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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

6	In re:)	BAP No.	WW-07-1123-MoDJ
7	BROWN & COLE STORES, LLC,)	Bk. No.	06-13950-SJS
8	Debtor.)		
9	_____)		
10	BROWN & COLE STORES, LLC,)		
11	Appellant,)		
12	v.)	O P I N I O N	
13	ASSOCIATED GROCERS, INC.;)		
14	OFFICIAL UNSECURED CREDITORS)		
15	COMMITTEE; HARRIS BANK, N.A.,)		
	Appellees.)		
	_____)		

Argued and submitted on July 27, 2007
at Seattle, Washington

Filed - August 17, 2007

Appeal from the United States Bankruptcy Court
for the Western District of Washington

Honorable Samuel J. Steiner, Bankruptcy Judge, Presiding

Before: MONTALI, DUNN and JAROSLOVSKY,¹ Bankruptcy Judges.

¹Hon. Alan Jaroslovsky, Bankruptcy Judge for the Northern
District of California, sitting by designation.

1 MONTALI, Bankruptcy Judge:

2
3 This case presents us with an issue of first impression
4 regarding new section 503(b) (9) ("§ 503(b) (9)") of the Bankruptcy
5 Code, as amended in 2005.² We expect that the issue is of great
6 importance to many sellers of goods to troubled companies. The new
7 provision gives expense-of-administration priority ("administrative
8 priority") to a claim for the value of goods received by a debtor
9 within 20 days before the commencement of the case and sold in the
10 ordinary course of business ("twenty-day sales").³ The bankruptcy
11 court granted administrative priority to a claim that may also be
12 secured and denied the debtor's claim of setoff. We AFFIRM the grant
13 of administrative priority; we REVERSE the denial of setoff.

14
15 _____
16 ²Unless otherwise indicated, all chapter and section references
17 are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, as revised by The
18 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub.
L. 109-8, Apr. 20, 2005, 119 Stat. 23 ("BAPCPA").

19 ³The legislative history of § 503(b) (9) "suggests that it was
20 aimed at providing relief to sellers of goods who fail to give the
21 required notice under the reclamation provision of section 546(c) [.]"
22 Shirley S. Cho, The Intersection of Critical Vendor Orders and
23 Bankruptcy Code § 503(b) (9), 29 Cal. Bankr. J. 7, 11 (2007), citing
24 BAPCPA, Pub. L. No. 109-8 at § 1227. The administrative priority
25 status accorded by § 503(b) (9) is not limited to "critical vendors,"
26 a term that is not defined in the Bankruptcy Code. Alan N. Resnick,
The Future of the Doctrine of Necessity and Critical-Vendor Payments
in Chapter 11 Cases, 47 B.C. L. Rev. 183, 205 (Dec. 2005)
(§ 503(b) (9) administrative priority does not require a demonstration
that the creditor is "critical" or that payment of the claim is
necessary for a successful reorganization, especially since
§ 503(b) (9) also applies in liquidation cases).

1 I. FACTS

2 Debtor and appellant Brown and Cole Stores, LLC ("B&C"), is a
3 large, privately-held grocery store chain. It operates 27 stores in
4 Washington state. It employs about 1,500 people and has annual
5 revenues of about \$280 million.

6 Creditor and appellee Associated Grocers, Incorporated ("AGI"),
7 is B&C's principal supplier and wholesaler, with sales to B&C of \$2.5
8 to \$3 million per week. AGI is a cooperative and B&C is its largest
9 shareholder, holding approximately 25% of AGI's outstanding stock.
10 AGI claims a first-position security interest in the AGI stock⁴ to
11 secure all indebtedness of B&C to AGI. The total indebtedness
12 asserted by AGI has several components: approximately \$907,000 for
13 products covered by the Perishable Agricultural Commodities Act
14 ("PACA") and sold prior to bankruptcy; approximately \$4,166,000 for
15 goods sold more than twenty-days before bankruptcy and not included
16 in the PACA claim; pre-petition rent under various leases in the
17 approximate amount of \$125,000; potential rejection damages in excess
18 of \$4,637,000 on account of lease rejections that likely have
19 occurred, plus additional rejection damages that could exceed
20 \$10,000,000; and nearly \$6,380,000 for the twenty-day sales (the
21 "twenty-day sales claim").

