

Securities Regulation Daily Wrap Up, TOP STORY—U.S.: High Court denies certiorari in Newman, (Oct. 5, 2015)

[Click to open document in a browser](#)

By Rodney F. Tonkovic, J.D.

The Supreme Court has declined to review the Second Circuit's ruling in *U.S. v. Newman*. The opinion limited some insider trading prosecutions in the Second Circuit and may eventually influence courts outside that circuit's reach. In its petition, the government called the Second Circuit's ruling an "unprecedented" redefinition of an insider trading theory long recognized under the Court's *Dirks* precedent. The Court denied certiorari without comment (*U.S. v. Newman*, October 5, 2015)

In one of the most important insider trading actions in years, a unanimous Second Circuit vacated the insider trading convictions of two hedge fund portfolio managers because there was no evidence that the managers knew they were trading on information obtained from insiders, or that those insiders received any benefit in exchange for the disclosures. The court found that the evidence of any personal benefit received by the alleged insiders was insufficient to establish the tipper liability from which purported tippee liability would derive. Second, even assuming the scant evidence offered on the issue of personal benefit was sufficient, the government presented no evidence that the portfolio managers knew that they were trading on information obtained from insiders in violation of those insiders' fiduciary duties.

The government's certiorari petition asked whether the court of appeals misread *Dirks* and erroneously held that insider trading liability under a gifting theory requires a personal relationship that is based on a meaningful "exchange." In response, Newman asked if the evidence was sufficient to prove that the corporate insiders in this case got a personal benefit from disclosing information to remote tippees. Co-defendant Chiasson made largely the same arguments as Newman did but in a separate opposition brief.

The case is No. 15-137.

Attorneys: Stephen R. Fishbein (Shearman & Sterling) for Todd Newman. Donald B. Verrilli, Jr., Solicitor General, U.S. Department of Justice, for the United States. Gregory Morvillo (Morvillo LLP) and Mark F. Pomerantz (Paul, Weiss, Rifkind, Wharton & Garrison LLP) for Anthony Chiasson.

Companies: Dell Inc.; NVIDIA Corporation

MainStory: TopStory AlternativeInvestmentFunds Enforcement FraudManipulation HedgeFundsNews
InvestmentAdvisers SupremeCtNews