

CREDITOR'S RIGHTS TOOLKIT

What Is a Section 503(B)(9) Claim and How Can It Improve My Chances For Recovery?

Pursuant to the Bankruptcy Code, claims against a debtor are paid according to a priority scheme which places the holders of administrative expenses before the holders of general unsecured claims in receiving distributions. Although most administrative expense claims are for goods, services, or other benefits provided to a debtor after the bankruptcy is filed, section 503(b)(9) categorizes as an administrative expense any claim for “the value of any goods received by the debtor within 20 days before the date of commencement of a case... in which the goods have been sold to the debtor in the ordinary course of business.”

Key Issues

- Section 503(b)(9) applies to only goods—not services. This determination is not as straightforward as it may appear, and the goods v. services distinction is often debated. Each jurisdiction may have its own analysis to determine if what was delivered to the debtor is actually a “good.”
- Section 503(b)(9) applies only to those goods “received” by a debtor within 20 days before the petition date. When goods are “received” requires a careful analysis. Certain delivery methods, such as F.O.B. or drop-shipping, may complicate this analysis.
- Section 503(b)(9) requires a creditor to calculate the “value” of the goods it sold to a debtor. An invoice might be sufficient for this purpose, but a creditor must be ready to respond to a debtor challenging the “value” of the goods it received.
- The deadline to seek a section 503(b)(9) claim is generally set by court order. Creditors must closely review relevant pleadings to ensure they do not miss the deadline to assert a section 503(b)(9) claim. Creditors also need to determine whether they must file a motion to request payment of a section 503(b)(9) claim or if submitting a proof of claim is sufficient. Failure to timely file a section 503(b)(9) in the required format can result in the creditor forfeiting the right to payment on account of such claim.

- While section 503(b)(9) elevates a claim, it does not require immediate payment of such claim, nor does it guaranty payment of the claim. A creditor can request immediate payment, which will then be decided by the judge presiding over the case. If such request is opposed by the debtor, it is unlikely immediate payment will be required. The latest a section 503(b)(9) claim can be paid is in connection with the plan of reorganization, which may be months or even years after the bankruptcy case is filed. If no chapter 11 plan is confirmed in a case, there is no guaranty that funds will be available to pay administrative claims.

Takeaway

Section 503(b)(9) of the Bankruptcy Code provides a creditor with a unique opportunity to elevate its claim and potentially secure payment in full. Creditors should work with experienced bankruptcy counsel to determine if their claim falls within the purview of section 503(b)(9) and to timely and properly assert their claim in the bankruptcy case.