

# Supreme Court: Providing a Gift of Inside Information to a Trading Relative or Friend Is Sufficient to Establish the Personal Benefit Requirement for Tipping-Based Insider Trading Liability

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On December 6, 2016, the Supreme Court unanimously held that the personal benefit necessary to establish a breach of duty and insider trading liability under *Dirks v. S.E.C.*, 463 U.S. 646 (1983)[[1](#)] is satisfied where a tipper gives inside information to a trading relative or friend. *Salman v. United States*, 2016 WL 7078448 (Alito, J.). The Court's narrow decision resolved a recent split between the Second and Ninth Circuits on the scope of the personal benefit requirement.[[2](#)]

The *Salman* Court considered a case in which “the tipper provided inside information to a close relative, his brother.” The tipper’s brother then passed the information along to a friend, who then traded on that information. The Court found the following oft-cited passage in *Dirks* directly resolved the case before it:

[T]here may be a relationship between the insider and the recipient that suggests a *quid pro quo* from the latter, or an intention to benefit the particular recipient. The elements of fiduciary duty and exploitation of nonpublic information also exist when an insider makes a gift of confidential information to a trading relative or friend. The tip and trade resemble trading by the insider himself followed by a gift of the profits to the recipient.

*Dirks*, 463 U.S. 646.

The *Salman* Court reiterated the factual finding that the tipper had intended to provide his brother with inside information for his brother’s benefit, and found that this was precisely the type of “gift giving” *Dirks* found sufficient to satisfy the “personal benefit” requirement. *Salman*, 2016 WL 7078448. Following the logic in *Dirks*, the Court noted that the tipper’s conduct—sharing information with his brother so the latter could reap financial gains—was analogous to the tipper himself trading on the inside information and providing his brother with the proceeds as a gift.

The Court clarified that “[t]o the extent the Second Circuit [in *Newman*] held that the tipper must also receive something of a ‘pecuniary or

similarly valuable nature’ in exchange for a gift to family or friends . . . this requirement is inconsistent with *Dirks*.”

Notably, the *Salman* Court expressly acknowledged that “[i]t remains that case that ‘determining whether an insider personally benefits from a particular disclosure, a question of fact, will not always be easy for courts.’” *Id.* (quoting *Dirks*, 463 U.S. 646).

[1] In *Dirks*, the Supreme Court held an insider can only face liability under Section 10(b) and Rule 10b-5 for disclosing material inside information to a third party—or tipping—if the insider “receive[d] a direct or indirect personal benefit from the disclosure, such as a pecuniary gain or a reputational benefit that will translate into future earnings.”

[2] In *United States v. Newman*, 773 F.3d 438 (2d Cir. 2014) (Parker, J.), the Second Circuit held the Government must prove “an exchange that is objective, consequential, and represents at least a potential gain [to the tipper] of a pecuniary or similarly valuable nature.” Several months later, the Ninth Circuit held the Government may establish the existence of a personal benefit by presenting “evidence of a friendship or familial relationship between tipper and tippee.” *United States v. Salman*, 792 F.3d 1087 (9th Cir. 2015) (Rakoff, J.).

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