In what has been described as the largest insider trading case ever filed in Orange County by the Securities and Exchange Commission (SEC), a jury earlier this year took only a few hours to return a verdict that found no wrongdoing by Manouch Moshayedi, the co-founder and former Chairman and CEO of sTec, Inc. The SEC had filed the case in the Santa Ana federal court, claiming that Mr. Moshayedi unjustly enriched himself by $267 million when he and family members sold nine million shares of the company’s stock while allegedly in possession of material, non-public information. The SEC also alleged that Mr. Moshayedi made material misrepresentations about sTec’s business. On June 6, 2014, the jury rejected all of the SEC’s claims.

Five days later, Andrew Ceresney, the SEC’s Director of Enforcement, gave a speech announcing that the SEC would start bringing more insider trading cases in administrative proceedings rather than in court. Mr. Ceresney claimed that the move was not related to recent court losses, but the Moshayedi decision came shortly after the SEC lost several other high-profile insider trading cases brought in federal courts around the country. Regardless, it is a significant development that the SEC has decided to bring more of these cases in what is quite literally its home court, rather than in the traditional venue of the U.S. district courts.

After the Dodd-Frank Act, the SEC may use administrative proceedings to obtain a range of remedies, including disgorgement of allegedly ill-gotten gains, and even the imposition of civil penalties for violations of the securities laws. Yet these administrative actions are brought before administrative law judges who are appointed by the SEC and are subject to procedural rules established by the SEC. Even though SEC enforcement attorneys often take years to investigate a case, including the use of subpoenas to gather evidence and obtain witness testimony, once an administrative action is commenced, the defendant is subject to a “rocket docket” that requires the case be decided in less than a year. The defendant has limited rights to obtain pre-trial discovery of the evidence. The normal rules of evidence do not apply; for example, hearsay may be allowed in an administrative proceeding. There is no jury. Then, after the administrative law judge renders an “initial decision” on a case, the final judgment is rendered by the SEC itself, that is, the same body of five commissioners who approved the enforcement staff’s internal request to file the case in the first instance. Altogether, it is not difficult to see why the administrative route might be considered easier for the SEC than having to prove its case before a jury in a court of law.

Not surprisingly, expanded use of administrative proceedings is the subject of considerable criticism, and is being challenged by some defendants as an improper abridgement of the right to due process and of other constitutional protections. Until such a challenge is successful, however, the SEC’s increased use of administrative proceedings means that defendants will have to be ready to defend allegations of even the most serious securities violations on an expedited basis in an inhospitable forum. A critical first step will be to engage counsel with the experience and resources to contest such charges efficiently and effectively.

Christopher McGrath and Howard Privette are litigation partners in the Costa Mesa office of Paul Hastings LLP and focus their practice on securities litigation and enforcement matters. Contact Mr. Privette at 714.668.6201 or howardprivette@paulhastings.com or contact Mr. McGrath at 714.668.6244 or chrismcgrath@paulhastings.com. Paul Hastings served as trial counsel for Mr. Moshayedi in the SEC enforcement action referenced in the article.