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Appellate & Constitutional Law Update

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Supreme Court Holds The Seventh Amendment Entitles A Defendant To A Jury Trial When The SEC Seeks Civil Penalties For Securities Fraud

Securities & Exchange Commission v. Jarkesy, No. 22-859 – Decided June 27, 2024

Today, the Supreme Court held 6-3 that the Seventh Amendment to the United States Constitution requires the SEC to sue in federal court, not in the agency’s in-house court, when the SEC seeks civil penalties for fraud.

“[T]he Government has created claims whose causes of action are modeled on common law fraud and that provide a type of remedy available only in law courts. This is a common law suit in all but name. And such suits typically must be adjudicated in Article III courts.”

CHIEF JUSTICE ROBERTS, WRITING FOR THE COURT

Background:

In 2013, the SEC brought administrative enforcement proceedings against George Jarkesy and his investment advisor for securities fraud. After an SEC in-house administrative law judge found that Jarkesy committed securities fraud, the SEC ordered Jarkesy to pay hundreds of thousands of dollars in civil penalties and disgorgement.

A divided panel of the Fifth Circuit held unconstitutional parts of the SEC's in-house adjudication process for three independent reasons: (1) The Seventh Amendment right to a jury trial barred the SEC's use of administrative proceedings to impose civil penalties; (2) Congress unconstitutionally vested the SEC with the unfettered discretion to decide whether to enforce securities laws in an agency adjudication or in federal court; and (3) Congress unconstitutionally insulated SEC administrative law judges from removal by allowing their firing only upon a finding of "good cause" by the Merit Systems Protection Board, whose members themselves are subject to removal only in certain limited circumstances.

Issue:

Can the SEC require defendants in actions for civil penalties to defend themselves before the agency tribunal rather than before a jury in federal court?

Court's Holding:

No. The Seventh Amendment entitles defendants to a jury trial in federal court for SEC fraud actions seeking civil penalties.

What It Means:

- Today's decision will have a significant impact on the forum in which the SEC can enforce the statutes it administers—in the agency's in-house administrative court, or in federal court before an Article III judge and a jury. The Court explained that "if a suit is in the nature of an action at common law, then the matter presumptively concerns private rights, and adjudication by an Article III court is mandatory." The Court also emphasized that the form of relief the SEC sought in this case—civil penalties—was "all but dispositive" on the issue of whether the Seventh Amendment applied because civil penalties are "a type of remedy at common law that could only be enforced in courts of law." Thus, going forward, if the SEC seeks civil penalties on a claim that resembles a traditional common-law action, the SEC very likely must proceed only in federal court, not in the administrative court.
- The decision will also likely impact how the SEC settles enforcement actions with unregistered parties, including public companies and individual executives, at least for violations that resemble traditional common-law actions. The imposition of penalties in

such settlements will likely require a federal court judgment, which in turn will subject settlements to potential scrutiny by a district court prior to endorsement of the judgment.

- In the near term, the decision may have little impact on SEC enforcement because the agency hasn't pursued contested actions seeking penalties in its administrative forum. But long term, requiring the SEC to bring enforcement actions in federal court will afford defendants access to independent judges and juries, the rules of evidence and civil procedure, and other procedural protections.
- The Court's decision could have broader implications for other agencies and other theories of liability. Many agencies have in-house courts that adjudicate alleged violations of the statutes they implement. If an agency seeks monetary penalties on a ground that resembles a traditional action at common law—such as a fraud or negligence claim—the Seventh Amendment presumptively requires the agency to proceed in federal court. The “public rights” exception to this principle will be construed more narrowly than suggested by some prior Court decisions. Defendants facing agency enforcement actions therefore should carefully consider the nature of the agency's claims and requested penalties and assert their constitutional rights to a jury trial. Similarly, parties to agency investigations should consider asserting those constitutional rights in the event the agency signals it intends to take enforcement action.
- Because the Seventh Amendment question resolved the case, the Court declined to reach the other constitutional questions that the petitioner presented. Thus, the Court has yet to decide whether Congress unconstitutionally delegated to the SEC the power to choose the forum in which to proceed or unconstitutionally insulated the administrative law judge from removal.

Gibson Dunn Appellate Honors



The Court's opinion is available [here](#).

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the U.S. Supreme Court. Please feel free to contact the following practice group leaders:

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