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ALERT

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EMPLOYMENT ALERT

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The Supreme Court today (June 27, 2024) issued a decision concerning administrative law – *SEC v. Jarkesy*, which may have major implications as to administrative procedures. The SEC investigators proposed fines and other monetary relief against Mr. Jarkesy for alleged security fraud. He was required to litigate this matter before an Administrative Law Judge employed by the SEC and appeal to the Commission. The Supreme Court found that the SEC administrative proceedings against Mr. Jarkesy violated his Seventh Amendment right to a jury.

The Court noted the Seventh Amendment guarantees that in “[s]uits at common law, ... the right of trial by jury shall be preserved.” Importantly, it held that such right is not limited to common-law forms of action when the Seventh Amendment was ratified – 1781. Rather, common law was used in contrast with equity, admiralty and maritime jurisdiction. In pursuing civil penalties for alleged fraud, the SEC was engaged in two common law causes – fraud and seeking civil penalties. When the defendant is being sued for fraud or civil penalties, the defendant has a right to a jury trial. Thus, the administrative proceedings used by the SEC are unconstitutional. The Supreme Court discussed the public rights exception and found it has limited application and cannot be interpreted so broadly to allow Congress to decide what falls into the exception. The Court held that common lawsuits in all but name must be adjudicated in Article III courts.

What does this mean to companies? *Jarkesy* upends administrative procedures in dozens of federal agencies such as Labor, NLRB and the SEC, where ALJ and internal tribunals employed by such agencies have decided cases for decades. Any company in an ongoing prosecution can claim a right to a jury trial based on this decision. For example, Wage and Hour Division, U.S. Department of Labor uses administrative procedures to assess penalties for alleged violations of the FLSA, child labor violations, violations of the Migrant Agricultural and Seasonal Workers Protection Act, and violation of the H2-A and H2-B regulations to name a few. It is anticipated that each proceeding will be challenged as unconstitutional under the Seventh Amendment.

What does it mean to federal agencies? The federal agencies will need to analyze each statute and regulation that assess penalties through administrative proceedings to determine whether they are impacted by the Seventh Amendment and this case. They should prepare for the inevitable constitutional challenges arising from the *Jarkesy* decision.

How significant this ruling will be remains to be seen; however, this decision has the potential of turning administrative law upside down.

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Questions? Need more information? Call Larry Stine at 404-365-0900.