LABOR UPDATE
"*SEC v. Jarkesy*: Seventh Amendment Jury Trials, Seeking Civil Penalties, and Agency Administrative Actions"
MILLER NASH *EMPLOYMENT LAW IN MOTION* BLOG POST

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The U.S. Supreme Court's decision in *Securities and Exchange Commission v. Jarkesy*, 144 S. Ct. 2117 (2024) held that when the SEC seeks civil penalties to punish and deter wrongful conduct, the Seventh Amendment entitles the defendant to a jury trial. As a result, the SEC was required to bring the action in federal court and not use its in-house administrative forum as the SEC (and other federal agencies) have done in the past.

The U.S. Supreme Court reasoned that the SEC's claim was "legal in nature" (not equitable) because the SEC sought civil penalties designed to punish and deter the wrongdoer, as opposed to solely restore the status quo. The Court explained that a civil sanction that serves as a punishment, rather than a remedial purpose, was a remedy only courts of law could issue. The Court also considered that the SEC was not required to return any money to victims, and, as a result, the penalty does not "restore the status quo" nor can it be characterized as equitable.

The U.S. Supreme Court also noted that the "public rights" exception to the Seventh Amendment did not apply in this case, because the SEC's claim was essentially the same as common law fraud. The "public rights" exception recognizes that Congress can assign certain matters for enforcement without a jury, such as those concerning revenue collection, certain issues related to customs and immigration, assessment of tariffs and excluding foreign goods, relations with Indigenous and Native American tribes, administration of public lands, and granting of public benefits. The Court, however, reasoned that Congress cannot withdraw matters that would be the subject of traditional legal claims, or, in other words, when the substance of the claim is "akin to suits at common law." (The Court also admitted that it has not clearly defined the distinction between private and public rights and did not attempt to do so in this decision.)

This is another case that, although specifically addressing civil penalties sought by the SEC, this decision could have farther reaching implications for other federal agencies. In private sector labor cases pending before various circuit courts of appeals, parties have raised Seventh Amendment challenges based on the U.S. Supreme Court's decision in *SEC v. Jarkesy*. In addition to raising arguments or challenges based on *SEC v. Jarkesy*, parties have also been asked to submit supplemental briefing related to the implications of this decision or address the issue at oral argument. In a letter to the Third Circuit Court of Appeals, the Board has taken the position that in *Jarkesy* the U.S. Supreme Court reaffirmed the continuing validity of the public rights exception as it related to the Board's unfair labor practice proceedings, or at the very least left that undisturbed. (See Letter Brief of the National Labor Relations Board, *NLRB v. Starbucks Corp.*, 2024 WL 3535052 (3rd Cir. July 19, 2024)). The Board further argues that under *Jarkesy* the Board's use of "make-whole" relief is equitable as it is designed to restore the status quo rather than punish the respondents. The Board opines that its remedies are equitable in nature, and the make-whole remedies are integral to its reinstatement remedy (the remedy at issue in that pending case).

The Miller Nash labor & employment team will continue to monitor developments in this area, including potential decisions related to this case.