

Circuit Court Decisions Addressing Insider Trading Liability

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Second Circuit: Gifting Confidential Information With an Intent to Benefit the Tippee Satisfies *Dirks*' Personal Benefit Requirement, Even If the Tipper Does Not Have a Relationship With the Tippee

On June 25, 2018, the Second Circuit held that *Dirks*' personal benefit requirement can be satisfied with evidence that the tipper gifted confidential information with an intent to benefit the tippee, even in the absence of evidence of a personal relationship between the tipper and the tippee.^[1] *U.S. v. Martoma*, 894 F.3d 64 (2d Cir. 2018) (Katzmann, C.J.). The court reasoned that *Dirks*' "personal benefit requirement is designed to test the propriety of the tipper's purpose." The court found that "it makes perfect sense to permit the government to prove a personal benefit with objective evidence of the tipper's intent, without requiring in every case some additional evidence of the tipper-tippee relationship." The court stated that "[t]he tipper's intention to benefit the tippee proves a breach of fiduciary duty because it demonstrates that the tipper improperly used inside information for personal ends and thus lacked a legitimate corporate purpose."

^[1] In *Dirks v. S.E.C.*, 463 U.S. 646 (1983), the Supreme Court held that the "test" for tippee liability is "whether the insider [the tipper] personally will benefit, directly or indirectly, from his disclosure." The *Dirks* Court stated that "there 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."

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