

From the Bankruptcy Code, 11 U.S. Code
§101.Definitions:

* * *

(10)The term "creditor" means—

(A)entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;

(B)entity that has a claim against the estate of a kind specified in section 348(d), 502(f), 502(g), 502(h) or 502(i) of this title; or

(C)entity that has a community claim.

* * *

(13)The term "debtor" means person or municipality concerning which a case under this title has been commenced.

Though reclamation may not be valuable in many cases, as the following case illustrates, it is sometimes worth pursuing. You need to understand the benefits--as well as the problems--with exercising a reclamation right in order to fully appreciate the value of the right to stop goods in transit BEFORE the goods are "received" by the DEBTOR. That is what consideration of the following case, including the calculation of time periods, will help you do.

The unpaid SELLER of goods is a "creditor" in the bankruptcy of BUYER. BUYER is a "debtor" in Bankruptcy Code terminology.

You can see this pretty clearly in the case of the unpaid SELLER by looking at the definition. In the case of the BUYER you want to check the definition of "person".

Unless the SELLER reserved a security interest in the goods sold (and perfected that security interest), SELLER will be an unsecured creditor in the bankruptcy of BUYER. As we saw at the start of the class, unsecured creditors often receive payment at a low percentage of the amount of their claims--that is to say, the unsecured creditor has a higher expected loss given default than a secured creditor. In such a case, it is an advantage to receive an administrative priority which gets paid ahead of general unsecured creditors even though the claim is paid after any claim secured by the goods.

OUR STORE FAILS TO PAY THE PRICE OF CONFORMING GOODS

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whether the bank acted in good faith. As such, summary judgment should not have been granted.

3. UNPAID SELLER'S RIGHTS WHEN BUYER FILES BANKRUPTCY

An unpaid seller's right of reclamation survives the buyer filing bankruptcy, 11 U.S.C.A. § 546(c), but this right is still subject to the superior claim of the buyer's secured party. In fact, this secured party's claim is strengthened in bankruptcy and prevails without regard to good faith. 11 U.S.C.A. § 546(c); In re hhgregg, Inc., 578 B.R. 814 (Bankr. S.D. Ind. 2017). So, reclamation is often basically worthless in and out of bankruptcy.

This leaves the unpaid seller of goods, who lacks a security interest, with an unsecured claim against the buyer's bankruptcy estate. Unsecured creditors ordinarily get pro rata shares of the bankruptcy estate, but it's often relatively small or worthless. The balances of debts owed them are discharged.

However, the Bankruptcy Code gives the unpaid seller of goods an "administrative expense" priority claim for the value of goods received by the debtor within 20 days before the petition date. 11 U.S.C.A. § 503(b)(9). This basically means that the unpaid seller is paid before most other unsecured creditors. This priority is only helpful, however, to the extent that the value of the debtor's assets exceeds the value of security interests and other liens and interests that encumber or limit the debtor's rights in the property. Typically, there is little or no such excess value.

The BUYER who files a voluntary petition for bankruptcy is a "debtor" within the meaning of the Bankruptcy Code because the BUYER is a person "concerning which a case under this title has been commenced." A company like Inofin against whom creditors commenced an involuntary petition is also a "debtor." Note that a debtor must be either a "person" or a "municipality".

A "person" is defined as follows:

(41)The term "person" includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that—

* * *

**IN RE: WORLD IMPORTS,
LTD., et al., Debtors**

**Haining Wansheng Sofa Co., Ltd,
Fujian Zhangzhou Foreign Trade
Co., Ltd, Appellants**

No. 16-1357

United States Court of Appeals,
Third Circuit.

Argued March 8, 2017

(Filed: July 10, 2017)

Background: Sellers in China that had sold goods to Chapter 11 debtor prepetition filed motions for allowance and payment of administrative expense claims, and debtor objected on ground that goods were not received when debtor, or its customers, took physical possession of goods, less than 20 days prior to its bankruptcy filing, as required by administrative expense provision. The United States Bankruptcy Court for the Eastern District of Pennsylvania, Stephen Raslavich, J., 511 B.R. 738, entered order denying motion, and sellers appealed. The District Court, Petrese B. Tucker, Chief Judge, 549 B.R. 820, affirmed. Sellers appealed.

