

Banking and Finance Law Daily Wrap Up, CONSUMER FINANCIAL PROTECTION BUREAU—D.D.C.: No injunctive relief for company on CFPB's CID but identity temporarily protected, (Feb. 21, 2017)

By [Thomas G. Wolfe, J.D.](#)

In light of the recent decision by the U.S. Court of Appeals for the District of Columbia Circuit in a separate case (*PHH Corporation v. CFPB*) to grant the Consumer Financial Protection Bureau's petition for a rehearing *en banc*, the U.S. District Court for the District of Columbia has decided to deny a company's request for preliminary injunctive relief in connection with the CFPB's Civil Investigative Demand served on the company. At the same time, however, because of the novel circumstances of the case before it and the constitutional issues in *PHH Corporation* about the structure of the CFPB being headed by a single director, the federal district court also issued a "narrow injunction" to preserve the company's anonymity under the pseudonym "John Doe Company" for two additional weeks to allow the company to petition the D.C. Circuit for a stay of the court's order pending any appeal ([John Doe Company v. Consumer Financial Protection Bureau](#), Feb. 17, 2017, Contreras, R.).

According to the court's opinion, after a three-judge panel of the D.C. Circuit in *PHH Corporation* found that the CFPB's current structure was unconstitutional but before the D.C. Circuit granted the CFPB's petition for a rehearing *en banc*, the CFPB issued a CID to the John Doe Company requesting information relevant to its investigation about the company's pension-related transactions that arguably fell within the scope of the CFPB's authority concerning consumer financial products or services. After the CFPB denied John Doe Company's petition to have the CID set aside or, in the alternative, to have the CID treated confidentially, the company filed a lawsuit in January 2017 against the CFPB in the federal trial court for the District of Columbia. At that time, the court [permitted](#) the company to proceed using the pseudonym "John Doe Company."

Company's complaint. Notably, in seeking declaratory and injunctive relief in connection with the CFPB's CID, John Doe Company's [complaint](#) maintained that the CID was invalid because it was issued while the CFPB was "unconstitutionally structured." Further, the company's complaint challenged the validity of the "vast investigatory and enforcement powers" of the CFPB.

In addition, the company contended that its transactions did not fall within the scope of the CFPB's authority. More specifically, John Doe Company asserted that its activities "include

neither the offering or providing of credit or financial advisory services, nor the assignment of pensions or pension payments." Rather, the company "purchases and sells assets: the right to receive income streams derived from periodic payments received by sellers."

Further, in its complaint against the CFPB, John Doe Company claimed that: (i) the CFPB's current structure violates the separation of powers principle under the Constitution; (ii) the CFPB's CID infringed on the company's "liberty" in violation of its due process rights; and (iii) the Administrative Procedure Act entitles the company to judicial review of the CFPB's actions.

Court's decision. The court noted that when the D.C. Circuit granted the CFPB's petition for a rehearing *en banc* in the *PHH Corporation* litigation on Feb. 16, 2017, the federal appellate court's ruling served to vacate the three-judge panel's decision and thereby *eliminated* the "state of limbo" on which John Doe Company's request for injunctive relief was based.

Consequently, the court determined that, given the present status of the separate *PHH Corporation* litigation, John Doe Company "failed to show that it is substantially likely to succeed in its pursuit of injunctive relief that would prevent the agency from taking any adverse action" against the company. Likewise, the court determined that John Doe Company did not show that it faces "likely irreparable harm in the absence of a preliminary injunction."

While the court denied the company's request for injunctive relief concerning the CFPB's CID, the court recognized the "novel issues presented in this case" as well as the company's "partial inability to remedy them" if the CFPB were to be permitted to publicize the company's actual identity. Accordingly, the court decided to issue a "narrow injunction" to preserve John Doe Company's pseudonym "for two additional weeks" so that John Doe Company would have the window of opportunity to petition the D.C. Circuit for "a stay of this Court's order pending any appeal."

The case is [No. 17-0049 \(RC\)](#).

Attorneys: Cathy A. Hinger (Womble Carlyle Sandridge & Rice, LLP) for John Doe Company. Christopher John Deal for the Consumer Financial Protection Bureau.

LitigationEnforcement: CFPB DistrictofColumbiaNews DoddFrankAct EnforcementActions
Loans Privacy