22
23 ⁴The value of that stock is disputed by the parties. B&C
24 contends that it is significantly more than the amount AGI is owed.
25 AGI contends that B&C is bound to a value based on the stock's book
26 value. Because we hold that AGI's twenty-day sales claim is entitled
to administrative priority whether it is over-secured, under-secured,
or unsecured, the value of the stock is irrelevant to our decision.

1 B&C and AGI are parties to a Master Supply Agreement which
2 contains a "most favored nations" pricing provision requiring AGI to
3 sell goods to B&C on terms no less favorable than to any other of
4 AGI's shareholders or customers. B&C contends that for some time
5 prior to bankruptcy, AGI breached the Master Supply Agreement by
6 selling goods to B&C at higher prices than it charged other
7 customers.

8 B&C also contends that AGI unlawfully terminated a rebate
9 program that has caused damages "well into seven figures."

10 Shortly after B&C filed its chapter 11 petition on November 7,
11 2006, AGI filed a motion for allowance and payment of \$6,379,879.51
12 for the twenty-day sales claim. It relied on § 503(b)(9), which
13 provides:

14 (b) After notice and a hearing, there shall be allowed
15 administrative expenses . . . , including--

16 . . . (9) the value of any goods received by the debtor
17 within 20 days before the date of commencement of a case
18 under this title in which the goods have been sold to the
19 debtor in the ordinary course of such debtor's business.

20 B&C opposed AGI's motion on four grounds. First, it argued that
21 AGI's claim was not entitled to administrative priority under
22 § 503(b)(9) because it was a secured claim. At oral argument counsel
23 for B&C clarified that it is the security claimed by AGI for the
24 twenty-day sales claim that disqualifies that claim for
25 administrative priority, regardless of whether AGI's other claims are
26 secured, partially secured or unsecured.

Second, B&C argued that since AGI's twenty-day sales claim was
fully secured, allowing payment to AGI of an administrative priority

1 claim would be inequitable to other creditors. Third, B&C contended
2 that it was entitled to a setoff for its damage claims arising out of
3 AGI's breach of the "most favored nations" pricing provision of the
4 Master Supply Agreement and termination of the rebate program.
5 Fourth, it argued that any payment should be deferred until plan
6 confirmation. AGI subsequently withdrew its demand for immediate
7 payment, leaving only the first three arguments to be decided by the
8 bankruptcy court.

9 The bankruptcy court granted AGI's motion and denied B&C's
10 request for a setoff. In support of its ruling, the court found that
11 the plain meaning of § 503(b)(9) was to allow administrative priority
12 regardless of security. In support of its refusal to allow setoff,
13 it held that unsecured claims cannot be set off against
14 administrative priority claims and that B&C was equitably estopped
15 from asserting a setoff because it had ordered the goods from AGI
16 while contemplating bankruptcy. The court stated:

17 Now, on top of that, offset is an equitable doctrine,
18 and I really have my doubts as to the debtor's conduct
19 immediately before the filing in the ordering and accepting
20 delivery of these goods. In other words, I don't think the
21 debtor acted in an equitable manner, and therefore, an
22 offset is not allowable.

23 This timely appeal followed.⁵

24 ⁵On April 30, 2007, B&C filed a Request For Judicial Notice with
25 us. It asks that we consider a public record of a sale by AGI of its
26 real property referred to by B&C in its opening brief. This
information, obviously, was not available to the bankruptcy court and
has no bearing on our review of the bankruptcy court's decision. The
Request For Judicial Notice is DENIED, particularly because the post-
appeal sale is immaterial to resolution of this appeal, and thus no

(continued...)

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II. ISSUES

- A. Is a secured claim entitled to an administrative priority pursuant to § 503(b)(9)?
- B. Did the bankruptcy court properly deny B&C's request for setoff?

III. STANDARDS OF REVIEW

Interpretation of a statute is a question of law which we review de novo. Smith v. Arthur Andersen LLP, 421 F.3d 989, 1006 (9th Cir. 2005). We review decisions to allow or disallow setoff under § 553 for abuse of discretion. Biggs v. Stovin (In re Luz Int'l, Ltd.), 219 B.R. 837, 840 (9th Cir. BAP 1998); HAL, Inc. v. United States (In re HAL, Inc.), 196 B.R. 159, 161 (9th Cir. BAP 1996), aff'd, 122 F.3d 851 (9th Cir. 1997); United States v. Arkison (In re Cascade Roads, Inc.), 34 F.3d 756, 763 (9th Cir. 1994).

