Peer Reviewed

Dr. Dan Davidson is a Professor of Business Law and Chair of the Department of Accounting, Finance & Business Law at Radford University. He has previously taught at Central Connecticut State University, St. Cloud State University, the University of Arkansas, and California State University – Fresno. This is his 43rd year of collegiate instruction. Dr. Davidson earned his BSBA and JD at Indiana University.

Dr. Lynn Saubert is a Professor of Accounting at Radford University. She previously taught at Drake University and at the University of Wisconsin – Milwaukee. Dr. Saubert earned her BBA from the University of Wisconsin-Whitewater, and her MBA, and PhD in Accounting from the University of Wisconsin-Madison.

ABSTRACT

Insider trading is a violation of the Securities Exchange Act of 1934 (the '34 Act). A person who is in possession of material information that is not generally available to the public is prohibited from trading securities based on that information to the detriment of the other party. Some insider trading is legal, as when an officer or director deals in the securities of his or her company. Other insider trading is illegal, a violation of Rule 10 b-5 of the '34 Act. The courts have struggled in determining when illegal insider trading has occurred, resulting in a changing set of standards for determining when the trading in question is illegal. In this paper we discuss some of the most significant U.S. Supreme Court opinions addressing illegal insider trading, beginning with the *Securities and Exchange Commission v. Texas Gulf Sulphur* opinion in 1968 and concluding with the 2016 opinion in *Salman v. SEC* is examined.

INTRODUCTION

> "Because insider trading undermines investor confidence in the fairness and integrity of the securities markets, the SEC has treated the detection and prosecution of insider trading violations as one of its enforcement priorities." (U.S. Securities and Exchange Commission. Fast Answers.)

The stock market crash of 1929 triggered the Great Depression of the 1930s, the worst economic downturn in the history of the United States. By 1932 the economy reached its lowest point. After the inauguration of President Franklin Roosevelt in March 1933, the economy began to recover, although the Great Depression did not "officially" end until 1942.

As the economy began to recover in 1933, Congress started to address some of the issues that led to the stock market crash in 1929. First was the enactment of the Securities Act of 1933 (15 U.S.C. §77 et seq.) (the '33 Act), which required more information be made available to potential investors in stocks and other securities. Often called the "truth in securities" law, the '33 Act was intended to provide investors with certain specified information about securities when they were offered for public sale and to prohibit deceit, misrepresentations, and fraud in the sale of securities (US Securities and Exchange Commission, The). This was expected to prevent some of the misinformation, disinformation, and outright fraud that had been prevalent prior to 1929. The following year Congress enacted the Securities Exchange Act of 1934 (15 U.S.C. §78 et seq.) (the ’34 Act), designed to provide regulations in subsequent trading of securities. The ’34 Act created the Securities and Exchange Commission (SEC) and granted it broad authority to oversee and to regulate the securities industry (15 U.S.C. §77 et seq.). At the federal level, these two statutes provide the foundation upon which today’s securities regulations are based.

Despite these Congressional enactments, securities trading was still a risky endeavor, and the statutes as enacted did not provide sufficient protection to investors. As a result, in 1948 the Securities and Exchange Commission enacted Rule 10b-5, a rule intended to ferret out various fraudulent and/or deceptive practices in the securities area. Rule 10b-5 prohibits the use of manipulative and deceptive devices in interstate commerce in the purchase or sale of securities. Specifically, the rule says:

> “It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,
>
> (a) To employ any device, scheme, or artifice to defraud,
> (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
> (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security (15 U.S.C. §78j).”

One of the areas deemed to violate Rule 10b-5 was insider trading. Over the years a variety of activities have been challenged as insider trading by the SEC. Examples of such cases include:

- Corporate officers, directors, and/or employees who traded in the corporation’s securities after learning of significant corporate developments that were still being treated confidentially;
- Friends, business associates, family members, and other tippees who traded in these securities after receiving such information from the officers, directors, and/or employees;
- Employees of law firms, banks, brokerage firms, or printing firms who were given such information to provide services to the corporation whose securities they traded;
- Government employees who learned of such information because of their government employment; and
- Other persons who misappropriated and/or took advantage of confidential information from their employers (SEC.gov, Insider).

