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To Have and to Hold: Third Circuit Rules That Physical Possession of Goods Is Required Under Section 503(b)(9) of the Bankruptcy Code

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Since its enactment as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, section 503(b)(9) of the Bankruptcy Code has provided an important safety net for creditors selling goods to financially struggling companies that file for bankruptcy. The provision gives vendors an administrative expense priority claim for the value of goods "received by the debtor" during the 20-day period before the bankruptcy petition date. The U.S. Court of Appeals for the Third Circuit recently considered section 503(b)(9) and its relationship with another important vendor protection—reclamation rights under section 546 of the Bankruptcy Code and related nonbankruptcy law—in *In re World Imports, Ltd.*, 862 F.3d 338 (3d Cir. 2017). The Third Circuit reversed lower court rulings that the phrase "received by the debtor" in section 503(b)(9) includes constructive possession of goods at the time title is transferred, in addition to physical possession of the goods.