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SUPREME COURT UPHOLDS SEC'S DISGORGEMENT POWER BUT LEAVES SOME QUESTIONS UNANSWERED

PEOPLE

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INTRODUCTION

On June 4, 2026, the U.S. Supreme Court upheld the U.S. Securities and Exchange Commission's (SEC) ability to order disgorgement regardless of whether or not investors suffered financial harm. In the unanimous opinion, the Court held that a showing of pecuniary loss to investors is not required before the SEC may obtain a disgorgement award under 15 U.S.C. § 78u(d).[1] It is notable that the current Court chose to fortify, rather than pare back, the SEC's enforcement arsenal after previously issuing decisions that have incrementally eroded the SEC's powers in both civil and administrative forums.[2]

The *Sripetch* decision marks a turning point in the debate over what Congress meant when it allowed the SEC to seek equitable relief for the benefit of investors, and whether disgorgement orders fulfill such a role or act more akin to a pecuniary measure. Those in favor of viewing disgorgement as an equitable remedy contend that such orders are within the bounds of the SEC's statutory authority to hinder unjust enrichment and promote relief for investors. Those who view disgorgement as a civil penalty, rather than equitable relief, argue that such actions are punitive in nature, are often not compensatory with the alleged wrong, and have as their primary goal to deter future wrongdoers. The Court, firmly siding with the former, reasoned that equitable relief may be sought to benefit investors so long as the remedy "adheres to traditional equitable principles,"[3] which historically have not required a showing of harm suffered by an aggrieved party, such as investors.

While the *Sripetch* decision is undoubtedly a win for the SEC, there are questions that the Court declined to answer that could create uncertainty in future cases. This includes the SEC's ability to order disgorgement when there are no identifiable investors, in which case the funds would have previously been deposited into the Treasury, and whether or not a defendant is entitled to a jury trial because disgorgement is now a legal remedy and not solely an equitable remedy, as argued by Justice Clarence Thomas in the concurring opinion.[4] Generally, however, we expect the SEC to take an aggressive posture towards ordering disgorgement in light of Chair Paul Atkins' focus on holding individuals accountable for fraud.

Below we provide a summary of the context in which the *Sripetch* decision should be evaluated and analyzed.

HISTORICAL BACKGROUND AND CONTEXT

Over time, Congress and the Courts have taken action to strengthen the SEC's ability to enforce the U.S. securities laws. At its creation, the SEC solely had the authority to investigate wrongdoing and wield injunctions against defendants to prevent future violations. However, beginning in the 1970s, the SEC "urged courts to order disgorgement as an exercise of their 'inherent equity power to grant relief ancillary to an injunction.'"[5] Federal district courts complied with the request to prevent wrongdoers from profiting off violations of securities laws and to protect the investing public.[6]

In 1990, Congress passed the Securities Enforcement Remedies and Penny Stock Reform Act, which gave the SEC authorization to seek monetary penalties via an enlarged arsenal of enforcement tools.[7] In 2002, Congress allowed the SEC to seek "any equitable relief that may be appropriate or necessary for the benefit of investors" in federal court.[8] Then, in 2010, following the 2008 financial crisis, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, which "authorized the SEC to impose [civil penalties] through its own in-house proceedings" before administrative law judges (ALJs).[9]

RECENT CHALLENGES TO THE DISGORGEMENT REMEDY

As the SEC's use of disgorgement – and the amount of disgorgement ordered – increased, industry actors have challenged these orders through a series of cases heard by the Supreme Court. In 2017 the Court issued a unanimous decision in *Kokesh v. SEC*, finding that "[d]isgorgement in the securities-enforcement context is a 'penalty' within the meaning of Section 2462 of the Exchange Act, and so disgorgement actions must be commenced within five years of the date the claim accrues."[10]

Less than three years later, the Supreme Court ruled in *Liu v. SEC* on the question of whether disgorgement can be ordered in SEC enforcement proceedings. In this decision, the Court held that "a disgorgement award that does not exceed a wrongdoer's net profits and is awarded for victims is equitable relief under § 78u(d)(5) [of the Exchange Act]."[11] For an order of disgorgement not to "spill over" into the territory of pecuniary sanctions, the Court found that such orders must be limited in that (1) the wrongful gains are returned to the aggrieved party;[12] (2) the remedy must be limited to the net profits of each individual wrongdoer (unless the defendants are "partners engaged in concerted wrongdoing," an issue which was remanded to the lower courts in this instance);[13] and (3) the order of disgorgement must be limited to the net profits of the wrongdoer.[14] By following these principles, the Court reasoned that a disgorgement order may take the form of an equitable remedy.[15]

