Articles + Publications | December 31, 2024

Locke Lord QuickStudy: CTA – Preliminary Injunction Against Enforcement is Back in Effect

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On December 26, 2024, the merits panel of the 5th Circuit Court of Appeals vacated the Court's December 23rd stay of enforcement of the preliminary injunction issued by the United States District Court for the Eastern District of Texas in *Texas Top Cop Shop, Inc. v. Garland* pending appeal. The December 26th order stated that it was "to preserve the constitutional status quo while the merits panel considers the parties' weighty substantive arguments" in *Texas Top Cop Shop, Inc. v. Garland*.[1] The previously issued order by the motions panel of the 5th Circuit[2] stayed the nationwide preliminary injunction against enforcement of the Corporate Transparency Act issued by the District Court pending the determination of the appeal.[3]

The December 26 order of the Court of Appeals merits panel did not address the finding of the 5th Circuit's motions panel that found, among other things, that the CTA "was within [*Congress*'] commerce power".[4] When the appeal is finally decided on the merits, the merits panel is not bound by the motions panel's findings.

The Court of Appeals motions panel order expedited the appeal from the District Court "to the next available oral argument panel." The Court has entered a briefing schedule and scheduled oral argument on the appeal for March 25, 2025.

Shortly after reach of the 5th Circuits' decisions and orders, FinCEN issued Alerts[5] discussing the effects of the decisions and orders. The initial Alert included a number of extensions and important deadlines for CTA BOI reporting. The December 27th Alert advised that the nationwide stay against enforcement of the CTA reporting requirements is back in effect pending further court action.

While the preliminary injunction remains in effect, voluntary beneficial ownership reports (including initial reports, amendments and corrections) may be filed by reporting companies.

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[1] Texas Top Cop Shop, Inc. v. Merrick Garland, U.S. Attorney General, et al . 5th Cir. Case No. 24-40792., Document 160-2 December 26, 2024 at pg. 2.

[2] Texas Top Cop Shop, Inc. v. Merrick Garland, U.S. Attorney General, et al . 5th Cir. Case No. 24-40792., WL 5203138 (5th Cir. Dec. 23, 2024).

[3] See, Texas Top Cop Shop, Inc. v. Merrick Garland, U.S. Attorney General, et al . USDC ED TX, No. 4:24-CV-478, WL 5145951.

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[4] Texas Top Cop Shop, Inc. v. Merrick Garland, U.S. Attorney General, et al . 5th Cir. No. 24-40792., supra.

[5] https://www.fincen.gov/boi.

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