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Supreme Court Rejects Investor Loss Requirement for SEC Disgorgement

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On June 4, 2026, the US Supreme Court held that the Securities and Exchange Commission (SEC) need not prove that investors suffered actual financial loss to obtain disgorgement in a civil action. In a unanimous opinion authored by Justice Neil Gorsuch, *Sripetch v. SEC*, the Court reached this conclusion by relying on "traditional equitable principles," which "do not require a showing of pecuniary loss before a court may issue an award of unjust profits."

This ruling creates uniformity nationwide on an issue that had split the circuits, with the US Court of Appeals for the Second Circuit previously holding that pecuniary loss was required to obtain disgorgement, and the First and Ninth Circuits holding it was not. The SEC's ability to continue seeking disgorgement without showing pecuniary loss is meaningful, given the SEC obtained orders for $10.8 billion in disgorgement of ill-gotten gains and prejudgment interest in fiscal year 2025.

Sripetch marks the third time in 10 years that SCOTUS has addressed SEC disgorgement – and the issue may be back for a fourth round soon. The Court's opinion resolved the pecuniary loss question, but Justice Clarence Thomas's concurrence raised another – whether SEC disgorgement is a legal rather than equitable remedy, a determination that would give defendants a Seventh Amendment jury trial right. While that question is not yet before SCOTUS, Justice Thomas noted that a circuit split has developed on the issue, signaling it may be ripe for review. Both questions are addressed in turn below.

No pecuniary harm required for disgorgement

As we discussed in this January 2026 post, SCOTUS granted certiorari in *Sripetch* to resolve whether the SEC must show that investors suffered actual financial loss to obtain disgorgement. The Court held that it need not, concluding that "a showing of pecuniary loss is not required before an investor may qualify as a victim of an offender's wrongdoing entitled to compensation."

In reaching that conclusion, the Court drew on "traditional equitable principles" and case law stretching back to the early 1900s, clarifying that the touchstone for disgorgement is interference with a victim's legally protected interests, not loss of any kind. As Justice Gorsuch put it, "hat all these and a great many other cases have in common is this: Applying traditional equitable principles, a court ordered the defendant to disgorge the value of the gain attributable to his invasion of the plaintiff's legally protected interests without requiring a showing of pecuniary loss."

Against that backdrop, Justice Gorsuch addressed and rejected the petitioner's arguments to the contrary. He observed that, "t bottom," the petitioner's "real worry" seemed to be that the SEC would return to its past practice of seeking disgorgement awards that surpassed a defendant's net profits and went "beyond compensati" victims by sending the funds to the US Treasury. That practice was recognized and cabined to an extent by the Supreme Court's decisions in *Kokesh v. SEC* (2017) and *Liu v. SEC* (2020). Following *Liu*, in 2021, Congress expressly authorized the SEC to seek (and federal courts to order) disgorgement "n any action or proceeding brought by the Commission under any provision of the securities laws" through a new statutory provision (15 U.S.C. § 78u(d)(7)).

The *Sripetch* petitioner's concern, as Justice Gorsuch characterized it, was that "without a pecuniary loss requirement, the SEC might lose sight of traditional equitable principles altogether" and "try to use as a tool to resume its efforts to seek penalties for the Treasury rather than compensation for victims." Justice Gorsuch acknowledged that an attempt by the government to "depart from traditional equitable principles" would exceed the limits established in *Liu* and raise additional questions (including a defendant's potential entitlement to a jury trial). But he did not agree that this possibility had any bearing on the question at hand of whether disgorgement requires a showing of pecuniary loss.

Disgorgement: A legal remedy?

What's on the horizon for SEC disgorgement? SCOTUS in *Sripetch* assumed without deciding that disgorgement is an equitable remedy. But according to Justice Thomas (writing separately), disgorgement under the Securities Exchange Act

of 1934 (Exchange Act) as it stands today is fundamentally a legal remedy. In his concurrence, he reasoned that:

1. SEC disgorgement "more closely resembles legal restitution" rather than traditional equitable remedies, such as constructive trusts, equitable liens and accounting for profits.
2. The structure and substance of Congress's 2021 amendments to the Exchange Act reflect that the legislature "reclassified" SEC disgorgement as a legal remedy.

The practical stakes are significant. If SEC disgorgement is a remedy at law, the Seventh Amendment would entitle defendants to a jury trial and prohibit the SEC from seeking disgorgement in equity. Justice Thomas identified a developing circuit split on this issue, and his concurrence reads as an open invitation for a future petitioner to bring the question squarely before the Court.

Key takeaways

- *Sripetch* confirms that the SEC is not required to show investors suffered financial loss to obtain an award of disgorgement. This decision strengthens the SEC's ability to seek disgorgement – particularly in the Second Circuit, which now must conform to the Court's decision.
- We may see disgorgement return to the high court sooner rather than later. Justice Thomas's concurrence argued forcefully that SEC disgorgement is no longer an equitable remedy under the current statutory regime. The SEC's enforcement efforts could be significantly impacted if SCOTUS were to determine disgorgement is a legal remedy for which defendants are entitled to a jury trial under the Seventh Amendment.

The SEC noted that a large percentage of the FY2025 disgorgement figure was attributed to a single long-running action.

Justice Gorsuch acknowledged that following *Liu*, an open question remains of "whether the SEC may seek disgorgement when it is 'infeasible to distribute the collected funds to investors.'"

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