would not advance the efficiencies sought by the MDL. In those instances where the Court denied such motions without prejudice, it is the intent of the Court that the movants have the opportunity to reassert the motions, assuming that circumstances have not changed such that reassertion of the motions would be inappropriate.

**J. Case Resolution Efforts**

The court included in CMO No. 1 (filed May 28, 2009) (Doc. No. 229) a procedure under which for each Case Group, at the close of fact discovery and again at the close of expert discovery, Lead Counsel for the parties would meet, confer and attempt to agree on the selection of cases that could potentially be resolved through individual settlement conferences or mediations.

Pursuant to those procedures, 22 cases in Case Group 1 were mediated after the close of Group 1 fact discovery in January, 2010. Only one of the 22 cases was settled as a result of these mediations. Following the close of fact discovery in Case Group 2, Lead Counsel for the parties advised the Court that the parties had agreed to pass the next round of mediations, because the parties were in agreement that settlement conferences at that time were unlikely to be productive. The Court acceded to the parties' request.

The Court also requested that Lead Counsel for the parties confer and report to the Court as to the prospects for, and timing of, a comprehensive case resolution program for the Rhino Cases in MDL 2016, alone or in coordination with Rhino Cases pending in other courts. The Court received and considered the reports of the parties

on this issue, and determined that a comprehensive case resolution program under these circumstances was inappropriate and unlikely to succeed.

At the time MDL 2016 was initiated, there were many Rhino Cases pending in various state courts. Many of those state court cases were well advanced in discovery. Beginning in August 2009 and continuing through April 2011, nine of these state court Rhino Cases went to trial, resulting in eight defense verdicts<sup>4</sup> and one verdict for a plaintiff.<sup>5</sup> Other pending state court cases were settled before trial.

By Orders<sup>6</sup> filed on December 4, 2009, the Court set for trial five MDL 2016 cases that were originally venued in the Western District of Kentucky. The trials were set for the time period October 2010 through January 2011. The Court also issued separate Scheduling Orders in these cases. Later, the Court reset these cases for trials during the time period February 2011 through June 2011. These cases were settled prior to trial.

In August 2010, the parties reported that there were approximately 250 Rhino Cases pending in MDL 2016. However, in the last half of 2010 and during 2011, following extensive discovery in the MDL and a number of the state court jury verdicts, the number of cases resolved by agreement of the parties began to increase substantially and some cases were voluntarily dismissed by the plaintiffs. This fact was noted in CMO 13, filed December 7, 2010. In February 2011 the parties reported that approximately 30 additional cases in MDL 2016 had been resolved by agreement or

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<sup>4</sup> The judgments in two of these cases is on appeal.

<sup>5</sup> The judgment in that case was appealed. The case subsequently was settled and the appeal was dismissed.

<sup>6</sup> Doc. Nos. 1321, 1322, 1323, 1324, 1325.

voluntarily dismissed in the preceding two months.<sup>7</sup> Since February 2011, there have been agreed settlements in approximately 85 Rhino Cases and voluntary dismissals without settlement in about 7 Rhino cases, resulting in the conclusion of over 90 additional Rhino Cases in MDL 2016. At the same time, the number of new federal cases being filed and transferred into MDL 2016 dropped significantly. Accordingly, accounting for all case resolutions, as of August 1, 2011, there were 166 Rhino Cases pending on the Court's docket. The parties reported on August 2, 2011, that approximately 90 of those cases also had been settled or would be voluntarily dismissed, with settlement documents and dismissal orders being prepared. Additional cases have been settled and/or voluntarily dismissed since the parties reported to the Court in early August, 2011. Setting aside those cases that have been resolved by settlement or voluntary dismissal as well as those few cases that have pending motions that should be resolved in MDL 2016, there are 49 cases that are the subject of this Suggestion of Remand (*see* Exhibit A).

#### **IV. DISCOVERY**

CMO No. 1 established the basic framework and procedures under which discovery in MDL 2016 would be conducted.

##### **A. Case Groups**

The Court established a Case Group structure, with cases falling into a particular Case Group according to the date the case was transferred into MDL 2016 (CMO No. 1

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<sup>7</sup> Included among the many cases resolved by agreement were the five Western District of Kentucky cases the Court had set for trial in February through June 2011.

at 6-7.) Case Group 1 consisted of all cases that were pending in MDL 2016 on or before May 22, 2009. Case Group 2 was made up of cases transferred into the MDL after May 22, 2009, but on or before July 31, 2009. Case Group 3 consisted of cases transferred after July 31, 2009, but on or before October 31, 2009. Additional case groups were formed every 90 days following this same pattern. Ultimately, there were seven case groups formed on this 90-day rolling basis, plus a final Case Group 8. CMO No. 1 set deadlines for the completion of discovery for Case Groups 1 through 3, with discovery due to be completed for each succeeding case group approximately 90 days after completion of discovery in the preceding case group.

**B. Dual Discovery Tracks**

As suggested by the JPML, the Court established procedures by which fact discovery would proceed simultaneously on two tracks: (i) common fact discovery; and (ii) case-specific fact discovery. (CMO No. 1 at 6.) Initially, expert discovery also proceeded simultaneously on common and case-specific tracks. (CMO No. 2 at 4-5.) Several motions were filed to stay discovery in most cases pending “bellwether” trials or global resolution efforts. The Court, after full consideration of the motions, denied them, requiring both common and case-specific discovery to proceed. The Court believes this was the proper course. As explained more fully in Section VI below, as this MDL has approached completion, this approach was modified in the later case groups such that some case-specific discovery will remain to be completed in the Transferor Courts.

**C. Written Discovery**

CMO No. 1 provided that written discovery would be accomplished through Fact Sheets (which included lists of documents to be produced by each party) and contention interrogatories. Additional written discovery was permitted by agreement of the parties or by motion showing good cause. (CMO No. 1 at 13.)

1. Fact Sheets

The format and information to be provided in the Fact Sheets was negotiated and agreed to by the parties. The following Fact Sheets (Doc. Nos. 285, 288) were utilized in MDL 2016:

- a. Plaintiff Fact Sheet (which included authorizations for medical and other types of records that the Plaintiff was required to sign and provide to Yamaha);
- b. Yamaha Corporate Defendant Common Discovery Fact Sheet (containing factual information applicable to all MDL cases);
- c. Yamaha Corporate Case Specific Fact Sheet (containing factual information relevant and applicable to a specific case);
- d. Dealer Defendant Common Fact Sheet (containing factual information applicable to all MDL cases); and
- e. Dealer Defendant Case Specific Fact Sheet (containing factual information applicable to a specific case).

CMO No. 1 required the parties to give sworn answers in the Fact Sheets, and the answers are deemed to be interrogatory responses under Fed.R.Civ.P. 33, and may be used at trial accordingly. (CMO No. 1 at 9.) Each Fact Sheet contained a list of documents or categories of documents that the responding party was required to

produce. CMO No. 1 set due dates for service of completed Fact Sheets and production of documents for each case group. (CMO No. 1 at 9-11.)

2. Production of Documents

Yamaha had made substantial document productions in the pending cases prior to the initiation of MDL 2016. Those document productions also were made in MDL 2016. Yamaha made supplemental document productions in the MDL, producing additional documents it had agreed to produce in the Fact Sheet document lists as well as any other documents it located and produced in the ongoing state court cases. During fact discovery in MDL 2016, Yamaha produced over 67,800 documents which, if printed to paper, would total over 367,000 pages.

The Plaintiffs have created a central depository of Yamaha documents for use by all Plaintiffs in the MDL, with access available to non-MDL Plaintiffs under the terms of the Common Benefit Order. CMO No. 1 (supplemented by CMO No. 2) established procedures for the production of documents, including provisions to avoid duplicative document productions. (CMO No. 1 at 19; CMO No. 2 at 2-3.) Coordinating Counsel for the Plaintiffs will continue to maintain this common benefit depository for the benefit of participating cases, consistent with the Common Benefit Order.

3. Contention Interrogatories

CMO No. 1 provided that the parties in each case could serve up to 10 case-specific contention interrogatories on opposing parties, and set deadlines for the service of and responses to these interrogatories. (CMO No. 1 at 12-13.)

**D. Vehicle And Scene Inspections**

CMO No. 1 established procedures and guidelines for the prompt and efficient completion of vehicle and incident scene inspections by the parties and their consultants during the fact discovery period for each case group. (CMO No. 1 at 13-15.)