IV. DISCUSSION

- A. A Secured Claim May be Given § 503(b)(9) Administrative Priority.

As we have just noted in Cohen v. Lopez (In re Lopez), ___ B.R. ___ (9th Cir. BAP August 3, 2007), interpreting a statutory provision

⁵(...continued)
 extraordinary circumstances here warrant a review of material not considered by the bankruptcy court. Frankfurth v. Cummins (In re Cummins), 20 B.R. 652, 653 (9th Cir. BAP 1982) ("Ordinarily an appellate court should base its decision on the facts as they existed at the time the trial court made its decision[,] although in extraordinary circumstances an appellate court may ``take judicial notice of developments in a case on appeal which have occurred in the [trial] court after the appeal was filed.'").

1 begins with the language of the statute itself. See Lamie v. U.S.
2 Trustee, 540 U.S. 526, 534 (2004) ("The starting point in discerning
3 congressional intent is the existing statutory text [citation
4 omitted], and not the predecessor statutes. It is well established
5 that 'when the statute's language is plain, the sole function of the
6 courts--at least where the disposition required by the text is not
7 absurd--is to enforce it according to its terms.'" (quoting Hartford
8 Underwriters Ins. Co. v. Union Planters Bank, N.A., 530 U.S. 1, 6
9 (2000))).

10 B&C contends that we should disregard this fundamental principle
11 of statutory interpretation and instead be guided by history of a
12 nearby section, § 503(b)(1)(B)(i).⁶ Prior to BAPCPA, cases had been
13 divided whether administrative priority was available for secured tax
14 claims. In In re Florida Engineered Constr. Prods., Corp., 157 B.R.
15 698, 700 (Bankr. M.D. Fla. 1993), the court held:

16 Even a cursory analysis of the entire § 503 leaves no doubt
17 that all claims recognized under this Section are unsecured
18 claims, incurred by the estate after commencement of a
19 case. There is no evidence to assume that Congress ever
intended to include secured claims within the scope of
§ 503 which, by the way, enjoy a rank and a treatment even
higher than allowed administrative expenses.

20 See also In re Sylvia Dev. Corp., 178 B.R. 96 (Bankr. D. Md. 1995).

21 However, in City of New York v. R.H. Macy & Co. (In re R.H. Macy &
22 Co.), 176 B.R. 315, 316-17 (S.D.N.Y. 1994), the district court

23 _____
24 ⁶Section 503(b)(1)(B)(i) provides administrative priority for
25 any tax "incurred by the estate, whether secured or unsecured,
26 including property taxes for which liability is in rem, in personam,
or both, except a tax of a kind specified in section 507(a)(8) of
this title[.]"

1 reversed a bankruptcy court's ruling that a secured tax claim was not
2 entitled to administrative priority. The split of authority was
3 recognized by subsequent courts. See, e.g., In re Soltan, 234 B.R.
4 260, 269 (Bankr. E.D.N.Y. 1999).

5 BAPCPA amended § 503(b)(1)(B)(i) by inserting "whether secured
6 or unsecured," after "any tax [] incurred by the estate," resolving
7 the disagreement among the cases cited. Armed with that history, B&C
8 asks us to infer that § 503(b)(9) is limited to unsecured claims
9 because of the absence of the word "secured" in the statute. In
10 other words, because the BAPCPA amendments settled the question of
11 what tax claims were eligible for administrative priority (secured,
12 unsecured or both), we should conclude that § 503(b)(9) is limited to
13 unsecured claims.

14 We reject that invitation. The provision is not ambiguous; as
15 such, we must enforce it according to its terms and should not
16 inquire beyond its plain language. Lamie, 540 U.S. at 534. Apart
17 from finding no ambiguity in § 503(b)(9), we note that Congress also
18 declined to put the word "unsecured" into the same statute.⁷ The

19
20 ⁷By the plain terms of the statute, a vendor's right to assert
21 an administrative claim is limited in only three ways: (1) the vendor
22 must have provided goods (not services); (2) the debtor must have
23 received the goods within twenty-days of the commencement of the
24 case; and (3) the goods must have been sold "in the ordinary course"
25 of the debtor's business. "This right to an administrative claim
26 does not depend on whether the seller has a right to reclaim under
state law. . . . It applies even if the goods are no longer in the
possession of the debtor or are not identifiable. It applies even if
the goods are encumbered by a senior security interest." Sally S.
Neely, How BAPCPA Affects the Rights of Unpaid Prepetition Sellers of

(continued...)

