

DOJ Wins Big Insider Trading Case: Martoma Conviction; Bad News For Cohen And SAC

February 8, 2014 | [Insider Trading, The GEE Blog](#)

By **Patrick J. Cotter** | On February 6, 2014, a federal jury in New York handed the Department of Justice and U.S. Attorney Preet Bharara another victory in their ongoing campaign against perceived insider trading on Wall Street. Martoma, once a top lieutenant to Steve Cohen, the owner of large hedge fund SAC, [was convicted of acquiring and using inside information](#) about drug tests being conducted by drug manufacturer's Wyeth and Elan to inform SAC stock sales and purchases which netted over \$275 million in profit. The Martoma conviction, while closely watched by Wall Street insiders, the media, and, no doubt, Mr. Cohen, was not altogether unexpected. The "timeline" that the prosecution put before the jury, showing Mr. Martoma visiting with one of the doctors who was running drug trials for Wyeth and Elan and then, very shortly thereafter, engaging in a 20 minute phone conversation with Mr. Cohen, followed almost immediately by Mr. Cohen issuing orders to radically alter SAC's position regarding their stock in the two drug manufacturers, created a veritable mountain of circumstantial evidence pointing towards insider trading of the most basic form. The government put a nice peak on top of their mountain by introducing testimony from the doctor who ran the tests, who testified that he, in fact, did provide Mr. Martoma during their visit with insider information regarding how the tests were going. In defense, Martoma's lawyers attacked the credibility of the government's witnesses and tried to suggest to the jury that Mr. Cohen was the true government target, with Mr. Martoma being mere unfortunate collateral damage. This was no doubt meant to elicit from the jury some form of sympathy which would cause them to acquit Mr. Martoma despite the evidence presented by the prosecution. Sadly for Mr. Martoma, this defense did not prevail. Indeed, if media reports are to be credited, Mr. Martoma's attorneys were unable to provide to the jury an alternative explanation for the "timeline" presented by the government consistent with Mr. Martoma's innocence. Thus, the jury may well have accepted the notion that Cohen was the "big fish" that the government most wanted, but still see Martoma as part of Cohen's "school" and deserving of conviction. The conviction puts more pressure than ever on Mr. Cohen, and to a lesser degree, the Department of Justice. Having now convicted an insider trader of being on the phone with Mr. Cohen for 20 minutes just before Mr. Cohen started selling his shares in the two drug manufacturing companies, it becomes all the more difficult for the government to resist the temptation to bring a criminal action against Mr. Cohen himself. Likewise, Mr. Martoma, now facing years in prison after his conviction, may be highly incentivized to reconsider his up-to-now steadfast refusal to cooperate with the government in their inquiries into SAC and Mr. Cohen. The Martoma case stands not only as an example of a classic and very large insider trading case, but also as a cautionary tale, not only for individuals engaged in the highly competitive high-stakes world of Wall Street, but also to defense attorneys confronted with attempting to defend such individuals when the government turns their attention to them. Martoma's attorneys enjoy excellent reputations and from the media reports put on a spirited and well-presented defense. However, all individuals in the world of

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finance, and their attorneys, need to be mindful of the power of timelines that can make even innocent actions appear illegal. Mr. Cohen, and federal prosecutors, may be giving such notions some considerable thought today.