

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

**IN RE: SKECHERS TONING SHOE
PRODUCTS LIABILITY LITIGATION**

**Master File No. 3:11-MD-2308-TBR
MDL No. 2308**

**THIS DOCUMENT RELATES TO ALL
CASES**

**THOMAS B. RUSSELL
U.S. DISTRICT JUDGE**

**ORDER REGARDING PRACTICE AND PROCEDURE UPON TRANSFER
AND
SETTING INITIAL STATUS CONFERENCE**

This cause is hereby scheduled for an initial status conference on **March 15, 2012 at 1:00pm EST**. The conference will take place telephonically. Counsel wishing to participate in the conference call should call **1-877-336-1831** then give the **Access Code 6879517 and #, then when prompted press # again** to join the call.

The conference will be held for the purposes specified in Federal Rules of Civil Procedure 16(a), 16(b), 16(c), and 26(f) and subject to the sanctions prescribed in Rule 16(f). To minimize the costs and facilitate a manageable conference, the parties shall appear at the conference by counsel only. Parties with similar interests are encouraged to agree to the extent practicable on a single attorney to act on their behalf at the conference. By designating an attorney to represents its interests at the conference, a party will not be precluded from other direct participation in the various stages of this litigation. Attendance at the conference will not constitute a waiver of objection to jurisdiction, venue, or service.

PRE-CONFERENCE MEETING OF THE PARTIES AND SUBMISSIONS TO THE COURT

At least 21 days prior to the initial status conference the parties shall have a telephonic conference to discuss and attempt to agree upon the following items:

- 1) The plaintiffs' lead counsel and/or plaintiffs' steering committee, as well as plaintiffs' liaison counsel;
 - a) In selecting plaintiffs' lead counsel and/or the plaintiffs' steering committee, as well as plaintiffs' liaison counsel, the main criteria to be considered are: A) willingness and ability to commit to a time-consuming process, B) ability to work cooperatively with others, C) professional experience in this type of litigations, and D) access to sufficient resources to advance the litigation in a timely manner.
- 2) Pre-trial deadlines for:
 - a) Filing amended or consolidated pleadings;
 - b) Filing and briefing motions to remand to state court;
 - c) The completion of fact discovery;
 - d) Expert disclosure and discovery;
 - e) Filing and briefing motions for summary judgment; and
 - f) Any other appropriate deadlines.
- 3) Any additional items the parties believe would expedite the pre-trial portions of this case.

At least 7 days prior to the initial status conference, the parties shall submit a written report to the Court detailing the outcome of their pre-conference meeting. This report shall include all deadlines agreed upon by the parties. It should also set forth any deadlines upon which the parties could not agree and that the Court will need to resolve during the initial status conference.

If counsel for the plaintiffs cannot agree upon lead counsel and/or the plaintiffs' steering committee, as well as liaison counsel, then applications or nominations for those positions shall be submitted to the Court no later than 7 days prior to the initial conference. Applications should also set forth attorney fee proposals, rates, and percentages that applications expect to seek if the litigations succeeds in creating a common fund.

PRE-CONFERENCE CASE SUMMARIES

In order to familiarize the Court with the pending cases, on or before 7 days prior to the initial status conference, counsel for the plaintiffs and defendants in each case transferred to this Court shall submit¹ to the Court a brief (not to exceed five pages) summary of the case. If the parties have agreed upon lead counsel, only such counsel needs to make these submissions. The summary shall not be filed with the Clerk, but it shall be distributed to the other parties. It will not be binding, will not be considered to waive any claims or defenses, and may not be offered in evidence against a party in a later proceeding. The summary is solely for the benefit of the Court. The summary should include:

- (1) A brief synopsis of the factual allegations involved in the case;
- (2) A brief summary of the legal issues involved in the case;
- (3) A brief description of any discovery which has been completed, including any depositions which have been taken;
- (4) A list of pending motions, with an indication as to whether they are fully brief;
- (5) Whether counsel plans to attend the initial conference and, if so, to provide the name of the counsel who will appeal;
- (6) Any other matters which counsel believes requires the immediate attention of the Court.

