

**UNITED STATES JUDICIAL PANEL**  
**on**  
**MULTIDISTRICT LITIGATION**

**IN RE: CHIQUITA BRANDS INTERNATIONAL, INC.,  
ALIEN TORT STATUTE AND SHAREHOLDERS  
DERIVATIVE LITIGATION**

MDL No. 1916

**ORDER VACATING, IN PART, CONDITIONAL REMAND ORDER**

**Before the Panel:**\* Defendant Carla A. Hills, as personal representative of the Estate of Roderick M. Hills, Sr. (the Estate) moves under Panel Rule 10.3 to vacate the Panel's order conditionally remanding the actions listed on the attached Schedule A to the District of District of Columbia and District of New Jersey, respectively. Responding plaintiffs oppose the motion.

After considering the argument of counsel, we grant the Estate's motion as to plaintiffs' claims against the Estate.<sup>1</sup> We issued the conditional remand order based on a suggestion of remand issued by the transferee judge, the Honorable Kenneth A. Marra. *See In re: Chiquita Brands Int'l, Inc., Alien Tort Statute & S'holder Derivative Litig.*, — F. Supp. 3d —, 2016 WL 3247913 (S.D. Fla. June 1, 2016). The judge issued the suggestion in conjunction with a ruling on a motion to dismiss filed by seven individual defendants in the MDL.<sup>2</sup> The suggestion was made for the purpose of allowing plaintiffs to seek transfer, post-remand, to a judicial district or districts with personal jurisdiction over these defendants in order to cure a possible lack of personal jurisdiction in the two transferor courts. *See id.* at \*15-17, \*19.

The Estate joined in the motion to dismiss filed by the individual defendants, but also filed its own separate motion to dismiss. In that separate motion, the Estate raised several probate-related grounds unique to the Estate – including grounds similar to those it has asserted in a motion to dismiss pending in a related action in the District of District of Columbia (*Hills*).<sup>3</sup> Critically, in his

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\* Judge Ellen Segal Huvelle and Judge R. David Proctor took no part in the decision of this matter.

<sup>1</sup> By separate orders, we address whether the conditional remand order should be vacated as to the claims against the other defendants in these actions.

<sup>2</sup> These defendants are Fernando Aguirre, Cyrus Freidheim, Charles Keiser, Robert Kistingner, Robert Olson, William Tsacalis, and Steven Warshaw.

<sup>3</sup> The *Hills* complaint substantively mirrors the operative complaint in the District of New Jersey action subject to the motion to vacate, except that *Hills* is brought against only the Estate. *Compare Doe v. Hills*, No. 1:15-01586, Compl. (D.D.C. Sept. 29, 2015) (ECF No. 1) *with Doe 1 v.*

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ruling on the individual defendants' motion to dismiss, Judge Marra expressly stated that he was "reserv[ing] ruling on the Estate's motion to dismiss pending resolution of [any overlapping probate issues] in the D.C. litigation [*i.e.*, the *Hills* action]." *Id.* at \*3 n.9. Given the judge's unambiguous statement, we conclude that the suggestion of remand was not intended to encompass plaintiffs' claims against the Estate.

IT IS THEREFORE ORDERED that the Panel's conditional remand order filed June 9, 2016 (ECF No. 77) is vacated insofar as it encompasses plaintiffs' claims against the Estate.

PANEL ON MULTIDISTRICT LITIGATION



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Sarah S. Vance  
Chair

Marjorie O. Rendell  
Lewis A. Kaplan

Charles R. Breyer  
Catherine D. Perry

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*Chiquita Brands Int'l, Inc.*, No. 08-md-1916, Compl. (S.D. Fla. Nov. 16, 2012) (ECF No. 589). Indeed, as the New Jersey plaintiffs previously have freely acknowledged to the Panel – in unsuccessfully seeking to have *Hills* transferred to the MDL – the complaint in *Hills* was filed simply “to foreclose any argument that Plaintiffs have failed to take proper steps to ensure that any judgment finding Decedent Roderick Hills liable will be enforceable against the Estate.” *See* Pls. Mem. Opp. to Defs.’ Mot. to Vacate Conditional Transfer Order at 4 (J.P.M.L. Nov. 19, 2015) (ECF No. 70); *see also Hills* Compl. at 3 n.3 (“Although Plaintiffs believe that [the N.J. Complaint] fulfills [the requirements of the D.C. Probate Code with respect to challenging the disallowance of a creditor’s claim], out of an abundance of caution, Plaintiffs submit this Complaint, which has been modified to name only Carla Hills as a Defendant.”).

**IN RE: CHIQUITA BRANDS INTERNATIONAL, INC.,  
ALIEN TORT STATUTE AND SHAREHOLDERS  
DERIVATIVE LITIGATION**

MDL No. 1916

**SCHEDULE A**

District of District of Columbia

DOES (1-144) v. CHIQUITA BRANDS INTERNATIONAL, INC., ET AL.,  
C.A. No. 1:07-01048

District of New Jersey

DOE 1, ET AL. v. CHIQUITA BRANDS INTERNATIONAL, INC., ET AL.,  
C.A. No. 2:07-03406