

NOT FOR PUBLICATION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

May 1, 2018

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LETTER ORDER FILED WITH THE CLERK OF THE COURT

**Re: Michele and David Egarian v. Zimmer, Inc. et al.
Civil Action No. 18-176 (SDW)(SCM)
Master Docket Case No. 09-4414 (SDW)(SCM)**

Counsel:

Before this Court is Plaintiffs Michele and David Egarian's ("Plaintiffs") Motion For Leave to File a Motion to Remand. (Dkt. No 14). This Court having considered the parties' submissions 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.” 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’ Motion For Leave to File for Remand is Premature

Plaintiffs originally filed suit in the Superior Court of New Jersey, Law Division, Ocean County on December 5, 2017. That action was removed to this Court on January 5, 2018. (Dkt. No. 1.) Plaintiffs previously moved to remand this action to state court on February 5, 2018. (Dkt. No. 10.) This Court denied Plaintiffs’ motion because they did not seek leave to file and had failed to meet and confer with defense counsel before so moving. (*See* Dkt. No. 13.) Plaintiffs have since met and conferred with defense counsel, and now ask for leave to file a motion to remand.

This Court’s Opinion dated September 1, 2015 recognizes Plaintiffs’ right to seek remand of their case. (*See* MDL Dkt. No. 750.) 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. Because the Global Settlement Program is still ongoing, any request to remand individual actions to state court is premature. In an effort to more efficiently manage the MDL, this Court has extended its May 13, 2016 Settlement Order Regarding Settlement Agreements to include all Plaintiffs who have filed since May 31, 2016. Therefore, Plaintiffs motion for leave to file a motion to remand is denied, and Plaintiffs are ordered to participate in the Global Settlement Program.

CONCLUSION

For the reasons set forth above,

IT IS on this 1st day of May, 2018,

ORDERED that Plaintiffs' Motion for Leave to File a Motion to Remand is **DENIED** without prejudice, and it is further

ORDERED that Plaintiffs participate in the Global Settlement Program as set forth in this Court's May 13, 2016 Settlement Order and the Revised Settlement Order entered on May 1, 2018.

SO ORDERED.

____/s/ /Susan D. Wigenton_____

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

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