

**Case Summary: *Sripetch v. Securities and Exchange Commission*, No.
25–466. (U.S. June 4, 2026)**

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*(The views expressed are those of the author and do not necessarily represent the
position of the Clemson Law Review or its leadership.)*

Every justice system wants to be called “fair,” but no matter the outcome, someone will always have an issue with a court’s decision. In *Sripetch v. Securities and Exchange Commission*, Ongkaruck Sripetch had such a problem, specifically, with the Court’s unanimous agreement with the Ninth Circuit’s decision that disgorgement does not require a showing of financial loss by the victim but simply a showing of wrongful gains by the defendant. Sripetch was found to have engaged in a pump-and-dump scheme involving at least 20 penny stocks, in which he and his accomplices promoted stocks they already held to artificially boost prices before quickly selling their shares for profit.¹ The Securities and Exchange Commission (SEC) promptly charged him with six counts of securities fraud and one count of selling unregistered securities.² Sripetch did not dispute the charges; rather, he believed the SEC’s disgorgement request to be in violation of Liu because, as he

¹ *Sripetch v. SEC*, 608 U.S. 555, 561 (2026) (“Some were classic ‘pump and dump’ operations in which Mr. Sripetch and his co-conspirators obtained shares of penny-stock companies, promoted the companies to others, watched the share price rise, and then promptly sold.”).

² *Id.* at 561 (“On discovering the schemes, the SEC brought a civil enforcement action against Mr. Sripetch, charging him in court with six counts of securities fraud and one count of selling unregistered securities. Mr. Sripetch consented to the entry of judgment against him and agreed that the court could order disgorgement.”).

claimed, they didn't have proof of financial loss incurred by the investors, so there was no true "victim" to whom the disgorgement could be awarded.³

Originally, the SEC's only statutory remedy was an injunction against future violations. Courts later began ordering disgorgement as well.⁴ However, what started as restitution meant to be repaid to those who were wronged became a source of revenue for the United States Treasury.⁵ In 2002, Congress passed 15 U.S.C. § 78u(d)(5), which enabled the SEC to seek "any equitable relief that may be appropriate or necessary for the benefit of investors," and then created § 78u(d)(7) in 2021⁶, which explicitly lists the term disgorgement as a tool of the SEC.⁷ Sripetch's objection to the disgorgement award lies in *Liu*, which states, "to avoid transforming an equitable remedy into a punitive sanction, courts restricted the remedy to an individual wrongdoer's net profits to be awarded for victims."⁸ Thus, he made two claims that explain why the disgorgement request was unlawful: one, that the SEC does not have sufficient evidence of financial losses to specific victims;

³ *Id.* at 561 ("As relevant here, he argued that the SEC's request violated *Liu* for a very specific reason: The Commission lacked evidence that his schemes caused investors to suffer any 'financial losses,' so there were no 'victims' for whom disgorgement could be awarded under *Liu*.").

⁴ *Id.* at 558 ("When Congress created the SEC in the 1930s, it did not authorize the Commission to seek monetary awards for violations of federal securities laws. Instead, 'the only statutory remedy' the SEC could pursue was a judicial 'injunction barring future violations of securities laws.' " (quoting *Kokesh v. SEC*, 581 U.S. 455, 458 (2017))).

⁵ *Id.* ("But eventually, the SEC began routinely seeking and obtaining disgorgement awards that went 'beyond compensati[ng]' victims by sending disgorged funds 'to the United States Treasury.' " (quoting *Kokesh*, 581 U.S. at 465, 467)).

⁶ Brief for Consumer Federation of America as Amicus Curiae Supporting Respondent at 3, *Sripetch v. SEC*, 608 U.S. 555 (2026) (No. 25-466).

⁷ *Sripetch*, 608 U.S. at 559 ("[T]he SEC stressed that Congress had enacted 15 U.S.C. § 78u(d)(5) in 2002, a provision allowing it to seek 'any equitable relief that may be appropriate or necessary for the benefit of investors.'").