Holdings: The Court of Appeals, Hardiman, Circuit Judge, held that:

(1) goods are not "received" by debtor, as that term is used in bankruptcy statute according administrative expense claim

to vendors for value of goods received by debtor within 20 days prior to its bankruptcy filing, until debtor or its agent takes physical possession of them, and

(2) mere fact that risk of loss may have passed from vendors to debtor more than 20 days prior to its Chapter 11 filing, when goods that debtor had purchased prepetition were delivered free on board (FOB) to common carrier, did not alter fact that debtor "received" these goods, for purpose of statute governing vendors' right to administrative expense claim, within 20 days of petition date.

Reversed and remanded.

11 U.S.C. 503(b)(9) provides in relevant part:

(a) An entity may timely file a request for payment of an administrative expense, or may tardily file such request if permitted by the court for cause.

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—

* * *

(9) the value of any goods received by the debtor within 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.

Notice that the amount of the claim is the "value" of the goods and not the "price" of the goods.

The goods must have been "received by the debtor" and the word "received" is not defined in the Bankruptcy Code.

The time period "within 20 days before the date of commencement of a case" must be computed.

The goods must have been sold to the debtor "in the ordinary course of such debtor's business".

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Rule 9006. Computing and Extending Time
 (a) Computing Time. The following rules apply in computing any time period specified in these rules, in the Federal Rules of Civil Procedure, in any local rule or court order, or in any statute that does not specify a method of computing time.

(1) Period Stated in Days or a Longer Unit. When the period is stated in days or a longer unit of time:

- (A) exclude the day of the event that triggers the period;
- (B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and
- (C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

"Within 20 days before" July 3, 2013 should be a 20 day period occurring immediately prior to July 3. See *In re Circuit City Stores, Inc.* 432 B.R. 225 (Bankr. E.D. Va. 2010) (stating "it is undisputed that Circuit City took physical possession of the Consigned Goods prior to the 20-day period immediately preceding the Petition Date").

SELLER: Haining shipment|FOB Shanghai|"left" 5/26/13
 BUYER: World Imports|possession 6/21/13 [implies 25 days in transit prior to arrival date?]

SELLERS: Fujian shipments|FOB Xiamen|"shipped" 5/17/13, 5/31/13 & 6/7/13
 BUYER: World Imports|"accepted" goods [possession?] prior to 7/3/13 but on or after 6/13/13

BUYER: World Imports|bankr case 7/3/13--commenced voluntary Chapter 11 bankruptcy

On Appeal from the United States District Court for the Eastern District of Pennsylvania, (E.D.Pa. No. 2-14-cv-04920), District Judge: Honorable Petrese B. Tucker

Kirk B. Burkley [Argued], Daniel R. Schimizzi, Bernstein-Burkley, 707 Grant Street, Suite 2200, Gulf Tower, Pittsburgh, PA 15219, Counsel for Appellants

David L. Braverman [Argued], Helen M. Braverman, John E. Kaskey, Braverman Kaskey, 1650 Market Street, One Liberty Place, 56th Floor, Philadelphia, PA 19103, Counsel for Appellees

Before: HARDIMAN, KRAUSE, Circuit Judges, and STENGEL, District Judge.*

* The Honorable Lawrence F. Stengel, United States District Court for the Eastern District

OPINION OF THE COURT

HARDIMAN, Circuit Judge.

This appeal involves a question of bankruptcy law that has important ramifications for a creditor that sells goods to a debtor soon before the debtor files a Chapter 11 bankruptcy petition. Under 11 U.S.C. § 503(b)(9), a creditor may recover as a priority administrative expense the value of goods "received by the debtor within 20 days before" the bankruptcy petition is filed. In *In re Marin Motor Oil, Inc.*, this Court interpreted a related provision of the Bankruptcy Code (11 U.S.C. § 546(c)), and held that "receipt" occurs when the buyer takes physical possession of the goods. 740 F.2d 220, 224-25 (3d Cir. 1984). Does the word "received" in § 503(b)(9) likewise require physical possession? We hold that it does.

