

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: ZIMMER DUROM HIP CUP
PRODUCTS LIABILITY LITIGATION

MDL No. 2158

ORDER DENYING REMAND

Before the Panel: Plaintiffs in the *Foscue* action listed on the attached Schedule A move under Panel Rule 10.3 for Section 1407 remand to the Western District of Arkansas. Responding Zimmer defendants¹ oppose the motion.

After considering the arguments of counsel, we conclude that remand is not appropriate at this time, and therefore we deny plaintiffs' motion. In assessing the appropriateness of Section 1407 remand, we consistently have accorded great weight to the transferee judge's determination that remand of a particular action at a particular time is appropriate, given that he or she has supervised the day-to-day pretrial proceedings in the MDL. *See In re: Holiday Magic Sec. & Antitrust Litig.*, 433 F. Supp. 1125, 1126 (J.P.M.L. 1977). The transferee judge's suggestion of remand to the Panel, *see* Rule 10.1(b), reflects the judge's belief that the MDL judge's role under Section 1407 has ended. *See In re: Columbia/HCA Healthcare Corp. Qui Tam Litig. (No. II)*, 560 F. Supp. 2d 1349, 1350 (J.P.M.L. 2008).

Here, the Honorable Susan D. Wigenton, in her capacity as transferee judge, has become thoroughly familiar with the issues, and is in the best position to determine the future course of this and the other actions before her. Indeed, the judge recently considered – and rejected – the *Foscue* plaintiffs' request for a suggestion of remand. On this record, we find that plaintiffs, having failed to persuade Judge Wigenton that remand of their action is appropriate at this time, have failed to offer the Panel a valid reason why it should order remand in the absence of her suggestion.

¹ Zimmer, Inc. (now Zimmer Biomet, Inc.), and Zimmer Holdings, Inc. (now Zimmer Biomet Holdings, Inc.), and Zimmer US, Inc.

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IT IS THEREFORE ORDERED that the motion for Section 1407 remand of *Foscue* is denied.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance

Chair

Marjorie O. Rendell

Lewis A. Kaplan

R. David Proctor

Charles R. Breyer

Ellen Segal Huvelle

Catherine D. Perry

**IN RE: ZIMMER DUROM HIP CUP
PRODUCTS LIABILITY LITIGATION**

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SCHEDULE A

Western District of Arkansas

FOSCUE, ET AL. v. ZIMMER, INC., ET AL.,
C.A. No. 1:12-01083 (NJ C.A. 2:12-7491)