SIGNIFICANT INSIDER TRADING CASES

In this paper several of the cases which have significantly influenced the evolution of insider trading prosecutions, will be discussed. Briefly outlined will be the actions leading to the SEC charges, the lower court's decisions, the appellate court's rulings and the decisions of the Supreme Court. Finally, the most recent insider trading case to be decided by the U.S. Supreme Court and its potential impact on future litigation will be examined.

One of the classic cases involving insider trading is *Securities and Exchange Commission v. Texas Gulf Sulphur* (401 F.2d 833 (2d Cir. 1968)). In this case Texas Gulf Sulphur (TGS) was exploring for minerals in Canada based on data derived from a geological survey. TGS drilled a core at one of the sites and the core was analyzed. The analysis showed that the area around the core was extremely rich in minerals. Rumors of the discovery spread, and TGS issued a misleading press release to calm any speculation in TGS stock. Three days later, the defendants, several TGS officials, decided to release a more accurate press release detailing the results of the core analysis. The press release was issued the following day, four days after the misleading press release. The defendants, who had been purchasing TGS stock and calls since the initial core analysis was completed, continued to purchase the stock in this four-day period. Following the second press release TGS stock soared in value, allowing the defendants to make significant profits.

The SEC filed suit against the defendants, alleging that they had used material inside information that was not available to the public. This conduct involved insider trading in violation of Section 10b of the '34 Act and of Rule 10b-5. The fact that there was still a great deal of uncertainty about the true value of the minerals at the site was not deemed relevant. The defendants used information that was deemed material and which was withheld from the public. The purchases were made during this period and the defendants made significant profits from their transactions. The fact that the defendants took advantage of information that was not available to the public for their personal benefit was sufficient to constitute illegal insider trading.

The most significant aspect of the Texas Gulf Sulphur case was that the defendants took advantage of their inside knowledge of material information that was not generally available to the public for their personal benefit. Twelve years later the court faced another situation in which a person who had access to material information that was not generally available to the public led to a different result, marking a significant change in the insider trading rules. The case, *Chiarella v. United States* (455 U.S. 222, 100 S.Ct. 1108 (1980)), involved a person who acquired the material information through his employment, but he was not employed by the company in whose stock he traded. While it was true that Chiarella had knowledge of material information that was treated confidentially by the company and was not generally available to the public, he did not acquire the information as an insider of the company. Chiarella worked for Pandrick Press, a printing company, as a "markup man." Part of Chiarella's job was handling documents announcing corporate takeover bids. The names of the firms, both the acquiring firm and the takeover target, were disguised. However, Chiarelli could deduce the names of the firms from other information contained in the documents. Using the information he had acquired, he purchased stock in the target companies prior to the takeover bid, then sold the stock once the takeover attempts were announced to the public. Through these actions he made $30,000 in profits over slightly more than one year.

The government filed charges against Chiarella, alleging that his conduct violated Section 10b and Rule 10b-5. He was found guilty on seventeen counts, and the convictions were upheld by the Appellate Court. The Supreme Court granted *certiorari.* The issue to be resolved was "whether a person who learns about a corporation's plan to take over a target corporation through confidential papers discovered while working as a financial printer violates Section 10b if he fails to disclose the impending takeover before trading in the target company's securities (Case Briefs, Chiarella)?" The Court found that Chiarella had no duty to disclose the information he had acquired since he had no confidential relationship with the acquiring firms, the takeover targets, or the persons from whom he purchased the stock. The key to the difference in the result in *Chiarella* from the result in *Texas Gulf Sulphur* was the relationship of the person with the material nonpublic information to the firm whose stock was acquired. Chiarella was not an employee or fiduciary of the firm; the TGS insiders were employees and/or fiduciaries of TGS. The lack of a relationship removed the "taint" of the transaction by Chiarella.

