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IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA

ROGER McTAGGART and)
GLEND A McTAGGART,)
Plaintiffs,)
v.)
YAMAHA MOTOR CORPORATION,)
U.S.A.; YAMAHA MOTOR)
MANUFACTURING CORPORATION)
OF AMERICA, a Georgia Corporation;)
and YAMAHA MOTOR CO., LTD.,)
Defendants.)
_____)

CIVIL ACTION FILE NO.
08C-18950-2

FIRST AMENDED COMPLAINT

COME NOW Plaintiffs, ROGER McTAGGART and GLEND A McTAGGART, by and through the undersigned attorneys, and file this Complaint for Damages against the above-named Defendants and show the Court the following:

PARTIES, JURISDICTION AND VENUE

1. This is an action for damages within the jurisdictional limits of this Court.
2. Plaintiffs, ROGER McTAGGART and GLEND A McTAGGART (hereinafter "Plaintiffs"), are citizens and residents of the State of Georgia.
3. Defendant YAMAHA MOTOR CORPORATION, U.S.A. (hereinafter "YMUS") is, and at all times relevant to this Complaint was, a corporation organized and existing under the laws of the State of California and has its principal place of business at 6555 Katella Avenue, Cypress, California 90630. To the extent Defendant YMUS acted as an agent and employee of its co-defendants, YMMC and YMC, YMUS acted within the course and scope of its authority as an agent and employee and with the consent of its co-defendants. Defendant

YMUS may be served with process by and through its registered agent in Gwinnett County, Prentice Hall Corporation, 40 Technology Parkway South, # 300, Norcross, Georgia 30092.

Defendant YMUS is subject to the jurisdiction and venue of this Court.

4. Defendant YAMAHA MOTOR MANUFACTURING CORPORATION OF AMERICA (“YMMC”) is, and at all times relevant to this Complaint was, a corporation organized and existing under the laws of the State of Georgia and has its principal place of business at 1000 Georgia Highway 34 East, Newnan, Coweta County, Georgia 30265. To the extent Defendant YMMC acted as an agent and employee of its co-defendants, YMUS and YMC, YMMC acted within the course and scope of its authority as such an agent and employee and with the consent of its co-defendants. Defendant YMMC may be served with process by and through its registered agent in Gwinnett County, Corporation Service Company, 40 Technology Parkway South, # 300, Norcross, Georgia 30092. Defendant YMUS is subject to the jurisdiction and venue of this Court.
5. Defendant YAMAHA MOTOR CO., LTD. (“YMC”), is, and at all times relevant to this Complaint was, a Japanese corporation whose principal place of business is in Shizuoka, Japan. To the extent Defendant YMC acted as an agent and employee of its co-defendants, YMUS and YMMC, YMC acted within the course and scope of its authority as such an agent and employee and with the consent of its co-defendants. The licensed Registered Agent for this Defendant is 2500 Shingai, Iwata-shi, Shizuoka-ken, Japan.

FACTUAL ALLEGATIONS

6. Plaintiffs incorporate by reference and re-allege each and every preceding paragraph of this Complaint as if restated completely herein.

7. Defendants designed, developed, engineered, manufactured, assembled, tested, inspected, wholesaled, distributed, marketed and/or sold a four-wheel, off-road vehicle known as a Yamaha Rhino in the State of Georgia, and otherwise did business in the State of Georgia related to this Complaint.
8. At all times relevant to this Complaint, Defendants, YMUS, YMMC and YMC, (hereinafter known as “Defendants”) were in the business of designing, manufacturing, developing, engineering, assembling, testing, inspecting, wholesaling, marketing, and/or distributing the RHINO for sale to the general public, including consumers in the State of Georgia.
9. Plaintiffs purchased the vehicle from October 10, 2006 from D&H Cycle in Cullman, Alabama.
10. Prior to Plaintiff ROGER McTAGGART’s accident, Defendants designed, developed, engineered, manufactured, assembled, tested, inspected, wholesaled, marketed, distributed and sold a RHINO bearing the serial number 5Y4AM04Y16A027355 for resale to the general public as an off-road, four-wheel drive vehicle.
11. On May 14, 2007, Plaintiff ROGER McTAGGART operated the RHINO over an uneven, relatively flat, grassy area. After stopping the RHINO, Plaintiff ROGER McTAGGART resumed forward motion with steering input to the right and the RHINO tipped onto the driver’s side, trapping his leg under the vehicle, causing severe and permanent injuries.
12. Although Defendants knew or should have known that dangerous risks were associated with use of the RHINO, Defendants proceeded to design, manufacture, assemble, distribute, promote, market, and sell the RHINO, which was not merchantable or reasonably suited for the use intended.