**E. Depositions**

Procedures for the scheduling and taking of depositions were included in CMO No. 1, including procedures to promote efficiency and economy through coordination with other pending Rhino Cases. Depositions were ordered to be coordinated to the maximum extent possible with the Georgia and California coordinated state court proceedings, as well as Rhino Cases pending in other state courts. Cross-noticing and cross-use of depositions were provided for, subject to applicable law and court orders. Duplicate depositions of the same witness were prohibited, except by agreement of the parties or by motion showing good cause, and a procedure was included to help ensure compliance with this requirement. CMO No. 1 also set guidelines regarding the number of attorney questioners permitted, objections, and the length of depositions.

Many depositions of current and former employees of the various Yamaha entities have been taken on common fact issues during the course of the Rhino litigation in various state courts, as well as in the Georgia and California coordinated state court proceedings and this MDL. A substantial number of these depositions occurred before the coordinated proceedings and this MDL were opened. A total of 38 different, individual current or former Yamaha employees have been deposed. Many of these 38 individuals have been deposed multiple times *e.g.*, 12 of those individuals have been



deposed three or more times, and three individuals have been deposed six or more times. A total of 91 depositions of these Yamaha employees have been taken. Much duplication of deposition discovery was eliminated through the procedures described above. A large bank of Yamaha depositions now exists on the common fact issues in the Rhino litigation. The Court is of the view that the parties and courts involved in future post-MDL Rhino cases should implement procedures for cross-use of existing depositions, where consistent with applicable rules, to eliminate inefficiency and unnecessary costs. The Court reserves jurisdiction to address any requests for additional depositions of current or former employees of the Yamaha entities, and such requests are to be directed to this Court.

**F. Expert Discovery**

CMO No. 4 (filed 12/9/09) (Doc. No. 1338) identified different categories of experts for purposes of discovery. The category of “non-case-specific experts” (also referred to as “common experts”) includes experts whose opinions potentially are applicable in most, if not all, MDL 2016 cases. Examples of non-case-specific experts are vehicle design experts and warnings experts. The category of “case-specific experts,” on the other hand, includes experts whose opinions apply only in a specific case. Examples of case-specific experts are accident reconstruction experts or biomechanics experts, who render opinions that apply to a specific incident in a specific Rhino Case. The category of experts called “Deferred Experts” was defined to include “damages experts, IMEs and related experts (*e.g.* rehabilitation experts), treating physicians (other

than healthcare providers who provided assistance related to and within a short time following an incident), and risk analysis experts.” (CMO No. 4 at 1, footnote 1.)

A number of CMOs, beginning with CMO No. 4, set expert discovery schedules and deadlines in MDL 2016. As the MDL evolved, and based on the parties’ experience in completing discovery in early case group cases, the parties proposed an expert discovery plan for later case groups deferring until after remand certain discovery activities that relate to a specific case, including case-specific expert discovery. The parties also proposed that for all case groups, discovery regarding the “Deferred Experts” be conducted post-remand, because such discovery is case-specific in nature. After careful consideration, the Court concurred with the parties’ proposals. Accordingly, CMO No. 14 defines, for each case group, what expert discovery remains to be completed post-remand. *See* Section VI below.

Many depositions of non-case-specific experts have been taken on non-case-specific opinions during the course of the Rhino litigation in various state courts, as well as in the Georgia and California coordinated state court proceedings and this MDL. Many of the non-case-specific experts have been deposed multiple times. Much duplication of expert deposition discovery was eliminated through the procedures described above. A large bank of expert depositions now exists on the common expert issues in the Rhino litigation. The Court is of the view that the parties and courts involved in future post-MDL Rhino cases should implement procedures for cross-use of existing non-case-specific depositions to eliminate inefficiency and unnecessary costs. In CMO No. 8, the Court established procedures to avoid duplicative depositions and

questioning of non-case-specific experts, for such non-case-specific experts to disclose additions or changes to his or her opinions and other matters in the report, and for depositions of such non-case-specific experts on such supplemental matters. The Court intends that such procedures should continue to be observed.

## V. FINAL PRE-REMAND ACTIVITIES

### A. Final Case Management Orders

The parties filed a Joint Motion for Entry of Case Management Order No. 13 on December 2, 2010 (Doc. No. 2114), in which the parties asserted that, in their view, the common pretrial proceedings central to MDL 2016 were approaching completion. This included substantial common (i.e., non-case specific) written, document and deposition discovery from the Yamaha entities, common expert disclosures and discovery, and scheduled briefing on common issues (including *Daubert* motions appropriately brought before this Court). (Joint Motion at 1.) The parties set forth a proposal and revised schedule under which common expert work would be completed and Non-Case-Specific Motions<sup>8</sup> would be filed and ruled on, followed by a Suggestion of Remand to the JPML. The parties further proposed a new, ongoing Case Group 8, which would contain any new cases transferred to MDL 2016 on or after November 1, 2010. Proposed CMO 13 set, for Case Group 8, deadlines for the parties to exchange fact sheets and complete the written discovery allowed under CMO 1, and to file any Non-

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<sup>8</sup> CMO 13 defined "Non-Case-Specific Motions" as "motions that raise issues the resolution of which would impact multiple MDL cases." In contrast, "Case-Specific Motions" are "those motions that address narrow issues tied to the facts of a specific case." These same definitions apply in CMO 14, which superseded CMO 13.

Case-Specific Motions. After rulings on any Non-Case-Specific Motions, the Court would submit a Suggestion of Remand to the Panel. If the Panel concurred and remanded, the Transferor Court would then oversee completion of case-specific fact and expert discovery, other pretrial proceedings, and trial.

After careful consideration, the Court concurred with the parties that the objectives of MDL 2016 had been or would soon be achieved, and that CMO 13 set forth an appropriate plan and schedule to bring MDL 2016 to a timely and successful conclusion. The Court therefore signed CMO 13 (filed on December 7, 2010) (Doc. No. 2118).

The parties subsequently filed a Joint Motion for Entry of Case Management Order 14 (filed February 23, 2011) (Doc. No. 2195). Proposed CMO 14 further streamlined and consolidated the completion of non-case-specific activities, so that Non-Case-Specific Motions would be heard and ruled on simultaneously for cases in Case Groups 1-7, with a Suggestion of Remand to follow for all cases in those case groups. CMO 14 also made some other scheduling adjustments and addressed other miscellaneous matters. After review and consideration, the Court concurred with the revisions to CMO 13 and signed CMO 14 (filed 3/9/11) (Doc. No. 2235).

**B. *Daubert* And Other Pretrial Motions Relating To Experts**

CMO No. 14 provides that all Case-Specific Motions shall be brought before the appropriate Transferor Courts following remand and that all Non-Case-Specific Motions—including but not limited to motions addressing common discovery, e.g., motions regarding discovery of Yamaha, and motions to exclude certain “common”

experts' opinions, should be brought before this Court. (CMO No. 14 at 5-6.) The parties filed notices listing the experts and the common opinions of those experts as to which they believed motions to exclude were appropriate to bring before this Court. The issue was disputed between the parties and the Court heard argument on the issue. The Court ruled that an expert's designation as either a "non-case-specific" (or "common") expert or a "case-specific" expert, or both in several instances, should not dictate whether a *Daubert* motion challenging all or part of that expert's proposed testimony should be brought before this Court, as opposed to the appropriate Transferor Court. CMO No. 14 provides that "[t]he failure of a party to file a *Daubert* Motion in this Court is without prejudice to the party's right following remand of a case to a court of proper venue to bring a non-duplicative *Daubert* motion before that court." (CMO No. 14 at 6.) Thus, it is the Court's intent that so long as a *Daubert* motion filed in a Transferor Court after remand is not duplicative of a *Daubert* motion previously brought by that party, such motion is properly brought before the Transferor Court.

The parties filed motions relating to certain "common" issues and experts. The Court is satisfied that the parties made good faith determinations as to which motions should be resolved by this Court. The Court held hearings on these motions on August 2 and 3, 2011.

