

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.



<u>ne Proof is in the Code</u>

Section 507 dictates the payout priority of claims.

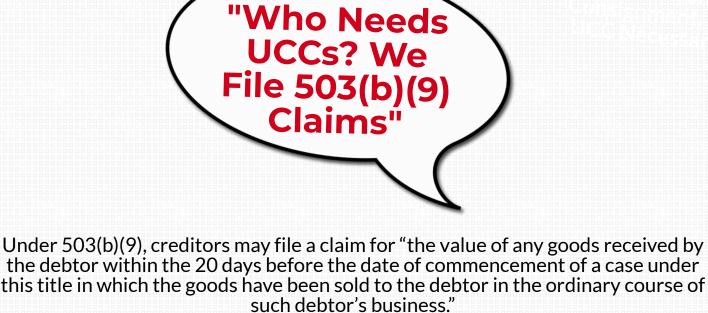
Secured Creditors (i.e. creditors who have a perfected security interest)

Administrative Expenses (i.e. costs associated with filing & processing

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

Unsecured Creditors (i.e. creditors without a security interest)

the bankruptcy)



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.

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

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

UCCs Are Payment Priority

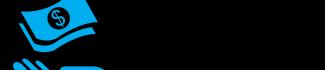
Consignment, No UCC Necessary"

and specifically identifying your goods, the inventory you supplied automatically becomes property of the estate.

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



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





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