1 obvious conclusion, therefore, is that all claims arising from
2 twenty-day sales are entitled to administrative priority.

3 We can do nothing about B&C's contention that giving priority to
4 a secured creditor may be inequitable to other creditors. First, it
5 is up to Congress to decide which creditors have leverage and which
6 do not. More importantly, if AGI's twenty-day sales claim is fully
7 secured, then payment of it by B&C will free the value of the
8 security for that claim for the benefit of other creditors. If AGI's
9 claim proves to be undersecured or unsecured, then to deny
10 administrative priority would be to ignore the statute, something we
11 cannot do.⁸

12 B. Denial of Setoff was Improper.

13 1. There is the requisite element of mutuality in the
14 competing claims.

15 The bankruptcy court ruled as a matter of law that "I don't see
16 how you can setoff unsecured matters against a priority

17 _____
18 ⁷(...continued)

19 Goods, SM014 ALI-ABA 31 (March 2007). Nor is the administrative
claim limited to critical vendors. Resnick, 47 B.C. L. Rev. at 205.

20 ⁸The dissent is concerned that we are ignoring bankruptcy policy
21 that permits a Chapter 11 debtor to "cramdown" a secured claim in
22 full over time. Congress gave tremendous leverage to a twenty-day
23 sales claimant such as AGI by permitting it to demand full payment as
24 of confirmation, and in doing so, perhaps dramatically affecting the
25 outcome of the case. The fact that the claim is also secured
26 represents less leverage (albeit more than held by non-priority
general unsecured claims) than having administrative priority. It is
not our place to reallocate that leverage. In any event, if the
dissent's view were the law, the holder of a twenty-day sales claim
could simply waive its security, obtain administrative priority, and
have equally powerful influence over the outcome of the case.

1 administrative expense claim." While this principle undoubtedly
2 seemed elementary and beyond dispute to the bankruptcy court, it did
3 not take into consideration the uniqueness of § 503(b)(9) and the
4 treatment Congress has given to twenty-day sales claims. Unlike all
5 of the other subsections of § 503, subsection(b)(9) applies to
6 prepetition debt. Congress has simply moved those claims up higher
7 on the priority ladder. All of the other subsections of § 503 create
8 administrative priority for postpetition debt. This is a crucial
9 difference when applying the setoff provisions of the Bankruptcy
10 Code.

11 Section 553(a) provides, in pertinent part:

12 (a) Except as otherwise provided in this section and in sections
13 362 and 363 of this title, this title does not affect any right
14 of a creditor to offset a mutual debt owing by such creditor to
15 the debtor that arose before the commencement of the case under
16 this title against a claim of such creditor against the debtor
17 that arose before the commencement of the case

18 Thus the provisions of § 553(a), which provide for setoff of
19 mutual debts which arise before bankruptcy, do not apply to most
20 administrative priority claims but do apply to twenty-day sales
21 claims, which by definition arise prepetition. See Luz Int'l, 219
22 B.R. at 843-44 ("In determining whether the right to setoff should be
23 preserved in bankruptcy under § 553, the party asserting setoff must
24 demonstrate the following: (1) the debtor owes the creditor a
25 prepetition debt; (2) the creditor owes the debtor a prepetition
26 debt; and (3) the debts are mutual."). It was therefore error for
the bankruptcy court to determine, as a matter of law, that setoff

1 was not permitted against AGI's twenty-day sales claim.⁹

2 2. Appellant should not be denied setoff as a matter of
3 equity.

4 While equitable considerations may be considered in allowing or
5 denying a setoff (Official Comm. of Unsecured Creditors v. Mfrs. &
6 Traders Trust Co. (In re The Bennett Funding Group, Inc.), 212 B.R.
7 206, 212 (2d Cir. BAP 1997), aff'd, 146 F.3d 136 (2d Cir. 1998)), the
8 sole equitable ground stated by the bankruptcy court had not been
9 established by any evidence in the record. A debtor contemplating
10 reorganization is under no legal obligation to inform suppliers that
11 it is contemplating a bankruptcy filing. Further, AGI did not offer
12 any facts to establish that B&C engaged in any inequitable conduct.
13 Nor did it ever make the argument. The court, sua sponte, raised
14 this issue, perhaps imposing its own value judgment on B&C's
15 behavior. That was not appropriate, particularly in the absence of a
16 compelling circumstance justifying the refusal to permit setoff.
17 United States v. Offord Finance, Inc. (In re Medina), 205 B.R. 216,
18 223 (9th Cir. BAP 1996) ("Although the allowance or disallowance of a
19 set off [sic] is a decision which ultimately rests within the sound
20 discretion of the trial court, the setoff right is an established
21 part of our bankruptcy laws and should be enforced unless compelling

