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## Swisher Hygiene To Pay \$5.5M In Shareholder MDL

By **Michael Lipkin**

Law360, Los Angeles (February 05, 2014, 10:05 PM ET) -- Commercial cleaning services company Swisher Hygiene Inc. agreed to pay \$5.5 million to end a putative securities class action over faulty accounting practices that led to restatements of three quarterly reports, according to a motion filed in North Carolina federal court Wednesday.

The settlement would end allegations that the company violated the Securities Exchange Act of 1934 by filing inflated earnings over the first three quarters of 2011, driving up the Swisher's stock price before it plummeted in March 2012 when the company announced it was conducting an internal review. The plaintiffs claimed the share price dropped over 26 percent, to \$2.43 per share, in the two days following the disclosure, resulting in damages of \$28 million.

"This proposed settlement is fair, reasonable and adequate and clearly meets the standard for preliminary approval," the motion said.

Swisher warned investors in March 2012 that its fourth-quarter 2011 financial statements would be late and that its past three statements "should no longer be relied upon," following concerns raised by former employees over Swisher's accounting practices, according to the plaintiffs' complaint. Swisher said it had started an internal review over the allegations and that significant adjustments may be required.

Later that month, Swisher was hit with its first securities class action, based on the alleged false and misleading disclosures in U.S. Securities and Exchange Commission filings. Four more suits followed, which were centralized into a multidistrict litigation in August 2012, according to the motion for preliminary settlement approval.

The internal audit was completed in May 2012, and the company announced that intentional changes had been made to journal entries that materially overstated Swisher's revenues, according to the complaint. The changes reclassified then-current expenses into shareholder equity in order to reduce expense levels that were publicly reported, the complaint said. Swisher's chief financial officer and two senior accounting personnel were fired as a result of the audit, the plaintiffs said.

In the audit report, Swisher admitted its internal controls were insufficient and that the company had placed "undue emphasis" on meeting internal projections during the financial statement close process, according to the complaint.

The putative class includes those who bought Swisher shares between March 2011 and March 2012. The proposed settlement allows for up to \$1.4 million of the payment to cover attorneys' fees and expenses.

Representatives for the parties did not immediately respond late Wednesday to requests for comment.

The plaintiffs are represented by Gary W. Jackson and Sam McGee of Jackson Law Group PLLC and Jeffrey Block, Jason M. Leviton and Whitney E. Street of Block & Leviton LLP.

The defendants are represented by Moore & Van Allen PLLC, Skadden Arps Slate Meagher & Flom LLP, Boies Schiller & Flexner LLP and DLA Piper LLP.

The case is In re: Swisher Hygiene Inc. Securities and Derivative Litigation case number 3:12-md-02384, in the U.S. District Court for the Western District of North Carolina.

--Editing by Christine Chun.

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