

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: SKECHERS TONING SHOE PRODUCTS
LIABILITY LITIGATION**

Tamara Grabowski v. Skechers U.S.A., Inc.,)	
S.D. California, C.A. No. 3:10-01300)	MDL No. 2308
Venus Morga v. Skechers U.S.A., Inc., et al.,)	
S.D. California, C.A. No. 3:10-01780)	

TRANSFER ORDER

Before the Panel:* Pursuant to Panel Rule 7.1, plaintiffs in two actions in the Southern District of California (*Grabowski* and *Morga*) and common defendant Skechers U.S.A., Inc. (Skechers) move to vacate our order that conditionally transferred the actions to MDL No. 2308. Plaintiffs in an action in the Western District of Kentucky (*Loss*) oppose the motions.

The two cases now before us are putative nationwide consumer class actions regarding the advertising of Skechers Shape-Ups toning shoes. The parties' arguments against transfer primarily turn on their assertions that (1) the claims in *Grabowski* and *Morga* are brought on behalf of nationwide classes of plaintiffs and transfer of these claims will slow the MDL proceedings and (2) the individual MDL plaintiffs' advertising claims under state consumer protection laws are secondary to or otherwise subsumed by their personal injury claims. We disagree that these considerations outweigh the benefits of transfer. Though the claims in *Grabowski* and *Morga* could conceivably encompass all of Skechers Shape-Ups advertising nationwide and the scope of such discovery will be more extensive than the separate individual actions (which presumably will focus upon representations made to individual plaintiffs), there is significant factual overlap among the discovery likely to be sought from common defendant Skechers in the MDL and these two actions. Moreover, most plaintiffs in the MDL proceedings would likely be members of the putative classes of *Grabowski* and *Morga*.

On balance, we are of the opinion that transfer under Section 1407 carries the benefit of placing all current and future factually-related actions before a single judge who can: (1) allow discovery with respect to any individual issues to proceed concurrently with pretrial proceedings on common issues, *In re Ephedra Products Liability Litigation*, 314 F.Supp.2d 1373, 1375 (J.P.M.L. 2004); and (2) ensure that pretrial proceedings are conducted in a streamlined manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties. Because the *Grabowski* and *Morga* class actions, which have been stayed for over a year, may present some unique issues (such as the propriety of class certification), the MDL No. 2308 transferee court can employ any number of pretrial techniques

* Judge John G. Heyburn II did not participate in the decision of this matter.

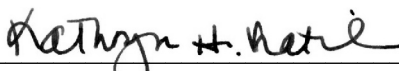
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– such as establishing separate discovery and/or motion tracks for consumer class actions and personal injury actions – to efficiently manage this litigation.

For all these reasons, and after considering all argument of counsel, we find these actions involve common questions of fact with the actions previously transferred to MDL No. 2308, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Moreover, transfer is warranted for reasons set out in our order directing centralization in which we held that the Western District of Kentucky was an appropriate Section 1407 forum for actions sharing factual questions “regarding injuries plaintiffs sustained as an alleged result of wearing purportedly defective Skechers “Shape-Ups” toning shoes, which contain a rocker bottom sole that plaintiffs contend altered their gait and caused severe lateral instability.” *In re: Skechers Toning Shoe Prods. Liab. Litig.*, ___ F.Supp. 2d ___, 2011 WL 6648903 (J.P.M.L. Dec. 19, 2011). In that order, we further noted that “additional common facts are found in plaintiffs’ allegations that Skechers promoted its toning shoes as conferring multiple health benefits in addition to those conferred by ordinary athletic shoes, while knowing that toning shoes do not confer such benefits, and that Skechers failed to warn of serious additional risks associated with use of its toning shoes.” *Id.* These “additional common facts” regarding defendant’s promotion of its toning shoe products are squarely at issue in *Grabowski* and *Morga*.

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, these actions are transferred to the Western District of Kentucky and, with the consent of that court, assigned to the Honorable Thomas B. Russell for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



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