

## Zimmer Biomet Bribery Suit Belongs In Mexico, 7th Circ. Says

By Celeste Bott

*Law360 (March 22, 2022, 4:59 PM EDT)* -- A Seventh Circuit panel ruled Monday that a lawsuit claiming Zimmer Biomet Holdings Inc. bribed Mexican government officials to sell unregistered medical products in Mexico belongs in that country, given the bulk of witnesses and evidence in the case are located there.

The appellate court said that while courts often give the plaintiff's choice of forum strong deference, it doesn't make sense for the lawsuit brought by Instituto Mexicano del Seguro Social to move forward in federal court in Indiana, where the medical device company is based. Given two of IMSS's claims arise under Mexican law, and the remedy of the third is identical in the United States and Mexico, the agency won't be deprived of a remedy by litigating in the Mexican courts, the panel said.

"Based on IMSS's own pleading, IMSS is an agency of the Mexican government, [Zimmer Biomet's subsidiary] is located in Mexico, the purported contracts were executed in Mexico between Mexican parties, 'Mexican agents' carried out the alleged bribery scheme, and any injury occurred in Mexico," the panel said.

IMSS is tasked with purchasing medical products distributed to Mexican citizens, and owns and operates numerous hospitals in Mexico, according to the opinion. In its January 2020 lawsuit, the agency says it purchased medical products from Zimmer Biomet, which distributes its products through subsidiary Biomet 3i Mexico, between 2008 and 2013. During that time, IMSS claims Zimmer Biomet paid around \$1 million in bribes to "Mexican agents" who passed them along to Mexican government officials so that it could sell unregistered medical products.

IMSS argued that based on Zimmer Biomet's cooperation with investigations into its global practices by the U.S. Securities and Exchange Commission and the U.S. Department of Justice — after which the company agreed to pay more than \$30 million in penalties for violating the Foreign Corrupt Practices Act in a deferred prosecution agreement in 2017 — the relevant evidence is already located in Indiana.

But the panel said Monday that the agency "points to nothing" that would warrant it reversing the district court's consideration of the materials from those investigations and its conclusion that they were "fewer in number and secondary in relevance" to evidence in Mexico.

"Nor did, as IMSS suggests, the district court ignore relevant evidence or arguments in reaching its decision," the panel said. "Merely because the district court disagreed about the weight and value of IMSS's evidence does not mean the court ignored it."

There's also no reason to disagree with the lower court's determination that Mexico's interest in this case is greater than that of the United States, and that the administrative burdens are comparatively less significant in Mexico, where the volume of evidence and witnesses likely reside, the court said.

"Nor can we ignore the impropriety of asking an Indiana jury to sit on this case and apply Mexican law to events from which they are 'highly attenuated,'" the panel said. "Even accepting IMSS's contention that, for the claims at issue, Mexican law is essentially identical to Indiana law, Mexican courts are in a better position than American courts to apply Mexican law."

U.S. Circuit Judges Joel Flaum, Amy St. Eve and Thomas Kirsch sat on the panel for the Seventh Circuit.

Counsel for the parties did not immediately respond to requests for comment on the decision.

The Instituto Mexicano del Seguro Social is represented by Mark Maney of Maney & Gonzalez-Phoenix PC and Andrew P. Tower.

Zimmer Biomet is represented by Megan R. Braden and Troy S. Brown of Morgan Lewis & Bockius LLP.

The case is Instituto Mexicano del Seguro v. Zimmer Biomet Holdings Inc., case number 21-1224, in the U.S. Court of Appeals for the Seventh Circuit.

--Editing by Jay Jackson Jr.