CLIENT ALERTS & INSIGHTS

Second Circuit Widens the Gap Between Wire Fraud and Intangible Interests - Confidential Business Information Without Commercial Value Is Not "Property"

AUGUST 15, 2025

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Case**: United States v. Chastain, No. 23-7038 (2d Cir. 2025)** Key Holding **The Second Circuit has narrowed the wire fraud statute (18 U.S.C. § 1343), ruling that a fraudulent scheme must target property with** actual commercial value **to the victim; mere confidential business information does not qualify as protected property if that information lacks commercial value.**

Background & Facts

- **Defendant:** Nathaniel Chastain, former head of product at OpenSea, an online NFT marketplace.
- **Convictions:** Initially convicted of wire fraud and money laundering.
- **Alleged Fraud:** Accused of manipulating NFT listings and misusing confidential internal information for personal gain while employed at OpenSea.

Appellate Decision

- The Second Circuit vacated Chastain's convictions and remanded the case for further proceedings.
- Crucially, the court held that confidential business information, if not tied to a tangible or economically valuable interest, does not count as "property" under the wire fraud statute.

What This Means

1. **Narrowing Wire Fraud Liability**
    - In the Second Circuit, prosecutors must now establish that the defendant sought to obtain property with commercial value, not merely intangible rights such as confidentiality.
    - A claim based solely on misuse of information without showing its economic value may fall short under Section 1343.

2. **Heightened Defense Opportunities**
    - Defense counsel can challenge prosecutions that rely on intangible property-particularly in cases involving intellectual property, trade secrets, or proprietary data-unless the prosecution demonstrates the information's market or economic value to the entity.

3. **Policy & Compliance Considerations**
    - Companies should quantify and clearly document the commercial value of their confidential assets when relying on fraud statutes to protect internal information.
    - Legal strategies should pivot toward remedies under trade secret law or civil remedies when "commercial value" is hard to demonstrate.

4. **Broader Precedent Risks**
    - The Second Circuit's new standard may limit the reach of the wire fraud statute in digital, NFT-related, or other tech-driven contexts where intangible assets play pivotal roles but lack obvious economic valuation.

Recommended Actions for Clients

- **Review Fraud Risk Policies:** Evaluate how your organization defines and protects confidential information. Ensure your confidentiality policies reflect economic interests-not just rights.
- **Quantify Value of Intangibles:** When deploying alleged trade secrets or internal data as protected property, document their commercial worth (e.g., licensing revenue, replacement cost, competitive advantage).
- **Strengthen IT & Access Controls:** While wire fraud claims may be harder to sustain under this standard, robust internal controls remain vital for preventing misuse of information.
- **Prepare Litigation Strategies:** In potential fraud cases involving intangible assets, litigation teams should anticipate challenges to property valuation and be ready to rebut them with data analysis, expert valuation, or related evidence.

For questions related to this case, its implications, and potential corporate compliance inquiries, please contact the **White Collar Practice Group at Benesch** for more information.