

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

IN RE: SKECHERS TONING SHOES
PRODUCTS LIABILITY LITIGATION

MASTER FILE No. 3:11-MD-2308-TBR

MDL No. 2308

This document relates to:

Honorable Thomas B. Russell

Hochberg, et al., v. Skechers U.S.A., Inc.
Case No. 3:12-cv-00370

**HOCHBERG'S COUNSEL REPLY BRIEF IN FURTHER SUPPORT OF THEIR
REQUEST FOR ATTORNEYS' FEES AND EXPENSES**

Hochberg's Counsel respectfully submits this Reply Brief in Further Support of Their Request for Attorney Fees and Expenses. Grabowski's Counsel "do not oppose a fee award to counsel for...Hochberg." See Grabowski Opposition to Applications for Attorneys Fees and Cost ("Grabowski Opp.") at 2. Rather, Grabowski's Counsel contends that because the Hochberg Action was filed after Grabowski Action, Hochberg's Counsel "assumed no risk in litigating this case" and therefore a multiplier on their lodestar is not "justified". *Id.* at 1, 10.

The simple fact that Hochberg Action was filed after the Grabowski Action does not mean that Hochberg's counsel did not assume risk in litigating the case. Hochberg Plaintiffs filed their case after the Grabowski Action because they recognized New York class members would not be part of the nationwide class Grabowski was seeking if the Ninth Circuit found in *Mazza v. American Honda Motor Co., Inc.* that California consumer protection statutes did not apply to non-California consumers extraterritorially. In fact, as noted in Hochberg's opening brief, after the Hochberg Action was filed, the Ninth Circuit held exactly that. As a result, Hochberg's counsel spent significant "at risk" time developing their strategy to protect New York class members, briefing Skecher's stay motion, meeting and conferring with defendants' counsel on discovery issues, and appearing before Magistrate Judge Go who ultimately set a schedule (as opposed to staying the case as urged by Skechers). Just like Grabowski's counsel, Hochberg's Counsel undertook this case on a contingency basis and success was far from guaranteed.¹

Indeed, the timing and tasks performed by Hochberg's Counsel speaks volumes that they

¹ Grabowski's Counsel states that "Counsel assumed no risk in litigating this case (they merely filed duplicate cases, some even after settlement was reached)...." *Id.* at 2. Because Grabowski's counsel's brief addresses multiple Plaintiffs, Hochberg's counsel wishes to be very clear -- this statement does not refer to the Hochberg Action, which was filed before any settlement was reached.

were proceeding on a litigation track with the sole intention of aggressively litigating the case on behalf of the New York class. When Hochberg's Counsel obtained detailed information about the settlement and determined that it fairly resolved the claims on behalf of the New York class, Hochberg's Counsel cooperated fully in the settlement process.

Moreover, Hochberg's fee request is not excessive and reflects time expended in litigation. The 2.8 multiplier Hochberg's Counsel requests is in line with the multipliers often awarded within the Sixth Circuit and the multiplier being sought by Grabowski's counsel. *See, e.g., Lowther v. AK Steel Corp.*, 1:11-cv-977, 2012 WL 6676131, at *5 (S.D. Ohio Dec. 21, 2012) (collecting cases demonstrating that a 3.06 lodestar multiplier is reasonable); *In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 767 (S.D. Ohio 2007) (lodestar multiplier of six).

CONCLUSION

Hochberg's Counsel respectfully requests that they be awarded attorneys' fees in the amount of \$450,000, and reimbursement of expenses in the amount of \$1,251.97.

Dated: February 8, 2013

GLANCY BINKOW & GOLDBERG LLP

By: s/Marc L. Godino
Marc L. Godino
1925 Century Park East
Suite 2100
Los Angeles, CA 90067
Tel: (310) 201-9150
Fax: (310) 201-9160

TAUS, CEBULASH & LANDAU, LLP

Brett H. Cebulash
Kevin S. Landau
80 Maiden Lane
Suite 1204
New York, NY 10038
Tel: (212) 931-0704
Fax: (212) 391-0703

Eric Cramer
Shanon J. Carson
BERGER & MONTAGUE P.C.
1622 Locust Street
Philadelphia, PA 19103
Tel: (215) 875-3000
Fax: (215) 875-4604

*Counsel for Plaintiffs Wendie Hochberg and
Brenda Baum*

**PROOF OF SERVICE VIA ELECTRONIC POSTING PURSUANT TO WESTERN
DISTRICT OF KENTUCKY LOCAL RULES**

I, the undersigned, say:

I am a citizen of the United States and am employed in the office of a member of the Bar of this Court. I am over the age of 18 and not a party to the within action. My business address is 1925 Century Park East, Suite 2100, Los Angeles, California 90067.

