

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

IN RE:

**SKECHERS TONING SHOE
PRODUCT LIABILITY LITIGATION**

: CASE: 3:11-md-02308-TBR

:

: MDL No.: 2308

:

This Document Applies to All Actions

:

: Judge Thomas B. Russell

PRACTICE AND PROCEDURE ORDER NO. 6:
GUIDELINES FOR MDL NO. 2308 PLAINTIFFS' PERSONAL INJURY
COUNSEL FOR TIME AND EXPENSE REPORTING OF COMMON
BENEFIT FEES AND RELATED COSTS.

This Practice and Procedure Order No. 6 shall apply to all personal injury claims pending before the Court in MDL No. 2308.

The Court recognizes that common benefit time and expense items reported must be reasonable and necessary for the collective prosecution of In re: Skechers Toning Shoes Product Liability Litigation personal injury cases and plaintiffs as a whole and not for individual clients. The Guidelines for Common Benefit Time and Expense Reporting set forth herein will be complied with by the Plaintiffs' Steering Committee and all associating state-court personal injury counsel.¹ Reporting for time and expenses will be on a monthly basis. The first time and expense report and will be cumulative for the hours expended and expenses incurred during this litigation up to and including July 1, 2012.

REPORTING GUIDELINES

A. TIME

Common benefit time will be reported consistent with the instructions attached hereto in Exhibit A, and will be reported to Plaintiffs' Steering Committee liaison counsel, Penny Hendy, on a quarterly basis beginning on July 1, 2012. Only time spent and incurred on matters common to all claimants and assigned by Co-Lead Counsel or

¹ An "associating" or "associated" state-court personal injury counsel is one who has executed a form consenting to the protocol for common benefit fees and related costs, together with the proposed assessment of 3% on each individual case filed in state court.

designated Plaintiffs' Steering Committee counsel will be considered for reimbursement or an award of fees. **Time spent on developing or processing a case for an individual client will not be considered and may not be submitted.** The Court may consider reimbursement of time spent preparing for and trying a bellwether case. Any time submitted in violation will be disallowed.

B. **EXPENSES**

Common benefit expenses will be reported consistent with the guidelines set forth below and submitted on the form attached hereto in Exhibit B. Common benefit expenses will be reported to the chair of the Common Benefit Fee Committee, Penny Hendy, on a quarterly basis as set forth in paragraph G, beginning on July 1, 2012.

1. **Receipts:**

Each expense claimed must be properly documented by a receipt or some other form of proof of payment acceptable for presentation and approval by the Court.

2. **Airfare:**

Economy class airfare may be fully reimbursed, subject to Plaintiffs' Steering Committee approval.

3. **Hotels:**

Hotel accommodations will be reimbursed at rates up to \$300 per night or the average of the Hyatt, Hilton, and Marriott hotels in that city. Charges for movies, laundry, toiletries, etc. will not be reimbursed.

4. **Meals:**

A copy of the restaurant receipt must be submitted. Charges for alcohol will not be reimbursed.

5. **Mileage:**

Mileage claims must be documented by stating origination point; destination, total actual miles for each trip; and the rate-per mile paid by the individual Plaintiffs' Steering Committee member's firm. The maximum allowable rate will be the current allowable rate set by the IRS (currently \$0.555 per mile)

6. **Long Distance and Cellular Telephone:**

Long distance telephone expenses must be documented. Only actual charges are reimbursable.

7. **Federal Express, Local Courier Service or Other Courier:**

All claimed expenses must be documented with bills showing the sender, origin of the package, recipient and destination of the package.

8. **Postage Charges:**

A contemporaneous postage log or other supporting documentation must be maintained and submitted. Postage charges are to be reported at actual cost.

9. **Facsimile Charges:**

Contemporaneous records should be maintained and submitted showing faxes sent and received. The per-fax charge shall not exceed \$1.00 per page.

10. **In-House Photocopy:**

A contemporaneous photocopy log or other supporting documentation must be maintained and submitted. The maximum copy charge is .25 per page.

11. **Secretarial and Clerical Overtime:**

Contemporaneous records should be maintained and submitted showing hours worked and specific common benefit project supported.

12. **Lexis/Westlaw**

Claims for expenses relating to computerized legal research, i.e. LEXIS or WESTLAW, should be in the exact amount charges to the Plaintiffs' Steering Committee member's firm for these research services and not for the "value" of these services.