In 1981 the court again addressed an important insider trading case, *United States v. Newman* (664 F.2d 12 (2d Cir. 1981), aff'd after remand, 722 F.2d 729 (2d Cir. 1983), cert. denied, 464 U.S. 863 (1983)). Here the Second Circuit Court of Appeals adopted the "misappropriation theory," holding that "a person with no fiduciary relationship to an issuer nonetheless may be liable under Rule 10b-5 for trading in the securities of an issuer while in possession of information obtained in violation of a relationship of trust and confidence." James Mitchell Newman, a securities trader, traded based on material nonpublic information about corporate takeovers that he obtained from two investment bankers, who had misappropriated the information from their employers (Newkirk, Speech). While Newman was not a fiduciary or an employee, he acquired the information from two parties who did have a fiduciary relationship. Newman was aware of their relationship when he obtained the misappropriated information and used that information to his advantage in dealing in the security. The Court held that Newman's knowledge of the fiduciary relationship of the investment bankers who provided him with the information was sufficient to show he was trading on insider information.

Two years later, in 1983, the Supreme Court expanded the precedent from *Chiarella* with its opinion in *Dirks v. SEC* (463 U.S. 646 (1983)). Dirks was a broker-dealer who provided investment analyses of insurance company securities to institutional investors. In early 1973 Dirks received information from a former officer of Equity Funding of America alleging fraudulent conduct by the firm. This former officer asked Dirks to investigate and, if he agreed that the firm was guilty of these fraudulent practices, to make the information public. Dirks personally investigated the firm and found evidence that it was, in fact, guilty of several fraudulent practices. While neither Dirks nor his investment firm dealt in Equity Fund securities, Dirks openly discussed his investigation and his opinions with several of his clients and investors. Some of these clients and investors divested themselves of Equity Fund securities worth more than $16 million.

During the Dirks' investigation, word spread of what he had discovered and Equity Fund stock fell from $26 per share to less than $15 per share. Shortly thereafter the *Wall Street Journal* published an article on the fraudulent conduct of Equity Fund, using much of the information gathered by Dirks and supplied to the article's author. The SEC then began investigating Dirks' role in exposing the fraudulent conduct. In its investigation, the SEC determined that Dirks had aided and abetted in violating various provisions of the '33 and '34 Acts by repeating his allegations of fraud to several investors who then divested themselves of Equity Fund stock. Based on its investigation, the SEC concluded that: "Where 'tippees' – regardless of their motivation or occupation – come into possession of material 'corporate information that they know is confidential and know or should know came from a corporate insider,' they must either publicly disclose that information or refrain from trading (463 U.S. 651 (1983))." In this case, however, the SEC only censured Dirks for his conduct.

Dirks sought review in the Court of Appeals for the District of Columbia, which entered judgment against him "for the reasons stated by the Commission in its opinion (463 U.S. 652 (1983))." Judge Wright wrote the opinion of the Circuit Court. In his opinion, he noted that: "the obligations of corporate fiduciaries pass to all those to whom they disclose their information before it has been disseminated to the public at large (220 U.S.App. D.C. 309, 324, 681 F.2d 824, 839 (1982)." He concluded his opinion by stating that, as an employee of a broker-dealer, Dirks had violated "obligations to the SEC and to the public completely independent of any obligations he acquired" because of receiving the information (220 U.S.App. D.C. 325, F.2d 840 (1982)).

The Supreme Court granted *certiorari*. Upon reviewing the case, and relying on the precedent established in *Chiarella,* the Court reversed the Court of Appeals. As the Court pointed out: "*In Chiarella, we accepted the two elements set out in [prior cases] for establishing a Rule 10b-5 violation:*

(i) the existence of a relationship affording access to inside information intended to be available only for a corporate purpose, and
(ii) the unfairness of allowing a corporate insider to take advantage of that information' (Page 463 U. S. 654) by trading without disclosure (445 U.S. at 445 U. S. 227)."

Here Dirks met neither of the criteria. He did not have access to inside information due to any relationship with Equity Fund. Rather, while he was investigating the firm he uncovered evidence of fraudulent conduct. And he did not benefit from his discoveries by trading in the securities. Instead he had discussed his opinions with others who then acted on what he had said to them. Since Dirks did not owe a fiduciary duty to Equity Fund and he did not personally benefit, either directly or indirectly, from the trading of those with whom he discussed his opinions about the firm, he was not guilty of violating the insider trading prohibitions of the ’34 Act.

