

Important Third Circuit Decision Finds a Lender and Contractual Counterparty to Be a Non-statutory "Insider"

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In a decision issued on February 3, 2009, the Third Circuit considered an issue of first impression: when will a creditor be considered a non-statutory insider for purposes of extending the time for recovery of preferential payments. The Court held that a creditor was a non-statutory insider where it had “an ability to coerce” (and did coerce) the debtor into various transactions, including transactions that were not in the debtor's best interest. The creditor was held to be an insider based on “domination,” rather than the more typical “actual control” test, and the one-year (rather than ninety-day) lookback period for the avoidance of preferential transfers applied.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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