

Supreme Court Agrees to Determine Whether SEC Actions Seeking Disgorgement are Subject to Five-Year Limitations Period Set Forth in 28 U.S.C. § 2462

Article By:

Robert A. Horowitz

Donald S. Davidson

At the urging of both an individual petitioner and the **SEC**, the **Supreme Court** has agreed to resolve a recent circuit split as to whether the five-year limitations period applicable to SEC enforcement actions applies to the remedy of disgorgement. **Kokesh v. SEC**, __ S. Ct. __, No. 16-529, 2017 WL 125673 (U.S. Jan. 13, 2017). The issue is whether disgorgement is a “penalty” or “forfeiture” for purposes of the five-year limitations period in 28 U.S.C. § 2462, which applies to government actions seeking a “civil fine, penalty, or forfeiture.” If, on the other hand, disgorgement is an equitable remedy akin to injunctive relief, a long line of cases holds that the statute would not apply. Last year two U.S. Courts of Appeal reach diametrically opposed conclusions on this question. In May, the Eleventh Circuit held that disgorgement is a “forfeiture” subject to the five-year limitations period. See *SEC v. Graham*, 823 F.3d 1357, 1363-64 (11th Cir. 2016). Three months later, the Tenth Circuit held that disgorgement is neither a “penalty” nor a “forfeiture” and therefore is not subject to the five-year limitations period. See *SEC v. Kokesh*, 834 F.3d 1158, 1166-67 (10th Cir. 2016).

©2025 Greenberg Traurig, LLP. All rights reserved.

National Law Review, Volume VII, Number 45

Source URL: <https://natlawreview.com/article/supreme-court-agrees-to-determine-whether-sec-actions-seeking-disgorgement-are>