

U.S. Court of Appeals (Second Circuit) Upholds Convictions, Eliminates Newman’s “Meaningfully Close Personal Relationship” Requirement

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In *United States v. Martoma*, a divided U.S. Court of Appeals for the Second Circuit overturned a key holding of its previous decision in *United States v. Newman* and significantly loosened the requirements of insider trading law. Under *Newman*, the government was required to prove a “meaningfully close personal relationship” between an individual with material nonpublic information (tipper) and an individual who is told—and ultimately trades on—that information (tippee) in order to establish the “personal benefit” element under the “gift theory” of insider trading liability. Explaining that this “meaningfully close personal relationship” requirement was no longer tenable in light of the Supreme Court’s recent decision in *Salman v. United States*, the Court in *Martoma* emphasized that a corporate insider personally benefits whenever he discloses inside information as a gift with the expectation that the recipient would trade on it or otherwise exploit it for his personal benefit, irrespective of his relationship with the recipient. The decision is a victory for prosecutors and has the potential to expand insider trading liability; however, the split decision potentially sets the stage for the Second Circuit to reconsider the issue *en banc*.

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