

The Judges Have Spoken!



503(b)(9) Claims & Consignment Agreements are No Match for Properly Perfected UCCs

It's True.

In bankruptcy, a properly perfected security interest, in compliance with UCC Article 9, has priority over unsecured creditors, creditors with administrative claims, 503(b)(9) claims, and even consignment agreements.

At the 2018 CRF Fall Forum, the Bankruptcy Judge Panel – Three Judges/One Verdict – reinforced the priority UCC filings have over 503(b)(9) claims and consignment agreements.



The Proof is in the Code

The proof is in Sections 506 & 507 of the bankruptcy code. Section 506 defines what is considered a secured claim and Section 507 dictates the payout priority of claims.

- 1 Secured Creditors (i.e. creditors who have a perfected security interest)
- 2 Administrative Expenses (i.e. costs associated with filing & processing the bankruptcy)
- 3 Unsecured Creditors (i.e. creditors without a security interest)

"Who Needs UCCs? We File 503(b)(9) Claims"

Under 503(b)(9), creditors may file a claim for "the value of any goods received by the debtor within the 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business."

A 503(b)(9) only covers the value of goods delivered to the debtor within 20 days prior to the bankruptcy filing. 20 days! What happens if you supplied outside of 20 days? You'll be wishing you had filed a UCC!

UCCs provide priority. A properly perfected security interest protects to the extent of the pledged collateral.

A simple consignment agreement is often viewed by the courts as a "secret lien" and may not be enough to protect you if your debtor defaults or files for bankruptcy protection, as there is no legal/recorded document identifying your title to the goods provided to the debtor.

If the debtor files for bankruptcy protection, the inventory the debtor has on hand is gathered up and sold off to pay creditors (secured creditors first and then the unsecured creditors). Without the UCC filing identifying you as a secured creditor and specifically identifying your goods, the inventory you supplied automatically becomes property of the estate.

"We Sell on Consignment, No UCC Necessary"

UCCs Are Payment Priority

UCCs are not a guarantee; there are no recovery guarantees in bankruptcy; after all, 100% of nothing is nothing.



However, without a properly perfected UCC, you are just another unsecured creditor, wading in an overcrowded shallow pool for payment.

With a properly perfected UCC, you are a payment priority.



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