Further, his tippees were also not guilty of violating the insider trading prohibitions. In its opinion in *Dirks* the “Court explained that tippee liability hinges on whether the tipper’s disclosure breaches a fiduciary duty, which occurs when the tipper discloses the information for a personal benefit. The Court also held that a personal benefit may be inferred where the tipper receives something of value in exchange for the tip or ‘makes a gift of confidential information to a trading relative or friend (Dirks v. SEC, 463 U.S. 644, n. 14 (1983)).’”

In 1997, the Supreme Court had the opportunity to address the misappropriation theory in its opinion in *U.S. v. O’Hagan* (521 U.S. 642 (1997)). James O’Hagan was a partner in the law firm of Dorsey & Whitney in Minneapolis, Minnesota. The firm was retained by Grand Metropolitan PLC (Grand Met), a company based in London, England, regarding a potential tender offer for Pillsbury’s common stock. (Pillsbury was headquartered in Minneapolis.) Both Grand Met and the law firm took steps to keep the information regarding the potential tender offer confidential. While O’Hagan did not work on the Grand Met presentation, he did learn of the planned tender offer, and he took full advantage of this knowledge. Beginning in August of 1988, O’Hagan began purchasing call options for Pillsbury stock. Each call option gave him the right to purchase 100 shares of Pillsbury common stock by a specified date in September. He eventually acquired 2,500 call options by the end of September, along with an additional 5,000 shares of stock he purchased for about $36 per share. When Grand Met announced its tender offer to Pillsbury in October of 1988 the price per share rose to almost $60 per share. At that time O’Hagan sold his stock and his call option, making a profit of more than $4.3 million.

The SEC launched an investigation into O’Hagan’s conduct, leading to his indictment on multiple counts, including mail fraud and securities fraud. He was found guilty on all counts at trial, but the Eighth Circuit Court of Appeals reversed all of his convictions (92 F.3d 612 (1996)). Its primary reason for reversing was that the misappropriation theory on which the SEC’s case was built exceeded the rule-making authority of the SEC because there was no breach of a fiduciary duty by O’Hagan (92 F.3d 627 (1996)).

The Supreme Court granted *certiorari* (519 U.S. 1087 (1997)) in order to resolve the conflict among the circuits on the propriety of the misappropriation theory. It then reversed the Eighth Circuit’s judgment. In its opinion, the Court addressed both the “traditional” or “classical” theory of insider trading and the “misappropriation theory” of insider trading. Under the traditional theory "a relationship of trust and confidence [exists] between the shareholders of a corporation and those insiders who have obtained confidential information by reason of their position with that corporation (*Chiarella .v. United States* 445 U.S. 222, 228)." That relationship "gives rise to a duty to disclose [or to abstain from trading] because of the 'necessity of preventing a corporate insider from ... tak[ing] unfair advantage of ... uninformed ... stockholders (*Chiarella .v. United States* 445 U.S. 228-229).'" The traditional theory only applies to officers, directors, attorneys, accountants, consultants and others who owe a temporary fiduciary duty to the firm (*Dirks v. SEC*, 463 U.S. 646, 655, n. 14 (1983).

The misappropriation theory applies when a person misappropriates confidential information in breach of a duty owed to the source of the information and uses that information in securities trading. "Under this theory, a fiduciary's undisclosed, self-serving use of a principal's information to purchase or sell securities, in breach of a duty of loyalty and confidentiality, defrauds the principal of the exclusive use of that information. In lieu of premising liability on a fiduciary relationship between company insider and purchaser or seller of the company's stock, the misappropriation theory premises liability on a fiduciary-turned-trader's deception of those who entrusted him with access to confidential information (*O'Hagan*, supra, at 652)."