13. **Deposition Costs, Expert Witness Fees, and Exhibit Costs:**

Fees and cost associated with pretrial discovery that are authorized by Co-Lead Counsel or designated Plaintiffs' Steering Committee counsel will generally be paid directly by the Plaintiffs' Steering Committee.

14. Equipment Purchases:

Purchase of equipment is not to be claimed, absent special circumstances approved in advance by Co-Lead Counsel or designated Plaintiffs' Steering Committee counsel.

15. Monetary Sanctions:

No monetary sanction levied by the Court on any Plaintiffs' Steering Committee member shall be reported as an expense.

C. EXCEPTIONS

The only exceptions to these guidelines shall be as specifically approved by co-lead counsel.

D. APPLICABILITY OF PROCEDURES

Each attorney submitting a time and expense statement shall be considered as representing to the Court, under oath, that the time and expense submitted meets the criteria set forth herein.

E. EXPLANATION OF COMMON SHARED COSTS VS. HELD COSTS

1. Common Shared Costs:

Costs of substantial nature under the below categories shall be considered "Common Shared Costs" (subject to reimbursement from the general litigation fund):

- a. Court, filing, & service costs;
- b. Deposition and court reporter costs;
- c. Document Depository: Creation and Administration – Equipment for Liaison Counsel and Plaintiffs' Steering Committee Administrative Matters (including but not limited to Verilaw service, web site., etc.);
- d. Equipment and leases for group common expenses (e.g.: computer equipment);
- e. Expert witness and consultant fees;

- f. Extraordinary postage (mass mailing);
- g. Printing, copying, coding, scanning (out of house or extraordinary and related solely to common issues);
- h. Plaintiffs' Steering Committee group meetings and expenses as approved by Plaintiffs' Steering Committee;
- i. Research by outside third party;
- j. Telephone conference calls (third party);
- k. Common Witness expenses including travel; and
- l. Translation Cost.

2. Held Costs:

- a. Fax charges;
- b. Meals & Entertainment;
- c. Office administration;
- d. Postage, Shipping, Courier, Certified Mail;
- e. Printing & Photocopying (in-house);
- f. Computerized research – Lexis/Westlaw;
- g. Secretarial and staff overtime;
- h. Supplies;
- i. Telephone – local and long distance;
- j. Temporary Personnel;
- k. Travel – non-common witness, attorney for deposition, court, or legislative including:
 - i. Airfare
 - ii. Reasonable ground transportation
 - iii. Hotel up to \$300/night or the average of Hyatt, Hilton, and Marriott hotel rates in that city.
 - iv. Reasonable meals
 - v. Reasonable other (i.e., parking)
 - vi. Assessments;
- l. Bank charges/Interest;

- m. Car rental, cabs, etc.; and
- n. Investigative Services.

F. SUBMISSION OF SHARED AND HELD EXPENSES

The attached expense report shall be completed and submitted with copies of receipts and logs. (*See* Exhibits A and B).

G. COMMON BENEFIT FEE COMMITTEE

For purposes of this PPO No. 6, the term “Common Benefit Work and Costs” shall mean activities and their related costs that substantially benefited and advanced the plaintiffs’ generic claims in this personal injury litigation toward a favorable resolution for all or for a substantial, identifiable group of personal injury plaintiffs in cases consolidated in these MDL proceedings, including activities and related costs in connection with the settlement of all pending personal injury claims as against one or more defendants.

The Common Benefit Fee Committee shall be responsible for collecting all billings for Common Benefit Work and Costs submitted in this litigation pursuant to this PPO. The Common Benefit Fee Committee shall thereafter conduct an audit of all such submittals to determine if each complies with the standard set forth in this PPO and subparagraphs 1 and 6 herein. Decisions by the Common Benefit Fee Committee prior to the submission of an application for the Common Benefit Fees pursuant to paragraph 6 herein.

The Common Benefit Fee Committee shall include the following; Ronald E. Johnson, Jr., Esq. Robert K. Jenner, Esq., Penny Unkraut Hendy, Esq. and Richard Schulte, Esq.

