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Receipt Under Section 503(b)(9) Means Actual Physical Possession of Goods: A Victory for the Trade

The United States Court of Appeals for the 3rd Circuit, in *In re World Imports Ltd.*, recently held that a debtor, World Imports, had received goods when the debtor or its agent physically received the goods, *not* when the goods were delivered to a common carrier for shipment. This decision was made in conjunction with determining the allowed amount of trade creditors' Section 503(b)(9) administrative priority claims for goods purportedly received by World Imports within 20 days of its bankruptcy filing.

Two Chinese vendors, Haining Wansheng Sofa Co., Ltd. ("Haining") and Fujian Zhangzhou Foreign Trade Co., Ltd. ("Fujian"), sold goods to World Imports. All of the goods were based on FOB (free on board) terms in which the risk of loss passed to World Imports when the goods were loaded on board the ships at the named ports of shipment in China. While the goods were delivered to the carriers more than 20 days before the Chapter 11 filing, World Imports received the goods within 20 days of the filing date.

The bankruptcy court held Haining and Fujian were not entitled to Section 503(b)(9) priority claims for the shipments. The court determined the meaning of the term "received" should be gleaned from the Convention on Contracts for the International Sale of Goods (the "CISG"), a treaty to which the United States and China are parties, instead of U.S. state law, the Uniform Commercial Code ("UCC"). While the CISG does not define "receive," it incorporates Incoterms (International Commercial Terms) that reflect current trade practices. The bankruptcy court, relying on the CISG and the FOB Incoterm, ruled World Imports had received the goods when they were loaded on the vessels in China. Thus, the court concluded World Imports received the goods more than twenty (20) days before its bankruptcy filing, and the Chinese vendors thereby were not entitled to priority status under Section 503(b)(9). The district court affirmed the bankruptcy court's holding.

The 3rd Circuit rejected the lower court holdings. Instead, the court relied on the dictionary definition of "receive" as taking physical possession of the goods and the UCC's definition of "receipt" in Section 2-103(c) as "taking physical possession of [the goods]." It also distinguished between receipt and delivery or transfer of title/risk of loss. The court concluded a buyer could not receive goods in the possession of a common carrier when the seller still retains the ability to stop delivery of the goods. Also, a common carrier is not an agent of the buyer that would confer

the buyer with constructive possession of the goods. Finally, the court applied the UCC's definition of receipt to Section 503(b)(9) based on the interrelationship between Section 546(c) of the Bankruptcy Code governing reclamation and Section 503(b)(9), and a prior 3rd Circuit decision that applied the UCC's definition of receipt to reclamation rights.

The 3rd Circuit's ruling—which is binding in Delaware, New Jersey and Pennsylvania—is undoubtedly very favorable for trade creditors. In those jurisdictions, it will result in larger Section 503(b)(9) priority claims because a debtor will be deemed to have received goods on the later date of physical possession instead of the earlier date of delivery of goods to a carrier.

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