"The two theories are complementary, each addressing efforts to capitalize on nonpublic information through the purchase or sale of securities. The classical theory targets a corporate insider's breach of duty to shareholders with whom the insider transacts; the misappropriation theory outlaws trading based on nonpublic information by a corporate 'outsider' in breach of a duty owed not to a trading party, but to the source of the information. The misappropriation theory is thus designed to 'protec[t] the integrity of the securities markets against abuses by 'outsiders' to a corporation who have access to confidential information that will affect th[e] corporation's security price when revealed, but who owe no fiduciary or other duty to that corporation's shareholders (*O'Hagan*, supra, at 652-653).'"

In 2016, the Court decided the case of *Salman v. SEC* (580 U.S. ____ (2016)). At various times between 2004 and 2007 Salman received valuable and confidential information from his brother-in-law who, in turn, had received the information from his brother. By trading on this information, Salman made more than $1.5 million dollars. The SEC discovered this information and filed charges against Salman and the two brothers. Salman denied liability, citing the precedent established in *Dirks v. SEC* and asserting that the tipper, his brother-in-law, received nothing of value from Salman and therefore he, Salman, had not violated the law.

Maher Kara, the brother-in-law and the tipper, was an investment banker with Citicorp. In this position, he had access to a significant amount of confidential information concerning mergers and acquisitions of Citicorp clients. At various times, he shared this confidential information with his brother, Mounir (Michael) Kara, a chemist. At some point in time the brother, Michael, began to trade in securities based on the information provided to him by Maher, his younger brother. Michael, in turn, would sometimes share the information he received from Maher with others, including his brother-in-law, Bassam Salman, who also made trades based on the confidential information that Maher had shared with Michael. Maher, the investment banker, had no knowledge that Michael was sharing the information with others, and he was totally unaware of Salman's acquisition of the information or of his trading based on that information.

Salman was indicted on one count of conspiracy to commit securities fraud and four counts of securities fraud. Maher and Michael, each of whom had pleaded guilty to the charges against them, each testified against Salman at his trial. Salman was found guilty on all counts. While his appeal was pending, the Second Circuit issued its ruling in *U.S. v. Newman* (773 F.3d 438 (2014)) in which the court reversed the convictions of two portfolio managers who had traded based on insider information. According to the *Newman* court, the two "defendants were 'several steps removed from the corporate insiders,' and the court found that 'there was no evidence that either was aware of the source of the inside information (773 F.3d 443 (2014)).'" While the finder of fact can infer that a tipper received a personal benefit from providing the tip to a relative or friend, such a finding "is impermissible in the absence of proof of a meaningfully close personal relationship that generates an exchange that is objective, consequential, and represents at least a potential gain of a pecuniary or similarly valuable nature (773 F.3d 452 (2014))."

Based on the *Newman* ruling, Salman argued that his conviction should be reversed since there was no evidence that Maher or Michael had received anything of value from him in exchange for providing him with the information. However, the Ninth Circuit disagreed. It found that, per *Dirks*, it can be inferred that the tipper received a personal benefit by providing the information to a relative or friend. Providing the information to Michael, his older brother, was adequate to infer a personal benefit to Maher. And Michael's sharing of that information with Salman, his brother-in-law who was aware of the source of the information and of the fact that it was confidential information not generally available to the public, was sufficient to infer the same duty applied to Salman.

In *Dirks* the Court held "that a tippee is exposed to liability for trading on inside information only if the tippee participates in a breach of the tipper's fiduciary duty. Whether the tipper breached that duty depends 'in large part on the purpose of the disclosure' to the tippee (463 U.S. at 662)." The test "is whether the insider personally will benefit, directly or indirectly, from his disclosure (463 U.S. at 662)." The disclosure of confidential information is not enough for a conviction without some personal benefit accruing to the tipper. However, the benefit to the tipper need not be pecuniary. The courts are expected to take a broad view, using objective criteria to determine the purpose of the tipper's actions in providing the information to the tippee. In his case, Maher was providing inside information to his brother, a close relative, with the understanding that his brother was likely to trade on the information to his personal benefit. When Salman received the information from Michael, he knew or should have known that the information was not generally available to the public.