On February 8, 2013, I caused to be served the following document:

**HOCHBERG'S COUNSEL REPLY BRIEF IN FURTHER SUPPORT OF THEIR
REQUEST FOR ATTORNEYS' FEES AND EXPENSES**

By posting the document to the ECF Website of the United States District Court for the Western District of Kentucky, for receipt electronically by the parties as reflected on the attached Court's Service List.

And on any non-ECF registered party:

By Mail: By placing true and correct copies thereof in individual sealed envelopes, with postage thereon fully prepaid, which I deposited with my employer for collection and mailing by the United States Postal Service. I am readily familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, this correspondence would be deposited by my employer with the United States Postal Service that same day.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 8, 2013, at Los Angeles, California.

s/Marc L. Godino

Marc L. Godino

Mailing Information for a Case 3:11-md-02308-TBR-LLK

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Lauren S. Antonino**
lauren@antoninofirm.com
- **Katrina R Atkins**
katrina.atkins@dinslaw.com
- **Melanie S. Bailey**
mbailey@burgsimpson.com,mcook@burgsimpson.com,kpund@burgsimpson.com,tabaray@burgsimpson.com,dklaene@burgsimpson.c
- **Jeffrey A. Barker**
jbarker@omm.com
- **Erik R. Blaine**
eblaine@legaldayton.com
- **Timothy Gordon Blood**
tblood@bholaw.com,efile@bholaw.com
- **Gloria Maria Borges**
gborges@omm.com
- **Anthony Bryce Brewer**
bbrewer@wbhlawfirm.com
- **David G. Bryant**
david@jonesward.com
- **Todd D. Carpenter**
tcarpenter@bffb.com
- **Shanon J Carson**
scarson@bm.net
- **Brett H. Cebulash**
bcebulash@tcllaw.com
- **Joanna K Chan**
joannachan@omm.com
- **Norberto J. Cisneros**
ncisneros@maddoxandassociates.com,servicelv@maddoxandassociates.com
- **Darrell Sloan Cockcroft**
dcockcroft@thompsoncoe.com
- **Eric Cramer**
ecramer@bm.net
- **Kristine A Crosswhite**
kac@cls-law.com
- **Martin Daniel Crump**
martincrump@daviscrump.com,latrisha.crump@daviscrump.com
- **Patrick K Dahl**
pdahl@wickersmith.com
- **Michael G Dawson**
mgdawson@hafif.com

- **Michael D. Eagen**
michael.eagen@dinslaw.com
- **Jarrett L Ellzey , Jr**
jarrett@crafthugheslaw.com
- **Jill F. Endicott**
jill.endicott@dinsmore.com,christina.stewart@dinsmore.com
- **Jeff S Gibson**
jgibson@cohenandmalad.com
- **Pamela Gilbert**
pamelag@cuneolaw.com
- **Marc L. Godino**
mgodino@glancylaw.com,info@glancylaw.com
- **Greg K Hafif**
ghafif@hafif.com
- **Herbert Hafif**
jayna-cpb@hafif.com
- **Kenneth R. Haggard**
kenslaw@ccol.net,connielynnjohnson@hotmail.com
- **Penny U. Hendy**
phendy@pschachter.com
- **Jason Ervin Holland**
j.holland@hollandlaw.org,k.downs@hollandlaw.org
- **William Craft Hughes**
craft@crafthugheslaw.com
- **Leslie E. Hurst**
lhurst@bholaw.com
- **Troy L Isaacson**
TIsaacson@mic-law.com,servicelv@maddoxandassociates.com
- **Robert K. Jenner**
rjenner@myadvocates.com,lcraig@myadvocates.com,twoodford@myadvocates.com
- **Ronald E. Johnson , Jr**
rjohnson@pschachter.com,ssmith@pschachter.com,adavis@pschachter.com,kriesenberg@pschachter.com
- **Joshua Keller**
jkeller@milberg.com
- **David Michael Kopstein**
dkopstein@cox.net
- **Gregory L. Laker**
glaker@cohenandmalad.com,aelkins@cohenandmalad.com
- **Kevin S. Landau**
klandau@tcllaw.com
- **Irvin B. Levin**
ilevin@cohenandmalad.com,jsmock@cohenandmalad.com
- **John L. Lowery**
tammy@jllowery.com
- **Robert C. Maddox**

