Investment Management Update

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SEC Disgorgement Powers Stay Intact After High Court Fight

Key Notes:

- In *Sripetch v. SEC*, the Supreme Court unanimously held that the SEC need not prove investors suffered pecuniary loss before obtaining disgorgement of a securities violator's ill-gotten gains. Disgorgement requires only that a defendant's misconduct invaded investors' legally protected interests.
- The decision clarifies *Liu v. SEC*: while disgorgement must be "awarded for victims," traditional equitable principles do not require proof of pecuniary loss before an investor qualifies as a victim. Defendants may still contest net-profit calculations, causation, expense deductions, distribution plans, and whether the violation actually invaded investors' protected interests.

In *Sripetch v. SEC*[1], the Supreme Court unanimously held that the SEC need not prove investors suffered pecuniary loss before obtaining disgorgement of a securities violator's ill-gotten gains. The decision clarifies a point left open after *Liu v. SEC*:[2] an investor may be a "victim" for disgorgement purposes without proof of out-of-pocket financial harm, so long as the defendant's misconduct invaded the investor's legally protected interests and generated unjust profits.

The case arose from Ongkaruck Sripetch's penny-stock fraud schemes. After consenting to judgment, Sripetch resisted the SEC's $4.1 million disgorgement request, arguing investors had suffered no financial losses. The Ninth Circuit held pecuniary harm was not required, deepening a split with the Second Circuit's contrary decision in *SEC v. Govil.*[3] The Supreme Court granted certiorari to resolve the conflict.

Writing for the Court, Justice Gorsuch distinguished damages from disgorgement: damages compensate plaintiffs for loss; disgorgement strips wrongdoers of gains from invading protected interests. Traditional equity has long permitted gain-based remedies even absent measurable financial loss.[4] The Court assumed without deciding that disgorgement remains equitable, subject to the "awarded for victims" rule, but held that no pecuniary-loss showing is required.[5]

The practical consequence is significant. In market-manipulation, insider-trading, and offering-fraud cases, loss causation from investor to investor is often difficult to prove. *Sripetch* allows the SEC to pursue disgorgement without converting remedy hearings into damages trials. The Second Circuit's *Govil* decision had required proof of pecuniary harm,[6] but *Sripetch* forecloses that reading, confirming that disgorgement may reach ill-gotten gains even when those gains do not correspond to identifiable investor losses.[7]

Sripetch applies rather than expands *Liu*. The *Liu* Court held that SEC disgorgement qualifies as equitable relief only when limited to net profits and awarded for victims.[8] The *Sripetch* majority rejected Sripetch's reading of "for victims"

[1] *Sripetch v. SEC*, 2026 U.S. LEXIS 2356 (2026).
[2] *Liu v. SEC*, 591 U.S. 71 (2020).
[3] *SEC v. Govil*, 86 F.4th 89, 106 (2d Cir. 2023).
[4] *See* Liu v. SEC, 591 U.S. 71, 79–80 (2020).
[5] *Sripetch v. SEC*, 2026 U.S. LEXIS 2356, at *11–12, *17–19 (2026).
[6] *SEC v. Govil*, 86 F.4th 89, 106 (2d Cir. 2023).
[7] *Sripetch v. SEC*, 2026 U.S. LEXIS 2356, at *12 (2026).
[8] *Liu v. SEC*, 591 U.S. 71, 79, 85 (2020).

as requiring proof of pecuniary loss.[9] Defendants may still contest net-profit calculations, causal connection, expense deductions, distribution plans, and whether the violation actually invaded investors' protected interests. Justice Thomas concurred, pressing his view that Section 78u(d)(7) converted disgorgement into a legal remedy carrying Seventh Amendment jury-trial rights.[10]

The opinion is not a blank check. The Court declined to decide whether Section 78u(d)(7) permits departures from equitable principles, including the requirement that disgorged funds be awarded for victims.[11] Justice Thomas's concurrence underscores unresolved constitutional questions. The Fifth and Second Circuits have split on whether Section 78u(d)(7) transformed disgorgement into a legal remedy.[12] Layered atop *SEC v. Jarkesy*,[13] which held the Seventh Amendment entitles defendants to jury trials when the SEC seeks civil penalties, this points toward future litigation: defendants will increasingly demand jury trials and challenge awards functioning as Treasury-bound penalties.[14] The majority signaled that using Section 78u(d)(7) to pursue Treasury penalties rather than victim compensation would "proceed beyond what *Liu* held § 78u(d)(5) tolerates."[15]

For enforcement defendants, the focus shifts from categorical "no investor loss" arguments to fact-specific challenges: unjust enrichment, causation, net-profit calculations, distribution plans, and the remedy's legal-versus-equitable character. The SEC retains a powerful, loss-independent disgorgement tool.[16] Defendants should redirect efforts toward *Liu's* net-profits and victim-compensation limits,[17] whether the Commission can show that investors' legally protected interests were actually invaded,[18] and whether the Seventh Amendment entitles them to a jury.[19] The pecuniary-loss question is settled; the question of whether disgorgement is equitable at all, and thus whether it may proceed without a jury, now must be decided.

FOR MORE INFORMATION

For more information, please contact:

Brian Lanciault
212.908.3945
Brian.Lanciault@ThompsonHine.com

Karim Sabbidine
212.908.3944
Karim.Sabbidine@ThompsonHine.com

[9] *Sripetch v. SEC*, 2026 U.S. LEXIS 2356, at *16–17 (2026).
[10] *Id.* at *19–30 (Thomas, J., concurring).
[11] *Id.* at *17–19.
[12] Compare *SEC v. Hallam*, 42 F.4th 316, 341 (5th Cir. 2022), with *SEC v. Ahmed*, 72 F.4th 379, 395 (2d Cir. 2023); *see Sripetch v. SEC*, 2026 U.S. LEXIS 2356, at *30 (Thomas, J., concurring).
[13] *SEC v. Jarkesy*, 603 U.S. 109, 123 (2024).
[14] *See Sripetch v. SEC*, 2026 U.S. LEXIS 2356, at *22–27 (Thomas, J., concurring).
[15] *Id.* at *17–18.
[16] *See id.* at *11.
[17] *Liu v. SEC*, 591 U.S. 71, 83–88 (2020).
[18] *Sripetch v. SEC*, 2026 U.S. LEXIS 2356, at *17–19 (2026).
[19] See *SEC v. Jarkesy*, 603 U.S. 109, 120–21 (2024).