

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

CHAMBERS OF
SUSAN D. WIGENTON
UNITED STATES DISTRICT JUDGE

MARTIN LUTHER KING COURTHOUSE
50 WALNUT ST.
NEWARK, NJ 07101
973-645-5903

September 5, 2017

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LETTER ORDER FILED WITH THE CLERK OF THE COURT

**Re: David Foscue, et al. v. Zimmer, Inc. et al.
Civil Action No. 12-7491 (SDW)(SCM)
Master Docket Case No. 09-4414 (SDW)(SCM)**

Counsel:

Before this Court is Plaintiffs David and Theresa Foscue's ("Plaintiffs") Second Motion for Suggestion of Remand (Dkt. No 74).¹ This Court having considered the parties' submissions

¹ Although Plaintiffs' request to remand was filed as a letter and does not comply with the requirements of motion practice in this district, for the purposes of this Letter Order this Court will treat the request as a motion.

and having reached its decision without oral argument pursuant to Federal Rule of Civil Procedure 78, and for the reasons discussed below, denies Plaintiffs' motion.

DISCUSSION

A. Standard of Review

28 U.S.C. § 1407(a) governs multidistrict transfer and remand and provides that matters transferred “for the convenience of the parties and witnesses” and to “promote the just and efficient conduct of such actions” shall be remanded “at or before the conclusion of such pretrial proceedings to the district from which it was transferred . . .” 28 U.S.C. § 1407(a); *see also In re Ins. Brokerage Antitrust Litig.*, MDL Dkt. No. 1663, 2009 WL 530965, at *2 (D.N.J. Mar. 3, 2009). The party seeking remand “has the burden of establishing that such remand is warranted.” *In re Integrated Res. v. Integrated Res. Equity Corp.*, 851 F. Supp. 556, 562 (S.D.N.Y. 1994) (internal citation omitted). The Judicial Panel on Multidistrict Litigation (“Panel”) has the sole power to remand a case back to the transferor district, and is “reluctant to order remand absent a suggestion of remand from the transferee district court.” R. PRO. OF JUDICIAL PANEL ON MULTIDIST. LITIG. 10.3(a). In determining whether remand is appropriate, the transferee court considers “whether the case will benefit from further coordinated proceedings as part of the MDL,” *In re Bridgestone/Firestone, Inc. ATX, ATXII & Wilderness Tires Prods. Liab. Litig.*, 128 F. Supp. 2d 1196, 1197 (S.D. Ind. 2001), and whether the court’s “role in the case has ended.” *In re Integrated Res.*, 851 F. Supp. at 562.

B. Plaintiffs' Second Motion for Suggestion of Remand is Improper

Plaintiffs originally filed suit in the Circuit Court of Bradley County, Arkansas on March 12, 2012. That action was removed to the Western District of Arkansas on July 18, 2012, and subsequently transferred to this Court on December 6, 2012. Plaintiffs filed a Motion for Suggestion of Remand on November 24, 2015. (Dkt. No. 65.) On April 4, 2016, this Court denied Plaintiffs' motion as premature, given the initiation of a proposed MDL-wide settlement program. (Dkt. No. 73.) Plaintiffs subsequently participated in the settlement process, including an unsuccessful mediation session on June 24, 2017. (Dkt. No. 74 ¶ 3.) Afterwards, Plaintiffs filed the instant Second Motion for Suggestion of Remand. (Dkt. Nos. 74, 76.)

Pursuant to Case Management Order No. 1, Plaintiffs must seek leave to file any motion with this Court. (Dkt. No. 39.) With regard to motions to remand, Plaintiffs are also required to meet and confer with defense counsel before moving to remand their case. (Master Dkt. Nos. 750, 751). Plaintiffs neither sought this Court's leave, nor conferred with defense counsel, prior to filing their motion. Therefore, Plaintiffs' motion is improper and will be **DENIED**.²

² This Court is aware of its ruling on the *Lexecon* waiver issue, addressed in this Court's Opinion dated September 1, 2015 which recognized Plaintiffs' right to seek remand of their case. However, this Court retains the authority to implement an orderly and efficient process for the remand of eligible cases. In order to effectively manage the Durom Cup Settlement Program, this Court is satisfied that questions of remand should be coordinated and not handled on a case-by-case basis.

CONCLUSION

For the reasons set forth above,

IT IS on this 5th day of September, 2017,

ORDERED that Plaintiffs' Second Motion for Suggestion of Remand is **DENIED**.

SO ORDERED.

____/s/ /Susan D. Wigenton_____

SUSAN D. WIGENTON, U.S.D.J

Orig: Clerk
cc: Parties
Steven C. Mannion, U.S.M.J.