The Common Benefit Fee Committee shall determine the following:

1. Hourly rates that shall be applied to the time submissions of all billings submitted for common benefit fees in this litigation. Because this litigation is national in scope and is not concentrated in only a few transferor federal courts, uniform hourly rates shall be established by the Common Benefits Fee Committee for various levels of

experience, success and professional standing of lawyers involved in this litigation; and a proposed schedule by which audits of all common benefit fee and cost submissions filed on or before December 31, 2012 shall be completed, which schedule shall be distributed to all MDL plaintiffs' counsel on or before September 1, 2012.

2. All audits conducted pursuant to the above shall apply the following standard in connection with billings for common benefit work and related costs:

a. Billings for Common Benefit Fees and Related Costs shall be considered compensable, subject to compliance with the remaining standard set forth in the CMO. Billings for fees or costs that do not meet this definition shall be recognized as compensable time or costs in any audit by the Common Benefit Fees Committee.

i. For example, time spent on individual cases (*i.e.*, discovery, gathering medical records, client communications, settlement efforts) will not be recognized as compensable. However, time spent on developing evidence or a theory of recovery that promotes the common interests of a substantial number of MDL claimants will be considered compensable common benefit time.

b. Billings for time spent conducting discovery in this MDL, authorized by the Plaintiffs' Discovery Committee, shall be presumptively compensable, subject to application of the remaining considerations set forth herein.

c. Billings for time spent pursuing the following activities shall presumptively be compensable, subject to compliance with the remaining standards set forth in this PPO:

i. Research, drafting, revision, negotiation and argument of MDL pleadings, motions, PPOs, and other MDL court filings on behalf of the Plaintiffs' Steering Committee and argument including petition for §1407 centralization before the JPML;

ii. Lead and Liaison Counsel activities;

- iii. Review, analysis, prioritization and organization of MDL Defendants' Document Production and Depository Management;
 - iv. Research drafting, revision of written generic MDL fact discovery requests, and review and analysis of responses thereto;
 - v. Preparation for and conduct of MDL Fact Depositions;
 - vi. Preparation for and attendance at Plaintiffs' MDL;
 - vii. Preparation of MDL Trial Package and materials included therein;
 - viii. Preparation for and presentation at the MDL informational hearings;
 - ix. Work in connection with MDL Generic Experts, including
 - 1. Expert Retention;
 - 2. Preparation of Rule 26 Reports of MDL Generic Experts;
 - 3. Preservation Depositions of MDL Generic Experts
 - 4. MDL Daubert Motion Research and Briefing;
 - 5. Preparation for and conduct of presentations at the MDL Daubert Hearings;
 - x. Preparation for and presentations at MDL trial seminars;
and
 - xi. Review, analysis, negotiation and documentation of any settlement of all claims pending in this MDL against one or more defendants.
- d. Billings for time spent on common benefit work that is determined to be either (i) excessive considering the difficulty and complexity of the work performed or (ii) demonstrably inadequate in quality given the same considerations shall be reduced to an amount which appropriately reflects the time which, in the good faith belief of the

Common Benefit Fee Committee, should have been reasonably and appropriately spent to perform the quality of work achieved.

- e. Billings for time spent observing others perform common benefit work, such as time spent in attending depositions or court proceedings, where the billing counsel has not been assigned any specific responsibility or role at such proceedings by the Plaintiffs' Steering Committee or Plaintiffs' Discovery Committee, will not be considered to confer a common benefit, and therefore will not be considered compensable.
- f. Billings for time spent reviewing MDL related e-mail and MDL filings shall not be compensable.
- g. Billings for time spent which fails to describe the work performed with sufficient levels of detail or clarity to permit the Common Benefit Fee Committee to determine whether it is common benefit time will not be considered compensable time.

All plaintiffs' firms or attorneys claiming compensations from the Common Fund for fees or costs, or for any award of fees and/or costs that meets the definition of Common Benefit Fees and Related Costs contained herein, shall submit an application for same to the Court on a schedule and in a manner to be specified in a future order of the Court. However, no such application shall be considered by the Court unless and until the applicant certifies that an audit has been conducted by the Common Benefit Fees Committee and that the applicant has reviewed the audit results with the Common Benefit Fees Committee. At a time and manner to be specified in said future order, the Common Benefit Fee Committee shall submit its recommendations regarding both the nature and extent of common benefit fees and costs to be awarded in this MDL and its recommendations regarding each fee application filed and the reasons for that determination. Lastly, that future order will specify a procedure under which hearings, if any, regarding disputed time or costs shall be permitted, scheduled and conducted.

