

Supreme Court Set to Rule on Constitutionality of SEC's ALJs

June 25, 2018

In April, the U.S. Supreme Court heard oral argument in *Lucia v. SEC* to resolve the federal circuit court split on whether the SEC's administrative law judges (ALJs) are "inferior officers" of the United States who must be appointed in accordance with the Appointments Clause of the U.S. Constitution, and not mere employees whose hiring is not required to meet constitutional standards.

The Appointments Clause requires that inferior officers be appointed by the President, the courts, or the heads of departments. Because ALJs have historically been hired by an HR division of the Commission and not the Commission itself, a finding that they are "inferior officers" could render their decisions unconstitutional, undermining the legitimacy of the SEC's in-house courts and potentially giving the myriad respondents found liable in SEC administrative proceedings a basis to challenge judgments entered against them.

In an interesting turn of events likely spurred by the new executive administration, the Solicitor General notified the Supreme Court early this year that the government would no longer defend the constitutionality of the SEC's ALJ hiring process. As a result, the Supreme Court appointed an amicus curiae, New York appellate attorney Anton Metlitsky, to defend the SEC's prior position.

Last November, the Commission attempted to resolve the issue by ratifying the hiring of its current ALJs. This maneuver arguably protects the constitutionality of current ALJs as appointed by a "head of department" pursuant to the requirements of the Appointments Clause. However, if the Supreme Court agrees that SEC ALJs were unconstitutionally appointed, the consequences of such a ruling, if any, on the viability of the decisions by previous ALJs remains unclear. We may soon learn the answer if the Supreme Court addresses this issue, along with the constitutionality question, in *Lucia v. SEC*.

Authored By



Natalie A. Napierala

Related Practices

[Securities Litigation and Enforcement](#)
[Financial Services Regulatory](#)

Related Industries

[Securities & Investment Companies](#)
[Life, Annuity, and Retirement Solutions](#)

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our [Contact Us](#) form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.