## VI. SUMMARY OF PRE- AND POST-REMAND ACTIVITIES

Set forth below is a listing, for the various Case Groups, of the activities completed in MDL 2016, and those activities that remain to be completed following remand.<sup>9</sup>

### A. Case Groups 1-3

#### 1. Activities completed in MDL 2016.

- a. All fact discovery, both common and case specific, was completed and fact discovery closed. (Note: The supplemental collection of records held by third parties, e.g., medical records, may be necessary and should be allowed.)
- b. All common and case-specific expert discovery was completed and closed, except as to Deferred Experts.<sup>10</sup>
- c. All Non-Case-Specific Motions were ruled on.
- d. Appropriate *Daubert* motions were ruled on.

#### 2. Activities to be completed after remand.

- a. Filing, briefing and consideration of Case-Specific Motions, including dispositive motions.
- b. Identification and discovery of Deferred Experts.
- c. Designation of common and case-specific experts who will actually testify at trial. (Discovery of these experts has been completed.)

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<sup>9</sup> In some instances and for individual reasons specific to each case, a particular case within a Case Group may not have completed all of the pretrial activities described herein for that Case Group. Despite that, the parties agree that all the cases listed in Exhibit A are ready for remand.

<sup>10</sup> "Deferred Experts" are damages experts, IMEs and related experts (e.g., rehabilitation experts), treating physicians (other than healthcare providers who provided assistance related to and within a short time following an incident), and risk analysis experts. Experts who do not fit this description are "non-deferred" experts.

- d. Filing, briefing and consideration of any non-duplicative *Daubert* motions (i.e., such motions that are not duplicative of motions presented to and ruled on by this Court in MDL 2016).
- e. Final pretrial procedures, e.g., witness and exhibit lists and objections, deposition designations, motions in limine, etc.
- f. Trial

**B. Case Groups 4-7**

1. Activities completed in MDL 2016.

- a. All fact discovery, both common and case specific, was completed and fact discovery closed. (Note: The supplemental collection of records held by third parties, e.g., medical records, may be necessary and should be allowed.)
- b. All common expert discovery was completed.
- c. All Non-Case-Specific Motions were ruled on.
- d. Appropriate *Daubert* motions were ruled on.

2. Activities to be completed after remand.

- a. Filing, briefing and consideration of Case-Specific Motions, including dispositive motions.
- b. Discovery of all case-specific experts and Deferred Experts.
- c. Designation of common experts who will actually testify at trial. (Discovery of these experts has been completed.)
- d. Filing, briefing and consideration of any non-duplicative *Daubert* motions (i.e., such motions that are not duplicative of motions presented to and ruled on by this Court in MDL 2016).
- e. Final pretrial procedures, e.g., witness and exhibit lists and objections, deposition designations, motions in limine, etc.
- f. Trial

C. Case Group 8

1. Activities completed in MDL 2016.
  - a. All written fact discovery, all document production by parties and all common fact deposition discovery (e.g., depositions of Yamaha current and former employees) was completed and closed. (Note: The supplemental collection of records held by third parties, e.g., medical records, may be ongoing and should be allowed.)
  - b. All Non-Case-Specific motions were ruled on.
  - c. Appropriate *Daubert* motions were ruled on.
2. Activities to be completed after remand.
  - a. Filing, briefing and consideration of Case-Specific Motions, including dispositive motions.
  - b. All case-specific fact deposition discovery, e.g., depositions of the plaintiff(s), other Rhino occupants, eye witnesses and other persons with knowledge of facts relating to the specific Rhino incident, the Rhino involved, the plaintiff or his/her injuries, or any other discoverable case-specific facts.
  - c. Designation of experts who will testify at trial.
  - d. Discovery of all case-specific experts and Deferred Experts.
  - e. Filing, briefing and consideration of any non-duplicative *Daubert* motions (i.e., such motions that are not duplicative of motions presented to and ruled on by this Court in MDL 2016).
  - f. Final pretrial procedures, e.g., witness and exhibit lists and objections, deposition designations, motions in limine, etc.
  - g. Trial



**VII. RECOMMENDATIONS TO TRANSFEROR COURTS AND COURTS WITH NEW POST-MDL RHINO CASES**

**A. Recommendations And Observations For Transferor Courts**

1. Based on the experience and learning gained by the Court in managing the Rhino cases in MDL 2016, Transferor Courts may well be able to achieve prompt resolution of many cases by (i) addressing any case-specific dispositive motions, including case-specific motions to dismiss, that were previously filed and denied without prejudice by this Court; and (ii) setting prompt trial dates (with scheduling orders for cases with activities to be completed post-remand), subject to and as permitted by the Transferor Courts' existing trial docket.
2. Section VI above outlines the fact discovery (common and/or case specific) and expert discovery (common and/or case specific) that was completed for cases in each respective Case Group. Ample time was allowed in the Court's CMOs for the completion of these discovery activities, including related motion practice, as indicated for each respective Case Group, and very extensive fact and expert discovery was taken. Accordingly, absent a showing of substantial good cause, no further fact discovery, expert work, expert discovery and related motions should be required in these cases, except for those activities to be completed after remand as noted in Section VI.
3. The Court recognizes that many of its orders will need to be modified to address administrative issues (e.g., provisions regarding notice to or involvement of Lead Counsel in the MDL). The Court recommends that such changes be made in each remanded case in connection with adoption of the Court's orders.

**B. Recommendations And Observations For Courts With New, Post-MDL Rhino Cases**

1. Exhaustive written and document production discovery on common issues has been completed in the MDL. Yamaha common fact sheet responses and the large volume of Yamaha documents produced are available to counsel in new Rhino cases through the Common Benefit Order. The parties should avail themselves of these materials, rather than undertaking expensive, wasteful and duplicative discovery and motion practice on common discovery. It is suggested that the trial court consider entering an order

requiring the parties to use this material, rather than initiating new discovery.

2. In order to preserve documents and tangible things relevant to each case, the Court recommends adoption of the Agreed Final Preservation Order entered in the MDL, modified only to reflect administrative differences (e.g., no need for provisions referring to Lead Counsel in the MDL).
3. Common deposition discovery (i.e., depositions of Yamaha current and former employees) was coordinated with state court Rhino proceedings, and the Court's CMOs contained procedures to prevent duplicative deposition discovery. These depositions are available through the Common Benefit Order. Parties should be required to prove new or changed circumstances in order to take any additional common deposition discovery.
4. Non-case-specific expert discovery, including depositions of these experts, was coordinated with state court Rhino proceedings, and the Court's CMOs contained procedures to prevent duplicative deposition discovery. These depositions are available to Defendants and to Plaintiffs through the Common Benefit Order. In CMO No. 8, the Court established procedures to avoid duplicative depositions and questioning of non-case-specific experts, for such non-case-specific experts to disclose additions or changes to his or her opinions and other matters in the report, and for depositions of such non-case-specific experts on such supplemental matters. The parties should be required to continue to comply with those procedures.
5. CMO 1 contained streamlined procedures for efficiently completing case-specific fact discovery. These procedures included:
  - a. in lieu of Rule 26 disclosures and written discovery requests, the use of fact sheets, which served as interrogatory responses, as well as form records release authorizations to be provided by plaintiffs and an agreed list of documents to be produced by the parties;
  - b. use of 10 case-specific contention interrogatories to be exchanged by the parties (parties were free to draft and customize these interrogatories for use in each specific case);

- c. a procedure to accomplish the prompt scheduling and completion of accident scene and vehicle inspections; and
- d. a procedure to accomplish physical examinations under Rule 35, if requested.

The Court found that the use of such streamlined discovery procedures fully met the discovery needs of the parties, and, in most cases, allowed case-specific fact discovery to be completed efficiently and promptly. The Court recommends the use of these procedures, set forth in CMO 1, to courts with new, post-MDL Rhino cases.

- 6. Extensive privilege log challenges were raised in the California state court coordinated Rhino proceedings, fully reviewed and considered, and resolved under California law. The Court recommends reference to those privilege log proceedings with respect to any new privilege log challenges, if raised, recognizing that applicable law in other cases might differ from California law.

As to both cases remanded to Transferor Courts, as well as any newly filed, post-MDL Rhino cases, the Court invites contact from such courts with any questions regarding the proceedings in MDL 2016, the Court's CMOs or any other matters relating to this MDL. The Court is willing to assist in any way possible to maximize the efficiencies that can be gained from the case activities completed in MDL 2016.

#### **VIII. DOCUMENTS TO BE SENT TO TRANSFEROR COURT**

After receiving the Final Remand Order ("FRO") from the JPML, the Clerk of the Court will issue a letter to the Transferor Courts, via email, setting out the process for transferring the individual cases listed in the FRO. The letter and certified copy of the FRO will be sent to the Transferor Court's email address.