"*Dirks* specifies that when a tipper gives inside information to 'a trading relative or friend,' the jury can infer that the tipper meant to provide the equivalent of a cash gift. In such situations, the tipper benefits personally because giving a gift of trading information is the same thing as trading by the tipper followed by a gift of the proceeds. Here, by disclosing confidential information as a gift to his brother with the expectation that he would trade on it, Maher breached his duty of trust and confidence to Citigroup and its clients—a duty Salman acquired, and breached himself, by trading on the information with full knowledge that it had been improperly disclosed (*Salman v. SEC*)." For these reasons, the opinion of the Ninth Circuit Court was upheld.

CONCLUSIONS

There have been many cases involving insider trading since the adoption of §10b of the '34 Act and Rule 10b5. This paper addresses a few of more important of these cases and the impact that each has on the evolution of the rules regulating insider trading.

- *Texas Gulf Sulphur* gave us the textbook example of traditional insider trading: employees and/or fiduciaries of the firm who used confidential and nonpublic information to make large profits by dealing in the firm's securities before the information was made available to the public.
- *Chiarella* provided a refining of the rule regarding traditional insider trading, holding that a person who acquired the information without being an employee or a fiduciary, and without gaining the information from an employee or fiduciary of the firm was not guilty of illegal insider trading even though he did trade before the information was made available to the public.
- The first *Newman* case, the one with James Newman as the accused, addressed the misappropriate theory. While neither an employee nor a fiduciary, Newman acquired confidential and nonpublic information from parties who did owe a fiduciary duty. While knowing that he had acquired the confidential information from parties who owed such a duty, he traded in the securities and earned substantial profits. He was held liable due to his misappropriation of the information.
- In the *Dirks* case, Dirks acquired confidential and nonpublic information which he shared with friends and colleagues. However, Dirks had no fiduciary duty to the firm he was investigating. Even though his friends and colleagues were aware that he had shared this information and that it was not generally available to the public, their trading was allowed because Dirks had not misappropriated the information. He had not breached any duty to the firm.
- *O'Hagan* was another misappropriation case. Here the Court refined the misappropriation theory, pointing out that O'Hagan, a partner in the law firm that represented the firm planning the tender offer to Pillsbury, breached a duty of confidentiality that he owed to the parties from whom he acquired the confidential information.
- Finally, the *Salman* case addressed an expansion of the traditional insider trading theory. Salman was a ""remote tippee" who acquired confidential information from the person who received his "tip" from an insider who owed a fiduciary duties to the firms involved and to his employer, through whom he acquired the information. Salman argued that since he had not provided anything of value to his tipper or the original tipper he could not be found

liable under the precedent set in the second *Newman* case, Todd Newman as the accused. This Newman case asserted that a remote tippee could not be found in violation absent evidence that he or she knew who the source was and knew that the information was confidential. The Supreme Court rejected this argument as well as Salman's argument that he had given nothing of value in exchange for the information. The court can infer that the tipper received something of value when the tippee is a close friend or family member. Salman was the brother-in-law of his tipper, who received the initial tip from his brother, also Salman's brother-in-law.

The rules governing insider trading have at times been somewhat unclear, and different circuits have reached different conclusions on cases involving very similar facts. The SEC has taken some steps to clarify what constitutes insider trading in two particular areas in which the courts had disagreed. The SEC adopted Rules 10b5-1 (17 CFR 240.10b5-1) and 10b5-2 (17 CFR 240.10b5-2.) in 2000. It was expected that these new rules would remove any controversies among the courts, ensuring the same treatment of people accused of violations regardless of the federal district in which the defendant was charged with a violation. Rule 10b5-1 addresses trading in securities "on the basis of" material nonpublic information. According to this rule, "a purchase or sale of a security of an issuer is 'based on' material nonpublic information about that security or issuer if the person making the purchase or sale was aware of the material nonpublic information when the person made the purchase or sale (§240.10b5-1(b))." However, it is not a violation of the insider trading rules if the person had either entered into a contract to purchase of sell the security before becoming aware of the information, instructed another person to purchase or sell on his or her behalf prior to becoming aware of the information, or had adopted a written plan for periodic purchase or sale of the securities in question before becoming aware of the information (§240.10b5-1(c)(A)). The effect of this rule is to protect those persons who, while qualifying as insiders, have acted in good faith in dealing in the securities and had made commitments to purchase or to sell such securities prior to gaining knowledge of the information.