⁸ *Liu v. SEC*, 591 U.S. 71, 79 (2020) ("Second, to avoid transforming an equitable remedy into a punitive sanction, courts restricted the remedy to an individual wrongdoer's net profits to be awarded for victims.").

and two, without a requirement to prove pecuniary damages the SEC may turn disgorgement punitive, in direct opposition to the guidelines established in *Liu*.⁹

The Court acknowledged that *Liu* left several questions unanswered, such as whether disgorgement under the new § 78u(d)(7) provision must fall under equitable remedy guidelines, but this is not a question that the Court looked to answer at this time.¹⁰ Additionally, they laid aside the issue as to whether disgorgement could be sought when repaying the victims is ‘infeasible,’ and what exactly that language entails.¹¹ Instead, the Court seeks to decide whether a showing of pecuniary loss is required to demonstrate that an investor is the victim of an offender's wrongdoings.¹²

The primary purpose of a legal remedy is to restore a plaintiff to their position before the defendant's actions; similarly,¹³ an equitable remedy is designed to deprive the defendant of their ill-gotten gains and return them to the victims. No matter how the court rules on the place of disgorgement as a legal versus equitable

⁹ *Sripetch*, 608 U.S. at 562 (“But it rejected Mr. Sripetch’s submission that “victim” must be ‘narrowly defined as an individual or entity that has suffered pecuniary harm.’” (quoting *Sripetch*, 154 F.4th at 986)).

¹⁰ *Id.* at 560 (“As much as it resolved, *Liu* left some questions unanswered.”).

¹¹ *Id.* at 560 (“We did not decide whether the SEC may seek disgorgement when it is ‘infeasible to distribute the collected funds to investors.’ *Id.*, at 89. Nor did we decide what showing the Commission might have to make to prove ‘[in]feasibility.’”).

¹² *Id.* at 564 (“The only question we took this case to resolve is whether the SEC must show that an investor suffered a pecuniary loss before it may secure a disgorgement remedy under either § 78u(d)(5) or § 78u(d)(7).”).

¹³ *Id.* at 559–60 (“First, because equity seeks to ‘depriv[e] wrongdoers of their . . . profits from unlawful activity,’ Second, because equity aims to deliver ‘wrongful gains’ to ‘wronged victims’—a point reinforced by § 78u(d)(5)’s focus on ‘investors’—we concluded that any amounts the SEC secures must be ‘awarded for victims.’ Accordingly, we held that the SEC must ‘return a defendant’s gains to wronged investors,’ contrary to its ‘practice of depositing a defendant’s gains with the Treasury.’” (citations omitted) (quoting *Liu*, 591 U.S. at 79, 82–85, 88–90)).

remedy, courts measure the amount to be awarded as the defendant's gains that are attributable to their wrongdoing, not the amount that the plaintiff lost.¹⁴ Contrary to Sripetch's assertions, restitution is not about recouping the losses of individual, identifiable plaintiffs; instead, it is about recovering enrichment that resulted from a violation of a plaintiff's interests.

Whether or not the plaintiff suffered financial loss is not at issue because the fact that the gains were obtained through the invasion of the plaintiff's legally protected interests is what is needed to authorize disgorgement. To illustrate this point, the Court cites *Edwards v. Lee's Administrator*. In this case, a man began a cave-touring business, where one-third of the attraction lay beneath his neighbor's land. Even though the neighbor's third of the cave was inaccessible to him and the man's use of said cave caused no loss to the neighbor, the court granted the neighbor one-third of the man's net profits.¹⁵ The neighbor was awarded not because he lost anything of value but because his rights were encroached upon.¹⁶

In light of this ruling, Sripetch asked whether the SEC would treat disgorgement as punitive rather than equitable, in the absence of the requirement to prove financial loss.¹⁷ His warning was even more alarming when coupled with the district court's decision not to require the SEC to explain how they would return

¹⁴ *Id.* at 565 ("Generally, the final award to the plaintiff is not measured by his loss but by the defendant's gain attributable to his wrongdoing against the plaintiff.").

¹⁵ *Edwards v. Lee's Adm'r*, 96 S.W.2d 1028, 1028–29 (Ky. 1936).

¹⁶ *Sripetch*, 608 U.S. at 567 ("Applying traditional equitable principles, a court ordered the defendant to disgorge the value of the gain attributable to his invasion of the plaintiff's legally protected interests without requiring a showing of pecuniary loss.").

