

# US Supreme Court Holds SEC Need Not Prove Investor Loss to Obtain Disgorgement

## WRITTEN BY

Jay A. Dubow | Ghillaine A. Reid

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## KEY POINTS

- The U.S. Supreme Court in *Sripetch v. SEC* held that the SEC may obtain disgorgement of a violator's net profits without proving that investors suffered pecuniary loss.
- The Court grounded its holding in traditional equitable restitution principles, distinguishing legal damages measured by investor loss from equitable disgorgement focused on the defendant's unjust gains.
- The Court interpreted *Liu v. SEC* as requiring that disgorgement be "awarded for victims" but not as imposing a pecuniary-loss requirement or redefining "victim" to mean only those with measurable financial loss.
- The Court reaffirmed that SEC disgorgement must be tied to net profits causally connected to violations of investors' legally protected interests, preserving constraints derived from *Liu* and traditional equity.
- Justice Thomas concurred to argue that disgorgement under 15 U.S.C. § 78u(d)(7) should now be treated as a legal remedy triggering a Seventh Amendment jury-trial right in future SEC disgorgement cases.

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On June 4, the U.S. Supreme Court unanimously held in *Sripetch v. SEC* that the U.S. Securities and Exchange Commission (SEC) does not need to prove that investors suffered pecuniary loss in order to obtain a disgorgement award in civil enforcement actions. Writing for the Court, Justice Neil Gorsuch anchored the decision in traditional equitable principles of restitution, concluding that disgorgement focuses on the defendant's unjust gains rather than the victim's out-of-pocket losses. The Court resolved a split between the Second Circuit and other courts of appeals, and left open significant questions about the nature of the SEC's disgorgement authority after Congress expressly authorized disgorgement in § 21(d)(7) of the Exchange Act.

## BACKGROUND

Sripetch allegedly engaged in multiple fraudulent schemes involving at least 20 penny-stock companies, including classic "pump-and-dump" operations. In 2020, the SEC brought a civil enforcement action in the Southern District of California, alleging six counts of securities fraud and one count of selling unregistered securities. Sripetch consented to judgment and agreed that the court could order disgorgement, but opposed the SEC's request for more than \$4.1 million in disgorgement.

Relying on *Liu v. SEC*, Sripetch argued that the SEC could not obtain disgorgement absent proof that his conduct caused investors to suffer financial losses. The Southern District of California found that the SEC had, in fact, shown investor pecuniary harm and therefore declined to resolve whether such a showing was legally required. The Ninth Circuit affirmed on a broader ground, holding that *Liu* does not impose a pecuniary loss requirement and that investors can be "victims" entitled to disgorgement even if they have not suffered measurable financial

loss. In doing so, the Ninth Circuit deepened a split with the Second Circuit, which had taken the opposite view.

## THE SUPREME COURT'S OPINION

The Court framed the question narrowly: whether the SEC must prove that investors suffered pecuniary loss before obtaining disgorgement under either 15 U.S.C. § 78u(d)(5) (equitable relief “appropriate or necessary for the benefit of investors”) or § 78u(d)(7) (express authorization of “disgorgement”). Rather than decide how Congress’s addition of § 78u(d)(7) changed the scope or character of the disgorgement remedy, the Court assumed for purposes of the case that disgorgement under both provisions must conform to traditional equitable principles, including *Liu*’s requirement that disgorgement be “awarded for victims.”

From that starting point, the Court drew a sharp distinction between legal damages and equitable restitution. Legal damages are typically measured by the plaintiff’s loss and seek to place the plaintiff in the position they would have occupied absent the wrongdoing. By contrast, equitable disgorgement and restitution historically focus on stripping the defendant of the net profits attributable to their wrongful interference with another’s legally protected interests. Under traditional equitable doctrine, a claimant seeking disgorgement of wrongful gains is not required to prove “a corresponding loss or any loss” at all. It is enough that the defendant has been unjustly enriched from the alleged malfeasance.

