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High Court Closes Door on SEC Disgorgement Controversy: Or Does It?

The Supreme Court's decision in **Sripetch v. SEC** earlier this month is one of the most important securities enforcement rulings since **Liu v. SEC**, because it preserves a central SEC remedy – disgorgement -- while simultaneously signaling future constitutional challenges that could reshape SEC enforcement.

Background

Sripetch arose from SEC allegations that the defendant participated in multiple penny-stock manipulation schemes, including classic "pump-and-dump" operations involving numerous issuers. The SEC sought disgorgement of more than $4 million in allegedly ill-gotten gains. Sripetch argued that, under the Supreme Court's 2020 decision in *Liu v. SEC*, the SEC could obtain disgorgement only if it demonstrated that investors suffered actual pecuniary loss.

The argument was rooted largely in the reasoning of the Second Circuit's decision in *SEC v. Govil*, which had suggested that disgorgement requires proof that investors suffered financial harm. The Ninth Circuit rejected that view, creating a circuit split and setting the stage for Supreme Court review.

The Supreme Court's Holding

On June 4, 2026, the Supreme Court unanimously affirmed the Ninth Circuit and held that the SEC need not prove investor pecuniary loss before obtaining disgorgement. Justice Neil Gorsuch, writing for a unanimous Court, concluded that traditional equitable principles focus on depriving wrongdoers of unjust enrichment rather than compensating victims for measurable economic losses.

The Court emphasized that:

1. Disgorgement is fundamentally a remedy aimed at stripping wrongdoers of unlawful profits.
2. A person may qualify as a "victim" of securities fraud even when a precise monetary loss cannot be quantified.
3. Nothing in *Liu* imposed a categorical requirement that the SEC prove pecuniary injury before seeking disgorgement.

Accordingly, the Court rejected Sripetch's contention that disgorgement should be limited to circumstances where the SEC can demonstrate measurable investor losses.

Relationship to Prior Supreme Court Cases

The decision fits into a trilogy of modern Supreme Court disgorgement cases:

In *Kokesh v. SEC*, the Court held disgorgement is a "penalty" for purposes of the federal statute of limitations. In *Liu v. SEC,* the Court ruled the SEC's disgorgement remedy survives but is limited to net profits and generally must benefit victims. Now, in *Sripetch v. SEC*, the Court has determined no showing of investor pecuniary loss is required for disgorgement.

Viewed together, these decisions define both the scope and limitations of modern SEC disgorgement authority.

Practical Implications for Securities Practitioners

1. A Significant SEC Victory

The most immediate consequence is that the SEC retains a powerful enforcement tool. In many fraud, manipulation, insider trading, and market-abuse cases, proving individualized investor losses can be extraordinarily difficult and expensive. Under *Sripetch*, the SEC can continue seeking disgorgement based on unlawful gains without conducting a victim-by-victim loss analysis.

This is particularly important in:

- Market manipulation cases;
- Microcap and penny-stock fraud cases;
- Insider trading matters;
- Registration and offering violations; and
- Certain crypto-asset enforcement actions.

2. Reduced Value of the "No Investor Harm" Defense

Defense counsel can no longer rely on the argument that the SEC must prove actual monetary injury to investors before obtaining disgorgement. The focus instead will remain on issues such as:

- Calculation of net profits;
- Deductible business expenses;
- Causation of gains;
- Tracing of proceeds; and

- Whether the requested amount exceeds unjust enrichment.

3. Future Constitutional Challenges Are Likely

Although the SEC prevailed, the opinion contains language suggesting that broader questions remain unresolved. Justice Clarence Thomas, in concurrence, suggested that Congress's post-*Liu* statutory codification of disgorgement may raise questions regarding whether disgorgement remains an equitable remedy or has become a legal remedy.

That issue matters because of the Court's decision in **SEC v. Jarkesy**, which held that defendants are entitled to a jury trial when the SEC seeks civil penalties in fraud actions. If disgorgement is ultimately characterized as a legal remedy, defendants may argue that jury-trial rights attach to disgorgement claims as well.

Conclusion

Sripetch v. SEC represents a substantial victory for the SEC and a significant setback for defendants seeking to limit disgorgement after *Liu*. The Court unanimously rejected the argument that disgorgement requires proof of investor pecuniary loss and reaffirmed that the remedy's primary purpose is to eliminate unjust enrichment rather than compensate measurable losses.

For securities practitioners, the immediate lesson is clear: disgorgement remains a potent enforcement remedy. However, the decision also points toward the next frontier of SEC litigation -- whether disgorgement, as currently authorized by Congress, remains sufficiently "equitable" to avoid the constitutional jury-trial concerns that have increasingly occupied the Court's attention in the post-*Jarkesy* era. As a result, while *Sripetch* settles the pecuniary-loss question, it is unlikely to be the Court's last word on SEC monetary remedies.



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