I

The facts of this appeal are undisputed. Appellants Haining Wansheng Sofa Company and Fujian Zhangzhou Foreign Trade Company (the Creditors) are Chinese companies that sold furniture and similar goods to World Imports (the Debtor) in the ordinary course of business. Those goods were shipped via common carrier from China to the United States "free on board" (FOB) at the port of origin, so the risk of loss or damage passed to World Imports upon transfer at the port.

The Haining shipment left Shanghai, China on May 26, 2013, and World Imports took physical possession of the goods in the United States on June 21, 2013. Fujian's goods were shipped on three separate dates from Xiamen, China on May 17, May 31, and June 7, 2013, and they were accepted in the United States within 20 days

of Pennsylvania, sitting by designation.

What is the significance of the transport being a "common carrier"? Is a common carrier considered the agent of the buyer? Is the common carrier a bailee? Are there legal differences between an agent and a bailee? Are there other kinds of carriers?

FOB port of origin| risk of loss to B / Debtor explained by court. Does court explain correctly? Is it "upon transfer at the port" or upon the loading of the cargo onto the vessel at the port?

Is "accepted" the proper word to use here? Would it be more accurate to say "received"?

Is "within 20 days of July 3, 2013" the best way to phrase this test? What would be a better way, if any, to word this part of the opinion or can you suggest other language?

of July 3, 2013, the day on which World Imports filed its Chapter 11 petition.

[1] Both Haining and Fujian filed Motions for Allowance and Payment of Administrative Expense Claims under 11 U.S.C. § 503(b)(9). Such claims are allowed if: “(1) the vendor sold ‘goods’ to the debtor; (2) the goods were received by the debtor within twenty days [before the bankruptcy] filing; and (3) the goods were sold . . . in the ordinary course of business.” *In re Goody’s Family Clothing, Inc.*, 401 B.R. 131, 133 (Bankr. D. Del. 2009).

The dispositive question in the Bankruptcy Court was whether World Imports “received the goods within 20 days prior to the bankruptcy filing.” *In re World Imports, Ltd. (World Imports I)*, 511 B.R. 738, 741 (Bankr. E.D. Pa. 2014). The parties agreed that Appellants shipped the goods from China “more than 20 days before the July 3, 2013 bankruptcy filing,” and that World Imports “took physical possession of the goods in the United States fewer than 20 days before the bankruptcy filing.” *In re World Imports, Ltd. (World Imports II)*, 549 B.R. 820, 822 (E.D. Pa. 2016). They disagreed, however, about which action (shipment or physical acceptance) constituted receipt under § 503(b)(9).

In evaluating the question, the Bankruptcy Court began by acknowledging that the operative word “received” in § 503(b)(9) is not defined. It then rejected the argument advanced by Haining and Fujian that state law (*i.e.*, the Uniform Commercial Code) should “provide a rule of decision for [the] gap[] in [this] federal statute[].” *World Imports I*, 511 B.R. at 741. Instead, the Bankruptcy Court looked to the Convention on Contracts for the International Sale of Goods (CISG)—which it found governed disputes arising between the Debtor and Creditors—as a treaty that

preempts the Uniform Commercial Code (UCC) in this case. Like the Bankruptcy Code, the CISG does not define the term “received,” so the Court looked to international commercial terms (Incoterms), which are incorporated into the CISG. And although no Incoterm defines “received,” the incoterm governing FOB contracts makes clear that the risk of damage or loss transfers to the buyer when the seller delivers the goods to the common carrier’s vessel. *Id.* at 745 (quoting FOB Incoterm). Because the risk of loss transferred at the port, the Bankruptcy Court concluded that the goods were “constructively received” when shipped from China. *Id.* Appellants’ motions were denied accordingly. *Id.* at 746.

The District Court affirmed the Bankruptcy Court and Haining and Fujian filed this appeal.