Rule 10b5-2 attempts to define when a person has a position of trust or confidence with respect to material nonpublic information. Any person in such a position who shares that information with another has misappropriated the information in violation of rule 10b5-2, as has the recipient of that information *if* he or she knew, or should have known, that the information should be treated as confidential. Should the recipient then trade on that information, he or she is guilty of insider trading due to the misappropriation of the information.

With these relatively new rules to supplement rule 10b-5, and with the decisions cited above, culminating in *Salman*, perhaps we can expect more consistency among the circuits and fewer insider trading cases reaching the Supreme Court. At a minimum, officers, directors, and other insiders should be aware that "tipping" friends and relatives of material nonpublic information can carry significant penalties for both the "tipper" and his or her "tippees." The *Salman* opinion and Rule 10b5-2 make this very clear.

REFERENCES

15 U.S.C. §77 et seq.

15 U.S.C. §78 et seq.

15 U.S.C. §78j.

17 CFR 240.10b5-1.

17 CFR 240.10b5-2.

§240.10b5-1(b).

§240.10b5-1(c)(A).

92 F.3d 612 (1996).

92 F.3d 627 (1996).

220 U.S.App. D.C. 309, 324, 681 F.2d 824, 839 (1982).

220 U.S.App. D.C. 325, 681, F.2d 840 (1982).

401 F.2d 833 (2d Cir. 1968)

455 U.S. 222, 100 S.Ct. 1108 (1980).

445 U.S. at 445 U. S. 227.

463 U. S. 654

463 U.S. 646 (1983).

463 U.S. 651 (1983).

463 U.S. 652 (1983).

463 U.S. at 662.

519 U.S. 1087 (1997)

521 U.S. 642 (1997).

580 U.S. ____ (2016).

664 F.2d 12 (2d Cir. 1981), aff'd after remand, 722 F.2d 729 (2d Cir. 1983), cert. denied, 464 U.S. 863 (1983)

773 F.3d 438 (2014) (Note that the defendant here is Todd Newman, not the John Mitchell Newman convicted in the 1981 opinion.)

773 F.3d 443 (2014) (Note that the defendant here is Todd Newman, not the John Mitchell Newman convicted in the 1981 opinion.)

773 F.3d 452 (2014) (Note that the defendant here is Todd Newman, not the John Mitchell Newman convicted in the 1981 opinion.)

Case Briefs, “Chiarella v. United States,” Bloomberg Law, http://www.casebriefs.com/blog/law/corporations/corporations-keyed-to-hamilton/transactions-in-shares-rule-10b-5-insider-trading-and-securities-fraud/chiarella-v-united-states/

Chiarella .v. United States 445 U.S. 222, 228.

Chiarella .v. United States 445 U.S. 228-229.

Dirks v. SEC, 463 U.S. 644, n. 14 (1983).

Dirks v. SEC, 463 U.S. 646, 655, n. 14 (1983).

Newkirk, Thomas, “Speech by SEC Staff: Insider Trading – A U.S. Perspective,” U.S. Securities and Exchange Commission web site (September 19, 1998). Found at https://www.sec.gov/news/speech/speecharchive/1998/spch221.htm.

O’Hagan, supra, at 652.

O’Hagan, supra, at 652-653.

SEC.gov . Insider Trading”. Retrieved from https://www.sec.gov/answers/insider.htm

Salman v. SEC, No. 15-628 (S.Ct. Dec. 6, 2016).

U.S. Securities and Exchange Commission. Fast answers: Insider trading. Retrieved from https://www.sec.gov/answers/insider.htm.

US Securities and Exchange Commission. “The Laws that Govern the Securities Industry,” Retrieved from https://www.sec.gov/about/laws.shtml.

Photo by Carole E. Scott

1996 B>Quest BUSINESS QUEST 2017