

## CLIENT ALERT

### Supreme Court Upholds Reasonable Doubt Standard for Criminal Fines

Jun.22.2012

The Supreme Court yesterday overturned an \$18 million criminal fine levied against Southern Union Company because the factual basis for the fine had not been decided by the jury. The decision, *Southern Union Co. v. United States*, 567 U.S. \_\_\_\_ (2012), extends to criminal fines the rule in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), which held that enhanced punishment in criminal cases must be decided by a jury. This case has broad implications for both individuals and corporations considering whether to put the government to its proof in criminal cases where statutory fines apply.

A jury found Southern Union guilty on one count of violating the Resource Conservation and Recovery Act ("RCRA") by storing hazardous waste (liquid mercury) without a permit. Judge William E. Smith of the District of Rhode Island sentenced the company to two years probation and ordered it to pay a \$6 million criminal fine plus a \$12 million "community service obligation."

The RCRA authorizes fines of \$50,000 per day for violations of its provisions. Southern Union argued that it was only subject to a one-day \$50,000 fine because the jury did not decide how many days the company had been in violation of the statute. Judge Smith ruled that in the context of all the evidence, the jury had implicitly concluded that Southern Union had violated the RCRA for 762 days. The First Circuit Court of Appeals disagreed that the jury had found a 762-day violation, but upheld the penalty based on its conclusion that *Apprendi* does not apply to criminal fines.

Yesterday's decision overturned that ruling. Justice Sotomayor wrote for the majority that the *Apprendi* rule applies to both imprisonment and to fines. Noting that criminal fines are penalties, and that the Court has "never distinguished one form of punishment from another," Justice Sotomayor reiterated that "*Apprendi*'s 'core concern' is to reserve to the jury 'the determination of facts that warrant punishment for a specific statutory offense.'" Southern Union's fine was based on the judge's own view of the facts, not the jury's verdict, which did not specify how many days the company had been in violation of the statute. The Supreme Court said, "This is exactly what *Apprendi* guards against: judicial factfinding that enlarges the maximum punishment a defendant faces beyond what the jury's verdict or the defendant's admissions allow."

The *Southern Union* decision is significant to individuals and companies facing criminal charges that include monetary penalties that are influenced by factual issues. Such an individual or entity may now be in a better bargaining position – at least when substantial questions exist about whether the government has proof beyond a reasonable doubt of the full extent of a violation.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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