

# SCOTUS to the FTC: No More Line-Jumping in Seeking Equitable Monetary Relief

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On Thursday, the Supreme Court ripped away from the Federal Trade Commission's preferred method of obtaining restitution and disgorgement from bad marketplace actors, ruling that § 13(b) of the Federal Trade Commission Act did not permit the FTC to directly seek court orders for monetary relief. Instead, the Court ruled in *AMG Capital v. FTC*, the FTC must first go through the administrative procedures set forth in § 5 of the Act. Only once the administrative procedures have been satisfied can the FTC seek civil penalties, or other monetary relief under the consumer redress provision at § 19 of the Act.

The FTC has long used § 13(b), which authorizes the Commission to apply directly to a district court for a permanent injunction, to obtain court orders for restitution and other kinds of equitable monetary relief without first using the administrative procedures set forth in § 5 of the Act. The Supreme Court's unanimous decision ended a circuit split and reversed the Ninth Circuit ruling that the FTC's direct appeal to the district court under § 13(b) and that court's subsequent award of \$1.27 billion in restitution and disgorgement were proper, despite the FTC's failure to go through the administrative proceedings set forth in the Act first.

As a result of Thursday's ruling, the Commission will now face larger hurdles in seeking monetary relief. The Commission will first have to file a complaint and obtain a cease and desist order from an Administrative Law Judge, and such complaint must be filed within three years of the underlying violation in order for monetary relief to be ordered under § 19. Additionally, § 19 monetary redress can only be ordered within one year of a final cease and desist order, and only where "a reasonable man would have known under the circumstances" that the conduct at issue was "dishonest or fraudulent." Such limitations are not present in § 13(b). The FTC has recently requested broader remedial authority from Congress than that currently authorized by the Act, but until such time as Congress grants that authority, "§ 13(b) as currently written does not grant the Commission authority to obtain equitable monetary relief."

For those ensnared in FTC investigations, this ruling is nothing short of a victory as the hurdles now faced by the FTC in obtaining monetary relief will limit the amount and frequency of such monetary awards.

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