22
23 ⁹AGI does not offer any support for the bankruptcy court's
24 conclusion in its brief. Instead, it argues that we should sustain
25 based on arguments not raised below or considered by the bankruptcy
26 court, including provisions of the Washington Uniform Commercial Code
and alleged failure of B&C to follow contractual requirements for
asserting a setoff. We decline to consider these issues, which can
be raised before the bankruptcy court on remand.

1 circumstances require otherwise.") (internal citations and quotation
2 marks omitted); see also In re Silver Eagle Co., 262 B.R. 534, 536
3 (Bankr. D. Or. 2001) (same).

4 The decision of a supplier to extend credit to a purchaser is a
5 complex one, factoring in the potential profit to be made from a
6 continuing relationship and an assessment of the purchaser's credit.
7 A Chapter 11 filing does not create an insolvency or a risk of
8 nonpayment, it merely confirms its existence and, hopefully, is a
9 first step towards solving the problem. A rule which requires a
10 potential debtor to warn all its suppliers that it is contemplating a
11 filing would make reorganization much more difficult and in many
12 cases impossible.

13 Moreover, even if we were to accept the proposition that B&C was
14 under some sort of duty to "warn" AGI that it was contemplating
15 Chapter 11, there is no evidence in the record to support a finding
16 that AGI was in any way harmed by a lack of notice. In addition to
17 its reclamation rights under § 546(c),¹⁰ AGI has security and its

18
19 ¹⁰Section 546(c) provides:

20 (c) (1) Except as provided in subsection (d) of this section
21 and in section 507(c), and subject to the prior rights of a
22 holder of a security interest in such goods or the proceeds
23 thereof, the rights and powers of the trustee under
24 sections 544(a), 545, 547, and 549 are subject to the right
25 of a seller of goods that has sold goods to the debtor, in
26 the ordinary course of such seller's business, to reclaim
such goods if the debtor has received such goods while
insolvent, within 45 days before the date of the
commencement of a case under this title, but such seller
may not reclaim such goods unless such seller demands in
writing reclamation of such goods--

(continued...)

1 administrative priority pursuant to § 503(b)(9) for its twenty-day
2 sales claim. There is accordingly no basis to void B&C's right to
3 setoff on equitable grounds. Silver Eagle, 262 B.R. at 537 ("The
4 Trustee purports to base his request for denial of the setoff on the
5 court's discretionary power to deny setoff based on general equitable
6 principles. However, this case does not have the type of facts or
7 the procedural posture that provide a sufficient basis for the court
8 to exercise its discretion to overcome the statutory presumption
9 favoring preservation of setoff rights.").

10 3. The consideration of setoff is premature.

11 Even though the court's refusal to allow setoff was an abuse of
12 discretion as it was based on equitable grounds not supported by law
13 or fact, B&C has not established that a right of setoff exists here.
14 Rather, we must remand for application of the appropriate standards
15 for determining whether to grant a setoff. Medina, 205 B.R. at 223
16 ("Because the court did not cite any compelling circumstances for not
17 allowing the setoff (other than those discussed above), the court's
18 refusal to allow set off [sic] was an abuse of discretion and the
19 case should be remanded to allow the court to apply the appropriate
20 standards.").

21 ¹⁰(...continued)

22 (A) not later than 45 days after the date of receipt of
23 such goods by the debtor; or

24 (B) not later than 20 days after the date of commencement
25 of the case, if the 45-day period expires after the
26 commencement of the case.

(2) If a seller of goods fails to provide notice in the
manner described in paragraph (1), the seller still may
assert the rights contained in section 503(b)(9).

1 As noted in Luz International, mutuality does not exist in "the
2 absence of a debt owing from" the creditor. Luz Int'l, 219 B.R. at
3 845. At this point, the record has not established the existence of
4 such a debt. The contentions by B&C that AGI breached the pricing
5 agreement and wrongfully terminated the rebate program are nothing
6 more than contentions alluded to in the papers and in the arguments
7 of counsel. In fact, no contested matter or adversary proceeding has
8 been commenced against AGI to determine the parties' rights under the
9 Master Supply Agreement, its pricing provisions or the rebate
10 program. Thus, at present, there really is nothing for B&C to set
11 off against the various AGI claims. If and when such claims are
12 asserted in proper form and adjudicated by the bankruptcy court, then
13 any and all defenses, setoffs, and counterclaims can be considered.
14 Id.

