

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: SUNEDISON, INC., SECURITIES
LITIGATION**

MDL No. 2742

TRANSFER ORDER

Before the Panel: Plaintiff Carlos Domenech Zornoza in a District of Maryland action (*Domenech II*) listed on the attached Schedule A moves under Panel Rule 7.1 to vacate the Panel's order conditionally transferring his action to MDL No. 2742. Defendants Peter Blackmore, Ahmad Chatila, Emmanuel Hernandez, Brian Wuebbels, TerraForm Power, Inc., and Terraform Global, Inc., oppose the motion.

After considering the argument of counsel, we find this action involves common questions of fact with the actions previously transferred to MDL No. 2742, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Transfer is warranted for the reasons set out in our order directing centralization. In that order, we held that the Southern District of New York was an appropriate Section 1407 forum for actions sharing factual questions arising from allegedly inaccurate statements concerning SunEdison's operational and financial condition (*e.g.*, its liquidity, classification of debt, and internal financial control), as well as the propriety of its public filings. The centralized actions involved various transactions, offerings and statements made in the roughly ten-month period before SunEdison filed for bankruptcy relief. *In re: SunEdison, Inc., Sec. Litig.*, 214 F. Supp. 3d 1350, 1351 (J.P.M.L. 2016). As we noted when we transferred plaintiff's prior whistleblower action (also over his objections), this action involves allegations related to SunEdison's liquidity, particularly defendants' alleged efforts to conceal the true state of SunEdison's liquidity, in the months preceding the bankruptcy. *Domenech II* thus falls within the MDL's ambit.

Plaintiff in *Domenech II* is the former President and Chief Executive Officer of SunEdison (SUNE) yieldcos,¹ GLBL and TERP, as well as a former Executive Vice President of their

¹ SunEdison had two partially-owned affiliates, known as "yieldcos," which are public companies created to purchase and own renewable energy projects developed by the sponsoring company, SunEdison. The projects purchased by a yieldco generate revenue as power is sold to customers, and the yieldco returns a portion of that revenue to its investors as dividends. SunEdison's yieldcos were Terraform Power (TERP, which became publicly traded in July 2014) and Terraform Global (GLBL, which held its IPO in late-July 2015). TERP operates renewable energy projects in the developed world (specifically North America, the United Kingdom, Canada and Chile), and GLBL was intended to serve as a companion to TERP in emerging markets. Pursuant to Management Services Agreements with both yieldcos, SunEdison provided them with all of their personnel, management, (continued...)

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controlling parent company, SUNE. Plaintiff contends that he was improperly dismissed from employment for his refusal to participate in an unlawful scheme to falsely report SunEdison's actual and projected cash holdings, as well as his advocacy against certain self-dealing transactions designed to siphon hundreds of millions of dollars from SunEdison subsidiaries into SunEdison coffers. These events allegedly led to the collapse and bankruptcy of SunEdison; in fact, plaintiff's initial action (which was transferred over his objections in May 2017) is quoted at length in the complaints of several MDL actions. Defendants in *Domenech II* – GLBL, TERP, and four individual former officers and directors of SUNE and certain yieldcos – also are defendants in multiple MDL actions. Plaintiff Domenech himself remains a defendant in the GLBL IPO litigation, which was tentatively settled but is currently in litigation over whether defendants' rights to terminate the settlement were triggered by two investor groups' decision to opt out. Transfer will benefit these common parties' convenience and that of any common witnesses.

Plaintiff opposes transfer primarily by arguing that his action focuses only on his unique whistleblower allegations, that there is no significant factual overlap with the remaining MDL cases, and that transfer will be a burden to him. Plaintiff also expresses the concern that his action will take longer to resolve in the transferee court than it would without transfer. The Panel has long held that "Section 1407 does not require a complete identity or even majority of common factual and legal issues." *In re: Satyam Computer Servs., Ltd., Sec. Litig.*, 712 F. Supp. 2d 1381, 1382 (J.P.M.L. 2010); *see also In re: ClassicStar Mare Lease Litig.*, 528 F. Supp. 2d 1345, 1346 (J.P.M.L. 2007) ("Regardless of any differences among the actions, all actions arise from the same factual milieu..."). The significant events in *Domenech II*, without doubt, concern "factual issues arising from allegedly inaccurate statements concerning SunEdison's operational and financial condition – e.g., its liquidity, classification of debt [], and internal financial controls – and the alleged impropriety of its public filings." *In re: SunEdison, Inc., Sec. Litig.*, 214 F. Supp. 3d 1350, 1351 (J.P.M.L. 2016).

While it appears that *Domenech II* may be the only whistleblower action in the MDL (a similar action was dismissed in March 2018), plaintiff's role in SunEdison's demise remains of interest to the plaintiffs in some of the remaining MDL actions. For instance, plaintiff recently was deposed in connection with the *Horowitz* action, and that testimony is at the center of a pending MDL discovery dispute regarding the production of documents related to an internal investigation. Transfer of *Domenech II* will allow for the streamlined resolution of all related actions while, at the same time, reducing the risk of inconsistent pretrial rulings and duplicative pretrial discovery. Further, transfer will obviate the need for another judge to become familiar with the extensive factual background of SunEdison, its yieldcos and their ultimate demise.

¹(...continued)

and operations. The yieldcos' executives – including individual MDL defendants – often were SunEdison officers or directors.

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IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the Southern District of New York and, with the consent of that court, assigned to the Honorable P. Kevin Castel for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in black ink, reading "Sarah S. Vance", is positioned above a horizontal line.

Sarah S. Vance
Chair

Lewis A. Kaplan
R. David Proctor
Karen K. Caldwell

Ellen Segal Huvelle
Catherine D. Perry
Nathaniel M. Gorton

**IN RE: SUNEDISON, INC., SECURITIES
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SCHEDULE A

District of Maryland

ZORNOZA v. TERRAFORM GLOBAL, INC., ET AL., C.A. No. 8:18-2523