

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-JBD
MDL No. 2016

THIS DOCUMENT RELATES TO:

JENNIFER B. COFFMAN
U.S. DISTRICT JUDGE

ALL ACTIONS.

**JOINT ORDER REGARDING
RESPONSIBILITIES OF DESIGNATED COUNSEL**

I. APPOINTMENT OF COUNSEL TO LEADERSHIP POSITIONS

In an Order dated March 24, 2009, the Court designated the following attorneys as having leadership positions on behalf of the parties in MDL No. 2016:

- A. Plaintiffs' Liaison Counsel: Jennifer Moore
- B. Plaintiffs' Lead Counsel: Elizabeth Cabraser
- C. Plaintiffs' Executive Committee: Robert Ammons, Elizabeth Cabraser, Anthony Klein, Troy Rafferty, Jason Shamblin, and Sean Tracey
- D. Plaintiffs' Steering Committee: George Chandler, C. Andrew Childers, Nghana Lewis Gauff, Eric Hageman, Steve Kramer, Jerry Miniard, and David Zoll.
- E. Plaintiffs' State-Federal Coordinator: C. Andrew Childers.
- F. Liaison counsel for Defendants Yamaha Motor Co., Ltd.; Yamaha Motor Corporation, U.S.A.; Yamaha Motor Manufacturing Corporation of America; Columbus Yamaha LP; Gullo & Paz Motor Sports & Marine LP; and Polaris of Hopkinsville, LLC (collectively known as the "Yamaha Defendants" or "Yamaha"): Linsey West
- G. Lead Counsel for the Yamaha Defendants: Thomas Fennell
- H. Lead Counsel for those defendants not represented by Mr. West and Mr. Fennell (collectively known as "the Other Defendants"): Karen Chrisman

II. RESPONSIBILITIES OF PLAINTIFFS' DESIGNATED COUNSEL

A. Plaintiffs' Liaison Counsel: Plaintiffs' Liaison counsel shall have the following responsibilities:

1. Maintain an up-to-date comprehensive Service List of Plaintiffs in MDL 2016 ("Plaintiffs") and promptly advise the Court and the other Liaison Counsel of changes to Plaintiffs' Service List;
2. Receive and distribute to Plaintiffs' counsel, as appropriate, orders, notices and correspondence from the Court;
3. Maintain and make available to other Plaintiffs' counsel, on reasonable notice and at reasonable times, a complete set of all pleadings and orders filed and/or served in MDL 2016; and
4. In conjunction with Plaintiffs' Executive Committee and to the extent deemed desirable by Plaintiffs' Executive Committee, establish and maintain a physical or virtual depository located within the Court's jurisdiction, or otherwise accessible to all Plaintiffs' counsel.

B. Plaintiffs' Lead Counsel

Plaintiffs' Lead Counsel shall Chair the Plaintiffs' Executive Committee, which shall be generally responsible for coordinating the activities of Plaintiffs during pretrial proceedings.

Plaintiffs' Lead Counsel shall determine (after consultation with the members of Plaintiffs' Executive Committee and other co-counsel as may be appropriate) and present (in briefs, oral argument, or such other fashion as may be appropriate, personally or by a designee) to the Court and opposing parties the position of the Plaintiffs on all matters arising during pretrial proceedings.

C. Plaintiffs' Executive Committee: Plaintiffs' Executive Committee shall have the following responsibilities with respect to cases during their pendency in MDL No. 2016:

1. Coordinate the initiation and conduct of discovery on behalf of Plaintiffs consistent with the requirements of FED. R. CIV. P. 26, including the preparation of joint interrogatories and requests for production of documents and the examination of witnesses in depositions;

2. Coordinate settlement discussions or other ADR efforts on behalf of Plaintiffs, under the supervision of the Court, if and as appropriate, but not enter binding agreements except to the extent expressly authorized;
3. Delegate specific tasks to other counsel in a manner to ensure that pretrial preparation for the Plaintiffs is conducted effectively, efficiently, and economically;
4. Enter into stipulations with opposing counsel as necessary for the conduct of the litigation;
5. Prepare and distribute to the parties periodic status reports;
6. Maintain adequate time and disbursement records covering services as Designated Counsel;
7. Coordinate with Plaintiffs' and Defendants' counsel to ensure that court orders are respected, schedules are met, discovery is conducted and provided consistent with the requirements of Fed. R. Civ. P. 26, and unnecessary expenditures of time and funds are avoided;
8. In order to avoid duplicative discovery, including minimizing the number of depositions taken of each witness, minimizing the number of lawyers who question witnesses at depositions, and reducing duplicative questioning at depositions, coordinate and communicate through or with the assistance of the State-Federal Coordinator with counsel in other Yamaha Rhino-related litigation pursuant to the provisions regarding coordination in the Court's Case Management Order or other orders of the Court;
9. Perform such other duties as may be incidental to proper coordination of Plaintiffs' pretrial activities or as authorized by further order of the Court; and
10. Present all matters of common or broad concern to the Plaintiffs in MDL No. 2016.

