

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

**IN RE: SWISHER HYGIENE, INC., SECURITIES
AND DERIVATIVE LITIGATION**

Glen Miller, et al. v. Swisher Hygiene Inc., et al.,)
S.D. Florida, C.A. No. 0:13-61292) MDL No. 2384

TRANSFER ORDER

Before the Panel:* Pursuant to Panel Rule 7.1, plaintiffs in this action (*Miller*) move to vacate our order conditionally transferring their action to the Western District of North Carolina for inclusion in MDL No. 2384. Defendant Swisher Hygiene, Inc. (Swisher) opposes the motion.

The actions in this MDL share “factual issues arising from allegations that defendants made false and/or misleading statements and/or failed to disclose that Swisher was improperly accounting for business transactions, and was improperly calculating its allowance for doubtful accounts receivable” *In re: Swisher Hygiene, Inc., Sec. & Derivative Litig.*, 885 F. Supp. 2d 1380, 1381 (J.P.M.L. 2012). In their motion to vacate, the *Miller* plaintiffs principally argue that their action is, for the most part, a breach of contract action arising out of just one of those transactions – Swisher’s March 2011 acquisition of Choice Environmental Services, Inc. (Choice). After careful review of the record, we find that argument unpersuasive. A review of the complaint in *Miller* demonstrates that the same core issues regarding Swisher’s financial reporting and accounting practices underlie both that action and the actions in the MDL.¹ Moreover, the *Miller* plaintiffs’ allegations are not confined to just the Choice transaction,² or even to the time period in which that transaction took place.³ All

* Judge Sarah S. Vance took no part in the decision of this matter.

¹ See, e.g., *Miller* Compl. ¶ 33 (alleging that Swisher engaged in “an aggressive acquisition and financing program with insufficient controls and capacity – contrary to usual and customary accounting (including Generally Accepted Accounting Principles”); ¶ 36 (alleging that defendants failed to disclose “potential problems in accounting for companies acquired through [Swisher’s] program of rapid business acquisitions”); ¶ 82 (alleging that defendants “engag[ed] in improper accounting practices, including materially deficient accounting and financial controls”); ¶ 146 (“Among other things, Defendants Swisher, Berrard, and Kipp each materially misrepresented Swisher’s accounting for its many business acquisitions, misstated Swisher’s accounts receivable, and understated Swisher’s operating losses.”).

² See Compl. ¶ 81 (alleging that Swisher “effectively acquired more than a company per week throughout 2011,” and that Swisher “lacked the necessary internal controls, infrastructure, staffing, and prudent management and accounting procedures and safeguards to properly account for such a rapid acquisition schedule”). Also, as Swisher points out, numerous allegations concerning the
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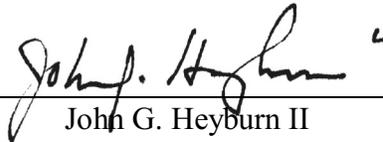
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defendants in *Miller* are already defendants in the MDL. To the extent that *Miller* involves some unique issues, the transferee judge has the discretion to handle those issues through the use of appropriate pretrial devices, such as separate tracks for discovery and motion practice. *See, e.g., In re: Countrywide Fin. Corp. Mortgage-Backed Sec. Litig.*, 812 F. Supp. 2d 1380, 1383 (J.P.M.L. 2011).

After considering all argument of counsel, we find that *Miller* involves common questions of fact with actions in this litigation previously transferred to MDL No. 2384, 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 Western District of North Carolina was an appropriate Section 1407 forum for actions sharing the factual issues mentioned above. *See* 885 F. Supp. 2d at 1381. As explained above, *Miller* shares multiple such issues with the actions already in the MDL.

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, this action is transferred to the Western District of North Carolina, and, with the consent of that court, assigned to the Honorable Graham C. Mullen for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



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Lewis A. Kaplan

Paul G. Barbadoro
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²(...continued)

Choice acquisition can be found in the consolidated securities class action complaint filed in the MDL. *See, e.g.,* First Am. Consol. Class Action Compl. ¶ 107 (“Swisher’s acquisition of Choice demonstrates, in a nutshell, Defendants’ misconduct with regard to acquisitions.”).

³ *See* Compl. ¶ 131 (“Swisher’s scheme continued throughout 2011 and well into 2012”); *see also id.* ¶ 90 (alleging that the downward trend in the price of Swisher stock “has continued to [the] present day because of [defendants’] ongoing inability to timely take corrective action”).