Following the *Kokesh* and *Liu* rulings and as part of the National Defense Authorization Act (NDAA) for fiscal 2021, Congress amended the Exchange Act to allow more flexibility regarding the SEC's timing for bringing disgorgement actions under § 78u(d)(7). The NDAA increased the flexibility by dividing such actions into two distinct categories. The first category codified the *Kokesh* ruling by limiting when the SEC may bring a claim for equitable relief to "not later than [five] years after the latest date of the violation that gives rise to the action or proceeding in which the Commission seeks the claim occurs."[16] However, the second category has both a five-year and ten-year statute of limitations, depending on the exact federal securities law(s) alleged to have been violated and the perpetrator's intent.[17] With these added authorizations and when applicable, the SEC can extend investigations further back in time to seek higher disgorgement amounts and be more dynamic in its use of tolling agreements in negotiations with alleged violators. Congress thereby bifurcated disgorgement claims, doubling the amount of time the SEC has to bring action for serious violations and effectively carving out a statutory exception to the *Kokesh* decision in a post-*Liu* environment.

***Sripetch v. SEC* – The Latest in the Saga on the SEC's Enforcement Power**

Onkgaruck Sripetch, along with other co-defendants, was charged with securities fraud and with the selling of unregistered securities. While Sripetch initially agreed to injunctions against future securities violations, a bar on trading penny stocks, and disgorgement, he later disputed the SEC's disgorgement request under §§ 78u(d)(5) and (d)(7) of the Exchange Act, asserting that a disgorgement under § 78u(d) requires a showing of pecuniary harm to an investor.

The SEC, on the other hand, contended that while §§ 78u(d)(5) and (d)(7) allow it to "seek disgorgement of only (1) a defendant's net profits that were (2) causally connected to his unlawful conduct,"[18] the SEC also claimed that the two statutory provisions differ from one another, namely in the sense that while disgorgement under § 78u(d)(5) "must be 'awarded for victims' of the defendant's securities-law violations,"[19] this same constraint does not apply to § 78u(d)(7) since it was enacted after the *Liu* decision.

The Court bypassed this division, deciding that *Sripetch* is instead about whether "the SEC must show that an investor suffered a pecuniary loss before it may secure a disgorgement remedy under *either* § 78u(d)(5) *or* § 78u(d)(7)."[20] To arrive at its conclusion, Justice Gorsuch, writing for the Court, compared disgorgement with the legal remedy of damages, noting that an award of damages is calculated by the "plaintiff's loss"[21] with the goal of placing the plaintiff "in as good a position as he would have been in"[22] had the wrongdoer not received a benefit. In contrast, the final award for equitable relief is generally "not measured by [the plaintiff's] loss but by the defendant's gain attributable to his wrongdoing against the plaintiff."[23] Historically, the Court noted that, when "[a]pplying 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" and that "[w]hatever else traditional equitable principles demand, they do not require a showing of pecuniary loss before a court may issue an award of unjust profits."[24]

By grounding its decision in the bedrock notion that actions at equity should be measured according to the wrongdoer's gain and not to an aggrieved party's loss, the Court reversed its trend of eroding the SEC's power in recent history and preserved one of the Commission's most well-known enforcement mechanisms. This decision ensures that complex and deceptive "victimless" crimes in the securities industry will remain open to SEC prosecution.

However, *Sripetch* marks the end of a chapter, not the story. As Justice Thomas noted in his concurrence, *Sripetch* sets the stage for what may be the next constitutional battle – whether the obtainment of disgorged funds functions as "fines regime, an inherently legal process,"[25] and not as "equitable relief," meaning that it would mandate a Seventh Amendment jury trial.

If you have any questions or would like to discuss these or any related topics further, please contact the authors or your regular Armstrong Teasdale attorney.

[1] *See* 15 U.S.C. § 78u(d)(5) ("In any action or proceeding brought or instituted by the Commission . . . the Commission may seek, and any Federal court may grant, any equitable relief that may be appropriate or necessary for the benefit of investors."); *see also* § 78u(d)(7) ("In any action or proceeding brought by the Commission . . . the Commission may seek, and any Federal court may order, disgorgement.").

[2] *See*, *e.g.*, SEC v. Jarkesy, 603 U.S. 109 (2024), Liu v. SEC, 591 U.S. 71 (2020), Kokesh v. SEC, 581 U.S. 455 (2017) and Gabelli v. SEC 568 U.S. 442 (2013).

[3] Sripetch v. SEC, No. 25-466, slip op. at 1 (June 4, 2026); *citing* Liu v. SEC, 591 U.S. 71, 85 (2020).

[4] *Id.,* at 3

[5] *Id*. at 458; citing SEC v. Texas Gulph Sulphur Co., 312 F. Supp. 77, 91 (S.D.N.Y. 1970), aff'd in part and rev'd in part, 446 F. 2d 1301 (2d Cir. 1971) [hereinafter Texas Gulph].

[6] *See*, *e.g.*, Texas Gulph, at 92.

[7] 104 Stat. 932, codified at 15 U.S.C. § 77t(d). The SEC was given the ability to "promulgate tools, investigate violations of those rules and the securities laws generally, and seek monetary penalties and injunctive relief for those violations" (Kokesh v. SEC, 581 U.S. 455, 459 (2017)).

