BerkeleyLaw
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Berkeley Center for Law,
Business and the Economy

University of California, Berkeley
School of Law
2850 Telegraph Ave, Suite 500
Berkeley, CA 94705-7220

Ph: 510.642.0532 – Fax: 510.643.7095
E-mail: BCLBE@law.berkeley.edu
http://www.law.berkeley.edu/bclbe.htm

Justices to Rule on Meaning of 'Personal Benefit' in Insider Trading

By Chloe Chavez, J.D. Candidate 2018 | October 17, 2016

On October 5, 2016, the Supreme Court heard its first insider trading case in over 20 years. The case is Salman v. United States, and involves the insider trading conviction of Bassam Salman in 2013. Salman was convicted of placing profitable stock trades after receiving confidential information from his future brother-in-law, who was a part of Citigroup's health care investment banking group.

For decades, courts have held that for an individual to be guilty of insider trading, his leak must breach a duty to keep that information confidential and he must receive a personal benefit in exchange for the leak. Thus, it is not inherently illegal to trade stocks based on material, nonpublic information without knowledge of the breach and benefit.

However, courts have failed to present any clarity or consistency on what amounts to a "personal benefit." In 2014, the Court of Appeals for the Second Circuit, in United States v. Newman, tightened the personal benefit standard and required prosecutors to show a tangible benefit, which extends beyond the mere friendship between the tipper and recipient. In contrast, the Court of Appeals for the Ninth Circuit, in Mr. Salman's case, adopted the view that giving inside information to a family member qualified as a benefit, regardless of whether a tangible benefit is apparent.

Despite the differences in holdings, both of these cases relied on Dirks v. Securities Exchange Commission, which directed courts to focus on "whether the insider receives a direct or indirect personal benefit from the disclosure, such as a pecuniary gain or reputational benefit that will translate into future earnings." The different results in the above cases can be explained by examining the parts of the Dirk's opinion the Second and the Ninth Circuits focused on. In Newman, the Second Circuit focused on the financial element described above. However, in Salman, the Ninth Circuit focused on another part of the opinion that allowed liability "when an insider makes a gift of confidential information to a trading relative or friend."

Alexandra Shapiro, Mr. Salman's lawyer, argued that the personal benefit must be "tangible," even between family and friends. However, the Court was skeptical, with Justice Breyer noting that "to help a close family member is like helping yourself." Nevertheless, the Court seemed reluctant to accept the Justice Department's ideal ruling which would apply the gift test even in situations where the insider and recipient are not close family or friends.

A ruling in this case will likely provide some clarity to the definition of "personal benefit" to prosecutors and traders.