

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

IN RE: YAMAHA MOTOR CORP. RHINO MASTER FILE NO. 3:09-md-2016-JBC  
ATV PRODUCTS LIABILITY MDL No. 2016  
LITIGATION

---

THIS DOCUMENT RELATES TO ALL ACTIONS JENNIFER B. COFFMAN,  
U.S. DISTRICT JUDGE

**INTERIM ORDER REGARDING PRESERVATION OF  
DOCUMENTS, DATA, AND TANGIBLE THINGS**

**1. Order to Meet and Confer**

To further the just, speedy, and economical management of discovery, the parties are ORDERED to meet and confer as soon as practicable, no later than April 20, 2009, to develop a plan for the preservation of documents, data, materials, scenes of the incident on which the action is based, side-by-side vehicles and any and all parts removed or repaired from the vehicle or any of its component parts, and such other tangible things reasonably anticipated to be subject to discovery in this action. The resulting preservation plan may be submitted to this Court as a proposed order under Rule 16(e).

**2. Subjects for Consideration**

The parties should attempt to reach agreement on all issues regarding the preservation of documents, data, materials, scenes of the incidents and side-by-side vehicles (hereinafter "subject vehicles" and "subject incident scenes") and any and all parts removed or repaired from the vehicle or any of its component parts, and such other tangible things. These issues include, but are not necessarily limited to:

(a) the extent of the preservation obligation, identifying the types of material to be preserved, the subject matter, time frame, the authors and addressees, and key words to be used in identifying responsive materials;

(b) the identification of persons responsible for carrying out preservation obligations on behalf of each party;

(c) the form and method of providing notice of the duty to preserve to those persons reasonably identified as custodians of relevant documents, data, and such other tangible things reasonably anticipated to be subject to discovery;

(d) mechanisms for monitoring, certifying, or auditing custodian compliance with preservation obligations;

(e) whether preservation will require suspending or modifying any routine business processes or procedures, with special attention to document-management programs and the recycling of computer data storage media, and whether any such action is reasonable and appropriate given the specific issues in this litigation;

(f) whether it is reasonable and appropriate to preserve any volatile but potentially discoverable material, such as voicemail, active data in databases, electronic messages, or subject incident scenes and, if so, what measures can be adopted that are reasonably effective and efficient;

(g) the anticipated costs of preservation and ways to reduce or share these costs; and

(h) a mechanism to review and modify the preservation obligation as discovery proceeds, eliminating or adding particular categories of documents, data and such other tangible things, recognizing that the balance of need and cost necessarily changes and should be taken into account.

### **3. Duty to Preserve**

(a) Until the parties reach agreement on a preservation plan, all parties and their counsel are reminded of their duty to preserve evidence reasonably anticipated to be subject to discovery. The duty extends to documents, data, materials, subject vehicles and any and all parts repaired or removed from the vehicle or any of its component parts, and such other tangible things in the possession, custody and control of the parties to this action and any employees of parties who it is reasonably determined possess materials reasonably anticipated to be subject to discovery in this action. In addition, parties are under an obligation not to take any action to alter or allow the alteration of any of the foregoing to the extent it is in its possession, custody and control. Counsel is under an obligation to exercise reasonable efforts to identify and notify such employees of corporate or institutional parties. The parties and their counsel are further under an obligation not to encourage, instruct or otherwise facilitate the destruction or alteration of any evidence in the possession of third parties.

(b) “Documents, data, materials, subject vehicles and any and all parts repaired or removed from the vehicle or any of its component parts, and such other tangible things” are to be interpreted broadly to include writings; records; files; correspondence; reports; memoranda; calendars; diaries; minutes; electronic messages; e-mail; computer and network activity logs; hard drives; backup data; document image files; web pages; databases; spreadsheets; software; books; ledgers; journals; orders; invoices; bills; vouchers; statements; worksheets; summaries; compilations; computations; charts; diagrams; graphic presentations; drawings; films; charts; digital or chemical process photographs; video phonographic tape or digital recordings or

transcripts thereof; drafts; notes, subject vehicles that are related to cases that have been, may be or are in the process of being transferred to MDL No. 2016, and any and all parts removed or repaired or any component parts. All stored documents and information will be maintained in native format to include meta data and any other file location information. All subject vehicles, parts or component parts shall be maintained in a secure, non-destructive location.

