

Supreme Court to Decide Key Question on SEC Disgorgement

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On January 9, the U.S. Supreme Court [granted](#) certiorari in *Ongkaruck Sripetch v. U.S. Securities and Exchange Commission* (SEC). The case arises out of an SEC civil enforcement action in the Ninth Circuit and squarely presents an important remedial question that the Court left open in *Liu v. SEC*, i.e., what counts as a “victim” for purposes of SEC disgorgement, and does the SEC have to show that investors actually lost money before it can obtain that relief?

The answer will directly affect how much the SEC can recover in enforcement actions nationwide and will resolve a split among the First, Second, and Ninth Circuits.

Background and the Question Presented

In *Liu v. SEC*, the Supreme Court held that the SEC may seek equitable disgorgement in civil enforcement actions, but only within traditional equitable limits — meaning that any award must be tied to a wrongdoer’s “net profits” and “awarded for victims.” Since *Liu*, lower courts have wrestled with what it means to be a “victim” and what constraints that places on the SEC.

In *Sripetch*, the Ninth Circuit upheld a disgorgement award of approximately \$2.2 million without requiring the SEC to prove that investors suffered any monetary loss. The court held that investors can be “victims” even if they did not lose money, reasoning that it was enough that their legally protected interests were compromised.

In doing so, the Ninth Circuit:

- Explicitly rejected the Second Circuit’s contrary decision, which held that disgorgement under the same statutory provisions is unavailable unless investors suffered pecuniary harm; and
- Aligned itself with the First Circuit, which likewise held that pecuniary harm is not a prerequisite for disgorgement.

The [petition](#) in *Sripetch* frames the conflict this way, and the Supreme Court granted review on the following question:

Whether a court may order equitable disgorgement under 15 U.S.C. § 78u(d)(5) and (d)(7) without the SEC having to show that investors suffered pecuniary harm.

Next Steps

By granting certiorari, the Supreme Court signaled that it is prepared to revisit the contours of SEC disgorgement for the third time in less than a decade. This time, the Court is poised to answer a concrete, recurring question that has now divided the circuits, i.e., must disgorgement be tied to actual investor monetary loss or is it enough that the defendant violated the securities laws and profited?

The Court's decision will shape how the SEC structures its enforcement actions, how courts calibrate remedies, and how companies and individuals assess the risks associated with settling or litigating SEC cases. We will continue to monitor developments as briefing proceeds and the Court moves toward argument and decision.

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