AGENDA FOR INITIAL STATUS CONFERENCE

The initial status conference is to permit counsel to confer with the judicial officer assigned to this case and to raise for discussion any matters requiring immediate attention by the Court. In addition, the initial conference is a time to discuss the organization and structure of the pretrial phases of this litigation, by which counsel and the Court will attempt to efficiently manage its development.

¹ For the purpose of this order, the brief case summaries shall be submitted to the following email address: kelly_p_harris@kywd.uscourts.gov.

During the initial conference, the Court will discuss the following items:

- 1) The agreed upon deadlines and items previously submitted by counsel;
- 2) Resolution of deadlines or other items upon which the parties could not agree;
- 3) If necessary, selection of plaintiffs' lead counsel, and/or plaintiffs' steering committee, as well as liaison counsel; and
- 4) Any additional items of immediate concern to the parties.

After the initial conference, the Court will enter a case management order memorializing the deadlines governing the pre-trial proceedings in this case.

PRACTICE AND PROCEDURE ORDER UPON TRANSFER
PURSUANT TO 28 U.S.C. § 1407(a)

Those actions transferred to this Court by the Judicial Panel on Multidistrict Litigation pursuant to its Order of December 19, 2011, and all related actions originally filed in this Court or transferred or removed to this Court, as well as any tag-along actions transferred to this Court by the Judicial Panel on Multidistrict Litigations pursuant to Rule 7.1 of the Rule of Procedure of that Panel subsequent to the filing of the final transfer order by the Clerk of this Court, and any related actions subsequently filed in this Court or otherwise transferred or removed to this Court, shall all be governed by the following practices and procedures:

- 1) The actions described above are consolidated for pretrial purposes.
- 2) All documents filed in these actions shall bear the identification "MDL Docket No. 2308," and shall indicate to which of these actions it applies. Counsel are urged to use the caption as it appears above. The notation "ALL CASES" shall be used where appropriate. Alternatively, if any filing does not relate to all of these actions, the individual docket numbers assigned to those actions by the Clerk of this Court shall be listed. An abbreviated caption for each of those actions may be listed opposite its case number. Case numbers assigned by transferor courts shall not be used in filings with this Court. Any filing should be filed in the master file, 3:11-MD-2308-TBR, and in the relevant individual cases as well. All pleadings and submissions in these actions shall be electronically filed in both the master docket and in the individual case docket(s) to which the submission pertains. Electronically filing in the master file

will present the option to spread the entry to any individual cases.²

- 3) Any paper that is to be filed in any of these actions shall be filed with the Clerk of this Court and not the transferor district court.
- 4) Counsel who appeared in the transferor district court prior to transfer need not enter a separate appearance before this Court. Non-resident attorneys in any of these actions shall not be required to apply for permission to appear or obtain local counsel in this district and the requirements of Joint Local Rules 83.1 and 83.2 of the Eastern and Western Districts of Kentucky are waived as to any attorney appearing in these actions who is duly admitted to practice before any United States District Court.
- 5) These cases are subject to Electronic Case Filing (“ECF”), pursuant to Joint General Order 05-03, which requires that all documents in such a case be filed electronically. All attorneys of record shall register to become an ECF User. Forms and instructions can be found on the Court’s website at <https://kywd.uscourts.gov/CMECFWelcome.php>. All attorneys must be registered with this Court’s CM/ECF system no later than **30 days from entry of this order**, absent application to the Court for relief from this requirement. This login and password issued by the Western District of Kentucky upon such registration will be used only for the purpose of filing documents in the Skechers Toning Shoe Products Liability Litigations and related cases. Said login and password are not to be used to file documents in any other case in the Western District of Kentucky unless the attorney is admitted or becomes admitted to practice in this District pursuant to Local Rule 83.1
- 6) Service of all papers shall be made on each of the attorneys on the Panel Attorney Service List. The service list is attached to this Order as Attachment A, and a continually revised form can be accessed via a link in the Multidistrict Litigation website which is posted on the Court’s webpage.³ A distribution list should not be included on documents filed in the Court. Rather, a certification of service stating that all attorneys appearing on the Panel Attorney Service List were served is sufficient. Any attorney who wishes to have his/her name added to or deleted from such Panel Attorney Service List may do so upon request to the Clerk of the Court with notice to all other persons on such service list, provided however, that at least one counsel for each party separately represented must remain on the list.⁴ Service shall be deemed sufficient if made upon all attorneys on the Panel Attorney Service List. That list will be updated as counsel enter appearances and/or tag-along cases are transferred to this court and, in particular, after the Initial Conference.
- 7) Where counsel for more than one party plan to file substantially identical papers, they shall join in the submission of such papers and shall file only one paper on behalf of the

