

U.S. Supreme Court Decides *Salman*, Reaffirms Broader View Of Insider Trading

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Just like that, the *Newman/Salman* insider trading saga has come to a close. For now, at least. These cases have generated a [good bit of ink on this blog](#). Yesterday, the U.S. Supreme Court unanimously decided *United States v. Salman*, affirming *Salman*'s conviction for insider trading, just two months after oral argument. The opinion, authored by Justice Samuel Alito, was not much of a surprise in what it decided, but was somewhat more interesting in what it did not address. The Court concluded that *Salman* lay in the "heartland" of its prior prohibition in *Dirks v. SEC*. In *Dirks*, the Court said that a tipper breaches his or her fiduciary duty (and therefore commits insider trading) when the tipper either receives something of value in exchange for the tip or "makes a gift of confidential information to a trading relative or friend." In *Salman*, the tipper, Maher Kahn, provided confidential information to his older brother, Michael, who had a "very close" relationship with Maher. Michael then passed on the information to his good friend, *Salman*, who was also Maher's brother-in-law and who knew the information ultimately came from Maher. The Court concluded that this was insider trading simply based on the close relationship between Michael and Maher, even though the tipper (Maher) received nothing of financial value from Michael. It reasoned that this "gift of confidential information to a trading relative" was no different than trading on the information for oneself and then giving the illicit profits to the tippee, which even *Salman*'s counsel conceded would be illegal. As a result, the Ninth Circuit's decision, affirming *Salman*'s conviction, was affirmed. The decision is more interesting for what is not in the opinion. The Court said it was deciding a "narrow issue," and it left open several thorny questions that no doubt will continue to generate litigation. First and foremost, it did not decide the other issue decided in *Newman* – whether an insider trading defendant must know that the information on which he or she is trading came from insiders or that the insiders received a personal benefit in exchange. Here, because everyone down the line knew the information came from Maher, unlike the evidence in *Newman*, the Court expressly avoided addressing what a tippee, or ultimate user of the confidential information, must know about where the information came from. This will no doubt continue to impact prosecutions of more impersonal exchanges of inside information. The Court also chose not to define the outer limits of who was a "trading relative or friend." The government had argued that a gift of confidential information to anyone sufficed, but the Court did not adopt this view. Instead, it retained the "trading relative or friend" language and acknowledged future courts could face some difficult line-drawing down the road, but, because of the unquestionably close relationships among all the parties here, left that issue for another day. The brevity of the opinion, the

speed from oral argument to decision (scarcely two months), and its unanimity all seem to suggest that this Court is comfortable with the state of its insider trading jurisprudence. There also was no call for Congress to legislate to provide additional clarity even though Congress has never defined the parameters of insider trading. Instead, the Court seems to have treated the Second Circuit's *Newman* decision more as an outlier than the beginning of a sustained narrowing of insider trading jurisprudence. Insider trading, therefore, remains a potent tool in a prosecutor's arsenal. It will be interesting to see how Preet Bhahara, the U.S. Attorney for the Southern District of New York, who spearheaded the *Newman* prosecution and numerous other insider trading cases, responds in light of the Supreme Court's affirmance of a broader view of insider trading than the Second Circuit allowed in *Newman*.