[8] *See* Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, § 305, 116 Stat. 779; *see also* 15 U.S.C. § 78u(d)(5).

[9] SEC v. Jarkesy, 603 U.S. 109, 109 (2024); *see* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376, §929P (2010).

[10] Kokesh v. SEC, 581 U.S. 455, 457 (2017). The Court in *Sripetch* qualified this decision, holding that "§ 2462's 5-year limitations period governed actions seeking disgorgement because, at that time, the remedy amounted to a civil penalty" (Sripetch v. SEC, No. 25-466, slip op. at 4 (June 4, 2026); Kokesh v. SEC, 581 U.S. 455, 467 (2017)).

[11] Liu v. SEC, 591 U.S. 71, 75 (2020); *see* fn. 1 for the statutory text.

[12] The Court noted that, historically, "the profits remedy often imposed a constructive trust on wrongful gains for wronged victims" (Liu v. SEC, 591 U.S. 71, 82 (2020).

[13] "Equity courts also generally awarded profits-based remedies against individuals or partners engaged in concerted wrongdoing, not against multiple wrongdoers under a joint-and-several liability theory . . . The rule against joint-and-several liability for profits that have accrued to another appears throughout equity cases awarding profits" (Liu v. SEC, 591 U.S. 71, 82-83 (2020)).

[14] "Finally, courts limited awards to the net profits from wrongdoing, that is, 'the gain made upon any business or investment, when both the receipts and payments are taken into account'" (Liu v. SEC, 591 U.S. 71, 82-84 (2020) (quoting Rubber Co. v. Goodyear, 76 U.S. 788, 804 (187), citing Livingston v. Woodworth, 56 U.S. 546, 559-560 (1854), Seymour v. McCormick, 57 U.S. 480, 490 (1854), Mowry v. Whitney, 81 U.S. 620, 649 (1872), and Wooden-Ware Co. v. United States, 106 U.S. 432, 434-435 (1882)). So that defendants cannot diminish their showing of profits, "[t]he Court has carved out an exception when the 'entire profit of a business or undertaking' results from the wrongful activity" (Liu v. SEC, 591 U.S. 71, 84 (2020); quoting Root v. Railway Co., 105

U.S. 189, 203 (1882)). Regarding joint-and-several liability, the Court acknowledged that "[t]he common law did . . . permit liability for partners engaged in concerted wrongdoing," and remanded the issue in this specific case to the Ninth Circuit (Liu v. SEC, 591 U.S. 71, 90 (2020)).

[15] For example, the Court noted that, while the SEC "has sought to impose disgorgement liability on a wrongdoer for benefits that accrue to his affiliates . . . [t]hat practice could transform any equitable profits-focused remedy into a penalty" (Liu v. SEC, 591 U.S. 71, 90 (2020); citing Marshall v. City of Vicksburg, 82 U.S. 146, 149 (1872). To avoid this scenario, "courts must deduct legitimate expenses before ordering disgorgement under § 78u(d)(5)" (Liu v. SEC, 591 U.S. 71, 91-92(2020)).

[16] 15 U.S.C. § 78u(d)(8)(A)(i).

[17] (i) § 78(b); (ii) § 77q(a)(1); (iii) § 80b-6(1); and (iv) "any other provision of the securities laws for which scienter must be established."

[18] Sripetch v. SEC, No. 25-466, slip op. at 7 (June 4, 2026); *citing* Brief for Respondent 33-35; Liu v. SEC, 591 U.S. 71, 83-84, 90-92 (2020); Third Restatement § 51, Comment *f*.

[19] Sripetch v. SEC, No. 25-466, slip op. at 7 (June 4, 2026); *citing* Liu v. SEC, 591 U.S., 71, 79 (2020)).

[20] Sripetch v. SEC, No. 25-466, slip op. at 7 (June 4, 2026) (emphasis added).

[21] Sripetch v. SEC, No. 25-466, slip op. at 7 (June 4, 2026); *citing* D. Dobbs & C. Roberts, Law of Remedies: Damages – Equity – Restitution § 3.1, p. 213 (3d ed. 2018) (Dobbs).

[22] Sripetch v. SEC, No. 25-466, slip op. at 7 (June 4, 2026); *citing* 3 S. Williston, Law of Contracts § 1338, p./ 2392 (1920); Dobbs § 3.1, at 215 ("[D]amages is an instrument of corrective justice, an effort to put [the] plaintiff in his or her rightful position").

[23] Sripetch v. SEC, No. 25-466, slip op. at 7 (June 4, 2026); *see* Dobbs § 3.1, at 213; Third Restatement § 51, Comment *f*, *h*, *i*.

[24] Sripetch v. SEC, No. 25-466, slip op. at 10-11 (June 4, 2026).

[25] Sripetch v. SEC, No. 25-466, slip op. at 8 (June 4, 2026) (Thomas, J., concurring in part and dissenting in part).