DREHER TOMKIES LLP ALERT

FOR CLIENTS AND FRIENDS OF DREHER TOMKIES LLP

April 8, 2024

FIFTH CIRCUIT ORDERS RETURN IN CASE CHALLENGING LATE FEE RULE

The case challenging the Consumer Financial Protection Bureau's credit card late fee rule is returning to Texas. Previously, the District Court for the District of Texas, Fort Worth Division ordered the case transferred to the District Court for the District of Columbia. *See* our ALERT of Mar. 29, 2024. The Fifth Circuit initially ordered a stay of the District Court transfer order on March 28 to decide on an interlocutory appeal filed by the Chamber of Commerce on March 25 for the District Court's effective denial of the Chamber's motion for preliminary injunction filed on March 7. *See* our ALERT of April 3, 2024.

The Fifth Circuit held that because the Chamber of Commerce appealed the District Court's effective denial of the Chamber's preliminary injunction motion *before* the District Court granted the motion to transfer the case, the District Court lacked jurisdiction to rule on the motion to transfer. The Fifth Circuit clarified that the ruling does not assess the question of the propriety of the case's venue, rather, it says "once a party properly appeals something a district court has done – here, the effective denial of a preliminary injunction – the district court has zero jurisdiction to do anything that alters the case's status."

Following the transfer order, the case was docketed with the District Court for the District of Columbia prior to the Fifth Circuit's ruling. As part of this ruling, the Fifth Circuit ordered the District Court for the District of Texas, Fort Worth Division to reopen the case and give notice to the District Court for the District of Columbia that the transfer was without jurisdiction and should be disregarded. ❑

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