IT IS ORDERED that all attorneys must fully comply with the provisions set forth above in order to be compensated for any and all time and expense submissions. The guidelines set forth in this PPO and in Exhibit A must be followed when submitting time. The form which is attached hereto as Exhibit B must be used when submitting expenses. Non-compliance with this Order will results in a denial of reimbursement.

IT IS SO ORDERED.


Thomas B. Russell, Senior Judge
United States District Court

May 3, 2012

EXHIBIT A

In Re: Skechers Toning Shoe Products Liability Litigation

To: All Participating Counsel

From: Penny Hendy, MDL Liaison Counsel

Date: _____

Re: Common Benefit Time and Expense Submissions

This Memorandum is designed to provide guidelines for each participating attorney who is submitting time and expenses for common benefit consideration.

On _____, Judge Russell entered Practice and Procedure Order No. 6: Guidelines for MDL No. 2308 Plaintiffs' Personal Injury Counsel for Time and Expense Reporting of Common Benefit Fees and Related Costs (PPO 6). In order to be eligible to submit common benefit time/expenses, you must agree to be bound by PPO 6. Other than the firms that are deemed to have executed PPO 6, because of their appointments of leadership as set forth in Practice and Procedure Order No. 3, each counsel representing a Skechers plaintiff is free to elect to either agree to PPO 6 or not. Participation is completely voluntary. However, those counsel who do not agree to PPO 6 will (a) not be provided access to the MDL and State court common benefit work product and will (b) not be able to make a submission for compensation for any time or reimbursement for expenses they incurred performing common benefit work.

You are urged to review PPO No. 6 to make sure you are familiar with the terms of those documents and the deadlines set forth therein. Please note that only time and expenses expended (a) for the common benefit of the litigation as a whole, (b) appropriately authorized or approved, (c) timely submitted and (d) properly verified will

be considered. *Work performed on your firm's individual cases will not be considered for compensation and should not be submitted.*

All time and expense submissions must be made on a monthly basis on the 15th of each month, which must include all time and expenses for which your firm seeks common benefit consideration for the previous time period, which ends on the 15th day of the prior month. The first time and expense submissions are due on _____ and should contain all time and expenses incurred for the common benefit since the beginning of this litigation through _____. The next submission will be due on _____ and should include *only* time and expenses expended between _____ and _____. This monthly cycle will continue for all future submissions (a reasonable extension of time—grace period—may be extended to those who, for good cause, cannot comply with the initial submission of _____).

All time submissions must be electronically submitted to Penny Hendy, MDL-Liaison Counsel at phendy@pschachter.com. Along with the firm name and reporting period, all submissions must include the following information:

1. Date
2. Name of each timekeeper
3. Timekeeper's attorney level:
 - a. Attorney 0-5 years
 - b. Attorney 5-10 years
 - c. Attorney 10+ years
 - d. Paralegal
 - e. Law Clerk

f. Staff

4. Billing rate
5. Hours (in 0.1 increments)
6. Detailed description of work performed

Entries that lack sufficient information to evaluate whether the task qualifies as being performed for the common benefit will be considered deficient and may not be compensated. A partner participating in this litigation in each firm must verify the accuracy of all submissions. You must submit your verification in the form of a pdf bearing the signature of a partner in your firm on the first page of each time submission.

All expense entries must be submitted on the Excel spreadsheet attached as Exhibit B to PPO 6 and as Exhibit 1 to this memorandum. They must include a detailed description of the expense incurred. By way of example, an entry that merely states “airfare” will not contain sufficient detail to adequately evaluate whether such was for the common benefit. Such entries must identify the locations between which you traveled and for what purpose (*e.g.*, airfare between Chicago and Los Angeles for the deposition of 30(b)(6) witness John Doe) in order to be considered for reimbursement. You must submit the back-up expense records maintained by your firm in the ordinary course of business with your spreadsheet in pdf or other electronic format. Back-up records should be in the form of receipts received at the time the expense was incurred, not monthly credit card statements. A partner participating in this litigation must verify the truth and accuracy of the expense submission. You must submit your verification in the form of a pdf bearing the signature of a partner in your firm on the first page of each expense submission.

Any questions concerning this memorandum should be directed to Penny Hendy.

EXHIBIT B

[illegible]