If a party believes that the docket sheet for a particular case being remanded is not correct, a party to that case may, with notice to all other parties in the case, file with

the Transferor Court a Designation Amending the Record. Upon receiving a Designation Amending the Record, the Transferor Court may make any needed changes to the docket. If the docket is revised to include additional documents, the parties should provide those documents to the Transferor Court.


#### **IX. CONCLUSION**

The Court believes that the purposes of MDL 2016, as set out in the JPML Transfer Order (2/13/09), have been largely achieved. The coordination and completion of common discovery from the Yamaha Defendants and the creation by Plaintiffs of a central depository of Yamaha documents have been accomplished. Other Plaintiffs in other Rhino Cases will have access to the common discovery (including written discovery products, as well as Yamaha documents and depositions) upon compliance with the Common Benefit Order and agreement to comply with and to be bound by all confidentiality and protective orders applicable to this discovery. All parties have benefited from the efficient completion of written discovery and common discovery under the procedures in CMOs 1 and 14.

Because the parties will have the benefit of common fact and expert discovery previously conducted in the MDL, any request for additional common discovery – that is, discovery that addresses issues that arise in more than one MDL case that are not unique to the facts or circumstances of the individual case, including any additional requests for depositions of Yamaha employees or written discovery beyond that permitted by this Court’s CMOs – must be brought before this Court in accordance with the schedule set forth in CMO 14.

The Court retains jurisdiction over all requests to modify any of its orders previously entered in MDL 2016. The Court also retains jurisdiction to modify or supplement this Order as may be appropriate.

ORDERED on this the 3<sup>d</sup> day of November, 2011.

  
JENNIFER B. COFFMAN  
U.S. DISTRICT JUDGE

**Exhibit A**  
**(List of cases to be remanded)**

**EXHIBIT A**  
**TO SUGGESTION OF REMAND AND FINAL MDL**  
**PRETRIAL ORDER FOR REMANDED CASES**

Case No.	Case Name	MDL Case No.	Transfer Court	Transfer Court Case No.
1.	Gould v. Yamaha Motor Corporation, USA, et al.	3:09-cv-516-JBC	Northern District of Alabama (Eastern Division)	1:09-cv-966
2.	Barrett v. Yamaha Motor Company, Limited, et al.	3:11-cv-00001-JBC	District of Arizona	2:10-cv-2384
3.	da Costa v. Yamaha Motor Corporation, U.S.A., et al.	3:09-cv-163-JBC	District of Arizona	2:08-cv-1583
4.	White v. Yamaha Motor Corporation, U.S.A., et al.	3:09-cv-272-JBC	Central District of California (Southern Division)	8:09-cv-237
5.	Sosa v. Yamaha Motor Corporation, U.S.A., et al.	3:09-cv-177-JBC	District of Colorado	1:07-cv-2721
6.	Massano v. Yamaha Motor Corporation, U.S.A., et al.	3:10-cv-255-JBC	District of Colorado	None – filed directly in MDL
7.	Ochsenbine, et al. v. Yamaha Motor Corporation, U.S.A., et al.	3:10-cv-624-JBC	Southern District of Florida (Fort Pierce Division)	None – filed directly in MDL
8.	Ford v. Yamaha Motor Corporation, U.S.A., et al.	3:10-cv-339-JBC	Northern District of Georgia (Newnan Division)	None – filed directly in MDL
9.	Guilbeau v. Yamaha Motor Corporation, U.S.A., et al.	3:09-cv-805-JBC	Middle District of Louisiana	3:09-cv-740
10.	Burris v. Yamaha Motor Corporation, U.S.A., et al.	3:09-cv-462-JBC	Western District of Louisiana (Monroe Division)	3:09-cv-725
11.	Chamblee v. Yamaha Motor Co., Ltd., et al.	3:09-cv-203-JBC	Western District of Louisiana (Shreveport Division)	5:08-cv-1351
12.	Sattler v. Yamaha Motor Corporation, U.S.A., et al.	3:10-cv-81-JBC	Western District of Louisiana (Lake Charles Division)	2:09-cv-1107
13.	Eldridge v. Yamaha Motor Corporation, U.S.A., et al.	3:09-cv-826-JBC	District of Minnesota	0:09-cv-2092
14.	Frieman v. Yamaha Motor Corporation, U.S.A., et al.	3:09-cv-615-JBC	District of Minnesota	0:09-cv-1702
15.	Ponyi v. Yamaha Motor Corporation, U.S.A., et al.	3:09-cv-830-JBC	District of Minnesota	0:09-cv-2452
16.	Stockton v. Yamaha Motor Corporation, U.S.A., et al.	3:09-cv-614-JBC	District of Minnesota	0:09-cv-1700
17.	Thompson v. Yamaha Motor Corporation, U.S.A., et al.	3:09-cv-726-JBC	District of Minnesota	0:09-cv-1703
18.	Wiggins v. Yamaha Motor Corporation, U.S.A., et al.	3:09-cv-963-JBC	District of Minnesota	0:09-cv-2083

CASE NAME	WKDY CASE NO	TRANSFEROR COURT	TRANSFEROR COURT CASE NO
19. Goodman, et al. v. Yamaha Motor Corporation, U.S.A., et al.	3:10-cv-102-JBC	Eastern District of Missouri (Eastern Division)	4:09-cv-1929
20. Schulte v. Yamaha Motor Corporation, U.S.A., et al.	3:10-cv-666-JBC	Eastern District of Missouri (Eastern Division)	4:10-cv-1445
21. Tucker v. Yamaha Motor Corporation, U.S.A., et al.	3:09-cv-173-JBC	Northern District of Mississippi (Western Division)	3:07-cv-143
22. Carter v. Yamaha Motor Corporation, U.S.A., et al.	3:09-cv-409-JBC	Southern District of Mississippi (Jackson Division)	3:09-cv-259
23. James, et al. v. Yamaha Motor Corporation, U.S.A., et al.	3:09-cv-717-JBC	Southern District of Mississippi (Jackson Division)	3:09-cv-419
24. Harris v. Yamaha Motor Corporation, U.S.A., et al.	3:10-cv-722-JBC	Southern District of Mississippi (Southern Division)	1:10-cv-238
25. Smith (Clint) v. Yamaha Motor Corporation, U.S.A., et al.	3:09-cv-227-JBC	Southern District of Mississippi (Hattiesburg Division)	2:09-cv-27
26. Kees v. Yamaha Motor Corporation, U.S.A., et al.	3:09-cv-732-JBC	Southern District of Mississippi (Jackson Division)	3:09-cv-418
27. Mills v. Yamaha Motor Co., Ltd., et al.	3:10-cv-406-JBC	Northern District of New York	8:10-cv-396
28. Lawson v. Yamaha Motor Corporation, U.S.A., et al.	3:09-cv-212-JBC	Southern District of New York	1:08-cv-10193
29. Smith (Christopher) v. Yamaha Motor Corporation, U.S.A., et al.	3:09-cv-146-JBC	Northern District of Ohio (Western Division)	3:08-cv-1863
30. Carlson, et al. v. Yamaha Motor Corporation, U.S.A., et al.	3:10-cv-527-JBC	Southern District of Ohio (Eastern Division)	2:10-cv-552
31. Williams v. Yamaha Motor Corporation, U.S.A., et al.	3:09-cv-196-JBC	Eastern District of Oklahoma	6:08-cv-392
32. Edwards v. Yamaha Motor Corporation, U.S.A., et al.	3:10-cv-113-JBC	Western District of Oklahoma	5:09-cv-1238
33. Marcinkevich v. Yamaha Motor Corporation, U.S.A., et al.	3:09-cv-710-JBC	Middle District of Pennsylvania	3:09-cv-1487
34. Oswald v. Yamaha Motor Corporation, U.S.A., et al.	3:09-cv-542-JBC	District of South Carolina (Charleston Division)	None – filed directly in MDL
35. Sentell v. Yamaha Motor Corporation, U.S.A., et al.	3:09-cv-541-JBC	District of South Dakota (Southern Division)	4:09-cv-4056



