

IN THE
United States Court of Appeals
FOR THE SEVENTH CIRCUIT

INSTITUTO MEXICANO DEL SEGURO SOCIAL,

Plaintiff-Appellant,

—v.—

ZIMMER BIOMET HOLDINGS, INC.,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION
NO. 3:20-CV-00099-DRL-MGG
HONORABLE DAMON R. LEICHTY

**MOTION FOR LEAVE TO FILE THE BRIEF OF *AMICUS CURIAE*,
SECRETARÍA DE RELACIONES EXTERIORES DE LOS ESTADOS
UNIDOS MEXICANOS IN SUPPORT OF PLAINTIFF-APPELLANT**

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MOTION FOR LEAVE TO FILE THE
BRIEF OF AMICUS CURIAE,
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The district court dismissed an action filed by the Instituto Mexicano del Seguro Social (IMSS) against Zimmer Biomet on the basis of the discretionary *forum non conveniens* doctrine.

IMSS is an agency of the Mexican government. IMSS sued Zimmer Biomet for paying bribes to Mexican government officials to sell its products to IMSS.

The Secretaría de Relaciones Exteriores de los Estados Unidos Mexicanos (the SRE) is the equivalent of the United States Department of State. The SRE is responsible for representing Mexico's interests abroad, including, when warranted, intervening in foreign litigations when such litigations affect vital interests of the Mexican government. The anti-corruption action filed by IMSS, the subject of this appeal, is such a matter.

Mexico has a direct interest in this appeal because the district court made an express determination about the policy interests of Mexico and got it wrong. The district court's holding as to Mexico's interests in IMSS' lawsuit and the anti-corruption claims IMSS sought to bring in the district court is directly contrary to the actual policy interests of Mexico. By this *amicus* filing, Mexico desires to express for itself what Mexico's interests are and how the district court misjudged those interests.

Ironically, the district court dismissed IMSS' action against Zimmer Biomet, and thereby damaged Mexico's interests, on the express basis that Mexico's overwhelming interest in IMSS' anti-corruption claims justified that dismissal. Mexico's strong interest in IMSS' anti-corruption claims thus became a tool to damage Mexico and its anti-corruption

efforts. Mexico is concerned that the district court substituted its own judgment of what Mexico's policy position should be rather than accept the stated position of Mexico's governmental agency, IMSS.

In addition, Mexico is interested in this matter because the district court's opinion undermines the principles and protections set out in the United Nations Convention Against Corruption (the "Merída Convention"), places the United States in contravention of its obligations under that Convention, and materially damages the interests of Mexico. In brief, when the district court exercised its discretion under the *forum non conveniens* doctrine to dismiss IMSS' action, it placed the United States in violation of its international obligations under the Merída Convention. As a result, the district court's ruling adversely affects Mexico's anti-corruption policies, Mexico's rights under the Merída Convention, and Mexico's agency, IMSS.

The SRE notes that, at the request of the United Nations, this Court granted a two-week extension of the time to file an amicus brief. As explained in the declaration of Ambassador Alberto Székely in support of the United Nation's motion, Ambassador Székely was drafting a brief for the United Nations. At the same time, Ambassador Szekely was working with the SRE, but two weeks ago, the United Nations appeared to be more advanced in its processing than Mexico. Unfortunately, the United Nations did not have sufficient time to complete its work in order to join this brief. As stated in Ambassador Székely's declaration in support of the motion for extension of time, "With a two-week extension, the United Nations believes it likely that there will be a single amicus filing that states the interests of both parties." Declaration at ¶6. The other party was and is Mexico. Ambassador Székely is the principal drafter of the attached amicus filing, which was originally intended to be in behalf of Mexico and the United Nations.

Counsel for Zimmer Biomet states that Zimmer Biomet is opposed to the filing of any *amicus* brief in this appeal.

The district court made direct determinations setting out that court's view of Mexico's policy interests. Mexico requests leave to file an amicus brief that sets out Mexico's actual position. In the interests of fairness and of international comity, leave should be granted.

Dated: May 17, 2021

Respectfully submitted,

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Certificate of Service

On May 17, 2021, I caused a true and correct copy of this document to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. All participants in the case are registered CM/ECF users and service will be accomplished by the CM/ECF system.

Dated: May 17, 2021

Respectfully submitted,

/s/ Andrew P. Tower
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