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Bullies, Beware

Posted By [Marie Beaudette](#) On February 4, 2009 @ 11:39 am In [Bankruptcy Law](#) | [No Comments](#)

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Are you the creditor of a company in bankruptcy that doesn't have enough cash to pay you? Take heart: a U.S. appeals court [2] [ruling](#) that put \$188 million in the pockets of Winstar Communications Inc. creditors may fix that.

The 3rd Circuit U.S. Court of Appeals on Tuesday ruled that Winstar, which liquidated in bankruptcy several years ago, can recover the \$188 million it paid telecommunications equipment maker Lucent Technologies Inc. in the four months before Winstar's April 2001 bankruptcy filing.

Bankruptcy law allows companies to recover payments they made within 90 days of their filing, since the company was likely insolvent when those payments were made. Such recoveries increase the pot of funds companies use to pay off their debts. According to Lucent, that \$188 million was well outside that timeframe.

But the time limit runs to a year when insiders of the company are concerned, which include officers, directors, a person in control of the debtor and their relatives. And according to Winstar, Lucent — which didn't have any officers, directors or other officials technically in control of Winstar — was nonetheless an insider because it exerted control over Winstar. Stephen M. Rathkopf of Herrick, Feinstein LLP, who represented Winstar's bankruptcy trustee in the litigation, said Lucent imposed such demands on Winstar as the purchase of goods from Lucent that Winstar didn't need, all for the purpose of inflating Lucent's revenue.

The appeals court agreed. "You can still be an insider if you have a sufficiently close relationship that you're not dealing at arms length with the debtor," Rathkopf said of the ruling. He added that this can include hedge funds, vendors and others in powerful relationships with companies in bankruptcy who, "when times get tough," may make extra demands on a company that they don't have the right to.

The news is no doubt welcome for Winstar's creditors, including pre-bankruptcy lenders owed \$1.3 billion and unsecured noteholders owed more than \$1 billion.

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[2] ruling: http://online.wsj.com/public/resources/documents/winstar_ruling.pdf