Blogs

Recent briefing in *SEC v. Team Resources, Inc.*, a long-running case challenging a U.S. Securities and Exchange Commission ("SEC") disgorgement award, is a reminder of both the significance of the Supreme Court's 2020 decision in *Liu v. SEC* and the open questions that remain regarding the SEC's disgorgement remedy.

The Case: Pre-*Liu* In 2015, the SEC filed a complaint against two California oil-and-gas companies, Team Resources, Inc. and Fossil Energy Corporation, their mutual owner, and four sales staff (collectively, "Team Resources") in the U.S. District Court for the Northern District of Texas, alleging that Team Resources fraudulently induced approximately 475 investors nationwide to invest over $33 million, through the purchase of limited partnership interests, in oil and gas wells located in Kansas. The SEC alleged that Team Resources created and disseminated misleading offering documents regarding the wells' projected production rates and investment returns, and failed to disclose to investors the poor drilling results of previous programs. The SEC and Team Resources quickly reached a settlement, with Team Resources agreeing to disgorge its ill-gotten gains in an amount to be determined by the district court. In 2018, the district court ordered Team Resources to disgorge over $15 million. The Fifth Circuit subsequently affirmed, and Team Resources filed a petition for a writ of certiorari to the U.S. Supreme Court, asking the Court to decide whether the SEC could seek disgorgement as a form of equitable relief for securities law violations, despite the Court's earlier ruling in *Kokesh v. SEC* that disgorgement is a penalty. Team Resources acknowledged that the same legal question was already pending before the Court in *Liu v. SEC*, and requested that the Court hold its petition in abeyance pending the Court's decision in *Liu* and dispose of the petition in a manner consistent with *Liu*'s anticipated resolution. **The *Liu* Decision** In June 2020, while Team Resources' petition was pending, the Supreme Court decided *Liu v. SEC*. In an 8-1 decision, the Court held that the SEC may seek disgorgement as "equitable relief," as long as the disgorgement award "does not exceed a wrongdoer's net profits and is awarded for victims." The Court further held that "legitimate expenses" must be deducted from a wrongdoer's profits to avoid transforming a disgorgement award into an impermissible penalty. **The Case: Post-*Liu*** Following its decision in *Liu*, the Supreme Court granted Team Resources' petition for a writ of certiorari, vacated the Fifth Circuit's decision, and remanded the case to the district court "for further consideration in light of" *Liu*. In the renewed proceedings before the district court, the SEC lowered its disgorgement demand from $15 million to just $2.4 million. Team Resources, meanwhile, sought an evidentiary hearing in which the district court could determine what amount should be deducted as legitimate business expenses, as *Liu* requires. On January 11, 2022, the parties submitted supplemental filings in connection with the SEC's disgorgement demand and Team Resources' hearing request. Team Resources argues that because the SEC "never inquired directly to ascertain the bona fides of legitimate corporate expenditures," and instead relied solely on a SEC staff accountant's summary opinion, its calculation of net profits "cannot possibly be anything other than the SEC's uninformed guess." The SEC, on the other hand, contends that Team Resources is foreclosed from seeking an evidentiary hearing to determine the amount of deductible legitimate expenses because the Fifth Circuit held that a hearing was not needed, and that ruling was not disturbed by the decision in *Liu*. The SEC further asserts that it already "reasonably approximated" Team Resources' ill-gotten gains, less expenses to be deducted. Although the district court has yet to rule on this issue, this case already underscores some of *Liu*'s limiting principles in SEC disgorgement cases. Indeed, the SEC's substantial reduction in the amount sought as *disgorgement* -- from $15 million before *Liu* to $2.4 million after *Liu* -- indicates that *Liu* has curtailed the SEC's authority to seek large disgorgement awards in certain cases. Further, the questions now pending before the district court in this case are among those that the Supreme Court left open after *Liu*, including:

- What expenses are considered "legitimate" such that they should be deducted from a disgorgement award?
- Does the SEC have an affirmative duty to inquire of defendants about legitimate corporate expenditures?

- Is an evidentiary hearing necessary or appropriate to resolve disputes regarding the SEC's disgorgement calculation?

With the district court poised to weigh in on some or all these undecided questions, *SEC v. Team Resources, Inc.* is a case well worth following.

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