

EXHIBIT D

Relevant Portions of Transcript of
7/24/12 Preliminary Settlement Hearing

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

IN RE: SKECHERS TONING SHOES) Master File No. 3:11-MD-2308-TBR
PRODUCTS LIABILITY) MDL No. 2308
LITIGATION)
)
) July 24, 2012
) Louisville, Kentucky

TRANSCRIPT OF PRELIMINARY SETTLEMENT HEARING
BEFORE HONORABLE THOMAS B. RUSSELL
UNITED STATES DISTRICT SENIOR JUDGE

APPEARANCES:

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produced by computer.

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1 any fraudulent claims that might occur. Defendants always raise
2 this. Surprisingly, very few people actually submit fraudulent
3 claims. Fraud in class action settlements tends to be very much
4 the exception and not the rule.

5 I think those are the highlights of the settlement, Your
6 Honor. I can certainly go through other aspects of it. But
7 those are the highlights and I think the unique aspects that
8 make this settlement truly an exceptional one.

9 THE COURT: I'm sure the defendants are in accord here
10 with this. I was thinking I would let Mr. Morosoff and some of
11 the other people that have some objections to it maybe go first,
12 unless you want to chime in with something right now.

13 MR. BARKER: I agree with you wholeheartedly, Your
14 Honor. Nobody has approached the merits of the settlement that
15 has --

16 THE COURT: More procedures aspects of it.

17 MR. BARKER: Exactly.

18 THE COURT: Mr. Morosoff, I don't know who's speaking
19 for you, or more than one, but feel free to let me hear from you
20 now.

21 MR. HAFIF: Your Honor, this is Greg Hafif, if I
22 could. I'm with Morosoff.

23 THE COURT: Go ahead.

24 MR. HAFIF: Again, so the Court is aware, we really
25 are just addressing the attorney fee issue for the most part,

1 not really the merits of the settlement. That appears to be a
2 perfectly fine settlement in the whole thing. The Court can
3 rest assured there in that regard.

4 But I think Mr. Blood has stated it in that what he is
5 proposing is very unique and a novel approach to the division of
6 attorneys' fees, and although I applaud the effort that went
7 into the idea of doing it, I'm not on board with leaving his
8 firm or Mr. Blood with sole discretion on how to divide up the
9 attorneys' fees amongst all class counsel.

10 First, I think legally I don't think it's proper under
11 Rule 23 in regards to the Manual for Complex Litigation that
12 vests the award of these even amongst -- divided up amongst
13 counsel with the discretion of the Court. So at least there
14 should be some supervision in that regard by the Court.

15 This case is unique in the sense that Mr. Morosoff and
16 myself and Mr. Mandlekar, who is not with us, really kind of
17 formulated the idea of this case, discovered this case. They
18 actually then brought it to Mr. Blood's attention. We filed a
19 very similar case, I guess another firm or defendant as well,
20 and from that point Mr. Blood investigated it and filed his case
21 two weeks before we filed ours, even though it was us who
22 brought it to his attention.

23 We started the discovery process with the defendants, the
24 meet and confers. We actually even filed a class certification
25 motion, the only ones in the country to do it. Then our case

1 application to extend the 90 days in this case was filed, nor
2 was there ever a meet and confer with us asking us to agree to
3 an extension of the 90 days, which we would have gladly given
4 because the case was not even remotely positioned for a class
5 certification motion that early before any discovery or other
6 actions.

7 MR. MOROSOFF: Your Honor, this is Chris Morosoff
8 again. We don't have to fight this. We thought it was. We
9 thought this was very simple, just as this settlement has been
10 reached with no formal discovery. The fact that we are here
11 settling saying we know everything we need to know to settle
12 the case but no formal discovery has been conducted sort of --
13 it contradicts the argument that we shouldn't have filed a
14 class certification motion. They are asking you to certify a
15 class for settlement purposes right now with no formal
16 discovery.

17 In any event, if Your Honor's thinking is to put this over
18 for a week or two to accommodate Mr. Blood's vacation plans
19 before signing that preliminary approval order and give us one
20 more chance to try to work it out and maybe discuss it with Your
21 Honor, then I guess we can stop talking. But if Your Honor is
22 poised and ready to file that preliminary -- sign that
23 preliminary approval order, then we would have the same
24 objections or problems with it or same opposition to it that we
25 have put in our papers and voiced here today.

1 involved, you can call in, and those who don't, you won't have
2 to. Thank you.

3 MR. BLOOD: Thank you, Your Honor.

4 MR. MOROSOFF: Thank you.

5 THE COURT: Thank you.

6 MR. BARKER: Thank you.

7 (Proceedings concluded at 4:10 p.m.)

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10 C E R T I F I C A T E

11 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
12 THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

13 s/ Alan W. Wernecke
14 Alan W. Wernecke, RMR, CRR
Official Court Reporter

August 16, 2012

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