

Insider Trading: U.S. Court of Appeals (Second Circuit) Vacates Convictions, Clarifies Requirements of Tippee Liability

December 11, 2014 | Client Update

On December 10, 2014, the U.S. Court of Appeals for the Second Circuit held that to obtain an insider trading conviction against a tippee, the Government must prove that the tippee knew both that an insider disclosed confidential information and that the insider did so in exchange for a personal benefit. The court emphasized that “without establishing that the tippee knows of the personal benefit received by the insider in exchange for the disclosure, the Government cannot meet its burden of showing that the tippee knew of a breach.” The Second Circuit vacated defendants’ convictions and remanded for dismissal because the district court improperly instructed the jury, there was insufficient evidence showing that the insiders received a personal benefit and even, assuming that evidence of the insiders’ personal benefit was sufficient, there was insufficient evidence that defendants knew that they were trading on information obtained in violation of the insiders’ fiduciary duties. The ruling may result in the Government’s reviewing ongoing matters and, of course, the Government may further appeal.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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