CASE NAME	WKDY CASE NO	TRANSFEROR COURT	TRANSFEROR COURT CASE NO
36. Best v. Yamaha Motor Corporation, U.S.A., et al.	3:10-cv-482-JBC	Eastern District of Texas (Marshall Division)	2:10-cv-165
37. Hewett v. Yamaha Motor Corporation, U.S.A., et al.	3:09-cv-201-JBC	Eastern District of Texas (Tyler Division)	6:08-cv-481
38. McKee v. Yamaha Motor Corporation, U.S.A., et al.	3:09-cv-197-JBC	Eastern District of Texas (Beaumont Division)	1:08-cv-227
39. Rogers v. Yamaha Motor Corporation, U.S.A., et al.	3:09-cv-199-JBC	Eastern District of Texas (Marshall Division)	2:08-cv-219
40. Crank v. Yamaha Motor Corporation, U.S.A., et al.	3:10-cv-117-JBC	Southern District of Texas (Houston Division)	4:09-cv-3446
41. Hammock v. Yamaha Global Corp., et al.	3:10-cv-257-JBC	Southern District of Texas (Houston Division)	4:09-cv-3225
42. Perry v. Yamaha Motor Corporation, U.S.A., et al.	3:09-cv-916-JBC	Southern District of Texas (Victoria Division)	6:09-cv-51
43. Young v. Yamaha Motor Corporation, U.S.A., et al.	3:09-cv-741-JBC	Western District of Texas (San Antonio Division)	5:09-cv-502
44. Colledge v. Yamaha Motor Corporation, U.S.A., et al.	3:10-cv-274-JBC	District of Utah	None – filed directly in MDL
45. Gurney v. Yamaha Motor Corporation, U.S.A., et al.	3:09-cv-417-JBC	District of Utah	2:09-cv-103
46. Chandler v. Yamaha Motor Corporation, U.S.A., et al.	3:10-cv-316-JBC	Southern District of West Virginia (Beckley Division)	5:10-cv-372
47. Jeffrey v. Yamaha Motor Corporation, U.S.A., et al.	3:10-cv-315-JBC	Southern District of West Virginia (Beckley Division)	5:10-cv-371
48. Seabolt v. Yamaha Motor Corporation, U.S.A., et al.	3:10-cv-314-JBC	Southern District of West Virginia (Charleston Division)	2:10-cv-358
49. Short v. Yamaha Motor Corporation, U.S.A., et al.	3:10-cv-254-JBC	Southern District of West Virginia (Charleston Division)	None – filed directly in MDL

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

JENNIFER B. COFFMAN, U.S.  
DISTRICT JUDGE

THIS DOCUMENT RELATES TO ALL  
CASES.

CASE MANAGEMENT ORDER NO.

COMMON BENEFIT ORDER

This Order is entered pursuant to this Court's April 1, 2009 *Order Appointing Plaintiffs' Designated Counsel and Joint Order Regarding Responsibilities of Designated Counsel*, to establish a reasonable prospective contingent assessment upon recoveries on the claims comprising this litigation, and to provide for the fair and equitable sharing among plaintiffs of the cost of services performed and expenses incurred by Plaintiffs' Lead Counsel and other attorneys designated by that Order acting for the MDL administration and common benefit of all plaintiffs in this complex litigation ("Designated Counsel").

As this Court previously ordered,

Common Benefit Fees/Costs/Assessment.

Plaintiffs' Designated Counsel shall be responsible, in the first instance, for funding common discovery and pretrial costs necessary and appropriate to their duties as set forth in this Order. As soon as practicable, based upon their evaluation of the particular circumstances of this litigation, and after consultation with the Plaintiffs' Steering Committee, Plaintiffs' Executive Committee shall submit a proposal for any reasonable prospective contingent assessment upon recoveries on the claims comprising this litigation. Such proposal will be subject to court approval and will be implemented under the equitable principles of the common

benefit doctrine that is commensurate with the benefits of economy, efficiency and value actually conferred upon Plaintiffs by these expenditures and services.

*Jt. Order Regarding Responsibilities of Designated Counsel, IV.D.*

Any disputes arising under this Order regarding Participating Parties, as defined in Paragraphs I.B.2.a. and b. of this Order, which cannot be resolved by agreement of Counsel will be resolved by this Court in the exercise of its jurisdiction over this complex litigation, under the equitable principles of the common benefit doctrine. *See, e.g., Sprague v. Ticonic National Bank*, 307 U.S. 161 (1939); *In re MGM Grand Hotel Fire Litigation*, 660 F.Supp. 522, 525-29 (MDL No. 453) (D. Nev. 1987); *In re Air Crash Disaster at Florida Everglades on December 29, 1972*, 549 F.2d 1006, 1019-21 (5th Cir. 1977).

The Court Orders as follows:

**I. COMMON BENEFIT FUND**

The Court hereby authorizes the establishment of a Yamaha Rhino MDL Common Benefit Fund (the “Common Benefit Fund”) for the purposes and pursuant to the limitations set forth in this Order. Plaintiffs’ Lead Counsel is directed to establish an account to receive and disburse funds as provided in this Order. These funds will be held as funds subject to the direction of the Court. No party or attorney has any individual right to any part of this Fund except to the extent of amounts directed to be disbursed to such person by order of the Court. These funds will not constitute the separate property of any party or attorney nor be subject to garnishment or attachment for the debts of any party or attorney except when and as directed to be disbursed as provided by Court order to a specific person. These limitations do not preclude a party or attorney from transferring, assigning, or creating a security interest in potential disbursements from the Fund if permitted by applicable state laws and if subject to the conditions and contingencies of this Order.

**A. Common Benefit Work Product**

1. All plaintiffs or claimants and their counsel of record in the MDL 2016-related cases as provided in paragraph I.B.2.a. below, and state counsel who elect to participate in this agreement as provided in paragraph I.B.2.b. below [hereinafter “Participating Parties”], shall have full access to the work product developed by, at the direction of, and in conjunction with Designated Counsel.

**B. Assessments for the Common Benefit Fund**

1. Subject to the provisions of this Order, Participating Parties who, on or after July 1, 2009, settle, compromise, dismiss, or reduce the amount of a claim against Yamaha Motor Corporation, U.S.A., Yamaha Motor Manufacturing Corporation of America, and/or Yamaha Motor Co., Ltd. (collectively, the “Yamaha Defendants”), with or without trial, with or without that claim being filed, or recover a judgment for monetary damages or other monetary relief, including compensatory and punitive damages, with respect to any Rhino claims against the Yamaha Defendants, are subject to an assessment of the gross monetary recovery on the claims as provided herein. The gross monetary recovery excludes court costs that are to be paid by the Yamaha Defendants or dealer defendants, and includes the present value of any fixed and certain payments to be made in the future.

This obligation attaches in the following instances:

2. Participating Parties

a. MDL 2016-Related Cases: (i) All cases transferred to this MDL, except those remanded by order of this Court to state court for lack of jurisdiction; (ii) all cases filed in federal court but not yet transferred, except those dismissed for lack of jurisdiction; and (iii) all cases subsequently filed in or transferred to this Court, AND, which are settled,

compromised, dismissed, or which have had the amount of the claim reduced, with or without trial, recovered a judgment for monetary damages or other monetary relief, including compensatory and punitive damages, based upon alleged injury (including death) arising from a Yamaha Rhino incident. Such cases will be subject to an assessment of five percent (5%) of the gross monetary recovery, said assessment to be withheld by the Yamaha Defendants and paid into the Common Benefit Fund. The five percent (5%) assessment will be divided proportionally: two percent (2%) coming from the plaintiffs' share of any recovery and three percent (3%) coming from the share of any recovery payable to plaintiffs' attorney as attorneys' fees. For example, on a recovery of \$1,000 with an attorneys fee of forty percent (40%), and without any consideration of case-specific out-of-pocket costs paid or advanced by the individual attorney (for purposes of this example only), two percent (2%) or \$20 would come from the plaintiffs' sixty percent (60%) share and three percent (3%) or \$30 from the attorneys' forty percent (40%) share.

b. Non-MDL Cases and Claims: For cases and claims not covered by paragraph I.B.2.a. above, plaintiffs and their counsel may elect, within 60 days of the entry of this Order, to enter into an appropriate *Participation Agreement* [attached hereto as Exhibit A], for five percent (5%) of the gross monetary recovery, divided proportionally as set forth in paragraph I.B.2.a. above. Later Participating Parties may be assessed a percentage of the "gross monetary recovery" to be established and agreed to by the Plaintiffs' Executive Committee ("PEC"), based on the then-existing and anticipated time and costs of the litigation. Such percentage may exceed the 5% assessment (should the Court so approve). For purposes of the Yamaha Defendants' obligations under paragraph I.B.6., a plaintiff or claimant and his or her counsel shall not be considered a Participating Party pursuant to this section unless a copy of the

executed Participation Agreement is provided to Lead Counsel for the Yamaha Defendants prior to or at the time any settlement agreement is executed.