² Filings with questions regarding procedures for electronic filing in the Western District of Kentucky are directed to call the ECF Help Desk], Monday through Friday, 8:00am to 6:00pm EST, at 1-866-822-8305.

³ The parties may access the webpage established for this MDL at www.kywd.uscourts.gov/mdl/2308

⁴ This requirement does not in any way amend the duties and requirement of counsel under Local Rule 83.6 with regard to the withdrawal of counsel.

parties so joined.

- 8) The Court will be guided in its management of this litigation by the *Manual for Complex Litigation, Fourth*, which has been approved by the Judicial Conference of the United States. Counsel are directed to familiarize themselves with that reference. The Court wishes to express clearly its expectations that professionalism, courtesy, and civility will endure throughout these proceedings. The *Manual for Complex Litigation, Fourth* at section 10.21 captures the spirit in these terms:

The added demands and burdens of complex litigation place a premium on attorney professionalism, and the judge should encourage counsel to act responsibly. The certification requirements of the Federal Rules of Civil Procedure 11 and 26(g) reflect some of the attorneys' obligations as officers of the court.

Because of the high level of competence and experience that attorneys ordinarily bring to this type of litigation, the Court is confident that this objective will be achieved without judicial intervention.

- 9) The Clerk is directed to serve this Order on counsel of record in these cases and on an counsel in additional cases that may be filed in, removed from, or transferred to this action.

IT IS SO ORDERED.

3:11-md-02308-TBR In Re: Skechers Toning Shoe Products Liability Litigation
Thomas B. Russell, presiding
Date filed: 12/20/2011
Date of last filing: 01/17/2012

Attorneys

Lauren S. Antonino

The Antonino Firm, LLC
Suite 1425
Five Concourse Parkway
Atlanta, GA 30328
770-408-1229
866-372-5586 (fax)
lauren@antoninofirm.com

Assigned: 12/20/2011

ATTORNEY TO BE NOTICED

representing

Frederick Gilliland, IV
(Plaintiff)

Susan Reno-Gilliland
(Plaintiff)

Katrina R Atkins

Dinsmore & Shohl LLP - Cincinnati
255 East Fifth Street, Suite 1900
Cincinnati, OH 45202
513-977-8205
513-977-8141 (fax)
katrina.atkins@dinslaw.com

Assigned: 12/22/2011

ATTORNEY TO BE NOTICED

representing

Skechers Fitness Group
(Defendant)

Skechers, USA Inc.
(Defendant)

Skechers, USA, Inc. II
(Defendant)

Jeffrey A. Barker

O'Melveny & Myers LLP
1999 Avenue of the Starts, 7th Floor
Los Angeles, CA 90067
310-553-6700
310-246-6779 (fax)
jbarker@omm.com

representing

Skechers Fitness Group
(Defendant)

Assigned: 12/20/2011
ATTORNEY TO BE NOTICED

Skechers, USA Inc.
(Defendant)

Skechers, USA, Inc. II
(Defendant)

Anthony Bryce Brewer
Welch, Brewer and Hudson LLC
One Riverfront Place
Suite 413
North Little Rock, AR 72114
501-978-3030
501-978-3050 (fax)
bbrewer@wbhlawfirm.com
Assigned: 12/20/2011
ATTORNEY TO BE NOTICED

representing

Lisa Fuller
(Plaintiff)

