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**Protecting Intellectual Property:
Will Criminal Authorities Help?**

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CARPENTER ET AL. v. UNITED STATES

No. 86-422

SUPREME COURT OF THE UNITED STATES

484 U.S. 19; 108 S. Ct. 316; 98 L. Ed. 2d 275; 1987 U.S. LEXIS 4815; 56 U.S.L.W. 4007; 5 U.S.P.Q.2D (BNA) 1059; Fed. Sec. L. Rep. (CCH) P93,423; 14 Media L. Rep. 1853

October 7, 1987, Argued
November 16, 1987, Decided

PRIOR HISTORY: CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

DISPOSITION: *791 F. 2d 1024*, affirmed.

DECISION:

Financial columnist's and stockbrokers' prepublication use of newspaper's confidential information in order to trade in stocks held to violate federal mail and wire fraud statutes (*18 USCS 1341, 1343*).

SUMMARY:

A daily column in the Wall Street Journal discussed selected stocks, giving positive and negative information about them and taking a point of view with respect to investment in them. Because of the column's perceived quality and integrity, it had the potential of affecting the price of the stocks that it examined. The Journal's official policy was that the contents of the column were the Journal's confidential information prior to publication. Aware of this policy, one of the two writers of the column entered into a scheme with two stockbrokers to give them advance information as to the timing and contents of the column, thus permitting the brokers to buy or sell stocks based on the column's probable impact on the market. The brokers' profits from this scheme were to be shared with the writer. Over a four-month period, the brokers gained about \$ 690,000 in net profits from such trades. After the scheme was exposed, the writer and one of the brokers were convicted, in the United States District Court for the Southern District of New York, of defrauding the Journal in connection with the purchase

or sale of securities in violation of 10(b) of the Securities Exchange Act of 1934 (*15 USCS 78j(b)*) and SEC Rule *10b-5* (*17 CFR 240.10b-5*), and of misappropriating the Journal's property, with specific intent to defraud, in violation of the federal mail and wire fraud statutes (*18 USCS 1341, 1343*), and the writer's roommate was convicted for aiding and abetting (*612 F Supp 827*). On appeal, the United State Court of Appeals for the Second Circuit affirmed as to these convictions (*791 F2d 1024*).

On certiorari, the United States Supreme Court (1) affirmed the judgment on the securities laws counts by an equally divided vote, and (2) affirmed with respect to the mail and wire fraud convictions. In an opinion by White, J., expressing the unanimous view of the eight members of the court, it was held that the activities of the writer and the brokers were within the reach of the mail and wire fraud statutes, since (1) the Journal had been defrauded within the meaning of those statutes, even though it had not suffered a monetary loss, because it had been deprived of its property right of making exclusive use of the confidential business information, and (2) the use of the wires and the mail to print and send the Journal to its customers satisfied the statutory requirement that those mediums be used to execute a fraudulent scheme, because circulation of the column not only was anticipated but was an essential part of the scheme.

LAWYERS' EDITION HEADNOTES:

COMMUNICATIONS §8

SERVICE §48 ;

federal mail and wire fraud statutes -- stock columnist -- confidential information -- ;

484 U.S. 19, *; 108 S. Ct. 316, **;
98 L. Ed. 2d 275, ***; 1987 U.S. LEXIS 4815

Headnote:[1A][1B][1C][1D]

The writer of a daily column in a financial newspaper, together with certain stockbrokers, violates the federal mail and wire fraud statutes (*18 USCS 1341, 1343*) where (1) the writer gives the brokers advance information as to the timing and contents of the column, which discusses selected stocks and takes a point of view with respect to investment in them, in order to permit the brokers to buy or sell stocks based on the column's probable impact on the market, (2) the newspaper's official policy, of which the writer is aware, is that the contents of the column are the newspaper's confidential information prior to publication, and (3) the writer and the brokers act with specific intent to defraud the newspaper; under such circumstances, the newspaper has been defrauded within the meaning of *18 USCS 1341* and *1343*, even though it has not suffered a monetary loss, because it has been deprived of its property right of making exclusive use of the confidential business information.

APPEAL §1666 ;

equal division of court -- affirmance -- securities fraud -- ;

Headnote:[2]

The United States Supreme Court will affirm a United States Court of Appeals judgment, which affirmed the convictions of the accused, under 10(b) of the Securities Exchange Act of 1934 (*15 USCS 78j(b)*) and *SEC Rule 10b-5* (*17 CFR 240.10b-5*), for defrauding a newspaper in connection with the purchase or sale of securities by misappropriating confidential information belonging to the newspaper, where the Supreme Court is equally divided with respect to those convictions.

CORPORATIONS §58

EQUITY §23 ;

property rights -- confidential information -- protection -- ;

Headnote:[3]

Confidential information acquired or compiled by a corporation in the course and conduct of its business is a species of property to which the corporation has the exclusive right and benefit, and which a court of equity will protect through the injunctive process or other appropriate remedy.

SERVICE §48 ;

mail fraud statute -- ;

Headnote:[4]

In the federal mail fraud statute (*18 USCS 1341*), the words "to defraud" have the common understanding of wronging one in his property rights by dishonest methods or schemes, and usually signify the deprivation of something of value by trick, deceit, chicane, or overreaching.

DECEIT §2

EMBEZZLEMENT §1 ;

definition -- ;

Headnote:[5]

The concept of fraud includes the act of embezzlement, which is the fraudulent appropriation to one's own use of the money or goods entrusted to one's care by another.

AGENCY §54 ;

exploiting confidential knowledge -- accounting to principal -- ;

Headnote:[6]

A person who acquires special knowledge or information by virtue of a confidential or fiduciary relationship with another is not free to exploit that knowledge or information for his or her own personal benefit, but must account to his or her principal for any profits derived therefrom.

COMMUNICATIONS §8

SERVICE §48 ;

federal mail and wire fraud statutes -- circulation of newspaper -- ;

Headnote:[7]

For the purposes of the federal mail and wire fraud statutes (*18 USCS 1341, 1343*), the use of the wires and the mail to print and send a newspaper to its customers satisfies the requirement that those mediums be used to execute a fraudulent scheme, where the scheme at issue involves the use of advance information from a financial column to buy or sell stocks based on the column's probable impact on the market, since circulation of the column not only is anticipated but is an essential part of the scheme.

SYLLABUS

Petitioner Winans was coauthor of a Wall Street Journal investment advice column which, because of its

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