

Insights

CTA Update: Roll the Dice?

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The fight to save the Corporate Transparency Act continues and presents challenges to any planning for CTA compliance. To file or not becomes a roll of the dice.

We have recently updated you [found here] about the preliminary injunction against enforcement of the CTA issued by the U.S. District Court for the Eastern District of Texas in the case of *Texas Top Cop Shop, Inc., et al. v. Merrick Garland*, Attorney General of the United States (Case No. 4:24-cv-478). And shortly after, we covered the appeal filed just two days later by the Department of Justice with the Fifth Circuit Court of Appeals and speculated that the DOJ could seek expedited consideration [found here].

And now, the DOJ has done just that and doubled down by filing an emergency motion seeking a stay of the preliminary injunction pending appeal and requesting a decision not later than December 27, 2024. The Fifth Circuit responded by setting an expedited briefing schedule and giving the impression that it may act within that timeframe. It has a wide range of responses available, from staying the injunction in whole or in part to denying the request for a stay completely.

The waiting game for a decision from the Fifth Circuit remains about as uncertain as an answer from the classic Magic 8-Ball, presenting a compliance dilemma for reporting companies. Do they prepare to file in the few days between the Fifth Circuit's decision and the CTA required filing date of January 1, 2025? Do they go the preventative route and expend the effort now and incur the costs of time, headaches and, likely, out of pocket professional fees just in case? Do they trust that any stay of the injunction will include some grace time to respond? If the Fifth Circuit does not issue a decision, will FinCEN show some latitude? Will any party try to involve the Supreme Court?

The answers – right or wrong – may be just a lucky roll of the dice away.

Krieg DeVault will continue to monitor this matter and the CTA landscape generally and will issue further alerts on developments as they occur.

If you have any questions regarding the CTA or obligations to comply with the BOI reporting requirements, please contact Robert A. Greising, Travis D. Lovett, Jacob W. O' Donnell, Thomas M. Abrams, or any member of our Business, Acquisitions and Securities Practice.

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