

THE 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

HON. THOMAS B. RUSSELL

THIS DOCUMENT APPLIES TO ALL CASES

**ORDER APPOINTING
SPECIAL SETTLEMENT MASTER**

A telephonic conference was held on October 10, 2013.

The court may appoint a special settlement master to perform duties consented to by the parties. See Fed. R. Civ. P. 53(a)(1)(A). In this multi-district litigation, the parties have consented to the appointment of a special settlement master to act as a mediator in any settlement negotiations that may occur. Accordingly, **IT IS ORDERED** that:

Francis McGovern is appointed under Federal Rule of Civil Procedure 53 as a special settlement master in this multi-district litigation. He will receive correspondence at the following address: 210 Science Drive, Box 90362, Durham, NC 27708-0362. He can be reached by telephone at 919-613-7095, by facsimile at 919-613-7231, and by email at McGovern@law.duke.edu.

1. Special Settlement Master McGovern shall proceed with all reasonable diligence and shall have all the powers set forth in Federal Rule of Civil Procedure 53(c), subject to the limitations set forth in Paragraph 2, below. As such, he may adopt any procedures that are consistent with Rule 53 and orders of the Court, including but not limited to, the conducting of meetings of the parties as deemed necessary to promote meaningful settlement discussions.

2. Special Settlement Master McGovern will not act as an advocate, representative, fiduciary, or counsel for any party and has no formal coercive authority to make any binding decisions or orders, or to compel the making of any agreement or the granting of any concession.
3. In accordance with Rule 53(b)(2)(B), the Court sets forth the circumstances in which the master may communicate *ex parte* with the Court or a party as follows:
The Special Settlement Master in this proceeding is authorized to communicate *ex parte* with the Court and parties, without notice, as he deems appropriate.
4. Pursuant to Rule 53(b)(2)(C), the Court defines the nature of materials to be preserved and filed as to the record of the special settlement master's activities:
The Special Settlement Master in this proceeding shall maintain normal billing records of time spent on this matter with reasonably detailed descriptions of his activities. If the Court asks the Special Settlement Master to submit a formal report, the Special Settlement Master shall submit such report in writing for electronic filing on the case docket.
5. Rule 53(b)(2)(D) directs the Court to state “the time limits, method of filing the record, other procedures, and standards for reviewing the master’s findings and recommendations.” The Special Settlement Master shall either: (1) reduce any formal finding, report, or recommendation to writing and file it electronically on the case docket via Electronic Case Filing (“ECF”); or (2) issue any formal finding, report, or recommendation on the record, before a court reporter. Absent timely objection, the findings, reports, and recommendations of the Special

Settlement Master shall be deemed approved and accepted, unless the Court explicitly provides otherwise.

6. Special Settlement Master McGovern shall be compensated at an agreed hourly rate. This fee shall be paid to the Special Settlement Master upon receipt of his invoice. The fee shall be borne equally by the parties. If the parties disagree on a payment issue, the Court shall determine the allocation of responsibility for the payment amongst the parties.
7. The affidavit required by Rule 53(b)(3)(A) of the Federal Rules of Civil Procedure is attached as Exhibit A.

The image shows a handwritten signature in black ink that reads "Thomas B. Russell". The signature is written in a cursive style. Behind the signature is a circular seal of the United States District Court, which is partially obscured by the ink.

**Thomas B. Russell, Senior Judge
United States District Court**

October 16, 2013

P/15

Terri Turner,
Official Court Reporter,
recorded the conference

AFFIDAVIT OF FRANCIS MCGOVERN
TENDERED PURSUANT TO FED. R. CIV. P. 53

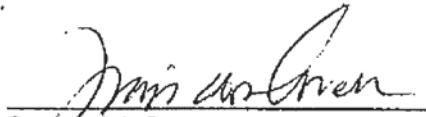
STATE OF Missouri)
) ss.
COUNTY OF St. Louis)

AFFIDAVIT

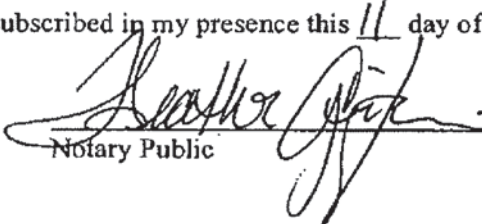
Francis McGovern, being first duly sworn according to law, states the following:

1. I am an attorney at law, duly licensed to practice law in the States of Alabama, Virginia, Texas and District of Columbia.
2. I have thoroughly familiarized myself with the issues involved in the Multi-District Litigation captioned *In re Skechers Toning Shoe Products Liability Litigation*, No. 3:11-MD-02308 (W.D.Ky.). As a result of my knowledge of that case, I can attest and affirm that there are no non-disclosed grounds for disqualification under 28 U.S.C. §455 that would prevent me from serving as the Special Master in the captioned matter.

FURTHER AFFIANT SAYETH NAUGHT.


Francis McGovern

Sworn to before me and subscribed in my presence this 11 day of October, 2013.


Notary Public

HEATHER K. GRIFFIN
Notary Public - Notary Seal
State of Missouri
Commissioned for St. Louis City
My Commission Expires: June 22, 2017
Commission Number: 13827097