3. Advancement of Funds for Common Benefit Expenses Approved by Lead Counsel. Designated Counsel who have advanced funds to the Plaintiff's common benefit assessment account during the pendency of the litigation that have been utilized to pay for common benefit expenses approved by Lead Counsel shall receive a credit against their assessment payments.

4. Non-Participating Parties

a. Counsel for any plaintiff who has a case or claim in any state court and who chooses not to execute a Participation Agreement with the PEC (hereinafter a "Non-Participating Party") may seek access from the PEC to MDL and/or PEC non-work product materials by contacting Plaintiffs' Lead Counsel in writing. The PEC, however, shall have no obligation to allow such attorney access to any MDL materials. Further, nothing in this Order shall limit the PEC's right or ability to seek an equitable contribution from a Non-Participating Party who has requested in writing and was provided access to MDL work product.

b. Any Non-Participating Party who utilizes, in connection with his or her state court claims, common benefit work product created in this litigation shall be deemed to have agreed to participate as set forth in paragraph I.B.2.b. above and shall be responsible to withhold the assessment set forth in paragraphs I.B.2.a. and b. above.

5. Coordination with State Courts. The assessment described in this Order is not intended to be cumulative of any assessment imposed in any coordinated state proceedings (including, but not limited to, the California JCCP and Georgia Coordinated Proceedings). Cases and claims subject to an assessment by virtue of paragraph I.B.1. above shall be subject to only

one assessment per settlement or disposition, and shall not be subject to assessment in the California JCCP or any other coordinated state court proceeding. In the event there is a dispute regarding where a particular case or claim should be assessed as between the JCCP, the MDL, or another state coordinated proceeding, Plaintiffs' Lead Counsel shall resolve the matter with plaintiffs' counsel of record in the specific case and shall instruct the Yamaha Defendants which fund is to receive the assessment. The Court recognizes that some Designated Counsel and other firms are performing court-ordered or informal common benefit work in these state court coordinated proceedings, and that common benefit work product and activities generated in one proceeding may and should be utilized and made available, on equitable terms, to plaintiffs in the others. To the extent that any State Court imposes any assessments in those proceedings, MDL Designated Counsel shall work with designated counsel in such coordinated proceedings to coordinate the use of common benefit assessment funds obtained from cases and claims filed in those State Courts, to coordinate their common benefit efforts, and to minimize duplication of effort and expense, such that necessary and appropriate work of common benefit to plaintiffs is reimbursed and compensated, fully and without duplication regardless of the location where the work was conducted. The Court may confer with the California JCCP Court and other state courts regarding common benefit applications, and Designated Counsel shall submit, to this Court, copies of all requests and applications for common benefit awards made in other Courts.

6. From the date this Order is signed forward, the Yamaha Defendants are directed to withhold the amount of the Common Benefit Fund assessment from any amounts paid by the Yamaha Defendants to plaintiffs and their counsel in any case involving a Participating Party, and to pay such withheld funds directly into the Common Benefit Fund as a credit against the settlement or judgment. Unless extraordinary circumstances prevent such payment, payment

into the Common Benefit Fund shall be made within five business days of the payment to any plaintiff or plaintiff's counsel in connection with a settlement that is subject to this Order. In the event that payment cannot be made into the Common Benefit Fund within five business days, the Yamaha Defendants' counsel shall notify Plaintiffs' Lead Counsel of the delay and the reason for the delay. If for any reason the assessment is not or has not been so withheld, the plaintiffs and plaintiffs' counsel of record in the specific case are jointly responsible for paying the assessment into the Common Benefit Fund promptly. Despite the effective date of this Order as set out in paragraph I.B.1., assessments upon any resolutions consummated prior to the date this Order is signed by the Court are the responsibility of plaintiffs' counsel in such cases. The Yamaha Defendants shall not be liable for any assessments or actions taken in connection with settlements to which this Order would apply prior to the date this Order is signed.

7. If the terms of the settlement are confidential, the amounts paid into the Common Benefit Fund by the Yamaha Defendants shall be confidential and shall not be disclosed by the Court-appointed Escrow Agent of the Fund ("Escrow Agent") (see section I.D) other than to the Court upon request by the Court except that the total amounts received in the aggregate may be disclosed by the Escrow Agent, but only on a quarterly basis. Even if the terms of the settlement are confidential, Yamaha Defendants' Counsel shall notify Plaintiffs' Lead Counsel of the fact of a settlement of a case involving a Participating Party, including the case name and docket number, within five business days of the settlement.

8. Any order of dismissal of any Participating Parties claim in which any recovery is received shall be accompanied by a certificate of plaintiff's and the Yamaha Defendants' counsel, if applicable, that the assessment has been withheld and deposited into the Common Benefit Fund.



9. The Plaintiffs' Lead Counsel shall provide Defendants' Liaison Counsel and the Escrow Agent (see section I.D) with a list of Participating Parties. This Court shall have exclusive and continuing jurisdiction over any and all disputes relating to this Order and the assessment process with respect to Participating Parties. In the event a dispute arises regarding a Non-Participating Party under the provisions of Paragraph I.4. a. and b., this Court will determine at that time whether it can and should exercise jurisdiction to resolve the dispute or whether such dispute should be handled in state court with jurisdiction over the particular case. In the event there is a dispute as to whether a case should be assessed, the Plaintiffs' Executive Committee shall first attempt to resolve the matter with the particular plaintiff's counsel either informally or upon motion in the appropriate court. Other than the responsibilities described in this Order, the Yamaha Defendants shall have no duties or responsibilities to any parties or their counsel arising out of the administration of the Common Benefit Fund. The Yamaha Defendants shall have no obligation to take assessments from Non-Participating Parties unless subsequently ordered to do so by the appropriate Court. In the event the Yamaha Defendants violate any provision of this Order, the Yamaha Defendants may be subject to sanctions as determined by the Court. However, no other liability shall be imposed in connection with the Yamaha Defendants' performance of their obligations under this Order. If the Yamaha Defendants learn at any time that a mistake has been made with respect to the amount collected, the Yamaha Defendants shall inform Plaintiffs' Lead Counsel and the Escrow Agent (see section I.D).

10. The Yamaha Defendants shall bear no out-of-pocket costs in connection with the administration of the Common Benefit Fund. All out of pocket costs (exclusive of attorney time), including those associated with the withholding and/or collection of assessments, the submission of certifications, reports and/or statements required by this Order, and any other

cost that may be incurred by the Yamaha Defendants in the administration of the Fund, shall be chargeable to the Common Benefit Fund.

**C. Disbursements from Common Benefit Fund.**

1. Upon approval of the Plaintiffs' Executive Committee (PEC) and on order of this Court, payments may be made from the fund to attorneys who provide services or incur expenses for the joint and common benefit of plaintiffs in addition to their own client or clients. Attorneys eligible are limited to Plaintiffs' Lead and Liaison Counsel, members of the Plaintiffs' Executive and Steering Committees, and other attorneys designated by the PEC to assist in performing their responsibilities. Only work authorized by the PEC in writing may be compensated from the Common Benefit Fund. All time and expenses are subject to proper submission of records which have been timely received by Lead Counsel.

2. Payments will be allowed only to entities for services performed, and to reimburse for expenses incurred, for the joint and common benefit of all plaintiffs.

3. Payments will not exceed the fair value of the services performed (plus any court approved multiplier) or the reasonable amount of the expenses incurred, and, depending upon the amount of the fund, may be limited to a part of the value of such services and expenses.

4. If the Fund exceeds the amount needed to make all payments as provided in this Order (for court approved costs, fees, and any court approved multiplier on any fees), the Court may order a refund to those who have contributed to the Fund. Any such refund will be made in proportion to the amount of the contributions. If the Fund is inadequate to make all payments as provided in this order, the PEC may request and the Court may order an increase to the assessment from those who have contributed to the Fund.

