Corporate Transparency Act: A Nationwide Injunction

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On December 3, the U.S. District Court for the Eastern District of Texas issued a preliminary injunction blocking the Corporate Transparency Act's ("CTA") reporting obligations nationwide, pending a final judgment on the matter.

As we have noted, the CTA is intended to help the government combat money laundering and other illicit activities by requiring many legal entities to report their beneficial owners to FinCEN, a division of the Treasury Department. The regulations became effective January 1, 2024, for new entities formed this calendar year. All non-exempt entities formed prior to this calendar year face an initial reporting deadline at the end of this year.

The Court stated, in part, that:

> The CTA, 31 U.S.C. § 5336 is hereby enjoined. Enforcement of the [its reporting rule], 31 C.F.R. 1010.380 is also hereby enjoined, and the compliance deadline is stayed under § 705 of the [Administrative Procedures Act]. ***Neither may be enforced, and reporting companies need not comply with the CTA's January 1, 2025, [beneficial ownership information] reporting deadline pending further order of the Court***. (emphasis added).

The Court found that the CTA is likely void as it is outside of Congress's enumerated powers in the Constitution. It did not address the plaintiffs' arguments that the CTA is also violative of the First and Fourth Amendments.

Interestingly, the plaintiffs in the case included 1 individual and 5 entities, including 1 trade association of over 300,000 members. During arguments over whether a preliminary injunction was appropriate, the plaintiffs only asked for relief for the named plaintiffs in the case. In opposing this remedy, the Treasury Department noted that an injunction for these plaintiffs would be akin to a nationwide injunction due to the broad number of the trade association members. The Court agreed that a nationwide injunction is an extreme remedy, but nevertheless took the Treasury Department's suggestion in a manner it did not expect and found that the injunction should apply nationwide to all affected by the CTA and its implementing regulations.

In turn, lawyers for the Treasury Department filed a notice of appeal on December 5.

With just 3 weeks remaining until the deadline, the new ruling means individuals and businesses affected by the CTA must carefully evaluate next steps.

The injunction currently halts the enforcement of the CTA nationwide, so compliance and filing are currently voluntary and not required. However, further court decisions could resume the CTA's enforceability at a moment's notice, and this is virtually certain not to be the final word on the CTA.

Therefore, we encourage those who are impacted by the new rules (i) to monitor the outcome of this case and the appeal and (ii) to continue the work to be prepared to comply on a moment's notice should the ruling be overturned.

Miller & Martin's Corporate Transparency Act Working Group, which includes **Evan Sharber**, **Matt Jannerbo**, **Bruce McCall**, **Mike Marshall**, and **Alan Madison**, will be monitoring these developments. Please stay tuned for additional updates.

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