Terry Fuller
(Plaintiff)

Kristine A Crosswhite
Crosswhite Limbrick and Sinclair LLP
405 Frederick Rd Ste 260
Baltimore, MD 21209
14107474174
14107477177 (fax)
kac@cls-law.com
Assigned: 12/20/2011
ATTORNEY TO BE NOTICED

representing

Skechers Fitness Group
(Defendant)

Skechers, USA Inc.
(Defendant)

Skechers, USA, Inc. II
(Defendant)

Michael D. Eagen
Dinsmore & Shohl LLP - Cincinnati
255 East Fifth Street, Suite 1900
Cincinnati, OH 45202

513-977-8578
513-977-8141 (fax)
michael.eagen@dinslaw.com
Assigned: 12/20/2011
ATTORNEY TO BE NOTICED

representing

Skechers Fitness Group
(Defendant)

Skechers, USA Inc.
(Defendant)

Skechers, USA, Inc. II
(Defendant)

Jarrett L Ellzey, Jr
Hughes Ellzey LLP
Galleria Tower 1
2700 Post Oak Blvd Suite 1120
Houston, TX 77056
888/350-3931
888/995-3335 (fax)
jarrett@crafthugheslaw.com
Assigned: 01/13/2012
ATTORNEY TO BE NOTICED

representing

Lisa Peniston
(Plaintiff)

Jill F. Endicott
Dinsmore & Shohl LLP - Louisville
101 S. Fifth Street, Suite 2500
Louisville, KY 40202-3197
502-581-8057
502-581-8111 (fax)
jill.endicott@dinslaw.com
Assigned: 12/20/2011
ATTORNEY TO BE NOTICED

representing

Skechers Fitness Group
(Defendant)

Skechers, USA Inc.
(Defendant)

Skechers, USA, Inc. II
(Defendant)

Penny U. Hendy
Schachter Hendy & Johnson, PSC
909 Wright's Summit Parkway, Suite 210
Ft. Wright, KY 41011

Allison Drury

859-578-4444
859-578-4440 (fax)
phendy@pschachter.com
Assigned: 12/20/2011
ATTORNEY TO BE NOTICED

(Plaintiff)

representing

Melissa Kearnelly
(Plaintiff)

Richard Kearnelly
(Plaintiff)

Lynne P. Orsine
(Plaintiff)

Raymond J. Orsine
(Plaintiff)

Jessica Wilson
Canton
(Plaintiff)

Holly Ward
(Plaintiff)

Timothy Scott Ward
(Plaintiff)

David Drake Hudgins
Hubbard & Biederman
1601 Elm Street, Suite 1995
Dallas, TX 75201-4729
703-739-3300
703-739-3700 (fax)
e-mailbox@hudginslawfirm.com
Assigned: 12/20/2011
ATTORNEY TO BE NOTICED

representing

Skechers Fitness Group
(Defendant)

Skechers, USA Inc.
(Defendant)

Skechers, USA, Inc. II
(Defendant)

William Craft Hughes
Hughes Ellzey, LLP
2700 Post Oak Blvd., Suite 1120
Galleria Tower I
Houston, TX 77056
888/350-3931
888/995-3335 (fax)
craft@crafthugheslaw.com
Assigned: 01/13/2012
ATTORNEY TO BE NOTICED

representing

Lisa Peniston
(Plaintiff)

Robert K. Jenner
Janet, Jenner & Suggs LLC
1829 Reistertown Road, Suite 320
Baltimore, MD 21208
410-653-3200
410-653-9030 (fax)
rjenner@medlawlegalteam.com
Assigned: 12/20/2011
ATTORNEY TO BE NOTICED

representing

Frederick Gilliland, IV
(Plaintiff)

Melissa Kearnelly
(Plaintiff)

Neil Croak
(Defendant)

Richard Kearnelly
(Plaintiff)

