

Client Alert: Second Circuit Allows Insider Trading to Be Proven Without Personal Benefit

Publications

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A recent decision issued by the Second Circuit Court of Appeals could have important implications on the scope of insider trading liability and may make it easier for criminal prosecutors to bring such cases. The prohibition on insider trading under federal law has been developed, not by statute, but by judicial decisions interpreting the application of general anti-fraud statutes to forms of insider trading. In interpreting Section 10(b) of the Securities Exchange Act (Title 15 securities fraud), courts have required the government to prove that the tipper received some form of personal benefit and that the trader (who is sometimes a step or two removed from the insider) was aware of the personal benefit. These requirements have been difficult for the government to meet and have served as a limitation on the government's ability to subject defendants to criminal and civil liability for insider trading.

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