

Supreme Court Rejects “Pecuniary Loss” Requirement for SEC Disgorgement

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On June 4, 2026, the Supreme Court issued a [unanimous decision](#) in *Sripetch v. SEC*, holding that the U.S. Securities and Exchange Commission does not need to prove that investors suffered pecuniary loss in order to obtain disgorgement. The decision resolves a circuit split and rejects the [Second Circuit’s more restrictive approach](#) articulated in *SEC v. Govil*, which had required pecuniary harm to investors before disgorgement could be awarded.

The Supreme Court held that “a showing of pecuniary loss to investors is not required before the SEC may obtain a disgorgement award.” Disgorgement, the Court explained, is not a compensatory remedy measured by investor losses, but rather an equitable remedy designed to strip wrongdoers of their unjust gains obtained by interfering with investors’ legally protected interests. While investor harm is still relevant to this analysis, it is not a prerequisite to disgorgement, and disgorgement may be available even where victims have suffered “no measurable loss whatsoever.”

The decision does not eliminate all limits on SEC disgorgement. The SEC must still tie the award to the defendant’s unjust enrichment, and traditional limitations on disgorgement—including net profits, causation, and concerns about punitive awards—remain important. Although the Court has previously held that disgorged funds should be returned to victims when feasible, it remains unclear whether disgorgement that cannot practicably be distributed to investors retains its equitable character or instead functions as a penalty.

In his concurrence, Justice Thomas reiterated his view that SEC disgorgement more closely resembles a legal remedy, not an equitable one, suggesting that future cases may need to address whether defendants are entitled to a jury trial under the Seventh Amendment when the SEC seeks disgorgement.

Implications for Investment Advisers

The Court's decision has several important implications for investment advisers:

- **Confirmation of Broad SEC Enforcement Authority.** The Court has confirmed that the SEC may pursue disgorgement even where investors did not suffer provable financial losses, so long as unjust enrichment can be tied to a violation of legally protected investor interests. Disgorgement focuses on defendants' *gains* rather than investor *losses*. As a result, in cases involving disclosure, valuation, or registration violations, arguments based on the absence of client harm are less likely to carry weight, and the analysis will instead focus on alleged ill-gotten gains.
- **Regulatory Focus on "Unjust Enrichment."** For investment advisers in particular, the decision heightens enforcement risk in areas where it can be hard to quantify losses suffered by investors, such as undisclosed conflicts of interest and other technical compliance violations. For example, disgorgement could be available where an investment was secured (and thus advisory fees were obtained) on the basis of deficient disclosures, regardless of whether clients experienced negative performance outcomes.
- **Unresolved Structural Questions.** The Court left open broader questions about the nature of SEC disgorgement, and Justice Thomas's concurrence signals potential future challenges, including whether disgorgement should be treated as a legal remedy requiring a jury trial.

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