Antitrust and Business Litigation - Year in Review

January 2, 2018 Carrington Giammittorio

PRACTICES Antitrust and Competition, Litigation

The U.S. Supreme Court took up its first insider trading case in more than 20 years and issued an important opinion addressing the applicability of equitable tolling to the Securities Act of 1933's statute of response.

Insider Trading Developments

More than 30 years ago, the Supreme Court held in *Dirks v. SEC* that a tippee may be liable for insider trading if the tipper breached a fiduciary duty in disclosing the information, which occurs when the tipper receives a personal benefit from the disclosure. In recent years, the circuit courts had split over what constitutes a "personal benefit." In *United States v. Newman*, the 2nd Circuit Court of Appeals held that a personal benefit could not be inferred unless the tipper and the tippee have a "meaningfully close personal relationship" and engage in an exchange that results in "at least a potential gain of a pecuniary or similarly valuable nature" for the tipper. But in *United States v. Salman*, the 9th Circuit declined to follow Newman, and held that a tipper receives a personal benefit when he makes "a gift of confidential information to a trading relative." The Supreme Court addressed the split in *Salman v. United States*, affirming the 9th Circuit's interpretation of *Dirks* and noting that, when a tipper gives inside information to a trading relative, a fact-finder can infer that "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." In doing so, the court expressly rejected *Newman*'s pecuniary benefit requirement but did not address whether the tipper and tippee must have a close relationship.

Excerpted from Texas Bar Journal, January 2018. To read the full article, click here.

