
Applicability of Section 16(b) to Insider Transactions of Acquisitions Involving Unrelated Entities Owning Registered Equity Securities of an Issuer

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In *At Home Corporation v. Cox Communications, et al.*, the U.S. Court of Appeals for the Second Circuit (the "Court of Appeals") recently addressed the issue of whether an insider's acquisition of the common stock of an issuer by acquisition of a third-party intermediary company gives rise to liability under Section 16(b) of the Securities Exchange Act of 1934 (the "Exchange Act") when matched with a sale of the issuer's common stock by such insider within six months of the acquisition. In dismissing At Home Corp.'s ("At Home" or the "Plaintiff") complaint, the Court of Appeals declined to rely on the "unorthodox transaction" rule of *Kern County Land Co. v. Occidental Petroleum Corp.*, and instead held that Section 16(b) generally does not apply to transactions "... in which an insider's acquisition of an enterprise holding an issuer's stock entails appreciable risks and opportunities independent of the risks and opportunities that inhere in the stock of the issuer."

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