

Court Applies Five-Year Limitations Period to SEC Disgorgement Actions

22 Jun 2017

In *Kokesh v. Securities and Exchange Commission*, the SEC sought to force Kokesh to disgorge millions he had misappropriated from various businesses from 1995 to 2009. While the Supreme Court had long held that a five-year limitations period applied to any SEC “action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture,” the district court held that the limitation did not apply to a disgorgement request since that was not a “penalty,” and thus ordered disgorgement of all the money. The Tenth Circuit affirmed, and the Court, in a unanimous opinion (including Justice Gorsuch) by Justice Sotomayor, reversed, holding that disgorgement met the definition of a “penalty” subject to the five-year limitations period. Since disgorgement addresses a wrong to the public, not an individual (the proceeds being deposited into the court which has free reign to distribute the funds as it sees fit), and disgorgement's purpose is punitive, to discourage others from similar acts, it met the definition of a penalty as applied by the Court in prior cases. Thus, Kokesh could at most be forced to disgorge monies he misappropriated since 2004, five years before the SEC initiated suit. [A link to the opinion is here.](#)

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