

# Court Hears Southern Union Appeal of \$18M Fine

MARK SHERMAN, Associated Press

WASHINGTON (AP) — The Supreme Court indicated Monday that it could throw out an \$18 million penalty against a natural gas company convicted of an environmental violation in Rhode Island.

In arguments at the high court, several justices sounded skeptical of the government's case for upholding the penalty against Texas-based Southern Union Co. over its improper storage of mercury in a building in Pawtucket.

The arguments focused on whether a line of Supreme Court cases limiting judges' discretion to increase prison sentences also should apply to criminal fines, as Southern Union says.

The Obama administration says judges have much more discretion to hand out fines.

Unlike other Supreme Court disputes involving corporations, this case does not appear to divide the justices along ideological lines. In the sentencing cases, conservative Justice Antonin Scalia has been the most forceful advocate for reining in judges and requiring juries to find any facts that could lead to a longer sentence.

Scalia said he sees the Southern Union case as a logical extension of the court's earlier rulings. He said it would be odd to require a jury to establish facts that lead to even the shortest jail term, yet give judges freedom to decide on fines that "will make a pauper of you."

But another conservative justice, Samuel Alito, seemed more open to the administration's argument. Alito, a former prosecutor, has been more supportive of the government's side in sentencing cases.

Southern Union had used the building to store outdated mercury-sealed gas regulators that it removed from customers' homes. Although the mercury was initially removed and shipped to a recycling center, that work stopped, and the regulators, along with loose mercury, were left to accumulate in bags, containers and jugs inside the building.

A judge decided that the company should pay a \$6 million fine and \$12 million in charitable contributions. He arrived at those numbers after taking the maximum fine of \$50,000 a day and multiplying it by 762 days, as specified in the indictment. The judge said he could have imposed a fine of more than \$38 million.

But Southern Union said the jury did not specifically determine how long the mercury was stored improperly and that the judge should have capped the fine at \$50,000, the one-day maximum.

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The 1st U.S. Circuit Court of Appeals in Boston said the penalty was reasonable, and rejected Southern Union's arguments.

A decision is expected by late spring.

The case is Southern Union Co. v. U.S., 11-94.

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