

Alert | Securities Litigation



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Supreme Court Expands SEC Disgorgement Authority in *Sripetch v. SEC*

The U.S. Supreme Court's unanimous decision in *Sripetch v. SEC* marks a significant enforcement development for the Securities and Exchange Commission. Resolving a circuit split, the Court held that the SEC need not prove investors suffered pecuniary loss before seeking disgorgement under 15 U.S.C. Sections 78u(d)(5) or 78u(d)(7). For those facing SEC scrutiny, the decision narrows one potential defense but leaves several important limits on disgorgement intact.

Background

Disgorgement — the return of ill-gotten gains — has long been a central remedy in SEC civil enforcement actions. In *Liu v. SEC* (2020), the Supreme Court held that disgorgement may qualify as equitable relief under 15 U.S.C. Section 78u(d)(5) if it tracks traditional equitable principles, including limiting awards to net profits and providing relief “for victims.” Congress later added express disgorgement authority in § 78u(d)(7).

After *Liu*, courts divided over whether the SEC had to show that investors suffered pecuniary harm before obtaining disgorgement. The Second Circuit required that showing, while the First and Ninth Circuits rejected that threshold requirement. The split created different enforcement risks depending on where a case was filed. For additional background on the circuit split addressed by the Court, [see GT's prior coverage here](#).

The Court's Decision

The SEC alleged that Ongkaruck Sripetch participated in fraudulent penny-stock schemes, including “pump-and-dump” activity involving at least 20 companies.

According to the SEC, Sripetch and his co-conspirators acquired shares, promoted them, used manipulative trading to increase the price, and then sold into the market, generating substantial proceeds. Sripetch consented to judgment but objected when the SEC sought more than \$4.1 million in disgorgement. He argued that, because the SEC had not proved investor pecuniary loss, there were no “victims” for whom disgorgement could be awarded under *Liu*. The Ninth Circuit rejected that argument, and the Supreme Court granted review.

Writing for a unanimous Court, Justice Gorsuch affirmed. The Court assumed without deciding that disgorgement under Section 78u(d)(7) remains subject to traditional equitable limits, but held that those limits do not require proof of pecuniary loss. Historically, equity allowed a party whose legally protected interests were invaded to recover a wrongdoer's gains even without showing a corresponding measurable loss. Because disgorgement focuses on the defendant's gain — rather than the investor's loss — an investor may qualify as a victim for this purpose without proving financial harm.

The immediate effect is that the SEC may pursue disgorgement nationwide without first proving investor pecuniary loss. The decision is likely to be most relevant in cases where losses are diffuse, difficult to quantify, or hard to trace, including pump-and-dump, insider trading, nondisclosure, and certain registration-failure matters. The SEC must still satisfy other disgorgement limits, including net profits, causation, and applicable victim-distribution requirements.

Key Takeaways for Companies and Individuals Facing SEC Enforcement

1. **A no-loss defense will not defeat disgorgement at the threshold.** Defendants can no longer rely on the absence of investor financial loss as a complete bar to disgorgement where the alleged conduct invaded legally protected investor interests and generated unjust gains.
2. **The focus shifts to amount and limits.** Companies and individuals should consider whether the SEC can prove net profits, tie those profits to the alleged violation, and satisfy the requirements under *Liu* and the statutory disgorgement requirements.
3. **Victim-distribution questions remain unresolved.** The Court held only that investors need not show pecuniary loss to qualify as victims for threshold purposes. It did not address when disgorged funds must be distributed to investors, when Treasury remittance is permissible, or how Section 78u(d)(7) affects those limits.
4. **Jury-trial arguments may be the next battleground.** Justice Thomas's concurrence preserves an argument that statutory SEC disgorgement may be a legal remedy carrying a Seventh Amendment jury-trial right. If courts adopt that view, SEC enforcement litigation could change materially.

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