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March 19, 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

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 Judge Wigenton:

We represent David Foscue and Teresa Foscue and we write to object to the Proposed Case Management Order submitted by Mr. Andrew Campbell on March 11, 2016 (4414 ECF 843 at pp 3,4, Page ID#s 14837, 14838).

The Zimmer proposed Order is obviously part of the “delay” prong of the “delay-deny-defend” litigation strategy of these sophisticated defendants to further put off the Foscues’ constitutional right to present their claims to a jury. The terms of that order would automatically extend the life of this already 4-year-old case for another 18 months before remand for trial can be had, all of which is not to mention what will undoubtedly be an additional a one-year wait *after* remand before a trial can be actually held on the Foscues’ claims. Indeed, for the Court to do anything other than immediately suggest remand of the Foscue’s case for trial would be to become part of the obstruction to the Foscue’s constitutional right to present their claims to

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a jury.

Further mediation between the Foscues and Zimmer is useless and a waste of time. On May 12, 2014, the Foscues and their lawyers made the 2,600 mile round trip to New Jersey for a feckless mediation with Zimmer before then-Magistrate Arleo. There is no reason to believe that a further mediation under the proposed Zimmer order will have a different result.

It would be added that the Foscues have reviewed the “U.S. Durom Cup Settlement Program Agreement” attached to the proposed Order and see that same does not even include their damages from the failure of the device to perform as advertised. The Foscues will never agree to the Zimmer proposal before the Court.

Consequently, the Foscues object to any order that does anything other than suggest remand of their claims to the U.S. District Court for the Western District of Arkansa. This was requested in the Foscues’ Motion For Suggestion of Remand (4414 ECF 791, 7491 ECF 65) that was filed on November 24, 2015. The Foscues requested a ruling on the Motion on December 1, 2015 (4414 ECF 801, 7491 ECF 69) and again on February 1, 2016 (4414 ECF 824, 7491 ECF 70). We are at a loss to explain to the Foscues why this Court has yet to rule on these remand requests. We do, therefore, again request the Court to rule.

If the Court does anything other than grant the Foscues’ request for suggestion of remand, the Foscues would request a formal hearing in front of the Court where they may be heard by telephone.

Sincerely,

/s/ Paul W. Keith

Paul W. Keith

PWK/ak

cc: David & Teresa Foscue
All counsel via ECF