

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

IN RE:	:	
SKECHERS TONING SHOE	:	CASE: 3:11-md-02308-TBR
PRODUCT LIABILITY LITIGATION	:	
-----	:	MDL No.: 2308
	:	
This Document Applies to All Actions	:	
-----	:	Judge Thomas B. Russell

PRACTICE AND PROCEDURE ORDER NO. 3

1. SCOPE

- 1.1 This Order, issued pursuant to 18 U.S.C. § 1407(a), will govern the practices and procedure in personal injury claims in: (1) those actions transferred to this Court by the Judicial Panel on Multidistrict Litigation, pursuant to its order of December 19, 2011, and (2) all related cases originally filed in this Court or transferred or removed to this Court pursuant to Case Management Order No. 1.

- 1.2 This Order will also govern the practice and procedure in personal injury claims in: (1) any tag-along actions transferred to this Court by the Judicial Panel on Multidistrict Litigation, pursuant to Rule 1 of the Rules of Procedure that Panel, i.e., those actions transferred after the filing of the final transfer order by the Clerk of this Court; and (2) any related actions subsequently filed in this Court or transferred or removed to this Court pursuant to Case Management Order No. 1.

2. FILING AND SERVICE

- 2.1 Filing will be performed pursuant to the WDKY CM/ECF guidelines. All papers filed in these actions must bear the identification “MDL Docket

No. 3:11-md-02308-TBR” docket number must be followed only by notation ALL CASES. If the paper does not relate to all of these actions, then the individual docket numbers of those actions to which the paper relates, as assigned by the Clerk of this Court, must also be listed. If the paper relates to five or fewer actions, the abbreviated caption of each of the actions may be listed opposite its number.

- 2.2 Any paper filed in any of these actions must be filed with the Clerk of this Court and not with the transferor district court. No pleadings will be accepted or filed by any member of the staff of the District Judge or Magistrate Judge.
- 2.3 Faxed pleadings will not be accepted for filing by the Clerk’s Office or by the Court.
- 2.4 Any paper filed in any of these actions that is substantially identical to any other paper filed in another of these actions will be sufficient if it incorporates by reference the paper to which it is substantially identical. Where the counsel for more than one party plan to file substantially identical papers, they must join in the submission of those papers and will file only one paper on behalf of all so joined.
- 2.5 Counsel named in 2.6 do not need to provide the Court with courtesy of all papers filed with the Clerk. Service will be deemed effective in accordance with the Federal Rules of Civil Procedure, the Local Rules in the Western District of Kentucky, and the applicable CM/ECF guidelines, and will be made upon the following, in addition Liaison Counsel:

In the case of service on Skechers—

LEAD COUNSEL

Michael D. Eagen
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255 E. 5th St., Suite 1900
Cincinnati, OH 45202
Phone: (513) 977-8578
Fax: (513) 977-8141
Email: michael.eagen@dinsmore.com

LIAISON COUNSEL

Jill F. Endicott
DINSMORE & SHOHL LLP
101 South Fifth Street, Suite 2500
Louisville, KY 40202
Phone: (502) 581-8000
Fax: (502) 581-8111
Email: jill.endicott@dinsmore.com

In the case of service upon plaintiffs –

Ronald E. Johnson, Jr., Esq.
Schachter Hendy & Johnson, PSC
909 Wright's Summit Parkway, Ste. 210
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Robert K. Jenner, Esq.
Janet Jenner & Suggs, LLC
Commerce Centre East, Suite 165
1777 Reistertown Road
Baltimore, MD 21208
PH: 410-653-3200
FAX: 410-653-6903

In the case of case-specific filings, service must also be made upon counsel for plaintiff(s) in that case.

- 2.6 Plaintiffs' Liaison Counsel will provide a copy to incoming counsel of all Orders in MDL 3:11-md-02308-TBR.

- 2.7 Pursuant to page 5 of the Court's previous case management order entered on January 31, 2012, the Court maintains a service list of attorneys for MDL 2308 and each individual matter linked to it. This list is continuously revised by the Court and can be accessed via a link through the Court's website by all registered ECF users or anyone with a PACER account. This list shall constitute the Master Service List for MDL 2308 and the individual cases that are part of MDL 2308.
- 2.8 Within 5 days of receipt by counsel in cases now or in the future made part of MDL 2308, all Counsel are required to view the then-current Master Service List to ensure their names, addresses, and e-mail addresses are correct. Any attorney who wishes to have his/her name added to, deleted from, or corrected on the Master Service List shall contact their appropriate Liaison Counsel for assistance in filing the appropriate pleadings with the Court. The appropriate Liaison Counsel shall work with counsel in any cases transferred or added to MDL 2308 after the date of this order to ensure they are properly registered through the ECF system with correct names, address, and e-mail addresses. Compliance with the provisions of this paragraph shall constitute compliance the Counsel's responsibilities with regard to Master Service List. To the extent that this provision conflicts with page 5 of the Court's case management order of January 31, 2012, this provision applies and governs the addition or removal of Counsel from the Master Service List.
- 2.9 In the interest of efficiency and conservation of judicial resources, only electronic notification of filings will be given to Counsel on the Master Service List through the ECF system. The Clerk of the Court will not issue notification of filings on the Master Service List via tangible paper copies. To the extent that any Counsel requests to be removed from and no longer receive notifications via the Master Service List but still represents a party subject to this MDL, it is the responsibility of that Counsel to stay current with the orders and proceedings of this MDL. No tangible paper copies will be served on Counsel requesting to be removed from electronic notification in MDL 2308.

