

# Setbacks Show Holes in Insider-Trading Cases

## Legal Experts Question Whether Government Is Overreaching

By  
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The SEC dropped its case against Parker H. Petit, shown dedicating a science center at Georgia State University. *Carolyn Pruden Richardson/Georgia State University*

The government's push against insider trading is being tested along several fronts, as the effort to curb illicit use of nonpublic information enters a new and arguably more difficult phase.

The latest flash points include the high-profile probe into billionaire investor [Carl Icahn](#), professional golfer Phil Mickelson and sports bettor William "Billy" Walters, along with two recent setbacks for the Securities and Exchange Commission.

The agency on Wednesday dismissed its long-running civil case against Atlanta executive Parker H. Petit, 75 years old, less than a month before it was due to go to trial.

The move came days after the SEC lost a civil trial against a hedge-fund manager, when a federal jury cleared Nelson J. Obus and two others of insider trading.

The SEC's recent mixed record on insider-trading cases comes as some legal experts question whether the government is overreaching in its effort to crack down on the alleged misuse of nonpublic information. Prosecutors have had a successful stretch of cases against Wall Street, but many of these were aided by wiretaps, while recent losses by the SEC mostly don't include such hard evidence.

In Mr. Petit's case, the government never said that he received a financial benefit from allegedly telling a friend that his former company, Matria Healthcare Inc. of Marietta, Ga., was going to be sold. The government said he tipped off his friend and flying partner Earl C. Arrowood, 69, and that Mr. Arrowood invested about half his net worth, buying \$420,000 of stock in Matria ahead of the 2008 deal.

Mr. Petit, who was Matria's chairman and chief executive at the time, denied ever mentioning the proposed sale to Mr. Arrowood, saying in an interview he had even kept his children in the dark about the deal. He said he had voluntarily taken—and passed—a lie-detector test as part of a five-year effort to persuade the SEC its that suspicions were groundless.

Mr. Arrowood recently agreed to pay more than \$22,000 to settle the allegations, without admitting or denying any wrongdoing. His lawyer, Anthony Cochran, said his client was "quite pleased" with the pact. The settlement amount was significantly less than the sanctions of more than \$376,000 the SEC initially had sought, according to court documents.

Andrew Ceresney, the SEC's enforcement chief, in a statement described the deal as "an appropriate resolution of our insider trading case based on the evidence available to us."

Judges of the U.S. Court of Appeals for the Second Circuit have signaled their concerns that prosecutors may have taken too broad a view of insider trading. One of the issues they are considering is whether a trader needs to know the person who tipped them got a personal benefit for leaking information.

The question of what exactly constitutes insider trading has come under further scrutiny due to the widespread publicity around the investigation into Messrs. Icahn, Mickelson and Walters. U.S. authorities are looking into whether Mr. Icahn tipped off Mr. Walters about potentially market-moving investments by Mr. Icahn's company, including Clorox Co., and whether Mr. Walters passed stock tips to Mr. Mickelson. All three men have denied any wrongdoing.

Some lawyers say the area of insider-trading laws involving activist investors, like Mr. Icahn, is particularly murky. It isn't clear that activists have a legal duty to keep their investments secret, or that they would be breaking any securities laws even if they did leak their investments, lawyers say.

James Cox, a law professor at Duke University in Durham, N.C., said some of the recent SEC insider-trading defeats pointed to a more fundamental potential sticking point with the Icahn probe: making a case without wiretaps or other surveillance evidence showing definitively that information was leaked.

"Circumstantial evidence doesn't seem to carry the same sway as it did in the past," partly because many of the recent cases are "not quite as plain vanilla as some of the earlier cases," Mr. Cox said.

He added that unless the government has some "hard evidence" of conversations discussing nonpublic stock information between individuals in the Icahn investigation, "I think the case crashes and burns."

Thomas Gorman, a partner at law firm Dorsey & Whitney LLP, said the agency is pushing the boundaries at times by bringing cases based on limited circumstantial evidence. "They have a view that if you trade ahead of some big market-moving event, they're going to come after you," he said.

Mr. Ceresney of the SEC said cases "based on circumstantial evidence are often difficult, but that does not deter us from aggressively enforcing the law when we believe the evidence supports the allegations."

But Christopher Garcia, a former prosecutor and now a partner at law firm Weil Gotshal & Manges LLP, said the SEC's mixed track record on insider-trading stems more from problems with the agency's past selection of cases, rather than wider legal problems in pursuing such wrongdoing.

"The SEC in recent years charged some cases where they don't have enough evidence to prove liability," Mr. Garcia said.

—Christopher M. Matthews and David Benoit contributed to this article.

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