

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

IN RE:

**SKECHERS TONING SHOE
PRODUCT LIABILITY LITIGATION**

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

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: MDL No.: 2308

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This Document Applies to All Actions

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: Judge Thomas B. Russell

**FIRST AMENDED PRACTICE AND PROCEDURE ORDER NO. 6
GUIDELINES FOR TIME AND EXPENSE REPORTING OF COMMON
BENEFIT FEES AND RELATED COSTS.**

The Court recognizes that common benefit time and expense items reported must be reasonable and necessary for the collective prosecution of all *In re: Skechers Toning Shoes Product Liability Litigation* and California Consolidated Actions¹ personal injury cases and plaintiffs as a whole (not for individual clients). The Guidelines for Common Benefit Time and Expense Reporting set forth herein will be complied with by the Combined Plaintiffs’ Steering Committee² and all associating state-court personal injury counsel.³ Reporting for time and expenses will be on a quarterly basis and will be due on the 15th day of the second month following the end of that quarter, *i.e.*, approximately 45 days later. The first time and expense report, due February 15, 2015, will be cumulative for the hours expended and expenses incurred during this litigation and the California Consolidated Actions, up to and including December 31, 2014.

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REPORTING GUIDELINES

A. TIME

¹ The “California Consolidated Actions” refer to certain cases pending in the Superior Court of the State of California, Los Angeles County, before the Honorable Elihu Berle, the lead case of which is *Kathy Bartek, et al. v. Skechers USA, Inc., et al*, BC476903.

² “Combined Plaintiffs’ Steering Committee” is defined as the members of the MDL Plaintiffs’ Steering Committee and the California Consolidated Actions’ Plaintiffs’ Steering Committee.

³ 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 6% on each individual case filed in state court.

Common benefit time will be reported consistent with the forms attached hereto in Exhibit B, and will be reported to MDL Plaintiffs' Steering Committee liaison counsel, Penny Hendy, on a quarterly basis beginning on February 15, 2015. Only time spent and incurred on matters common to all claimants and assigned by Combined Co-Lead Counsel or designated Combined 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. All time records shall be submitted together with summaries. The summaries shall contain a compilation of the total hours incurred by timekeepers in each firm working on MDL or associated state court matters only. Each timekeeper's time shall be compiled by total hours and tasks for the period. Each summary shall be set forth in the form submitted on a monthly basis.

B. **EXPENSES**

Common benefit expenses will be reported consistent with the guidelines set forth below and submitted on the forms attached hereto in Exhibit B. Common benefit expenses will be reported to the chair of the Common Benefit Fee Committee ("CBFC"), Penny Hendy, on a quarterly basis as set forth in paragraph H, beginning on February 15, 2015.

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:**

First class airfare may be fully reimbursed, subject to Combined 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 Combined Plaintiffs' Steering Committee member's firm. The maximum allowable rate will be the current allowable rate set by the IRS (currently \$0.56 per mile)

6. Long Distance and Cellular Telephone:

Long distance telephone expenses must be documented. Only actual charges are reimbursable. Any and all expenses related to mobile phone use, whether in service fees or long distance calls, shall not be reimbursed.

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. Telefax 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:

As a general rule, secretarial and clerical work is not compensable. For overtime consideration, 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 Combined 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 Combined Co-Lead Counsel or designated Combined Plaintiffs' Steering Committee counsel will generally be paid directly by the Combined Plaintiffs' Steering Committee.

14. Equipment Purchases:

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

15. Monetary Sanctions:

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

C. EXCEPTIONS

The only exceptions to these guidelines shall be as specifically approved by Combined Plaintiffs' Steering Committee.

