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February 1, 2016

VIA ECF

The Honorable Susan D. Wigenton
United States District Judge
U.S. District Court for the District of New
Jersey
Martin Luther King, Jr. Federal Building &
U.S. Courthouse
50 Walnut Street
Newark, NJ 07102

The Honorable Steven C. Mannion
United States Magistrate Judge
U.S. District Court for the District of New
Jersey
Martin Luther King, Jr. Federal Building
& U.S. Courthouse
50 Walnut Street
Newark, NJ 07102

RE: David Foscue, et al v. Zimmer, Inc., et al
U.S.D.C.N.J. 2:12-CV-07491-SDW-SCM
MDL Lead Case 2:09-CV-04414-SDW-SCM

Dear Judges Wigenton and Mannion:

We respectfully request a ruling on our clients' November 24, 2015 Motion For Suggestion of Remand [Master Docket No. 791, Foscue Docket No. 65] and offer the following:

1. March 12, 2016 will be the four-year anniversary of the filing of the Foscues' complaint in state court in Arkansas;
2. The Foscues and their counsel have made the 2600 mile round trip to New Jersey for a feckless mediation with Zimmer and within the last month I have emailed and called Zimmer counsel Stephen Bennett (to whom I was directed by plaintiffs' liaison counsel) to again attempt settlement and neither my email nor my calls have been returned;

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3. The Court has specifically ruled that the Foscues have not waived their right to remand;
4. The Foscues have submitted all of the documents required by Court order;
5. All of the common issue discovery in the Durom Cup cases has been completed;
6. All of the witnesses for case-specific discovery in the Foscues' case are in Arkansas;
7. We have conferred with Zimmer counsel, Mr. Andrew Campbell, and the only substantive reason put forth by Zimmer for declining remand is that Zimmer "does not want any one case to get ahead of the others" as to case-specific discovery and that the way to do that is to keep all of the cases in the MDL until case specific discovery is complete. As we have previously pointed out, this strategy by Zimmer has at least two flaws:
 - a. It presumes that the Federal Court in Arkansas is not capable of overseeing the case-specific discovery, which has not been shown;
 - b. It could result in the remand of almost 400 Zimmer cases for jury trials nationwide at the same time, with Zimmer then seeking continuances due to scheduling conflicts.
8. The delay is a real problem for the Foscues, who have lost significant income due to the implantation of the defective Zimmer Durom Cup hip replacement device into David Foscue, who is a practicing medical doctor. They are due their day in Court

Thank you for the Court's attention to this request for a ruling on the Motion For Suggestion of Remand.

Sincerely,



Paul W. Keith

PWK/ak

cc: David & Teresa Foscue
All counsel via ECF