(c) The parties, their attorneys, employees, experts retained to testify or consult in litigation, and others over whom the parties have control, without prior express written agreement of all parties or a Court order, shall not destroy or permanently alter any documents, data and materials reasonably anticipated to be subject to discovery, the subject vehicles and any and all parts repaired or removed from the vehicle or any of their components parts, and such other tangible things through disassembly, destructive testing or otherwise, and they shall not change the present form of the subject vehicles or any of their component parts prior to final resolution of this matter.

(d) The parties and others over whom they have control shall not, without prior express written agreement or a Court order, inspect, disassemble or modify the subject vehicles or any component parts unless each party, with its representatives, has an adequate opportunity to be present and to observe and/or document such activities

(e) "Preservation" is to be interpreted broadly to accomplish the goal of maintaining the integrity of all documents, data, and such other tangible things reasonably anticipated to be relevant, material and subject to discovery under Fed. R. Civ. P. 26, 34, 45, and 56(e) in this action. Preservation includes taking reasonable steps to prevent the partial or full destruction, alteration, testing, deletion, disassembly, shredding, incineration, wiping, relocation, migration, theft or mutation of such material, as well as negligent or intentional handling that would make material incomplete or inaccessible, of any information in the care, custody or control of the parties or their counsel.

(f) If the business practices of any party involve the routine destruction, recycling, relocation, or mutation of materials reasonably anticipated to be subject to discovery in this action, for the pendency of this order, the party must, to the extent practicable and consistent with Fed. R. Civ. P 37(e), and within a reasonable time from the date of the order, either:

- (i) halt such business processes; or
- (ii) sequester or remove such material from the business process; or
- (iii) arrange for the preservation of complete and accurate duplicates or copies of such material, suitable for later discovery if requested.

(g) A party may seek permission to exempt or resume routine business processes relating to the storage or destruction of specific categories of documents, data

or such other tangible things, on notice and motion and upon a showing of undue cost, burden, or overbreadth.

**4. Procedure in the Event No Agreement is Reached**

If, after conferring to develop a preservation plan, counsel do not reach agreement on the subjects listed under paragraph 2 of this order or on other material aspects of preservation, the parties are to submit to the Court within five days of the last conference on these matters a statement of the unresolved issues together with each party's proposal for their resolution of the issues. In framing an order regarding the preservation of documents, data, and such other tangible things, the court will consider those statements, as well as any statements made in any applications under paragraph 3(g) of this order.

**5. Applicability of this Order**

This Order shall govern the parties in the interim from the date of its entry until the entry of a final Preservation Order. The final Preservation Order will, as of the date of its entry, supersede this Interim Order and any other orders or agreements relating to preservation that were entered in any case that has been transferred to, is hereafter transferred or in the process of being transferred to the MDL, and shall govern the obligations of the parties to preserve evidence from that date forward.

**IT IS SO STIPULATED:**

Dated: April 2, 2009

/s/ Elizabeth J. Cabraser (by Jennifer Moore with permission)

Elizabeth J. Cabraser  
Paulina do Amaral  
Lieff, Cabraser, Heimann & Bernstein, LLP  
250 Hudson Street  
New York, NY 10013  
Telephone: (212) 355-9500  
Facsimile: (212)355-9592

LEAD COUNSEL FOR PLAINTIFFS

Dated: April 2, 2009

/s/ Jennifer A. Moore  
Jennifer A. Moore  
GROSSMAN & MOORE, PLLC  
One Riverfront Plaza  
401 W. Main St., Suite 1810  
Louisville, KY 40202  
Tel: (502) 657-7100  
Fax: (502) 657-7111

Liaison Counsel for Plaintiffs

Dated: April 2, 2009

/s/ Thomas E. Fennell (by Jennifer Moore with permission)  
Thomas Fennell  
Jones Day  
2727 North Harwood Street  
Dallas, Texas 75201-1515  
Telephone: (214) 969-5130  
Facsimile: (214) 969-5100

Lead Counsel For the Yamaha Defendants

Dated: April 2, 2009

/s/ Karen Chrisman (by Jennifer Moore with permission)  
Karen Chrisman  
300 Whitaker Bank Building  
P.O. Box 1100  
Frankfort, KY 40602  
Telephone: (502) 223-2100  
Facsimile: (502) 227-7385

Lead Counsel For the Non-Yamaha Defendants

**IT IS SO ORDERED:**

DATED this 6<sup>th</sup> day of April, 2009.

  
JENNIFER B. COFFMAN  
UNITED STATES DISTRICT COURT