3. APPEARANCE OF COUNSEL

- 3.1 Counsel who appeared in the transferor district court prior to the transfer need not enter a separate appearance before this Court.
- 3.2 No parties to any of the actions will be required to obtain local counsel in this district, and the requirements of Local Rule 83.5 are waived as to any attorney appearing in these actions who is duly admitted to practice before any United States District Court. Attorneys who are not so admitted to a United States District Court must comply with Local Rule 83.5. The Court will be liberal in granting waivers from the requirement that local counsel be designated.

4. HEARINGS

- 4.1 Hearings will not be held on any motions filed by order of the Court. Requests for Hearings must be made in writing.

5. PENDING MOTIONS AND ORDERS

- 5.1 The parties must advise the Court of any pending motions, filed in the transferor court and requiring decision, within seven (7) days of this order. Absent such notice, the Court will not consider motions pending at the time of the transfer.
- 5.2 Any orders, including protective orders, previously entered by this Court or any transferor district court will remain in full force and effect, unless expressly vacated by subsequent order of this Court.

6. DISCOVERY AND MOTIONS

- 6.1 No motion (other than under Fed. R. Civ. P.12) will be filed unless it includes a certification that the movant has conferred with opposing parties and made a good faith effort to resolve the matter without Court action.

6.2 All disclosure obligations and discovery proceedings established in the transferor forums will remain in effect, except as provided in this Order.

6.3 Discovery requests and responses will not be filed with this Court except when specifically ordered by the Court or to the extent needed in connection with a motion.

7. MANUAL FOR COMPLEX LITIGATION

7.1 The Court will be guided by the Manual for Complex Litigation – Fourth, approved by the Judicial Conference of the United States, and counsel is directed to become well acquainted with that publication.

8. ORGANIZATION OF PLAINTIFFS' COUNSEL

8.1 Lead Counsel

8.1.1 Lead Counsel shall be:

Ronald E. Johnson, Jr., Esq.
Schachter Hendy & Johnson, PSC
909 Wright's Summit Parkway, Ste. 210
Ft. Wright, KY 41011
PH: 859-578-4444
FAX: 859-578-4440

Robert K. Jenner, Esq.
Janet Jenner & Suggs, LLC
Commerce Centre East, Suite 165
1777 Reistertown Road
Baltimore, MD 21208
PH: 410-653-3200
FAX: 410-653-6903

8.1.2 Lead Counsel will be responsible for prosecuting the claims as more specifically defined in this Order, as well as coordinating the pretrial proceedings conducted by counsel for the individual personal injury plaintiffs. With respect to the claims Lead Counsel must:

- (a) determine (after such consultation with members of Plaintiffs' Steering 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 matters arising during pretrial proceedings.
- (b) 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, except that discovery and motions initiated by defendants directed to named individual plaintiffs will be handled by the attorney for those individuals;
- (c) delegate specific tasks to other counsel in a manner to ensure that pretrial preparation for the plaintiffs is conducted effectively, efficiently, and economically;
- (d) enter into stipulations, with opposing counsel, necessary for the conduct of the litigation;
- (e) call meetings of the Plaintiffs' Steering Committee for the purpose of proposing joint action;
- (f) organize themselves and agree on a plan for conducting the litigation on behalf of all plaintiffs;
- (g) conduct pretrial, trial and post-trial proceedings of the claims;

- (h) brief and argue motions for the plaintiffs and file opposing briefs and argue motions in proceedings initiated by other parties (except as to matters specifically directed to individual plaintiffs and their counsel);
- (i) Consult with and employ experts with respect to the claims;
- (j) call meetings of plaintiffs' counsel when appropriate to consult with plaintiffs' counsel on matters of common concern;
- (k) maintain time and expense records for work performed, costs incurred and other disbursements made for the mdl, proof of claims and related matters advanced by Lead Counsel on behalf of the Plaintiffs' Steering Committee and report, with reasonable regularity, in writing, to the Plaintiffs' Steering Committee concerning expenses, disbursements and receipts;
- (l) monitor work performed by the Plaintiffs' Steering Committee and those who work it has specifically authorized;
- (m) perform all tasks necessary to carry out the functions of Lead Counsel and to properly coordinate plaintiffs' pretrial activities;
- (n) negotiate settlements, subject to court approval, on behalf of plaintiffs;
- (o) if there is a settlement, propose a plan of allocation;
and
- (p) prepare and distribute to the parties periodic status reports.