Susan Reno-Gilliland
(Plaintiff)

Theresa Croak
(Plaintiff)

Ms. Denise Hagvall
16 Cedar Avenue
Towson, MD 21286
410-296-7138

(Plaintiff)

Karen McClain
954 Orbitan Court
Parkville, MD 21234
(Plaintiff)

Holly Ward
(Plaintiff)

Allison Drury
(Plaintiff)

Ronald E. Johnson, Jr.
Schachter Hendy & Johnson, PSC
909 Wright's Summit Parkway, Suite 210
Ft. Wright, KY 41011
859-578-4444
859-578-4440 (fax)
rjohnson@pschachter.com
Assigned: 12/20/2011
ATTORNEY TO BE NOTICED

representing

Allison Drury
(Plaintiff)

Frederick Gilliland, IV
(Plaintiff)

Melissa Kearnelly
(Plaintiff)

Raymond J. Orsine
(Plaintiff)

Richard Kearnelly
(Plaintiff)

Susan Reno-Gilliland
(Plaintiff)

Lynne P. Orsine
(Plaintiff)

Jessica Wilson
Canton
(Plaintiff)

Holly Ward
(Plaintiff)

Mai L Moore
7314 English Cove
Memphis, TN 38125
(Plaintiff)

Walter B. McClelland
Mabry & McClelland
2200 Century Parkway, N.E.
Tenth Floor
Atlanta, GA 30345-3105
404-325-4800
wmcclelland@m-mlegal.com
Assigned: 12/20/2011
ATTORNEY TO BE NOTICED

representing

Skechers Fitness Group
(Defendant)

Skechers, USA Inc.
(Defendant)

Skechers, USA, Inc. II
(Defendant)

Jessica H Meeder
Janet Jenner and Suggs LLC
1777 Reisterstown Rd Ste 165
Baltimore, MD 21208
14106533200
14106539030 (fax)
jmeeder@myadvocates.com
Assigned: 12/20/2011
ATTORNEY TO BE NOTICED

representing

Ms. Denise Hagvall
16 Cedar Avenue
Towson, MD 21286
410-296-7138
(Plaintiff)

Karen McClain
954 Orbitan Court
Parkville, MD 21234
(Plaintiff)

Richard E. Mrazik

Parsons Behle & Latimer
201 S. Main Street, Suite 1800
Salt Lake City, UT 84111
801-532-1234
801-536-6111 (fax)

Assigned: 01/13/2012

ATTORNEY TO BE NOTICED

representing

Michael Stults
(Plaintiff)

Peggy Stults
(Plaintiff)

Shea B. Oliver

BURCH PORTER & JOHNSON
130 N. Court Avenue
Memphis, TN 38103-2217
901-524-5000
901-525-5024 (fax)
soliver@bpjlaw.com

Assigned: 01/12/2012

ATTORNEY TO BE NOTICED

representing

Skechers Fitness Group
(Defendant)

Skechers, USA Inc.
(Defendant)

Skechers, USA, Inc. II
(Defendant)

Daniel M. Petrocelli

O'Melveny & Myers LLP
1999 Avenue of the Starts, 7th Floor
Los Angeles, CA 90067
310-553-6700
310-246-6779 (fax)
dpetrocelli@omm.com

Assigned: 12/20/2011

ATTORNEY TO BE NOTICED

representing

Skechers Fitness Group
(Defendant)

Skechers, USA Inc.
(Defendant)

Skechers, USA, Inc. II
(Defendant)

Adam M. Priest

PRYOR FLYNN PRIEST & HARBER
625 S. Gay Street
Suite 600
Knoxville, TN 37902
865-522-4191
865-522-0910 (fax)
ampriest@pfph-law.com
Assigned: 01/11/2012
ATTORNEY TO BE NOTICED

representing **Mai L Moore**
7314 English Cove
Memphis, TN 38125
(*Plaintiff*)