**D. Third Party Escrow Agent to Protect Confidentiality of Settlements**

1. In cases as to which the settling parties have agreed upon confidentiality of settlement terms, the details of any individual settlement agreement and individual settlement amount shall remain confidential and shall not be disclosed to Plaintiffs' Designated Counsel or the Court. In order to protect the confidentiality of these settlements, the Court, upon the joint recommendation of the Yamaha Defendants and Plaintiffs' Lead Counsel, hereby appoints the following neutral third party to serve as Escrow Agent of the Common Benefit Fund: Citibank, N.A., Escrow Agent Services. The Escrow Agent shall be bound by the terms of this Order and shall execute the acknowledgement, attached hereto as Exhibit B, to that effect.

2. The Yamaha Defendants' counsel shall provide to the Escrow Agent, within five business days of the payment to any plaintiff or plaintiff's counsel in connection with a settlement of a case involving a Participating Party, notice of the names and docket numbers of the cases for which assessment payments have been made, the amounts of the assessment, and the amount of the settlement. The Escrow Agent shall then provide a summary quarterly report to Plaintiffs' Lead Counsel that: (a) verifies that the amounts withheld by the Yamaha Defendants from any settlements comply with the terms of this Order and (b) discloses the total amounts in the Fund at that time. For cases as to which the settling parties have agreed upon confidentiality of settlement terms, the Escrow Agent shall not disclose the terms or amounts of the individual settlements to Designated Counsel, nor shall the Escrow Agent disclose the aggregate additions to the Fund for any period other than as set forth in this subsection. It is the position of Plaintiffs' Lead Counsel that, if an accounting of the Common Benefit Fund becomes necessary, Plaintiffs' Lead Counsel or Designated Counsel shall be entitled to seek such an accounting upon a showing of good cause. It is the Yamaha Defendants' position that the confidential terms and amounts of any settlements should not be disclosed to Plaintiffs' Lead or

Designated Counsel under any circumstance, and therefore reserve the right to oppose any application seeking such an accounting.

3. The Common Benefit Fund shall be set up so that all regular statements generated in connection with the Fund, including those showing any deposits made, shall be issued solely to the Escrow Agent and shall not be shared with any party or counsel (unless the statements reflect only deposits made from settlement(s) where the terms of the settlement were not confidential).

4. It is anticipated that the parties will enter into an agreement with the Escrow Agent, setting forth the terms and conditions for the administration of the Fund. To the extent the terms of the escrow agreement are in conflict with any provision of this Order, the terms of this Order shall govern.

**II. PLAINTIFFS' COMMON COST FUND AND SUBMISSION OF TIME AND EXPENSES.**

**A. Time and Expense Submissions of Plaintiffs' Counsel**

Reimbursement for costs and/or fees for services of all Plaintiffs' counsel performing functions in accordance with this Order will be set at a time and in a manner established by the Court after due notice to all counsel and after a hearing. The following standards and procedures are to be utilized by any counsel who will seek fees and/or expense reimbursement.

1. General Standards

a. All time and expenses submitted must be incurred only for work authorized in writing by the Plaintiffs' Executive Committee.

b. These Time and Expense Guidelines are intended for all activities performed and expenses incurred by counsel that relate to matters common to all claimants in MDL 2016.

c. Time and expense submissions must be made on the forms prepared by Plaintiffs' Lead Counsel.

d. Time and expense submissions must be submitted timely to Plaintiffs' Lead Counsel so they can be compiled. It is therefore essential that each firm timely submit its records, and shall do so quarterly on a schedule to be established by Plaintiffs' Lead Counsel.

2. Time Reporting

a. Only time spent on common benefit work will be considered in determining fees. No time spent on developing or processing individual issues in any case for an individual client (claimant) will be considered or should be submitted, unless that case is determined by the PEC to be a bellwether case that serves the common benefit of all plaintiffs in the litigation. No time for reading or reviewing materials shall be compensated unless such review is specifically required to conduct PEC-authorized common benefit work.

b. All time must be accurately maintained. Time shall be kept according to these guidelines. All counsel shall keep a record of their time spent in connection with common benefit work on this litigation, indicating with specificity the hours, location and particular activity (such as "conduct of deposition of A.B.").

c. All common benefit work time for each firm shall be maintained in a quarter-of-an-hour or smaller increments.

d. All time records for common benefit work shall be summarized by accumulated total of all time incurred by the firm during the particular reporting period and in prior periods. The summary report form may then be obtained from Plaintiffs' Lead Counsel.

**B. Expense Reporting: Shared and Held Costs**

1. Advanced costs will be deemed as either “Shared” or “Held.”

a. Shared Costs are costs that are paid out of a separate Plaintiffs’ Executive Committee MDL 2016 Fund account that has been established by Plaintiffs’ Lead Counsel at Citibank, N.A., and funded by all members of the PEC and PSC and others as determined by the PEC. The PEC MDL 2016 Fund account is administered by Lief, Cabraser, Heimann & Bernstein, LLP.

b. Held Costs are those that will be carried by each attorney in MDL 2016 and reimbursed from the Common Benefit Fund pursuant to Section II.A. above.

2. Each member of the PEC has and will continue to contribute to the Plaintiffs’ Executive Committee MDL 2016 Common Benefit Fund at times and in amounts sufficient to cover Plaintiffs’ expenses for the administration of the MDL. PSC members may also be required to contribute to the Common Benefit Fund. The timing and amount of each assessment will be determined by the PEC, and each assessment will be paid to Plaintiffs’ Lead Counsel for deposit to the PEC MDL 2016 Common Benefit Fund. Failure to pay assessments will be grounds for suspension from the PEC/PSC.

3. Shared Costs

a. Shared Costs are costs incurred for the common benefit of the litigation as a whole. No client-related costs can be considered as Shared Costs unless they are approved costs associated with a specific trial. All costs of a substantial nature that meet these requirements and fall under the following categories shall be considered Shared Costs and qualify to be submitted and paid directly from the MDL account. All Shared Costs must be approved by Plaintiffs’ Lead Counsel prior to payment. Shared Costs include:

- i. Court, filing and service costs for common (not case specific) items;
- ii. Deposition and court reporter costs for common (i.e. not case specific) depositions or hearings;
- iii. Plaintiffs' Liaison and Lead Counsel administrative matters (e.g., expenses for equipment, technology, courier services, long distance, telecopier, electronic service, photocopy and printing, secretarial/temporary staff, etc.);
- iv. PEC and PSC group administration matters such as meetings and conference calls;
- v. Legal and accountant fees;
- vi. Expert witness and consultant fees and expenses for common experts, or for experts in any specific case approved by the PEC;
- vii. Printing, copying, coding, scanning (out of house or extraordinary firm costs);
- viii. Research by outside third party vendors/consultants/attorneys;
- ix. Common witness expenses including travel;
- x. Translation costs;
- xi. Bank or financial institution charges; and
- xii. Investigative services of benefit to all cases.

b. Plaintiffs' Lead Counsel shall prepare and be responsible for distributing to the appropriate plaintiffs' counsel and the PEC reimbursement procedures and the forms associated therewith. Request for payments described include sufficient information to

allow their accountant to account properly for costs and to provide adequate detail to the Court upon request. All requests shall be subject to review and approval by Plaintiffs' Lead Counsel.

4. Held Costs

a. Held Costs are costs incurred for the common benefit of the MDL.

Held Costs are those that do not fall into the above Shared Costs categories but are incurred for the benefit of all plaintiffs in general. No specific client-related costs can be considered as held Costs. For example, held costs include travel-related costs necessary and appropriate to common benefit activities. Counsel are expected to economize to the extent practicable with respect to such costs submitted for reimbursement. For example, as to airfare, first class airfare will not be reimbursed. Only the price of a business or full fare coach seat for a reasonable itinerary will be reimbursed. Only hotel room charges for appropriate room rates at business hotels convenient to the activity will be reimbursed. All costs of a substantial nature that meet these requirements shall be considered Held Costs and qualify to be submitted for consideration by the PEC and the Court for future reimbursement.

b. Held Cost records shall be submitted to Plaintiffs' Lead Counsel

on a quarterly basis with any time reports.

**C. Procedures To Be Established by Plaintiffs' Lead Counsel for Cost and Time Submission**

Plaintiffs' Lead Counsel shall establish forms and procedures to implement and carry out the time and expense submissions described in II.A.1-2. above, and for reimbursement from the PEC MDL 2016 Shared Costs Fund. These forms may be obtained from Plaintiffs' Lead Counsel.

