

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

DAVID FOSCUE, et ux.,	:	
	:	
Plaintiffs,	:	Civil Action No. 12-7491 (SDW)
	:	Master Docket No. 09-4414 (SDW)
v.	:	MDL No. 2158
	:	
ZIMMER, INC., et al.,	:	
	:	
Defendants.	:	

MOTION FOR SUGGESTION OF REMAND

Come David Foscue and Teresa Foscue, by and through their attorneys, Gibson & Keith, PLLC, and for their Motion state:

1. This action was filed in the Circuit Court of Bradley County, Arkansas on March 12, 2012 and was removed to the Western District of Arkansas on July 18, 2012 and was transferred to this Court on December 6, 2012. This is an action concerning defects in the Zimmer Durom Cup hip replacement device.

2. Plaintiffs have complied with Case Management Order No. 1 by transmitting to liaison counsel all of the materials required by said Case Management

Order to be produced. Plaintiffs have also provided all materials requested by Zimmer for mediation. Mediation was held on May 12, 2014 before then-Magistrate Judge Arleo. The parties were unable to reach a settlement agreement. Zimmer has not served a Plaintiff Fact Sheet on these plaintiffs, so no Plaintiff Fact Sheet is due per the provisions of the *Order Clarifying The Third Scheduling Order*, **ECF 245**, ¶

2.b.ii.

3. Plaintiffs have complied with the Case Management Order Regarding Settlement Agreement entered on May 13, 2016, **ECF 925**, by completing the questionnaires required by the Settlement Agreement, by submitting all materials required by the Settlement Agreement, and by participating in mediation conducted by Court-Approved mediator Faustin Pipal on June 24, 2017. The mediation did not result in a settlement of the Plaintiffs' claims against any of the Zimmer Defendants.

4. The time for common issue fact discovery and for disclosure of common issue expert disclosure (established by the Court's *Case Management Order Regarding Initial Trial Setting and Pretrial Deadlines*, **ECF 227**) has run.

5. The remaining discovery and pretrial proceedings in *Foscue v. Zimmer*, are case-specific and can be handled most efficiently by the transferor court – the Western District of Arkansas.

6. “Each action [transferred to the MDL] shall be remanded by the [Multi-

District] panel at or before the conclusion of such pretrial proceedings to the district from which it was transferred unless it shall have been previously terminated: *Provided, however, That the panel may separate any claim, cross-claim, counter-claim, or third-party claim and remand any of such claims before the remainder of the action is remanded.*” 28 USCS § 1407 (emphasis in the original). Indeed, the order centralizing the Zimmer Durom Cup litigation in this Court states, “[i]n the event that the transferee judge determines that the further adjudication of certain claims or actions would better take place in the transferor district, we encourage him to suggest remand under Section 1407.” **ECF 11 at page 2.**

WHEREFORE, David Foscue and Teresa Foscue move this Court for a Suggestion of Remand to the Western District of Arkansas.

Respectfully Submitted,
DAVID FOSCUE & TERESA FOSCUE

BY: /s/ Paul W. Keith
Paul W. Keith Ark. Bar No. 94008
GIBSON & KEITH, PLLC
P.O. Drawer 447
Monticello, AR 71657
870 367 2438
870 367 8306 fax
pwk@gibsonandkeith.com

CERTIFICATE OF SERVICE

I, Paul W. Keith, an attorney for the Plaintiffs David Foscue and Teresa Foscue, do hereby certify that on this June 24, 2017, the foregoing pleading was filed electronically pursuant to CM/ECF procedures for the District of New Jersey, which caused enrolled counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/ Paul W. Keith

Ark. Bar No. 94008