8.1.3 No discovery or other action or work in this litigation will be undertaken on behalf of any plaintiff except at the direction or with the permission of Lead Counsel; provided, however, that any attorney aggrieved by any refusal of permission may seek Court review of the refusal.

8.2 Plaintiffs' Liaison Counsel

8.2.1 Plaintiffs' Liaison Counsel is:

Penny Unkraut Hendy, Esq.
Schachter Hendy & Johnson, PSC
909 Wright's Summit Parkway, Ste. 210
Ft. Wright, KY 41011
PH: 859-578-4444
FAX: 859-578-4440

8.2.2 Plaintiffs' Liaison Counsel must:

- (a) maintain and distribute to the Court, co-counsel and to Defendants' Liaison Counsel an up-to-date list of all plaintiffs' counsel, including the date of the most recent revision;
- (b) receive and, as appropriate, distribute to co-counsel orders from the Court and documents from opposing parties and counsel;
- (c) maintain and make available to co-counsel at reasonable hours a complete file of all documents served by or upon each party except such documents as may be available at a document depository;
- (d) act as spokesperson on behalf of plaintiffs at pretrial conferences and hearings subject to the right of each party to present individual or divergent positions;

- (e) coordinate and communicate with defendants' counsel with respect to the matters addressed in this paragraph.

8.3 Plaintiffs' Steering Committee

8.3.1 The membership of Plaintiffs' Steering Committee ("PSC") will be composed of Lead Counsel, Liaison Counsel and a reasonable number of additional members. Plaintiffs' Lead Counsel are to submit the names of additional proposed members by filing a Proposed Membership with the Court.

8.3.2. The members of PSC shall from time to time consult with Lead Counsel in coordinating the plaintiffs' pretrial activities and in planning for trial.

8.4 The PSC, will promptly set up procedures for documenting and monitoring costs.

9. COMPENSATION AND TIME AND EXPENSE RECORDS

Counsel who anticipate seeking an award of attorney's fees and reimbursement of expenditures from the Court must comply with the directives contained in The Manual for Complex Litigation, Fourth §41.32, regarding the maintenance and filing of contemporaneous records reflecting the services performed and the expenses incurred. Lead Counsel, Liaison Counsel and the PSC are appointed with the understanding that they will not be compensated for services rendered in their court-appointed positions. However, if the efforts of counsel confer a substantial benefit upon other counsel and their clients, the Court may consider reimbursing counsel for costs expended for the common benefit of plaintiffs, and providing compensation to counsel on terms to be determined at the appropriate time.

10. ORGANIZATION OF DEFENDANT'S COUNSEL

10.1 Designation of Defendant's Lead and Liaison Counsel.

Lead Counsel for Skechers shall be:

Michael D. Eagen
DINSMORE & SHOHL LLP
255 E. 5th St., Suite 1900
Cincinnati, OH 45202
Phone: (513) 977-8578
Fax: (513) 977-8141
Email: michael.eagen@dinsmore.com

Liaison Counsel for Skechers shall be:

Jill F. Endicott
DINSMORE & SHOHL LLP
101 South Fifth Street, Suite 2500
Louisville, KY 40202
Phone: (502) 581-8000
Fax: (502) 581-8111

10.2 Email: jill.endicott@dinsmore.com Responsibilities of Defendants'

Liaison Counsel.

Defendants' Liaison Counsel shall have the following responsibilities:

- (a) notify the MDL Panel of tag-along cases
- (b) maintain and distribute to the Court, co-counsel and to Plaintiffs' Liaison Counsel an up-to-date service list of all defendants' counsel, including the date of the most recent revision;
- (c) receive orders and notices from the Court on behalf of all defendants and transmit copies of such orders and notices to the parties in the Liaison Group;
- (d) maintain complete files of copies of such orders and notices and make the files available to defendants' counsel upon request; and

- (e) receive orders and notices from the Judicial Panel on Multidistrict Litigation pursuant to Rule 8(e) of the Panel's Rules of Procedure on behalf of all defendants and transmit, or otherwise communicate the substance of, such orders and notices to defendants' counsel.

11. MODIFICATIONS TO THE LOCAL RULES

The local rules of this Court will apply, to the extent that they are not superseded by this and subsequent practice and procedure orders.

12. CONFIDENTIALITY ORDER

It is likely that an appropriate Confidentiality Order will be entered. It will be separate, and will be drawn as narrowly as is reasonable. This Confidentiality Order will supersede any previous orders regarding confidentiality.

IT IS SO ORDERED.