



Supreme Court Hears Case on SEC Disgorgement

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Action: On April 20, the Supreme Court heard oral argument in *Sripetch v. SEC* on whether the SEC may obtain disgorgement in a civil enforcement action – that is, require that a wrongdoer give up the ill-gotten gains – without showing that investors suffered “pecuniary harm” (damages that are quantifiable economic losses).

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- The Court’s decision could determine how broadly the SEC can continue using a key monetary remedy in enforcement actions involving fraud, unregistered offerings, disclosure failures, and other conduct that generates profits or avoids losses unlawfully. In this case, the petitioner facilitated a series of pump-and-dump schemes involving microcap stocks and pled guilty to selling unregistered securities.
- In 2020, a US District Court ordered him to pay about \$2.25 million in disgorgement (plus \$1.05 million in interest) to the SEC in addition to serving 21 months in prison in a related criminal case.
- In challenging the enforcement action, the petitioner pointed to previous Supreme Court decisions placing restrictions on disgorgement, including *Liu v. SEC* (2017) in which the Court stated that disgorgement must not exceed a wrongdoer’s net profits and be awarded to benefit victims.
- The petitioner argued that since in this case the SEC failed to identify specific investors who were harmed, disgorgement is not an appropriate remedy.
- However, in oral argument Justices generally seemed skeptical of this argument, suggesting that the Court is unlikely to grant the petitioner’s request. However, some justices did question at what point the use of disgorgement crosses into a legal penalty that would require a jury trial, as the Court has required in other cases, notably *SEC v. Jarkesy* (2024).
- The case comes as the SEC’s leadership has shifted its enforcement approach to focus on deliberate fraud and investor harm rather than technical compliance violations²

- **What this means for business:** Disgorgement is a key enforcement mechanism for the SEC. The agency obtained about \$17 billion in disgorgement (and interest) over the last two fiscal years, accounting for more than half of the monetary relief the agency obtained.
 - Oral argument in this case suggests that firms should plan for disgorgement to remain a material part of SEC enforcement.
 - Reassess litigation, settlement, and reserve assumptions in matters where revenue, fees, or avoided losses could be characterized as ill-gotten gains.
 - Review disclosure controls, offering practices, insider trading surveillance, books-and-records controls, and other areas where the SEC may seek profit-based remedies even when investor losses are difficult to quantify.
 - Preserve documentation supporting how profits, commissions, fees, and investor outcomes were calculated, since net-profit and victim-distribution questions may become central in enforcement disputes.
 - Monitor the Supreme Court's forthcoming opinion for any distinction between the SEC's ability to obtain disgorgement and the government's ability to retain those funds, which could shape future defense strategy and Seventh Amendment arguments.
 - Track SEC enforcement priorities as well as the Court's opinion; even a broad ruling may be paired with a more investor-harm-focused case-selection approach at the agency.

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1. https://www.supremecourt.gov/oral_arguments/argument_transcripts/2025/25-466_ec8f.pdf
 2. <https://www.sec.gov/newsroom/press-releases/2025-132-sec-division-examinations-announces-2026-priorities>
 3. <https://www.sec.gov/newsroom/press-releases/2026-34>

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