II

[2, 3] The Bankruptcy Court had jurisdiction under 28 U.S.C. § 157(b)(2)(B), and the District Court had appellate jurisdiction under 28 U.S.C. § 158(a)(1). “We have jurisdiction pursuant to 28 U.S.C. §§ 158(d), 1291 and exercise the same standard of review as the District Court when it reviewed the original appeal from the Bankruptcy Court.” *In re Handel*, 570 F.3d 140, 141 (3d Cir. 2009). “Thus, we . . . exercise plenary review over the Bankruptcy Court’s legal determinations.” *Id.*

III

[4] At issue in this appeal is the definition of the term “received” as used in 11 U.S.C. § 503(b)(9). If World Imports received the goods when they were loaded onto the common carrier in China, then Appellants’ claims for administrative priority fail. But if the goods were received only when World Imports took physical posses-

Questions you should be able to answer:
What is the CISG?
When does the CISG apply to a contract?
Can the parties to a contract disclaim the CISG and choose another applicable law? If the parties may choose another applicable law, how is that done?

Questions you should be able to answer:
What are Incoterms?
What is the most recent version of the Incoterms? How does a contract become subject to the Incoterms?

How would/should the FOB sale have been treated for financial accounting purposes? Would the goods have appeared as assets of World Imports from the time at which the goods were loaded on the vessel? If so, why should that not be the test?

Give a simple explanation for why “Appellants’ claims for administrative priority fail” if they received the goods when loaded on the common carrier.

sion of them, then Appellants' claims are entitled to "the highest priority." *World Imports I*, 511 B.R. at 741. Based on the ordinary meaning of "received," the legislative context of the Bankruptcy Code, and persuasive decisions finding that Congress meant to use the UCC definitions for this particular amendment to the Bankruptcy Code, we hold that goods are "received" when the debtor or its agent takes physical possession of them.

A

1

[5–7] We begin, as we always do, with the text and context of the relevant statute: 11 U.S.C. § 503(b)(9). The Bankruptcy Code does not define the word "received," so "we normally construe it in accord with its ordinary or natural meaning." *Smith v. United States*, 508 U.S. 223, 228, 113 S.Ct. 2050, 124 L.Ed.2d 138 (1993). And if the operative word "had at the time a well-known meaning at common law or in the law of this country, [it is] presumed to have been used in that sense unless the context compels to the contrary." *Standard Oil Co. of N.J. v. United States*, 221 U.S. 1, 59, 31 S.Ct. 502, 55 L.Ed. 619 (1911). The well-known meaning is especially salient for bankruptcy law because the Supreme Court has recognized that "[w]hen Congress amends the bankruptcy laws, it does not write 'on a clean slate.'" *Dewsnup v. Timm*, 502 U.S. 410, 419, 112 S.Ct. 773, 116 L.Ed.2d 903 (1992) (citation omitted).

The most recent edition of Black's Law Dictionary defines "receive" as "[t]o take . . . ; to come into possession of or get from some outside source." Black's Law Dictionary (10th ed. 2014). The 1990 edition of Black's defined "receive" as "[t]o take into possession and control; [to] accept custody of." Black's Law Dictionary 1433 (6th ed.

1990). The Oxford English Dictionary defines "receive," with respect to physical goods, as "[t]o take into one's hands or one's possession (something offered or given by another); to take delivery of (something) from another, either for oneself or for a third party." Oxford English Dictionary (3d ed. 2009). Although these definitions are not identical, they all require physical possession. Applying these definitions to § 503(b)(9), a debtor must "take" goods into its "possession," "custody," or "hands" in order to receive them.

[8] The legal and dictionary definitions comport with the definition found in the UCC. Section 2–103(1)(c) defines "receipt" of goods as "taking physical possession of them." And because Article 2 of the UCC governed sales of goods in 49 states when 11 U.S.C. § 503(b)(9) was adopted, *see Goody's Family Clothing*, 401 B.R. at 134, we infer that Congress meant to adopt this "well-known meaning" of the term, *Standard Oil*, 221 U.S. at 59, 31 S.Ct. 502. *See In re Circuit City Stores, Inc. (Circuit City II)*, 432 B.R. 225, 230 (Bankr. E.D. Va. 2010) (finding near-unanimous adoption of the UCC may have informed Congress's intended definition of the term "received"). *World Imports* has "presented [no]thing to suggest that Congress meant to deviate from the common and well known meaning of the word 'received' in drafting § 503(b)(9)" in 2005. *Id.* In fact, there is ample evidence from the statutory context that Congress relied on the UCC definition of the word. We turn to that context now.

