
Ninth Circuit Decision Deepens Circuit Split on Whether SEC Can Seek Disgorgement in Civil Enforcement Actions Involving Uninjured Investors

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When the Securities and Exchange Commission (“SEC”) brings a civil enforcement action in a securities fraud case, it has a range of potential remedies it can seek, including injunctive relief, disgorgement, and financial penalties. Historically, the SEC has treated disgorgement as a means to recoup the illicit gains received by the perpetrator of an alleged fraud.

Recent federal court opinions, however, are divided on the purpose of disgorgement, and whether the SEC can disgorge a defendant's ill-gotten gains without showing that investors suffered pecuniary harm. In 2023, the Second Circuit held in *SEC v. Govil* that such a showing was necessary, and in 2024, the First Circuit reached the opposite conclusion in *SEC v. Navellier & Associates, Inc.* The U.S. Supreme Court declined to resolve this circuit split, but the Ninth Circuit's recent decision in *SEC v. Sripetch* will likely give the Court another opportunity to weigh in.

On September 3, 2025, in *Sripetch*, a panel from the Ninth Circuit agreed with the First Circuit's reasoning and held that an award of disgorgement in a civil enforcement action under 15 U.S.C. § 78u(d)(5) and (d)(7) does not require a showing that investors experienced pecuniary harm. The Ninth Circuit's decision, which deepens the pre-existing circuit split, creates opposing rules in the two circuits where the SEC brings a large proportion of litigated enforcement actions (the Second and Ninth) and increases the likelihood that the U.S. Supreme Court will step in to resolve the split.

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