rmaddox@maddoxandassociates.com

- **Ray A Mandlekar**
raym@mandlekarlaw.com
- **Walter B. McClelland**
wmcclelland@m-mlegal.com
- **Barbara M. McDonald**
bmcdonald@mic-law.com
- **Jessica H. Meeder**
jmeeder@myadvocates.com,ddriver@myadvocates.com
- **Christopher J. Morosoff**
cjmorosoff@morosofflaw.com
- **Edward B. Mulligan , V**
nmulligan@cohenandmalad.com,aelkins@cohenandmalad.com
- **Patrick Shane O'Bryan**
shane.obryan@dinsmore.com,melissa.cecil@dinsmore.com
- **Dennis M. O'Hara**
dohara@wickersmith.com
- **Thomas Joseph O'Reardon , II**
toreardon@bholaw.com
- **Shea B. Oliver**
soliver@bpjlaw.com,jmccann@bpjlaw.com,mchrisman@bpjlaw.com
- **Daniel M. Petrocelli**
dpetrocelli@omm.com
- **Janine L. Pollack**
JPollack@milberg.com
- **Adam M. Priest**
ampriest@pfph-law.com
- **Ted C. Raynor**
kywd_ecf_deadletter@kywd.uscourts.gov
- **Roland W. Riggs , IV**
rriggs@milberg.com
- **Kyle T. Ring**
kyle@williamsinjurylaw.com
- **Trevor Bruce Rockstad**
trevor.rockstad@daviscrump.com
- **Joel Murray Rubenstein**
jrubenstein@germanrubenstein.com
- **Elaine A. Ryan**
eryan@bffb.com
- **Gregory Scott Savage**
kywd_ecf_deadletter@kywd.uscourts.gov
- **Paul J. Schachter**
pschachter@pschachter.com
- **Jeffrey R. Schmieler**
schmielerj@sslawfirm.com

- **Richard W. Schulte**
rschulte@yourlegalhelp.com, cartim@legaldayton.com
- **James C. Shah**
jshah@sfmslaw.com
- **Sarah N. Smith**
ssmith@pschachter.com
- **Melissa L. Stuart**
mstuart@cohenandmalad.com
- **Patricia N Syverson**
psyverson@bffb.com
- **Jay R. Vaughn**
jvaughn@pschachter.com, adavis@pschachter.com
- **James Andrew Vines**
avines@wj.com
- **Richard L. Walter**
rwalter@bsgpad.com, anorris@bsgpad.com
- **Lisa N. Walters**
waltersl@sslawfirm.com
- **J. Tanner Watkins**
tanner.watkins@dinslaw.com, kristen.gilles@dinsmore.com
- **Morgan E. Welch**
mwelch@wbhlawfirm.com
- **Jeff S Westerman**
jwesterman@milberg.com
- **Damon B. Willis**
damonwillislawyer@yahoo.com
- **Bradley Winston**
bwinston@winstonlaw.com, lwheaton@winstonlaw.com, lmaglio@winstonlaw.com, cwigand@winstonlaw.com, jdodd@winstonlaw.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

Alan Ambush

,

Debra Ambush

,

Antonio Barner

,

Sishma Barner

,

Michael C. Crowley
Office of the Attorney General of Texas
P.O. Box 12548
Austin, TX 78711-2548

In Re: Skechers Toning Shoe Products Liability Litigation

,

Carlos M. Lazatin
O'Melveny & Myers LLP

1999 Avenue of the Starts, 7th Floor
Los Angeles, CA 90067

Janet Motsiff

,

Richard E. Mrazik
Parsons Behle & Latimer
201 S. Main Street, Suite 1800
Salt Lake City, UT 84111

Matthew H. Raty
Law Office of Matthew H. Raty, PC
9730 S. 700 East, Suite 110
Sandy, UT 84070

Mark Salvato
2920 Virginia St.
Houston, TX 77098

Charles H. Thronson
Parsons Behle & Latimer
201 S. Main Street, Suite 1800
Salt Lake City, UT 84111