Jul 14, 2026

Categories:

Publications
SCOTUS Collection
Supreme Court 2025-2026 Term

Authors:

Jeffrey L. Nagel

No Harm, No Foul? Supreme Court Rules SEC May Seek Disgorgement Without Demonstrating Financial Harm to Victims

Sripetch v. SEC, 608 U.S. ___ (June 4, 2026)

In *Sripetch v. SEC* (June 4, 2026), the U.S. Supreme Court resolved a circuit split concerning whether the Securities and Exchange Commission (SEC), when seeking "disgorgement" as remedy, must first demonstrate that the victims of the federal securities law violation incurred financial harm. The Supreme Court unanimously held the SEC did not have to prove victim financial harm, but stressed the narrow issue it was deciding, leaving many important questions for another day.

To understand why *Sripetch* raises more important questions than it resolves, a brief history of the SEC's disgorgement practice is required. At inception the SEC was not authorized to seek monetary awards, but only an "injunction barring future violations of securities laws." *Kokesh* v. *SEC*, 581 U. S. 455, 458 (2017). By the 1970s, the SEC persuaded courts to order disgorgement of unlawful gains as an exercise of its "inherent equity power to grant relief ancillary to an injunction." *Id.* at 458. The practice became routine. Inherent power gave way to statutory authority in 2002 when Congress enacted 15 U.S.C. §78u(d)(5), amending the Securities and Exchange Act of 1934 (the "Exchange Act"), which granted the SEC power to seek "any equitable relief … for the benefit of investors." The SEC began pursuing more disgorgement claims, often depositing the proceeds into the U.S. Treasury.

Nearly two decades later, the Supreme Court agreed to assess the appropriateness of that particular practice in *Liu* v. *SEC*, 591 U.S. 71 (2020), holding that while "any equitable relief" can encompass a disgorgement remedy "for the benefit of investors," that remedy was limited by certain traditionally understood equitable principles. Disgorgement must seek only unlawfully obtained net profits. *Id.* at

79. And the disgorged funds must be "awarded for victims," not the U.S. Treasury. *Id.* A mere six months later, Congress amended the Exchange Act again, adding 15 U.S.C. §78u(d)(7) to specifically address "disgorgement" as a broad enforcement tool. And the language "for the benefit of investors" still present in §78u(d)(5) was not repeated, raising whether Congress wanted the U.S. Treasury back in the game of collecting disgorged profits, as the SEC has argued.

Against that backdrop came Mr. Ongkaruck Sripetch and his band of coconspirators who engaged in penny stock pump-and-dump schemes involving at least 20 companies, and who admitted to six counts of securities fraud and one count of selling unregistered se curities. Mr. Sripetch consented to a judgment and agreed to disgorgement. But when the SEC sought over $4 million, he had a change of heart and argued the SEC lacked evidence that his schemes caused investors "financial losses," so there were no "victims" for whom disgorgement could be awarded, as required by *Liu*. The lower court concluded the SEC had done enough to show that Mr. Sripetch's investors had suffered pecuniary loss. But the U.S. Court of Appeals for the Ninth Circuit went further. It held that although *Liu* required there be a "victim" to award any disgorgement, such victim need not be someone who "suffered pecuniary harm" but only someone who could show an "actionable interference" with their "legally protected interests."

The holding set up a circuit split with the U.S. Court of Appeals for the Second Circuit, and so the Supreme Court took up that narrow issue, concluding that the Ninth Circuit was indeed correct: assuming the SEC's disgorgement power remained subject to *Liu* — an open question after the Exchange Act's amendments following that ruling — equitable rules of disgorgement only required showing that a victim's legally protected rights were violated, allowing for a remedy designed to "deprive wrongdoers of their net profits from unlawful activity." Equitable cases of that variety are common throughout history, and the Supreme Court cited a number of them, from those where a party misused an easement to those where a property owner dug tunnels under their own and their neighbor's property to give cave-dwelling tours. In such examples, the "victim" hadn't suffered monetary loss by the bad actor, but the violator profited from their misuse, or their trespass, and the remedy was to disgorge their ill-gotten gains. The SEC's equitable disgorgement cases were no different from that in the Supreme Court's view.

In so ruling, the Supreme Court was aware of the narrowness of its holding and what hard questions would be expected down the road. It noted that should the SEC "depart from traditional equitable principles and attempt to use [newly enacted] §78u(d)(7) to secure penalties, it would of course proceed beyond what *Liu* held §78u(d)(5) tolerates." Indeed, the parties in *Sripetch* had spilt "much ink debating how the addition of §78u(d)(7) affects the scope of the SEC's disgorgement powers," but the Supreme Court had not granted *certiorari* to resolve those important questions, despite Mr. Sripetch (and the SEC) raising them, including the question whether Congress intended for the U.S. Treasury to once again collect the disgorgement remedies.

Finally, in a separate concurrence, Justice Thomas, despite being among the court's most conservative jurists, saw no problem reaching beyond the narrow issue necessary to decide the case to conclude that, since Congress has now provided a new statutory basis (and separate limitations period) for "disgorgement" actions under §78u(d)(7), it also created a legal remedy requiring the SEC to adhere to the Seventh Amendment's guarantee of a jury trial. That issue, too, is bound to come before the Supreme Court sooner than later.

Key Takeaways

- **The SEC may seek disgorgement without showing victim pecuniary harm.** Assuming disgorgement remains among the "equitable" remedies the SEC may seek under §78u(d)(5), the SEC need not show there is a victim who suffered any pecuniary harm, but only that there has been a victim whose legally protected rights were violated by the party against whom disgorgement is sought.
- **Whether disgorged funds need to go to victims or can be deposited with the U.S. Treasury remains an open question.** The SEC argued in *Sriptech* that it has authority

under newly enacted §78u(d)(7) to pursue disgorgement even without the requirement of any victim, and thus *Liu*'s limitation that disgorged funds must go to victims should no longer apply, and the U.S. Treasury may keep any such proceeds. The Supreme Court discussed but did not resolve that issue, leaving it open for a different case.

- **Whether the SEC's use of §78u(d)(7) to expand the scope of its disgorgement powers requires a jury trial remains an open question.** Justice Thomas in a separate concurrence directly addressed his view of disgorgement claims under §78u(d)(7) and indicated that such claims were not "equitable" at all, but instead were legal claims seeking a penalty that required SEC adherence to the Seventh Amendment's right to trial by jury. That issue remains open for later cases but no doubt will be tested soon as the SEC continues to bring large disgorgement actions under its recently expanded statutory authority.

The appellate advocates at FBT Gibbons have a proven track record of success in appeals involving questions of first impression, bet-the-company judgments, and decisions that shape the rules under which our clients will operate well into the future. For more information, please contact the author or any attorney with the firm's Appellate team.

Want more U.S. Supreme Court coverage?

Explore our full wrap-up and analysis of the most consequential rulings for business and industry from the U.S. Supreme Court's 2025-26 term.

View collection

FBT Gibbons