Questions regarding the guidelines or procedures or the completion of any forms should be directed to Plaintiffs' Lead Counsel.



SO ORDERED.

Date 10/6/10

  
HONORABLE JENNIFER B. COFFMAN  
United States District Court

**Participation Agreement**

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 200 \_\_, by and between the Plaintiffs' Executive Committee ("PEC") appointed by the United States District Court for the Western District of Kentucky in MDL No. 2016 and [FILL IN THE NAME OF THE FIRM EXECUTING THE AGREEMENT] (hereafter "the Participating Attorneys") on behalf of the clients listed on the attached Exhibit(s) (hereinafter "the Participating Parties").

WHEREAS, the United States District Court for the Western District of Kentucky has appointed Elizabeth J. Cabraser, Robert Ammons, Anthony Klein, Troy Rafferty, Jason Shamblin, and Sean Tracey, to serve as members of the PEC to facilitate the conduct of pretrial proceedings in the federal actions relating to the purchase or use of the Rhino;

WHEREAS, the PEC in association with other attorneys working for the common benefit of plaintiffs have developed and are in the process of developing work product which will be valuable in the litigation of federal and state court proceedings involving Rhino-related injuries (the "PEC Work Product"); and

WHEREAS, the Participating Attorneys are desirous of acquiring the PEC Work Product and establishing an amicable, working relationship with the PEC for the mutual benefit of their clients;

NOW, THEREFORE, in consideration of the covenants and promises contained herein, and intending to be legally bound hereby, the parties agree as follows:

1. With respect to each Participating Party who they represent in connection with Rhino-related claim, whether currently a filed claim in state or federal court or unfiled, each of the Participating Attorneys shall deposit or cause to be deposited in an MDL Common Benefit Fund Account a percentage of the gross monetary recovery by each such Participating Party

which is equal to five percent (5%). A three percent (3%) assessment shall be deemed fees to be subtracted from the attorneys' fees portions of individual fee contracts, and a two percent (2%) assessment shall be deemed costs to be subtracted from the client portion of individual fee contracts unless these percentages are modified by agreement of counsel or by the Court upon showing of good cause. For purposes of this Agreement, the gross monetary recovery shall not include court costs to be paid by the defendants, if any, but shall include the present value of any fixed and certain payments to be made to the plaintiff or claimant in the future. It is the intention of the parties that such assessment shall be in full and final satisfaction of any present or future obligation on the part of each Participating Party and/or Participating Attorney to contribute to any fund for the payment or reimbursement of any legal fees, services or expenses incurred by, or due to, the MDL and/or any Common Benefit Attorneys.

2. The Participating Attorneys, on behalf of themselves, their affiliated counsel, and their clients listed on the attached Exhibit(s), hereby grant and convey to the PEC a lien upon and/or a security interest in any recovery by any such client in connection with any Rhino related injury, to the full extent permitted by law, in order to secure payment in accordance with the provisions of paragraph 1 of this Agreement. The Participating Attorneys will undertake all actions and execute all documents which are reasonably necessary to effectuate and/or perfect this lien and/or security interest.

3. In accordance with the Common Benefit Order and any related orders, the amounts deposited in the MDL Common Benefit Fund shall be available for distribution to attorneys who have performed professional services or incurred expenses for the benefit of the plaintiffs in MDL 2016 and any state court litigation pursuant to written authorization from Lead Counsel for the PEC. Such sums shall be distributed only upon an Order of the Court in MDL

2016 which will be issued in accordance with applicable law governing the award of fees and costs in cases involving the creation of a common benefit. Appropriate consideration will be given to the experience, talent and contribution made by all of those authorized to perform activities for the common benefit, including the Participating Attorneys.

4. As the litigation progresses and work product of the same type and kind continues to be generated, the PEC will make available such work product and will otherwise cooperate with the Participating Attorneys to coordinate the MDL litigation and the state litigation for the benefit of the plaintiffs.

5. Upon execution of this Agreement, the PEC will provide to the Participating Attorneys, to the extent developed, the PEC Work Product, including access to the PEC's virtual depository.

6. The Participating Attorneys shall have the following rights the clients listed on the Exhibit(s) hereto:

- a. Access to testing information and other expert discovery materials relevant to the various defect issues alleged in the Rhino litigation;
- b. Briefing on common legal issues arising in individual cases;
- c. Deposition database of all common discovery depositions related to the Rhino litigation and exemplar case-specific depositions;
- d. Transcript database of trial and court proceedings in Rhino litigation to the extent permissible; and
- e. Any MDL trial package as it is developed or assistance with trial-related matters to the extent has not been completed.
- f. Any further work product developed by or in conjunction with the PEC as

it relates to this litigation.

7. Both the PEC and the Participating Attorneys recognize the importance of individual cases and the relationship between case-specific clients and their attorneys. Regardless of the type of settlement or conclusion eventually made in either state or federal matters, the PEC will recommend to Judge Coffman that appropriate consideration will be given to individual case contracts between attorneys and their clients and to work that has been performed by attorneys in their individual cases.

8. The Participating Attorneys represent that the list appended hereto as Exhibit "A" correctly sets forth the name of each client represented by them who has filed a civil action arising from the use of a Rhino with the Court and docket number of each such case and that the list attached hereto as Exhibit "B" contains the name and social security number of each client represented by them who has not yet filed a civil action arising from the use a Rhino.

9. The Participating Attorneys shall supplement the lists appended hereto as Exhibit "A" and "B" on a quarterly basis when new retentions or associations have been entered into.

10. This Agreement shall apply to each and every claim or action (whether state or federal, filed or unfiled) relating to the clients listed on the attached Exhibit(s) and arising from the use of a Rhino in which the Participating Attorneys have a right or claim to a fee recovery beginning from February 13, 2009, the date that MDL No. 2016 was assigned by the MDL Panel to this Court.

PLAINTIFFS' EXECUTIVE COMMITTEE

By: \_\_\_\_\_

Elizabeth J. Cabraser  
LIEFF, CABRASER, HEIMANN &  
BERNSTEIN, LLP  
275 Battery Street, 28th Floor  
San Francisco, CA 94111-3339  
Telephone: (415) 956-1000  
Facsimile: (415) 956-1008

AND

By: \_\_\_\_\_

Participating Attorney  
[Firm Name]

On behalf of:

On Behalf Of Clients Listed  
On Attached Exhibit(s)

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION**

<b>IN RE: YAMAHA MOTOR CORP. RHINO ATV PRODUCTS LIABILITY LITIGATION</b>	<b>Master File No. 3:09-MD-2016-JBC MDL NO. 2016</b>
<b>THIS DOCUMENT RELATES TO ALL CASES.</b>	<b>JENNIFER B. COFFMAN U.S. DISTRICT JUDGE</b>

**ADDENDUM TO COMMON BENEFIT ORDER**

The Common Benefit Order (Document 2021 Filed 10/16/2010) (“CBO”) authorizes the establishment of a Yamaha Rhino Common Benefit Fund. According to Part I.B.6. of the CBO, the Yamaha Defendants are required to withhold (and pay into the Common Benefit Fund) an assessment from any settling case involving a Participating Party. According to Part I.B.3. of the CBO, Designated Counsel who have advanced funds to pay for common benefit costs during the pendency of the litigation that have been utilized to pay for common benefit expenses approved by Lead Counsel shall receive a credit against their assessment payments. If Designated Counsel in a settling case advises that he or she intends to exercise his or her right to receive credit rather than pay an assessment on a settling case into the Common Benefit Fund, this Addendum to the CBO clarifies that Lead Counsel shall have authority pursuant to the credit provision of the Order to advise counsel for Yamaha whether that Designated Counsel has advanced common benefit payments and may state the amount of such advancements. Upon receipt of such instructions, counsel for Yamaha shall cease taking assessments from settling cases involving Participating Parties pursuant to Part I.B.6. of the CBO until the amount of any advancement has been met; at that time, assessments will resume. The Yamaha Defendants shall not be obligated to apply any such credit to any settlements for which the assessment required by the CBO has already been paid

to the Common Benefit Fund. Counsel for Yamaha shall incur no liability in connection with the implementation of this Addendum to the extent that counsel for Yamaha follow the instructions of Lead Counsel for Plaintiffs regarding such.

ORDERED on this 1st day of April, 2011.

  
JENNIFER B. COFFMAN  
U.S. DISTRICT JUDGE