

***Defendants Begin to Feel Impact of Supreme Court's Decision in Hudson v. United States***

In *Hudson v. U.S.*, the Supreme Court disavowed in large part its decision in *U.S. v. Halper*, and eliminated for all practical purposes a double jeopardy challenge to successive civil and criminal sanctions for the same conduct. In *Halper*, the Court determined that False Claims Act penalties imposed in a civil proceeding after Halper's criminal conviction violated the double jeopardy clause of the United States Constitution because the penalty authorized by the False Claims Act was disproportionate to the harm caused by Halper's actions.

*Halper* led to innumerable challenges to the federal government's authority to take both civil and criminal action against an individual based on the same activity, the vast majority of which were unsuccessful. Despite the lack of success, the likelihood of a challenge based on *Halper* affected enforcement efforts in cases in which parallel criminal proceedings arising from the same conduct were likely. Government agencies had to justify any requested penalties based on the agency's costs of investigation and may have hesitated to bring both the civil and criminal proceedings authorized by Congress.

On occasion, *Halper* also led to the dismissal of portions of indictments. In *U.S. v. D'Uva*, for example, the Ninth Circuit assumed that civil penalties imposed in a securities fraud case were punishment for the purposes of double jeopardy. The court then determined that seven of the indictment's 26 counts involved the same conduct involved in the civil action; thus, those seven counts were barred by double jeopardy. Similarly in *U.S. v. Morse*, the court applied *Halper* and dismissed portions of an indictment for securities fraud because the SEC (Securities and Exchange Commission) had previously obtained penalties under the 1990 Remedies Act for the same activities. According to the court, the civil penalties constituted double jeopardy because penalties under the Remedies Act varied based on the severity of the defendant's actions. (...)

*Hudson* makes future challenges even less likely to succeed. In *Hudson*, the petitioners argued that the double jeopardy clause barred their criminal prosecution for the same conduct that led to the imposition of monetary penalties and occupational debarment under the federal banking statutes. The Court looked at the language of the statutes in question and concluded that Congress intended the penalties to be civil in nature. It also rejected the notion that such penalties were "so punitive in form and effect as to render them criminal despite Congress' intent."

In reaching its decision, the Court rejected the analysis used in *Halper* that focused on "whether the sanction . . . was so grossly disproportionate to the harm caused as to constitute 'punishment.'" According to the Court, that analysis deviated from traditional double jeopardy principles and spawned too many novel double jeopardy claims. Instead, the Court returned to its earlier decisions and emphasized that the double jeopardy analysis looks only to the statute on its face.