



U.S. v. Salman

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In *Salman*, the 9th Circuit held that “[p]roof that [an] insider disclosed material nonpublic information with the intent to benefit a trading relative or friend is sufficient to establish the breach of fiduciary element of insider trading.” Writing for the panel, Senior Judge Jed S. Rakoff of the Southern District of New York, sitting by designation, rejected the argument that his home Circuit’s *Newman* decision required “at least a potential gain of pecuniary or similarly valuable nature” flowing to the person who gave the material, nonpublic information: “To the extent *Newman* can be read to go so far, we decline to follow it.” The 9th Circuit thus affirmed the defendant’s insider-trading conviction.

With the certiorari grant, the stage is now set for the Supreme Court to hear its first major insider-trading case in decades, allowing it to evaluate what showing the government must make to prove that a tipper received a “personal benefit” in exchange for the tip before a tippee may face criminal liability. The Court will also have the opportunity to decide whether to overturn the 2nd Circuit’s defendant-friendly *Newman* rule—or instead extend it nationwide.

The specific question that the Supreme Court will consider is:

Does the personal benefit to the insider that is necessary to establish insider trading under *Dirks v. SEC*, 463 U.S. 646 (1983), require proof of “an exchange that is objective, consequential, and represents at least a potential gain of a pecuniary or similarly valuable nature,” as the 2nd Circuit held in *United States v. Newman*, 773 F.3d 438 (2d Cir. 2014), *cert. denied*, No. 15-137 (U.S. Oct. 5, 2015), or is it enough that the insider and the tippee shared a close family relationship, as the 9th Circuit held in this case?

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