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, and service costs;
- b. Deposition and court reporter costs;
- c. Document Depository: Creation and Administration – Equipment for Liaison Counsel and combined Plaintiffs' Steering Committee administrative matters (including but not limited to Verilaw service, website, 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. Combined Plaintiffs' Steering Committee group meetings and expenses as approved by Combined 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 and entertainment;
- c. Office administration;
- d. Postage, Shipping, Courier, Certified Mail;
- e. Printing and 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 Exhibit 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 or in the California Consolidated Actions, including activities and related costs in connection with the settlement of all pending personal injury claims as against one or more defendants.

1. Membership

The CBFC shall include the following; Penny Hendy and Ronald E. Johnson, Jr. (who, collectively, shall have one vote on the Committee); Robert K. Jenner; Richard Schulte; Brooks Cutter; R. Michael Bomberger; and Martin Crump.

2. Duties

The Common Benefit Fee Committee (CBFC) shall be responsible for collecting all billings for Common Benefit Work and Costs submitted in this litigation pursuant to this PPO and the guidelines set forth in Liaison Counsel’s Memorandum, attached as Exhibit A. The CBFC shall thereafter conduct an audit of all such submittals to determine if each complies with the standard set forth in this PPO and sub-paragraphs 1 and 6 herein. Decisions by the CBFC prior to the submission of an application for the Common Benefit Fees pursuant to paragraph 6 herein.

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 CBFC for various levels of experience, success and professional standing of lawyers involved in this litigation.

3. Additional Submission Requirements and CBFC Audits

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 PPO. 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/California Consolidated claimants will be considered compensable common benefit time.
- b. Billings for time spent conducting discovery in this MDL or the California Consolidated Actions, shall be presumptively compensable, subject to application of the remaining considerations set forth herein.
- c. Billings for time spent pursuing the following activities shall be presumptively compensable, subject to compliance with the remaining standards set forth in this PPO:
 - i. Research, drafting, revision, negotiation and argument of MDL and California Consolidated pleadings, motions, CMOs, PPOs, and other MDL or Consolidated court filings on behalf of the Combined 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 and California Consolidated 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 fact depositions;
 - vi. Preparation for and attendance at Plaintiffs' MDL;
 - vii. Preparation of trial package and materials included therein;

- viii. Preparation for and presentation at the informational hearings;
 - ix. Work in connection with Generic Experts, including
 1. Expert Retention;
 2. Preparation of Rule 26 Reports of Generic Experts or the California equivalent;
 3. Preservation Depositions of Generic Experts
 4. Daubert Motion Research and Briefing;
 5. Preparation for and conduct of presentations at the Daubert Hearings;
 - x. Preparation for and presentations at trial seminars;
and
 - xi. Review, analysis, negotiation and documentation of any settlement of all claims pending in the MDL or California Consolidated Actions against one or more defendants to the extent such negotiations are designed for the common benefit and not selectively for one law firm.
- 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 CBFC, 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 Combined Plaintiffs' Steering Committee or Plaintiffs' Discovery Committee, may not be considered to confer a common benefit, and therefore may not be considered compensable.

- f. Billings for time spent reviewing e-mail and filings related to the MDL and California Consolidated 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 CBFC 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 Prof. Francis McGovern and the Court on a schedule and in a manner to be specified in a future order of the Court. However, the Court shall consider no such application unless and until the applicant certifies that an audit has been conducted by the CBFC and that the applicant has reviewed the audit results with the CBFC. At a time and manner to be specified in said future order, the CBFC shall submit to Prof. Francis McGovern its recommendations regarding both the nature and extent of common benefit fees and costs to be awarded in this MDL (as to all Common Benefit Attorneys) and its recommendations regarding each fee application filed and the reasons for that determination. In turn, Prof. McGovern shall submit to the Court its recommendations regarding each fee application 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.

The CBFC members agree that any disputes among the CBFC as to the application of this order shall be brought before and resolved by Prof. Francis McGovern, whose determination of any dispute shall be final.

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 forms which are attached hereto as Exhibit B must be used when submitted time and expenses. Non-compliance with this Order will result in a denial of reimbursement.

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