***Liu v. SEC*, No. 18-1501**

Introduction: Today, the Supreme Court held in an 8-1 decision that the SEC, in civil actions, can seek disgorgement of a defendant's net profits from securities fraud.

Background: Through an investment fund, Charles Liu and Xin Wang raised $27 million to build a cancer treatment center in California, but they spent a large portion of the money for other purposes, including their own enrichment. Based on that conduct, the SEC successfully sued Liu and Wang in federal court for violations of federal securities laws. The relevant relief provision allows the SEC to seek and a federal court to grant "any equitable relief that may be appropriate or necessary for the benefit of investors." 15 U.S.C. § 78u(d)(5).

The district court awarded the SEC various forms of relief, including "disgorgement" of all money Liu and Wang collected (less a few hundred thousand dollars remaining in the fund), even though the defendants apparently used some of the money in ways that were consistent with their representations to investors. On appeal, the defendants challenged the disgorgement order as an unauthorized penalty, claiming that it is not "equitable relief." The Ninth Circuit affirmed the disgorgement order.

Issue: Whether the Securities and Exchange Commission may obtain disgorgement as "equitable relief" for a securities law violation under 15 U.S.C. § 78u(d)(5).

Court's Holding: In an opinion authored by Justice Sotomayor and joined by seven other Justices, the Supreme Court held that "disgorgement" is an available form of "equitable relief" in SEC civil actions. The Court determined that equitable relief traditionally includes remedies that strip wrongdoers of ill-gotten gains, such as disgorgement. The Court then explained that long-standing principles of equity jurisprudence cabin the available disgorgement. First, a court may award only the net profits of the defendants, deducting legitimate expenses. Second, the SEC generally must return the defendants' ill-gotten gains to wronged investors. And third, courts should apply the "common-law rule requiring individual liability for wrongful profits"—instead of joint-and-several liability—unless the defendants were "partners in wrongdoing." The Court vacated the Ninth Circuit's decision and remanded for application of those principles.

Justice Thomas authored a dissent maintaining that the statute does not allow a court to award disgorgement because disgorgement is not a traditional equitable remedy.