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News & Announcements

Nationwide Injunction Issued Ceasing Enforcement of the Corporate Transparency Act – At Least For Now

On December 3, the United States District Court for the Eastern District of Texas in the matter of *Texas Top Cop Shop, Inc., et al. v. Garland, et al.* determined “that the Government should be enjoined from enforcing the Reporting Rule [of the CTA] and the January 1, 2025, compliance deadline under the Reporting Rule should be stayed under § 705 of the [Administrative Procedure Act].”

This gives anyone who has not yet filed some more breathing room. Even companies that have filed are, for now, relieved of the obligation to file amendments if any filed information changes. However, an appeal seems inevitable. Note that the standard applied by the Court in issuing an injunction is that the plaintiffs have shown a likelihood of success on the merits, but the Court has not actually decided the merits of the case. The opinion rests on constitutional grounds - that the CTA exceeds Congress’ powers, including that it is not a valid regulation of interstate commerce.

If the injunction is lifted, it is unclear how this will affect the outside filing date, which had been January 1. We recommend that reporting companies collect the information needed to file, and just refrain from actually making a filing. This way, everything is available should filing again become necessary.

Completely separate, there is also news about condominiums and whether they are reporting companies under the CTA. To be a reporting company it is necessary that you are “created by the filing of a document with a secretary of state or similar office.” It has been unclear if the manner in which condominiums in New York record their declarations or file their offering plans qualifies them as reporting companies. The advice of most lawyers has been that condominiums are not clearly covered by the CTA, but that the safer course of conduct is to file.

On November 22, the United States District Court for the District of Massachusetts dismissed for lack of standing the complaint in *Trustees of the Lewis Wharf Condominium Trust v Yellen*. In that case, the condominium and its trustees (plaintiffs) argued that their association was formed in the State of Massachusetts by a recording with the Register of Deeds and that “[p]laintiff is

not an incorporated entity and is not registered with the Secretary of the Commonwealth of Massachusetts.” According to the Court, the government conceded that, accepting the facts as presented in the complaint, “[p]laintiffs have not alleged facts that would place their organization within the scope of the CTA’s reporting requirements.” Given that the government did not evidence an intent to enforce the CTA against plaintiffs, the court found that they lacked standing to object to the CTA.

On the one hand, the apparent government concession is very helpful. On the other hand, there was no actual decision on the matter. Even assuming that the plaintiffs’ position is correct, is the New York mechanism for the formation of condominiums similar enough to that in Massachusetts for the same analysis to apply? Bottom line, this moves the needle for someone willing to be aggressive, but the conservative response remains that New York condominiums should strongly consider filing, if the injunction discussed above is lifted.

Please contact us if you have any questions or concerns. We are happy to help you meet your obligations under the CTA.

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