2

Section 503(b)(9) was enacted as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Pub. L. No. 109–8, 119 Stat. 23 (2005). Section 1227 of BAPCPA, entitled "Reclamation," did two things: (1) it

amended § 546(c) to clarify the conditions placed on trustees and sellers that seek to reclaim goods sold to a debtor; and (2) it created § 503(b)(9) to add an administrative expense claim as an *exemption* from § 546(c)'s reclamation conditions. See BAPCPA § 1227.

[9] The interrelationship between § 546(c) and § 503(b)(9) is explicit in the Bankruptcy Code. Section 546(c)(2) states: “If a seller of goods fails to provide notice . . . the seller still may assert the rights contained in section 503(b)(9).” Because § 503(b)(9) provides “an alternative remedy to reclamation,” *In re Momenta, Inc.*, 455 B.R. 353, 357 (Bankr. D.N.H. 2011), it should be read and interpreted consistent with § 546(c).

In *In re Marin Motor Oil*, this Court held that the word “receipt” in § 546(c) means the same thing as the UCC’s definition, namely, “taking physical possession.” 740 F.2d at 224–25. In doing so, we found that Congress originally adopted § 546(c) in 1978 “in order to resolve the question [of] whether U.C.C. § 2–702(2) [allowing reclamation] applies where the debtor files for bankruptcy.” *Id.* at 223 (footnote omitted). The “drafters of the Bankruptcy Code” basically “adopt[ed] 2–702(2) as part of the federal bankruptcy law,” but with some procedural modifications. *Id.* We reasoned that because “Congress essentially borrowed [the reclamation provision] from the U.C.C.,” it “also borrowed the stan-

dard definition of receipt.” *Id.* at 225 n.9. There was no indication in *Marin* that the meaning of “receipt” could change depending on the terms of the contract at issue. Rather, we held that “receipt,” as used in § 546(c), means “taking physical possession”—the UCC definition—as a matter of federal law. *Id.* at 224–25.¹

[10, 11] “It is a ‘fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.’” *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133, 120 S.Ct. 1291, 146 L.Ed.2d 121 (2000) (quoting *Davis v. Mich. Dep’t of Treasury*, 489 U.S. 803, 809, 109 S.Ct. 1500, 103 L.Ed.2d 891 (1989)). When two terms are “functional[ly] equivalent” and used in the same context, they should be treated identically. *Gomez-Perez v. Potter*, 553 U.S. 474, 481, 128 S.Ct. 1931, 170 L.Ed.2d 887 (2008).

The context of § 503(b)(9) is clear: it is an exemption to the general bankruptcy reclamation scheme established by § 546(c). See § 546(c)(2). Given the interrelationship between these two provisions and our holding that Congress meant for terms used in § 546(c) to bear the definition used in the UCC at the time of BAPCPA’s enactment, it follows that the UCC definitions also apply to the § 503(b)(9) exception.² It follows that since we have already held in *Marin* that the

1. There is also a wide consensus among bankruptcy courts that because the § 546 right of reclamation “arises under § 2–702 of the UCC,” *In re Circuit City Stores, Inc. (Circuit City I)*, 416 B.R. 531, 536 (Bankr. E.D. Va. 2009), Congress meant for undefined terms in § 546(c), including “receipt,” to take the meaning ascribed to them in the UCC at the time § 546 was enacted (“physical possession”). See, e.g., *Circuit City II*, 432 B.R. at 228–29 (citing, e.g., *In re Trico Steel Co., LLC*, 282 B.R. 318, 324 (Bankr. D. Del. 2002)); *In*

re Bill’s Dollar Stores, Inc., 164 B.R. 471, 474 (Bankr. D. Del. 1994).

2. We note as we did in *Marin* that “[o]ur reliance on the [UCC] for determining the time of receipt does not mean that the definition of receipt under [the Bankruptcy Code] is a matter of state law and might change were an individual state to alter its [laws].” 740 F.2d at 225 n.9. Rather, Congress intended to use the UCC definition at that time (physical possession) and it is not subject to change

term “receipt” used in § 546(c) means “taking physical possession,” 740 F.2d at 224–25, “received” means the same thing in § 503(b)(9).

