



June 20, 2024

FIFTH CIRCUIT ORDERS RETURN IN CASE CHALLENGING LATE FEE RULE – AGAIN

Once again, the Fifth Circuit decided that the case challenging the Consumer Financial Protection Bureau's ("CFPB") credit card late fee rule is to stay in Texas. This writ of mandamus is the latest update in the "byzantine" procedural history of the U.S. Chamber of Commerce's case against the CFPB. See our ALERTS of [Mar. 29, 2024](#); [April 3, 2024](#); [April 8, 2024](#) and [May 13, 2024](#).

As a refresher, the CFPB initially moved to have the case transferred to the District Court for the District of Columbia in March. That transfer motion was granted by the Texas District Court; however, the Fifth Circuit issued a writ of mandamus ordering the District Court for the District of Texas, Fort Worth Division to reopen the case. The Texas District Court then stayed the late fee rule pending the Supreme Court's decision in *Consumer Financial Protection Bureau v. Community Financial Services Association of America*. Following the Supreme Court decision upholding the constitutionality of the CFPB's funding mechanism, the CFPB again moved to transfer the late fee case out of Texas. The Texas District Court again ordered the case transferred to the District of Columbia. The Fifth Circuit again administratively stayed the transfer order, this time until June 18.

A new panel of Fifth Circuit Judges granted the second petition for a writ of mandamus and directed the Texas District Court to vacate its transfer order, holding that the transfer order misapplied the controlling standard for transferring cases under 28 U.S.C. § 1404(a) and was a clear abuse of discretion. The Fifth Circuit held that the Texas District Court clearly abused its discretion in finding that practical problems and local-interest factors weigh in favor of transfer. In particular the decision states that because the late fee rule has national effect, the local interest of citizens is the same in virtually every judicial district or division in the United States; therefore, interests are too diffuse to affect the local-interest determination.

In footnote 22, the Fifth Circuit notes that the CFPB moved for transfer under both Section 1404(a) (which permits transfer for the convenience of the parties and witnesses and in the interest of justice) and Section 1406(a) (which governs cases that are in the wrong division or district). Because the Texas District Court explicitly ruled only on the initial 1404(a) motion and did not address whether

venue was proper under 1406(a), the Fifth Circuit only addressed whether transfer was proper under 1404(a). Whether the CFPB will continue to fight the venue battle by filing another motion under 1406(a) remains to be seen. For now, the case remains in Texas.

We will continue to monitor the status of the case and provide updates on the credit card late fee rule.

✧ *Mike Tomkies, Elizabeth Anstaett and Mercedes Ramsey*

Darrell L. Dreher
ddreher@dtlaw.com

Elizabeth L. Anstaett
eanstaett@dtlaw.com

Susan L. Dreher
sdreher@dtlaw.com

2750 HUNTINGTON CENTER
41 S. HIGH STREET
COLUMBUS, OHIO 43215
TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600
WWW.DTLAW.COM

Michael C. Tomkies
mtomkies@dtlaw.com

Mercedes C. Ramsey
mramsey@dtlaw.com

Robin R. De Leo
robin@deher-la.com

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