

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

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

Does 1-98, et al. v. Boies Schiller & Flexner LLP, et al.,)
D. District of Columbia, C.A. No. 1:12-01855)

MDL No. 1916

TRANSFER ORDER

Before the Panel: Pursuant to Panel Rule 7.1, plaintiffs in this action move to vacate our order conditionally transferring the action (*Does*) to the Southern District of Florida for inclusion in MDL No. 1916. Chiquita Brands International, Inc. (Chiquita) opposes the motion.

In opposing transfer, plaintiffs argue, *inter alia*, that *Does* does not share sufficient factual or legal issues with those in the MDL, in that a determination of Chiquita's liability in the MDL is irrelevant to a determination of the liability of defendant herein – Boies Schiller & Flexner LLP (Boies). Plaintiffs thus contend that transfer would not eliminate any duplicative discovery or result in other efficiencies. After careful review of the record, however, we are not persuaded by plaintiffs' arguments. In their complaint, plaintiffs – who are, with the exception of plaintiff Paul David Wolf, all Colombian nationals and plaintiffs in one or the other of actions previously transferred to the MDL – allege that in the MDL, Boies, which is one of the principal plaintiffs' firms therein, is purporting to represent them even though they actually are clients of Wolf, an attorney who also has been involved in the centralized proceedings. These plaintiffs contend that none of them have met with Boies or even heard of it, and that Boies used a Colombian intermediary to dupe them into signing forms giving power of representation to Boies. Plaintiffs further contend that Boies and other plaintiffs' counsel in the MDL have reached an agreement, in violation of the Sherman Act, providing for the joint representation of all future plaintiffs in the MDL. In our view, an allegation that a law firm in an MDL is representing a party or parties therein without their consent goes to the core of the MDL.¹ Similarly, an allegation that MDL counsel are engaging in inappropriate or illegal conduct in connection with their involvement in the MDL is a matter that, at the very least, must be brought directly before the transferee court. *See Poole v. Eichholz Law Firm*, No. 11-1456, 2011 WL 5900797, at *3 (E.D. La. Nov. 23, 2011) (stating that transferee judge has an “undeniable interest” in policing conduct of attorneys who enrolled clients in settlement program implemented pursuant to settlement reached in MDL).

¹ We note that the prayer for relief in *Does* requests that the court declare that Wolf represents his co-plaintiffs and that Boies does not, and enjoin Boies from taking any further legal action on plaintiffs' behalf.

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After considering all argument of counsel, we find that *Does* involves common questions of fact with actions in this litigation previously transferred to MDL No. 1916, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Moreover, transfer is warranted for reasons set out in our original order directing centralization. In that order, we held that the Southern District of Florida was an appropriate Section 1407 forum for actions “aris[ing] from allegations that Chiquita provided financial and other support to the Autodefensas Unidas de Colombia (AUC), a Colombian right-wing paramilitary organization engaged in an armed struggle against leftist guerilla groups in various parts of Colombia, including those where Chiquita had banana-producing operations.” *See In re: Chiquita Brands Int’l, Inc., Alien Tort Statute & S’holders Derivative Litig.*, 536 F. Supp. 2d 1371, 1372 (J.P.M.L. 2008). As explained above, almost all plaintiffs in *Does* are already plaintiffs in the MDL, and plaintiff Wolf has been actively involved in the centralized proceedings. *Does* squarely raises the issue of whether Wolf or Boies is authorized to prosecute the claims of the *Does* Colombian plaintiffs in the MDL.

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, this action is transferred to the Southern District of Florida, and, with the consent of that court, assigned to the Honorable Kenneth A. Marra for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



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