Our conclusion is further supported by Congress’s placement of §§ 546(c) and 503(b)(9) (and only those sections) under the heading “Reclamation” in Section 1227 of BAPCPA. *See Fla. Dep’t of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 47, 128 S.Ct. 2326, 171 L.Ed.2d 203 (2008) (noting importance of subchapter location for word’s meaning). World Imports and the lower courts have pointed to nothing in the Bankruptcy Code that indicates that Congress intended a different definition for “received” between these two provisions in the same subchapter. On the contrary, the statutory scheme warrants a consistent interpretation of terms that appear in both § 546(c) and § 503(b)(9), as several courts have already held.³

Under § 546(c), notice for reclamation must be made within 45 days after goods are *received*, but § 503(b)(9) provides an exemption for goods *received* within 20 days before bankruptcy. It strikes us as quite implausible that Congress meant for the date of receipt to be different between these provisions. Indeed, for this general-rule-and-exemption scheme to make sense, the date of receipt must be fixed. The rules point to two time periods defined with respect to a fixed-date event: notice within 45 days of, or bankruptcy filing within 20 days of, the goods being received. As such, consistent with the statutory context and history, § 503(b)(9)—like § 546(c)—finds its definition in the UCC.

absent an amendment to the Bankruptcy Code.

3. *See, e.g., Ningbo Chenglu Paper Prods. Mfg. Co. v. Momenta, Inc.*, 2012 WL 3765171, at *6 (D.N.H. Aug. 29, 2012) (“Sections 503(b)(9) and 546 are related statutory provisions [and] ... the word ‘received’ should be given the same meaning in both sections....”); *In re*

B

[12, 13] World Imports argues that despite the foregoing reasons, the goods in this case were constructively received upon delivery because they were delivered “FOB” to a common carrier. While it is true that a buyer may be deemed to have received goods when his agent takes physical possession of them, common carriers are not agents. Constructive receipt thus does not include “FOB delivery” to a common carrier, as the Bankruptcy Court and District Court assumed.

Delivery, or transfer of title or risk of loss, has been treated as distinct from actual receipt of goods by the buyer. The official comment to the UCC’s definition of receipt makes this distinction:

“Receipt” must be distinguished from delivery particularly in regard to the problems arising out of shipment of goods, whether or not the contract calls for making delivery by way of documents of title, since the seller may frequently fulfill his obligations to “deliver” *even though the buyer may never “receive” the goods.*

UCC § 2–103 cmt. 2 (emphasis added); *see also In re Trico Steel Co., LLC*, 282 B.R. 318, 324 (Bankr. D. Del. 2002) (describing this comment as “highlight[ing] the distinction between ‘delivery’ (when title passes) and ‘receipt’”). A seller may deliver goods to a common carrier—thereby relinquishing title and risk of loss—some time before the goods are received by the buyer or its agent.

Wezbra Dairy, LLC, 493 B.R. 768, 770–71 & n.3 (Bankr. N.D. Ind. 2013) (relying on *Marin* and applying the UCC definition of “receipt” to § 503(b)(9)); *Circuit City I*, 416 B.R. at 535–37 (applying UCC definition of “goods” to § 503(b)(9)); *Goody’s Family Clothing*, 401 B.R. at 135 (same).

This Court in *Marin* explicitly stated that delivery and receipt of goods can occur at different times. See 740 F.2d at 225. We found that “the U.C.C. does not rely on the concept of ‘title’ for purposes of establishing the rights of buyers and sellers under the Code.” *Id.* After finding that “receipt” in 11 U.S.C. § 546(c) is defined the same way as in the UCC (requiring physical possession), *id.* at 224–25 & n.9, we noted that the UCC “views goods given by a seller to a common carrier for delivery to a buyer as being in the possession of the common carrier not the buyer,” *id.* at 225. Under this framework, the seller has “the right to stop delivery of the goods” while the common carrier remains in possession. *Id.* And “[t]his right to stop delivery applies regardless of which party bears the risk of loss, and regardless of which party is deemed to have ‘title’ to the goods while they are in the carrier’s possession.” *Id.* Only upon the buyer’s physical possession does the seller’s remedy convert to the “different right” of reclamation (governed in bankruptcy cases by § 546(c)). *Id.*

[14] In other words, regardless of FOB status, under the UCC and Chapter 11, receipt does not occur until after the seller’s ability to stop delivery ends—namely, upon the buyer’s physical possession.