Applying that framework, the Court rejected *Sripetch*’s reading of *Liu*. Although *Liu* held that disgorgement must be “awarded for victims” and rooted that requirement in equity, it did not redefine “victim” to mean only a person who suffers financial loss. Nor is a pecuniary loss requirement implicit in *Liu*’s description of disgorgement as “restoring the status quo.” In situations where the defendant is enriched but the plaintiff’s balance sheet is unchanged, the Court reasoned, equity faces a choice between restoring the defendant to their prior position by stripping their unjust gains or leaving them better off because the plaintiff suffered no calculable loss. Historically, equity has favored depriving the wrongdoer of wrongful profits rather than allowing unjust enrichment to stand.

The Court acknowledged concerns that, without a pecuniary-loss requirement, the SEC might seek disgorgement in a manner that resembles a penalty, particularly if it directs funds to the Treasury rather than to investors. But the Court held that those concerns do not justify reading a pecuniary-loss requirement into *Liu* or into the equitable tradition, where none exists. Likewise, the Court declined to address the broader concern expressed by parties who filed amicus briefs in *Sripetch* that the SEC might seek disgorgement for violations that do not invade any investor’s legally protected interests, because *Sripetch* did not contest that their conduct violated such interests.

On that basis, the Court affirmed the Ninth Circuit’s judgment and held that the SEC may obtain disgorgement of a violator’s net profits without proving that investors suffered pecuniary loss.

## THE CONCURRENCE

Justice Clarence Thomas concurred in the judgment, agreeing that the SEC can seek disgorgement without showing investor pecuniary harm. He wrote separately to argue that, after Congress added § 78u(d)(7) and structurally distinguished “disgorgement” from “equitable relief” and provided a separate statute of limitations, disgorgement should now be recognized as a legal remedy rather than an equitable one. In his view, SEC disgorgement does not correspond to traditional equitable tools like constructive trusts, equitable liens, or fiduciary accountings for profits, especially given the SEC’s practice of retaining large portions of disgorged funds rather

than returning them to victims.

Because disgorgement is now expressly authorized by statute as a stand-alone form of monetary relief and functions more like legal restitution or a penalty, Justice Thomas would treat it as “legal” for Seventh Amendment purposes. He concluded that, in a future case, the Court should hold that defendants facing SEC demands for disgorgement under § 78u(d)(7) are entitled to a jury trial, consistent with *Jarkesy* and the historical distinction between law and equity.

## **OUR TAKE**

*Sripetch* is a significant win for the SEC and other civil enforcement agencies that rely on gain-based remedies. By rejecting a pecuniary-loss requirement, the Court preserves the SEC’s ability to pursue disgorgement in cases where investor harm is diffuse, difficult to quantify, or not easily demonstrated in out-of-pocket terms. Defendants will not be able to defeat disgorgement simply by arguing that investors ultimately did not lose money.

At the same time, the decision leaves intact core constraints on disgorgement drawn from *Liu* and traditional equity. The SEC still must tie the award to the defendant’s net profits causally connected to the violation, and focus on directing those gains to “wronged investors” rather than treating disgorgement as a free-standing penalty for the Treasury. The Court’s repeated emphasis on “traditional equitable principles” and on the wrongful invasion of legally protected interests gives defendants continued grounds to challenge disgorgement amounts that overshoot net profits, lack a clear causal nexus to the alleged violation, or are sought in circumstances where no investor’s legal interests were actually invaded.

Justice Thomas’s concurrence points directly to the next frontier in disgorgement litigation: whether disgorgement under § 78u(d)(7) is properly characterized as a legal remedy that triggers a Seventh Amendment jury-trial right. The statutory structure distinguishing “disgorgement” from “equitable relief,” the separate limitations periods, and the SEC’s own data about how much disgorgement ends up in the Treasury rather than with investors, will likely fuel future challenges.

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