Matthew H. Raty

Law Office of Matthew H. Raty, PC
9730 S. 700 East, Suite 110
Sandy, UT 84070
801-495-2252
Assigned: 01/13/2012
ATTORNEY TO BE NOTICED

representing **Corin Hall**
(*Plaintiff*)

Robert Hall
(*Plaintiff*)

Ted C. Raynor

BURCH PORTER & JOHNSON
130 N. Court Avenue
Memphis, TN 38103-2217
901-524-5122
901-524-5024 (fax)
traynor@bpjlaw.com
Assigned: 01/12/2012
ATTORNEY TO BE NOTICED

representing **Skechers Fitness Group**
(*Defendant*)

Skechers, USA Inc.
(*Defendant*)

Skechers, USA, Inc. II
(*Defendant*)

Gregory Scott Savage

Wilson Elser Moskowitz Edelman & Dicker LLP

500 East Pratt Street
Suite 600
Baltimore, MD 21202

representing

Skechers Fitness Group

14105391800
14109628758 (fax)
gregory.savage@wilsonelser.com
Assigned: 12/21/2011
ATTORNEY TO BE NOTICED

(Defendant)

Skechers, USA Inc.
(Defendant)

Skechers, USA, Inc. II
(Defendant)

Paul J. Schachter
Schachter Hendy & Johnson, PSC
909 Wright's Summit Parkway, Suite 210
Ft. Wright, KY 41011
606-578-4444
578-4440 (fax)
pschachter@pschachter.com
Assigned: 12/20/2011
ATTORNEY TO BE NOTICED

representing

Allison Drury
(Plaintiff)

Melissa Kearnelly
(Plaintiff)

Richard Kearnelly
(Plaintiff)

Lynne P. Orsine
(Plaintiff)

Raymond J. Orsine
(Plaintiff)

Jessica Wilson
Canton
(Plaintiff)

Holly Ward
(Plaintiff)

Timothy Scott Ward
(Plaintiff)

Richard W. Schulte

Behnke, Martin & Schulte
812 East National Road
Vandalia, OH 45377
937-435-9999
937-435-7511 (fax)
rschulte@legaldayton.com
Assigned: 12/21/2011
ATTORNEY TO BE NOTICED

representing

Linda Nell
(Plaintiff)

Gale Leiter
(Plaintiff)

Karita Pierson
(Plaintiff)

Lisa Delzoppo-Patel
(Plaintiff)

Charles H. Thronson

Parsons Behle & Latimer
201 S. Main Street, Suite 1800
Salt Lake City, UT 84111
801-532-1234
801-536-6111 (fax)
Assigned: 01/13/2012
ATTORNEY TO BE NOTICED

representing

Michael Stults
(Plaintiff)

Peggy Stults
(Plaintiff)

Jay R. Vaughn

Busald, Funk & Zevely, PSC
226 Main Street
P.O. Box 6910
Florence, KY 41042-6910
859-371-3600
859-525-1040 (fax)
jayvaughn@bfzlaw.com
Assigned: 12/20/2011

representing

Allison Drury
(Plaintiff)

ATTORNEY TO BE NOTICED

Lisa Fuller
(Plaintiff)

Terry Fuller
(Plaintiff)

Holly Ward
(Plaintiff)

Timothy Scott Ward
(Plaintiff)

James Andrew Vines
Wright, Lindsey & Jennings - Little Rock
200 West Capitol Avenue
Suite 2300
Little Rock, AR 72201-3699
501-212-1237
avines@wlj.com
Assigned: 12/20/2011
ATTORNEY TO BE NOTICED

representing

Skechers Fitness Group
(Defendant)

Skechers, USA Inc.
(Defendant)

Skechers, USA, Inc. II
(Defendant)

Morgan E. Welch
Welch, Brewer and Hudson LLC
One Riverfront Place
Suite 413
North Little Rock, AR 72114
501-978-3030
501-978-3050 (fax)
mwelch@wbhlawfirm.com
Assigned: 12/20/2011
ATTORNEY TO BE NOTICED

representing

Lisa Fuller
(Plaintiff)

Terry Fuller

(Plaintiff)