¹⁷ *Id.* at 568 ("At bottom, Mr. Sripetch's real worry seems to be that, without a pecuniary loss requirement, the SEC might lose sight of traditional equitable principles altogether.").

these unlawful gains back to the victims.¹⁸ Accordingly, Justice Thomas concurred with the Court's opinion and enumerated similar questions that the decision left unanswered, while also arguing how the Court should proceed. Whether the Court decides to interpret disgorgement as a legal or equitable remedy could have the marked consequence of requiring a jury trial for its use. Justice Thomas argues that under § 78u(d)(7), disgorgement is akin to legal restitution and should thus invoke a jury trial.¹⁹ From a fundamental perspective, the very distinction between equity and law is that the former is a resolution that lies outside of traditional legal means.²⁰ Additionally, the nature of an equitable remedy is one of exactness, which seeks to create fairness where the law cannot.²¹ Now that disgorgement has been written into law, its status as an equitable remedy is, by definition, in question, even without considering how the SEC frequently fails to return funds to any damaged parties.²² And when directly compared to legal restitution, disgorgement and restitution both make no attempt to compensate victims and are used to award

¹⁸ *Id.* at 568 (“And, he hints, we should be on high alert for this problem given that, in this very case, the district court did not require the SEC to explain how it planned to distribute its disgorgement award to wronged investors.”).

¹⁹ *Id.* at 573 (Thomas, J., concurring) (“SEC disgorgement does not resemble any traditional equitable remedy. It does not correspond to the most common forms of equitable relief that involved returning money—constructive trusts and equitable liens.”).

²⁰ *Id.* at 572 (Thomas, J., concurring) (“Common-law courts could ‘entertain suits only in a prescribed form, and they [could] give a general judgment only in the prescribed form.’ Equity courts, by contrast, could ‘give relief in extraordinary cases, which are exceptions to general rules.’” (first quoting 1 Joseph Story, *Commentaries on Equity Jurisprudence* § 27 (13th ed. 1886); and then quoting *The Federalist No. 83*, at 505 (Alexander Hamilton) (Clinton Rossiter ed., 1961))).

²¹ *Id.* at 573 (Thomas, J., concurring) (“And, consistent with equity’s aim of exact justice, it is against the general principles of equity to aid in the enforcement of penalties or forfeitures. In short, equity provided exceptional relief tailored to the unique circumstances of the harmed party to achieve fairness when the remedies available at law were inadequate to do so.”).

²² *Id.* at 573 (Thomas, J., concurring) (“SEC disgorgement does not resemble any traditional equitable remedy. It does not correspond to the most common forms of equitable relief that involved returning money—constructive trusts and equitable liens.”).

the plaintiff for “some benefit the defendant had received.”²³

With these two principles in mind, Congress’s decision to explicitly name disgorgement as a tool of the SEC is inconsistent with equitable remedies because it codifies disgorgement into law.²⁴ Additionally, the disgorgement’s lack of victim compensation makes it similar to legal restitution; accordingly, Justice Thomas believes disgorgement under § 78u(d)(7) is a legal remedy, necessitating a jury trial for its enforcement.²⁵ However, it’s up to the courts to make this decision in the future.

As a result, disgorgement is further solidified as one of the SEC’s tools with the added benefit of not requiring proof of pecuniary loss, rejecting the Second Circuit’s view; relatedly, disgorgement is measured by a defendant’s wrongful gain and does not need to match the amount of damage suffered by the plaintiff. Ultimately, this strengthens the SEC’s ability to go after fraudsters, especially when the damages caused are difficult to calculate.

²³ *Id.* at 575 (Thomas, J., concurring) (“Legal restitution, unlike equitable restitution, does not purport ‘to restore to the plaintiff particular funds’; it instead vindicates the plaintiff’s “just grounds for recovering money to pay for some benefit the defendant had received.””).

²⁴ *Id.* at 575 (Thomas, J., concurring) (“As Judge Smith explained, ‘explicitly authorizing a remedy in a statute’s text’ is generally ‘inconsistent with that remedy’s being rooted in equity,’ as the ‘historical role for equity’ was providing relief where law did not.” (quoting *SEC v. Hallam*, 42 F.4th 316, 340 (5th Cir. 2022))).

²⁵ *Id.* (“Thus, the disgorgement that the SEC seeks today looks more like legal restitution, for which the Seventh Amendment entitles the defendant to a jury trial.”).