D. Plaintiffs' Steering Committee. Plaintiffs' Steering Committee shall have the following responsibilities:

1. Periodically meet and confer with the Plaintiffs' Executive Committee and/or Lead Counsel to provide advice regarding any matter before the Plaintiffs' Executive Committee;
2. Participate in common benefit work approved by the Plaintiffs' Executive Committee to advance the litigation; and

3. Review and convey the viewpoints of outside counsel who may wish to communicate with the committee.

III. RESPONSIBILITIES OF DEFENDANTS' DESIGNED COUNSEL

A. Yamaha's Liaison Counsel. Liaison Counsel for the Yamaha Defendants shall have the following responsibilities:

1. Maintain an up-to-date comprehensive Service List of the Yamaha Defendants and to promptly advise the Court and other Liaison Counsel of changes to their Service List;
2. Receive and distribute to the Yamaha Defendants and their respective counsel, as appropriate, orders, notices and correspondence from the Court;
3. Coordinate the filing of notices and papers by the Yamaha Defendants, including the designation of responsibilities to encourage the filing of a single set of papers by the Yamaha Defendants, where such group members have a common position; and
4. Maintain and make available to counsel for the Yamaha Defendants at reasonable times and at reasonable hours, a complete file of all pleadings and orders served and/or filed in MDL 2016.

B. Yamaha's Lead Counsel

Yamaha's Lead Counsel shall generally be responsible for coordinating the activities of counsel for the Yamaha Defendants in MDL 2016 during pretrial proceedings. Yamaha's Lead Counsel shall determine and present (in briefs, oral argument, or such other fashion as may be appropriate, personally or by a designee) to the Court and opposing parties the position of the Yamaha Defendants on all matters arising during pretrial proceedings.

C. The Other Defendants' Lead Counsel

The Other Defendants' Lead Counsel shall generally be responsible for coordinating the activities of counsel for the Other Defendants in MDL 2016 during pretrial proceedings, including the following:

1. Maintain an up-to-date comprehensive Service List of the Other Defendants and to promptly advise the Court and other Liaison Counsel of changes to their Service List;

2. Receive and distribute to the Other Defendants, as appropriate, orders, notices and correspondence from the Court;
3. Coordinate the filing of notices and papers by the Other Defendants, including the designation of responsibilities to encourage the filing of a single set of papers by the Other Defendants in situations where such group members have a common position;
4. Maintain and make available to members of the Other Defendants at reasonable times and at reasonable hours, a complete file of all pleadings and orders served and/or filed in MDL 2016; and
5. Determine and present (in briefs, oral argument or such other fashion as may be appropriate, personally or by a designee) to the Court and opposing parties the position of the Other Defendants on all matters arising during pretrial proceedings.

IV. OTHER PROVISIONS RELATING TO COUNSEL

A. Removal of Liaison Counsel.

On notice and opportunity to be heard and for good cause shown, the Court, on its own motion or on the motion of any party, may remove any Liaison Counsel from that position. The members of the group for whom the removed Liaison Counsel had been appointed under this Order shall move for appointment of a replacement Liaison Counsel. Such motion shall be served on the Court and all other counsel in writing no later than five (5) days from the effective date of the previous Liaison Counsel's removal.

B. Committees and Other Cooperative Arrangements.

The parties to this litigation may, formally or informally, create "committees" or other cooperative arrangements as they see fit.

C. Privileged Communications.

The Court recognizes that cooperation among counsel and the parties is essential for the orderly and expeditious resolution of the litigation. The communication, transmission or dissemination of information of common interest among Plaintiffs' counsel or the Yamaha defendants' counsel or the Other defendants' counsel shall be protected by the attorney-client

privilege, the protections afforded by the attorney work product doctrine, the protections afforded to material prepared for litigation or any other privilege or protection from disclosure to which a party may otherwise be entitled. Any cooperative efforts by the parties in connection with MDL No. 2016 and any stipulations entered in MDL 2016 in an effort to streamline the litigation or to aid in the management of MDL 2016 shall not in any way be used against any of the parties in this or any other action, be cited as purported evidence of conspiracy, wrongful action or wrongful conduct, and shall not be communicated to any jury.

D. 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.

E. Actions by Divergent Counsel.

Counsel who, after consultation with the appropriate Lead Counsel, disagree with Lead Counsel (or those acting on behalf of Lead Counsel), or who have individual or divergent positions may present written and oral arguments, conduct examinations of deponents, and otherwise act separately on behalf of their client(s) as appropriate, provided that they first petition the Court for good cause to do so and in doing so they do not repeat arguments, questions or actions of Designated Counsel.

AGREED TO:

Dated: March 31, 2009

/s/ Jennifer A. Moore
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Lead Counsel for Non-Yamaha Defendants

IT IS SO ORDERED, this the 1st day of April, 2009.


JENNIFER B. COFFMAN, U.S. DISTRICT JUDGE