

Jury Sides With Yamaha At \$17M Rhino ATV Trial

By **Sindhu Sundar**

Law360, New York (March 01, 2015, 5:18 PM ET) -- A California jury on Friday found for Yamaha Motor Corp. in a \$16.7 million trial over claims by a woman that defects in a Yamaha Rhino off-road vehicle in which she was a passenger caused an accident that resulted in the amputation of her right leg.

After a six week trial, the jury delivered a unanimous verdict for Yamaha in a case brought by Elizabeth Ault-Smietana and her husband Jayson Smietana, who alleged that the 2010 crash of their 2007 model year Rhino 660 SE vehicle was caused by stability problems inherent in the vehicle.

Yamaha, which has faced a number of suits over its Rhino off-road vehicle, had argued that the crash was caused by Jayson Smietana's driving and the injuries were more likely caused by his wife's failure to properly wear a seat belt and the correct riding gear, according to the company's statement Friday by Yamaha's counsel Bowman and Brooke LLP.

This is the eleventh case around the country to go to trial in the Yamaha mass tort involving its Rhino utility vehicle, and the last active case in the California Judicial Council coordinated proceedings, which once had more than 275 cases, according to the statement. It is not known if the plaintiffs plan to appeal.

"Yamaha has been tremendously successful in defending the Rhino," lead counsel Paul Cereghini of Bowman and Brooke, said in the statement.

"This verdict reinforces the message sent in prior trials that Yamaha designed, manufactured and sold a safe and defect free vehicle," he added. "Yamaha has once again demonstrated that it can and will vigorously and successfully defend cases like this."

Ault-Smietana's lower right leg was amputated after years of infections and prior surgeries, according to the statement. The plaintiffs had asked the jury to award more than \$16.7 million in special and general compensatory damages. They had also sought punitive damages, but the court had previously dismissed that claim as a matter of law, according to the statement.

"We are evaluating the next step," Fredric Levin of Levin Papantonio Thomas Mitchell Rafferty & Proctor PA, an attorney for the plaintiffs, said Monday. "It was a very attentive jury and based on the evidence they were allowed to hear, they may have had no choice."

Yamaha defeated the first bellwether trial in July 2010, in a case by plaintiff Richard Holt. His suit had been chosen as the first to go to trial of a pool of more than 170 cases over alleged safety issues associated with Rhino vehicles consolidated before Judge Thierry Colaw of Orange County Superior Court.

During the four-month trial Holt maintained that the Rhino was defective in its design and came with defective warnings and that the vehicle was not sufficiently stable.

The plaintiffs in the current case were represented at trial by Fredric G. Levin and Virginia Buchanan of Levin Papantonio Thomas Mitchell Rafferty & Proctor PA, Ryan Bright of Klein DeNatale Goldner Cooper Rosenlieb & Kimball LLP, and Ian Pancer of the Law Offices of Ian Pancer.

Yamaha was represented by Paul G. Cereghini, Timothy J. Mattson, Jenny A. Covington and Travis Wheeler of Bowman and Brooke LLP and Brian Gabel of the Yamaha Motor Corp. U.S.A. legal department.

The case is Elizabeth Ault-Smietana v. Yamaha Motor Corp. U.S.A., Case No. 37-2011-00086006-CU-PO-CTL, in the Superior Court of California, Orange County.

--Editing by Christine Caulfield.