13. As a result of the defects in the RHINO as alleged in this Complaint, Plaintiffs have suffered physical injury and pain and suffering, disability and impairment, lost capacity to enjoy life, loss of consortium, expense of hospitalization, medical and nursing care and treatment, medical expenses, loss of wages and earning capacity, and fear and mental anguish concerning future medical problems. These injuries are permanent and continuing in nature and will continue into the future.

COUNT ONE:
STRICT LIABILITY AND PRODUCTS LIABILITY
AS TO YAMAHA DEFENDANTS ONLY

14. Plaintiffs incorporate by reference and re-allege each and every preceding paragraph of this Complaint as if restated completely herein.
15. Pursuant to O.C.G.A. § 51-1-11 (b)(1), the manufacturer of any personal property sold as new property directly or through a dealer or any other person shall be liable in tort, irrespective of privity, to any natural person who may use, consume, or reasonably be affected by the property and who suffers injury to his person or property because the property when sold by the manufacturer was not merchantable or reasonably suited to the use intended, and its condition when sold is the proximate cause of the injury sustained.
16. The RHINO is unreasonably dangerous as designed, developed, engineered, manufactured, assembled, wholesaled, distributed, marketed, and sold, and was defective at the time it left the possession of the Yamaha Defendants.
17. The RHINO is defective in design and unsafe for its intended purpose in that it is unstable and tips over at low speeds, and traps passengers' and drivers' legs due to inadequate passenger compartment design.

18. At all times relevant to this Complaint, the Defendants knew that members of the general public would purchase and use the RHINO without inspection for defects.
19. As a direct and proximate result of the defective condition of the RHINO, Plaintiffs have suffered physical injury and pain and suffering, disability and impairment, lost capacity to enjoy life, loss of consortium, expense of hospitalization, medical and nursing care and treatment, medical expenses, loss of wages and earning capacity, and fear and mental anguish concerning future medical problems, for which the Yamaha Defendants are strictly liable. These injuries are either permanent or continuing in nature and will continue into the future.

COUNT TWO:
NEGLIGENCE

20. Plaintiffs incorporate by reference and re-allege each and every preceding paragraph of this Complaint as if restated completely herein.
21. All Defendants, as the designers, manufacturers, retailers, promoters, marketers and distributors of the RHINO, owed a duty to Plaintiffs to exercise reasonable care in designing, manufacturing, marketing, and selling the RHINO and to adequately warn Plaintiffs of the risks associated with use of the RHINO.
22. The Defendants, in breach of their duty to Plaintiffs, negligently and carelessly designed, developed, manufactured, engineered, inspected (or failed to inspect), tested (or failed to test), assembled, distributed, and sold the RHINO, which as designed, manufactured and sold was unstable and tipped over at low speeds. Further, Defendants breached their duty to Plaintiffs by failing to warn or inadequately warning of the risks associated with using the RHINO.

23. Although Defendants knew or should have known that dangerous risks were associated with use of the RHINO, Defendants proceeded to design, manufacture, assemble, distribute, promote, market, and sell the RHINO with knowledge that it was not merchantable or reasonably suited to the use intended. Further, Defendants inadequately warned the Plaintiffs of the risk associated with using the RHINO.
24. As a direct and proximate result of the negligence of the Defendants, the RHINO contained a defect that rendered it unsafe for its intended use.
25. As a further direct and proximate result of Defendants' negligence, Plaintiffs have suffered physical injury and pain and suffering, disability and impairment, lost capacity to enjoy life, loss of consortium, expense of hospitalization, medical and nursing care and treatment, medical expenses, loss of wages and earning capacity, and fear and mental anguish concerning future medical problems, for which Defendants are liable. These injuries are either permanent or continuing in nature and will continue into the future.