4. The lower courts looked to the CISG and Incoterms because they assumed the lack of definition for “received” in the Bankruptcy Code created a gap in the statute that could only be filled by reference to other federal law as the “rule of decision.” See *World Imports I*, 511 B.R. at 741; accord *World Imports II*, 549 B.R. at 823. However, the Bankruptcy Code itself provides the relevant substantive law in this case, and in interpreting Code terms, we do not necessarily assume that Congress intended to adopt a definition from another source of federal law in the “absence of any explicit connector” between the Bankruptcy Code and a definition contained in another statute. *United States v. Reorganized CF & I Fabricators of Utah, Inc.*, 518 U.S. 213, 219–

20, 116 S.Ct. 2106, 135 L.Ed.2d 506 (1996). In addition, while the CISG and the Incoterm definition of FOB would certainly be relevant in a contract dispute between these parties, the relevant inquiry for this appeal is meaning of the Bankruptcy Code, not the intent of the parties. See *In re Armstrong World Indus., Inc.*, 432 F.3d 507, 512 (3d Cir. 2005); see Appellants’ Br. 15. Finally, while we sometimes presume that federal statutes are to be interpreted consistent with treaties joined by the United States, *INS v. Cardoza-Fonseca*, 480 U.S. 421, 437–39, 107 S.Ct. 1207, 94 L.Ed.2d 434 (1987), we perceive no potential conflict between our holding here and the CISG. See Appellants’ Br. 21–23.

20, 116 S.Ct. 2106, 135 L.Ed.2d 506 (1996). In addition, while the CISG and the Incoterm definition of FOB would certainly be relevant in a contract dispute between these parties, the relevant inquiry for this appeal is meaning of the Bankruptcy Code, not the intent of the parties. See *In re Armstrong World Indus., Inc.*, 432 F.3d 507, 512 (3d Cir. 2005); see Appellants’ Br. 15. Finally, while we sometimes presume that federal statutes are to be interpreted consistent with treaties joined by the United States, *INS v. Cardoza-Fonseca*, 480 U.S. 421, 437–39, 107 S.Ct. 1207, 94 L.Ed.2d 434 (1987), we perceive no potential conflict between our holding here and the CISG. See Appellants’ Br. 21–23.

[15] Rather than look to this precedent, the Bankruptcy Court and District Court asserted that “goods are perforce constructively received” when delivered to the common carrier FOB. *World Imports I*, 511 B.R. at 745; accord *World Imports II*, 549 B.R. at 824. In our view, that assertion misapplies the concept of constructive receipt.⁴ While actual possession by an agent on behalf of a buyer constitutes constructive receipt, our caselaw is clear that common carriers do not qualify as agents. When a buyer “arrange[s] for a commercial barge operated by a common carrier to pick up the” goods from the seller, *Marin*, 740 F.2d at 222, the carrier does not act as an agent for purposes of receipt. See *id.* at 226 & n.13; see also *Trico Steel*, 282 B.R. at 323 (finding that “mere intermediaries in the transport” of goods do not qualify as agents). Bankruptcy courts in the Third Circuit have recognized this distinction since *Marin*. See, e.g., *Mayer Pollock Steel Corp.*, 157 B.R. 952, 960 (Bankr. E.D. Pa. 1993) (“It is true that

a constructive receipt will satisfy the requirements for reclamation if . . . the buyer's bailee receives possession of the goods. . . . However, receipt of the goods by a common carrier is not deemed constructive possession by a buyer, but rather is deemed to be possession by the common carrier." (citing *Marin*, 740 F.2d at 225)). Thus, the common carrier in this case did not act as an agent for World Imports.

In sum, there is no support for the idea that a buyer constructively receives goods when they are delivered to a common carrier, even if title and risk of loss pass at that time.

IV

Consistent with this Court's holding in *Marin*, we now hold that receipt as used in 11 U.S.C. § 503(b)(9) requires physical possession by the buyer or his agent. And because World Imports took physical possession within the 20-day period prior to commencement of its bankruptcy case, we will reverse the order of the District Court and remand for proceedings consistent with this opinion.