

Supreme Court Limits SEC's Ability to Mete Out 'Financial Ruin' via Disgorgement, Investment News, ft. Nancy Hendrickson

Nancy Hendrickson, partner and co-chair of KD's Financial Services Practice Group, is quoted in an Investment News article on coverage of the SCOTUS Liu vs. SEC opinion, written by Mark Schoeff Jr., published on June 23, 2020.

The ruling upholds the agency's right to claw back ill-gotten gains as long as they're from net profits of fraudulent schemes.

A Supreme Court decision this week upheld one of the Securities and Exchange Commission's most powerful tools for clawing back money from fraudsters but set limits that provide some protections to financial advisers caught in the agency's cross hairs.

In an 8-1 ruling Monday, the high court held that the SEC can obtain so-called disgorgement of ill-gotten gains in federal court as long as the award does not exceed the wrongdoer's net profit and is given to victims of the illegal scheme. The case involved a California couple, Charles Liu and Xin Wang, who misappropriated funds solicited to build a cancer center in California.

"It was a win for both sides," said Nancy Hendrickson, a partner at Kaufman Dolowich & Voluck. "It's going to be a narrower remedy for the SEC."

The Supreme Court decision allows the SEC to continue to seek disgorgement in federal court, where it wins about \$1 billion annually, according to Bloomberg News. The SEC also can obtain disgorgement through administrative proceedings.

The disgorgement curbs will provide at least partial relief for financial advisers who are involved in cases where disgorgement is ordered.

"It will limit the financial ruin the SEC can impose on somebody," Hendrickson said. "Now, your financial exposure is greatly diminished."