

The Saiber Construction Law Column: February 2025

March 1, 2025

Source: MetroBuilders' Construction Law Column

The Corporate Transparency Act was passed in 2021 and took effect January 1, 2024. The purpose of the act is to help combat money laundering, fraud, and terrorism by requiring certain non-exempt private companies to report certain information about the company and its “beneficial owners” to FinCEN, the Financial Crimes Enforcement Network within the US Department of the Treasury.

Under the Act, all non-exempt entities registered to do business in the US prior to January 1, 2024 were required to file a BOI (beneficial ownership information) report by December 31, 2024. Non-exempt entities registered to do business in the US after January 1, 2024 were required to file a BOI Report within 90 days of formation. And, non-exempt entities formed after January 1, 2025 were only to have 30 days to file their BOI Reports. Civil and criminal penalties could result if a company failed to file or filed with false information.

On December 3, 2024, a federal district court in Texas ruled that the Corporate Transparency Act would likely be held unconstitutional and, therefore, the court issued a nationwide preliminary injunction against its enforcement.

The government subsequently filed an emergency motion with an appeals court seeking a stay of the December 3 decision and, on December 23, 2024, the United States Court of Appeals for the Fifth Circuit granted the government’s motion for a stay of the district court’s order and injunction, reinstating the Act’s filing requirements.

However, on December 26, 2024, a separate panel of the Fifth Circuit vacated the appeals court’s December 23, 2024 ruling and reinstated the nationwide injunction until the Fifth Circuit could rule on the appeal. The Fifth Circuit has expedited the appeal of the Texas district court’s decision enjoining enforcement of the Act. Under the briefing schedule, all brief on the expedited appeal are due by February 28, 2025 and oral argument is currently scheduled for March 25, 2025.

Meanwhile, the Department of Justice filed an emergency application for a Stay of the Injunction with the US Supreme Court. The Supreme Court asked the plaintiffs in the Texas case to respond to the DOJ’s application for a stay by January 10, 2025. Thereafter, on January 23, 2025, the U.S. Supreme Court granted the federal government’s request that it be allowed to enforce the CTA while the government’s appeal moves forward. In other words, the Supreme Court put on hold the nationwide injunction ordered by the district court in Texas.

FinCEN, however, posted an alert on its web page, stating that because of other related actions pending in other courts, reporting companies are not currently required to file beneficial ownership information reports with FinCEN and will not be subjected to liability if they fail to do so for the time being. However, reporting companies may continue to voluntarily submit beneficial ownership information reports.

For now, as of this writing on February 3, 2025, no BOI reports are required to be filed with FinCEN. Companies, however, should be prepared to file their reports if the courts ultimately rule that the CTA is constitutional. The roller coaster ride will continue for at least a little while longer.

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Each issue's Saiber Construction Law Column will discuss a recent decision by New Jersey courts (or courts from other states) or other legal topics which may be of interest to people in the construction industry.

The information in each article is not intended to be legal advice and may not be used as legal advice. Legal advice must be tailored to the specific circumstances of each case. Every effort has been made to ensure this information is up to-date. The article is not intended to be a full and exhaustive explanation of the law in any area, nor should it be used to replace the advice of your own legal counsel.

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