



**SECURITIES AND
EXCHANGE COMMISSION**

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SEC Director of Enforcement and
General Counsel Respond to
Supreme Court's Decision in
Dirks v. SEC

Attached are statements by John M. Fedders, Director of the Division of Enforcement and Daniel L. Goelzer, General Counsel on the U.S. Supreme Court's Decision in Dirks v. SEC, July 1, 1983.

STATEMENT OF JOHN M. FEDDERS ON THE
U.S. SUPREME COURT'S DECISION IN
DIRKS V. SEC. -- JULY 1, 1983

"Based upon a preliminary reading, the Supreme Court's decision in Dirks v. SEC, although unfavorable to the prosecution of that specific case, does not jeopardize the Commission's insider trading enforcement program. The facts of the Dirks case were unique, and the Court recognized this. The Court itself addresses the impropriety of insider trading and how it can jeopardize the integrity of our nation's capital markets.

"The Court reaffirms the applicability of the duty analysis approach to insider trading cases, but does it in a way that limits its application in certain tippee cases. The Court's formulation will have to be carefully considered by the Commission and its staff when making prosecutorial decisions. The Court does speak favorably of the misappropriation doctrine upon which some insider trading cases are based."

Statement of Daniel L. Goelzer
General Counsel
July 1, 1983

Dirks v. Securities and Exchange Commission

I am, of course, disappointed that the Supreme Court did not agree with the Commission's position in Dirks v. SEC. In essence, the Court rejected the Commission's view on a narrow issue -- it held, contrary to the Commission's position, that tippees of corporate insiders only assume the same fiduciary duties as their corporate informants where the insider has himself breached a duty. The Dirks decision is, however, based on facts, arising out of the Equity Funding scandal, which the Court itself labeled "unusual." In my view, the adverse ruling in this specific case has limited, if any, impact on the Commission's insider trading enforcement program. Indeed, the Court makes a number of points which are favorable to the Commission:

- o The Court firmly recognizes that tippees of corporate insiders may be held liable for their trading, although the Court holds that the tipper must have breached a duty in furnishing inside information to the trader.
- o The Court implicitly endorses the misappropriation theory discussed in its earlier Chiarella decision.
- o The Court does not reach the Solicitor General's view -- with which the Commission disagreed -- that

evidence of corporate wrongdoing is not within the insider trading prohibition of the federal securities laws.

The Dirks decision is, of course, an important one, and will require careful study. The narrowness of the holding, and the strong reaffirmation of the basic concepts of insider trading, are a tribute to Paul Gonson, Solicitor to the Commission, who argued this case and to the other members of the Office of the General Counsel who prepared the Commission's brief.