

Anonymous Company's Reliance on Now-Vacated PHH Decision Insufficient to Halt CFPB Investigation

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Last month, an anonymous pension advance company sued the CFPB arguing that the Bureau lacked authority to issue a civil investigative demand (CID) following the D.C. Circuit's decision in *PHH Corp. v. CFPB* (a case holding the CFPB's single-Director structure unconstitutional). "John Doe Company" unsuccessfully sought a preliminary injunction from a federal district court. Last week in a 2-1 decision, the D.C. Circuit denied John Doe's emergency motion for injunction to halt the CFPB's investigation, "[g]iven the company's failure to establish a likelihood of success on the merits of its pre-enforcement challenge."

The court indicated that the company's reliance on *PHH* was simply "not enough" because the *PHH* decision has been vacated. Additionally, the court distinguished John Doe Co. from *PHH Corp.* based on its procedural posture. *PHH Corp.*'s suit followed a completed CFPB investigation and the issuance of a \$109 million fine; John Doe Co., on the other hand, tried to enjoin the CFPB from *attempting* to enforce its CID through a petition to the district court.

The company also could not establish that it would suffer irreparable harm absent an injunction. While the company had challenged that even publication of its name, through the CFPB's standard process of publicizing the names of companies who formally petition the CFPB director to modify a CID, would harm its reputation, the court was unpersuaded, calling the argument "unsubstantiated and conclusory."

The dissenting member of the panel noted that he would have granted the motion because in his view "the CFPB's structure is likely to be ruled unconstitutional," which is perhaps a sign of the ultimate outcome of the CFPB's *en banc* appeal in *PHH*. We will continue to monitor both the *John Doe Co.* case and the *PHH* case for major updates.

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410.684.3200

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