COUNT THREE:
JOINT AND SEVERAL LIABILITY

26. Plaintiffs incorporate by reference and re-allege each and every preceding paragraph of this Complaint as if restated completely herein.
27. By virtue of their individual and collective acts and omissions, Defendants are jointly and severally liable to Plaintiffs as such acts and omissions have proximately caused Plaintiffs to suffer a single indivisible injury for which each Defendant is responsible.

COUNT FOUR:

LOSS OF CONSORTIUM

28. Plaintiffs incorporate by reference and re-allege each and every preceding paragraph of this Complaint as if restated completely herein.
29. As a direct and proximate result of the combined negligent, wanton and/or reckless conduct of the Defendants as described above, Plaintiff, ROGER McTAGGART, suffered serious, painful, disfiguring, debilitating, and permanent injuries. ROGER McTAGGART consciously experienced these injuries at the time of the incident and such injuries are continuing in nature.
30. Although Defendants knew or should have known that dangerous risks were associated with use of the RHINO, Defendants proceeded to design, manufacture, assemble, distribute, promote, market, and sell the RHINO with knowledge that it is not merchantable and reasonably suited to the use intended and failed to warn or inadequately warned the Plaintiffs of the risk associated with using the RHINO.
31. As a direct and proximate result of the combined negligent, wanton and/or reckless conduct of the Defendants, Plaintiff, GLENDA McTAGGART, has suffered the loss of consortium of her husband, ROGER McTAGGART, including the loss of care, comfort, society, and attention, for which Defendants are liable. Such losses are permanent in nature and will continue into the future.
32. As a direct and proximate result of the combined negligent, wanton and/or reckless conduct of the Defendants as described above, Plaintiffs have suffered and will suffer general, compensatory and special damages, for which Defendants are liable.

COUNT FIVE:
PUNITIVE DAMAGES

33. Plaintiffs incorporate by reference and re-allege each and every preceding paragraph of this Complaint as if restated completely herein.
34. The conduct of each Defendant, as set forth herein above, showed willful misconduct, malice, fraud, wantonness, oppression or that entire want of care which would raise the presumption of a conscious indifference to consequences. Accordingly, punitive damages should be imposed against each Defendant pursuant O.C.G.A. § 51-12-5.1 and other applicable laws, to punish and deter each Defendant from repeating or continuing such unlawful conduct.

COUNT SIX:
LITIGATION EXPENSES

35. Plaintiffs incorporate by reference and re-allege each and every preceding paragraph of this Complaint as if restated completely herein.
36. Defendants have acted in bad faith, have been stubbornly litigious, and/or have caused the Plaintiffs unnecessary trouble and expense. As such, Plaintiffs are entitled to attorney's fees and costs pursuant to O.C.G.A. § 13-6-11.

WHEREFORE, Plaintiffs pray:

- (a) That process issue according to law;
- (b) That each Defendant be served with a copy of Plaintiffs' Complaint and show cause why the prayers for relief requested by Plaintiffs herein should not be granted;
- (c) That Plaintiffs be granted a trial by jury in this matter;
- (d) That the Court enter a judgment against each Defendant, jointly and severally, for all general and compensatory damages allowable to Plaintiffs;
- (e) That the Court enter a judgment against each Defendant, jointly and severally, for all special damages allowable to Plaintiffs;

- (f) That the Court enter a judgment against each Defendant serving to award Plaintiffs punitive damages under the provisions of O.C.G.A. § 51-12-5.1;
- (g) That the Court enter a judgment against each Defendant serving to award Plaintiffs' attorneys fees and costs of litigation under the provisions of O.C.G.A. § 13-6-11;
- (h) That the Court enter a judgment against each Defendant, jointly and severally, for all other relief sought by Plaintiffs under this Complaint;
- (i) That the costs of this action be cast upon Defendants; and
- (j) That the Court grant Plaintiffs such further relief which the Court deems just and appropriate.

Respectfully submitted this 9th day of November, 2009.

/s/ Kimberly R. Lambert
Kimberly R. Lambert, FL Bar No. 0014479
Pro Hac Application Granted
LEVIN, PAPANTONIO, THOMAS, MITCHELL,
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and
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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished to Amber B. Shushan, Esquire of Jones Day, 1420 Peachtree Street, N.E., Suite 800, Atlanta, GA 30309-3053, Attorney for Defendants, through LexisNexis File and Serve on the 9th day of November, 2009.

/s/ Kimberly R. Lambert

Kimberly R. Lambert, FL Bar No. 0014479

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