

Press Coverage | July 3, 2024

High Court's Regulatory Rulings Unsettle Coverage Risks

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Troutman Pepper Partners Jay Dubow, Jennifer Mathis, and Mary Weeks were quoted in the July 3, 2024 *Law360* article, "[High Court's Regulatory Rulings Unsettle Coverage Risks.](#)"

Though *Jarkesy* could result in a shift toward federal litigation, the court constrained its ruling to SEC actions that sought civil penalties, said Mary Weeks, a leader of Troutman Pepper Hamilton Sanders LLP's securities and D&O defense group.

"I think more importantly than what this does is what it didn't do," she told *Law360*. "It was possible that it could have gone further and made clear that these administrative proceedings are unconstitutional, and I think that is what people were on the lookout for."

Jay Dubow, who served at the SEC's Division of Enforcement before joining Troutman's securities litigation practice, told *Law360* that the decision could also support challenges to other agencies seeking civil money penalties.

"It does give parties who are involved in those types of cases ammunition to fight them, when before they may not have been able to do so," he said.

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Insurers should also keep an eye on the likely higher costs to defend the insureds in district courts as opposed to the SEC's own internal proceedings, said Jennifer Mathis of Troutman's carrier-side insurance practice.

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Mathis said that the courts decision in *Loper* could implicate a wide range of insurance lines covering liability risks relating to the environment, employment, financial institutions, consumer protection, health care, and more.

"There could be all kinds of implications for a lot of different types of policies — really any corporate liabilities that are affected by the decisions of regulatory authorities and defenses that corporate insureds have to proceedings that are commenced by regulatory authorities," she said.

She cautioned that it's difficult to predict what will follow from the courts' decisions and the likely follow-up

litigation challenging agency actions, adding that the increased uncertainty is its own risk.

“Uncertainty can be costly for everyone involved, because I think what it could mean for what comes out of this term is potentially more litigation to try to sort out what the new playing field is,” Mathis said.

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