

Winston Fuels Major Save for Excentus

APRIL 13, 2018

A Winston team achieved a pivotal victory for fuel loyalty rewards company Excentus by blocking the addition of three hostile board members, one of whom had been fired for malfeasance—a move that could have threatened the very existence of the company.

In September 2017, Excentus senior management and its board received shareholder consent to take two actions: (1) increase the board size from six to nine; and (2) name as the new members the former CEO, terminated for wrongdoing, along with two of his associates. Together with two allied board members, they would control the company.

Winston sought an injunction against the takeover attempt to save the company, its management, and its strategic direction. Winston secured a temporary restraining order, halting hostile action by the purported new board. After a hearing and multiple rounds of briefing, the court granted an injunction for Excentus, finding the new board appointments void. The adverse parties returned with yet another consent to place the fired CEO on the board, but then professed to amend the governing corporate documents so that all power was taken from the board and management and put into the control of shareholders. In response, the Winston team brought contempt proceedings, which froze this new aggression.

Winston's decisive win put Excentus in a strong position to seek a white knight buyer. A purchase offer was made, and the deal was completed on April 11. Management retained their positions, shareholders received maximum value, and Excentus has become part of a complementary group of enterprise software companies.

The Winston Dallas team included Partners Brett Johnson, Tom Melsheimer, Natalie Arbaugh, and Scott Thomas, and Associates Katrina Eash and Ahtoosa Dale.

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