

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JUANA DOE I et al,

Plaintiffs

v.

IFC ASSET MANAGEMENT COMPANY,
LLC,

Defendant.

Civil Action No. 17-1494-VAC-SRF

**PLAINTIFFS' SURREPLY IN
OPPOSITION TO
DEFENDANT'S MOTION TO EXTEND
TIME**

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Dated: November 28, 2017

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Plaintiffs' opposition showed that transfer is impermissible unless Defendant could show that *both* this Court and the transferee court have jurisdiction, and that Defendant cannot meet its burden because it intends to argue that it is immune from suit in both jurisdictions. DI 19 at 3-5. Defendant's responses regarding jurisdiction in each forum misconstrue the law.

Defendant argues that this Court need not determine its own subject matter jurisdiction before transfer, citing *In re: Howmedica Osteonics Corp.*, 867 F.3d 390, 404 n.8 (3d Cir. 2017). But the court found that in many cases jurisdiction would be considered at later steps in the analysis, *id.* at 408; if it contemplated that transfer without jurisdiction could ever be proper, the cited language is *dicta*, because the district court had subject matter jurisdiction. *Id.* at 399 n.5. *Howmedica Osteonics Corp.* did not overrule the Third Circuit's prior holding that "a court may not transfer a matter over which it lacks jurisdiction." *Shendock v. Director, Office of Workers' Compensation Programs*, 893 F.2d 1458, 1467 (3d Cir. 1990) (citing *Atlantic Ship Rigging Co. v. McLellan*, 288 F.2d 589, 591 (3d Cir. 1961)).

Regardless, Defendant concedes that it must show there is subject matter jurisdiction in D.D.C., but suggests that the D.C. court would have subject-matter jurisdiction over this case due to diversity alone. This ignores the fact that any immunity defense, if valid, would defeat subject-matter jurisdiction. Indeed, Defendant's motion to dismiss in D.D.C. on immunity grounds was filed for lack of subject matter jurisdiction under Rule 12(b)(1), and the D.C. Circuit has repeatedly held that immunity under the IOIA defeats subject-matter jurisdiction. *E.g., Zuzá v. Office of the High Representative*, 857 F.3d 935, 938 (D.C. Cir. 2017).

Defendant can only meet its burden of showing that jurisdiction is proper in both fora if it waives immunity. Otherwise, this Court cannot transfer without addressing immunity.

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Respectfully submitted,

/s/Misty A. Seemans

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CERTIFICATE OF SERVICE

I, Misty A. Seemans, hereby certify that on November 28, 2017, I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

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I further certify that on November 28, 2017, I caused the foregoing document to be served via electronic mail upon the above-listed counsel and on the following:

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