15 V. CONCLUSION

16 Section 503(b)(9) administrative priority is not limited to
17 unsecured claims. We accordingly AFFIRM the ruling of the bankruptcy
18 court that AGI is entitled to an administrative priority claim for
19 goods received by B&C in the twenty-days before bankruptcy and in the
20 ordinary course of business.

21 We hold that B&C is not denied setoff rights pursuant to § 553
22 of the Code against any twenty-day sales claim or other claims AGI
23 has, and that there presently is no equitable basis for denial of
24 these setoff rights in the record. Accordingly, we REVERSE the
25 bankruptcy court's denial of B&C's setoff rights and we REMAND for
26 further proceedings consistent with this opinion.

1 JAROSLOVSKY, Bankruptcy Judge, concurring in part and dissenting in
2 part:

3
4 I agree with the majority's disposition of the setoff issues. I
5 respectfully dissent from their overly-sterile conclusion that a
6 fully secured creditor can also have rights under § 503(b)(9). Not
7 only is my statutory analysis different, but I see compelling policy
8 reasons for a different result.

9 I do not see the issue of whether a secured creditor can be
10 entitled to an administrative expense claim being as simple as the
11 "plain meaning" analysis of the majority. It is considerably
12 complicated by the amendment to § 503(b)(1)(B)(i) of the Code made by
13 Congress at the same time it added § 503(b)(9).

14 At the same time as Congress was adding § 503(b)(9), it amended
15 § 503(b)(1)(B)(i) by adding the language "whether secured or
16 unsecured" to the section, thus resolving the disagreement as to
17 whether a secured tax could be entitled to administrative priority.
18 However, § 503(b)(9) does not include the same language. It is
19 generally presumed that Congress acts intentionally when it includes
20 particular language in one section of a statute but omits it from
21 another. Keene Corp. v United States, 508 U.S. 200, 208 (1993); City
22 of Chicago v. Env'tl. Defense Fund, 511 U.S. 328, 338 (1994). If
23 Congress had intended that all administrative expenses have priority
24 regardless of secured status, it would certainly have added "whether
25 secured or unsecured" in the first sentence of § 503(b) and not in
26 just one of nine enumerated subsections.

1 Moreover, some fundamental policy considerations are at stake in
2 this case. While allowing a priority claim to a secured creditor may
3 not have a big impact in most Chapter 7 cases, it can make a huge
4 difference in a Chapter 11 case like this one. If AGI's \$6 million
5 claim is entitled to priority status, § 1129(a)(9)(A) requires that
6 it must be paid in full in cash upon confirmation. If it is treated
7 as a secured claim, it still must be paid in full but is subject to
8 cramdown pursuant to § 1129(b)(2)(A). If we incorporate by
9 implication the "secured or unsecured" language into § 503(b)(9), we
10 may be in effect giving a secured creditor veto power over a plan of
11 reorganization when § 1129(b)(2)(A) and sound bankruptcy policy
12 dictate that a secured creditor can be forced to accept a plan which
13 is fair and equitable to it, honors its secured status and pays its
14 secured claim in full over time.¹¹

15 Provisions of the Bankruptcy Code cannot be read in isolation
16 but should be interpreted in light of the remainder of the statutory
17 scheme. United Savings Ass'n v. Timbers of Inwood Forest Assocs.,
18 Ltd., 484 U.S. 365, 370-72 (1988); In re Howard, 972 F.2d 639, 640
19 (5th Cir. 1992); In re Kaveney, 60 B.R. 34, 36 (9th Cir. BAP 1985).
20 This is sometimes difficult when Congress has made an isolated change
21 to one section of the Code without providing specific guidance as to
22 how the new section is to be integrated. However, I see our proper
23 role as meeting this challenge.

24
25 ¹¹These are not merely hypothetical concerns. The issue of how
26 to treat AGI's claims in a plan of reorganization is now pending
before the bankruptcy court.

1 I would weave the new § 503(b)(9) into the tapestry of American
2 bankruptcy law, preserving the clear intent of Congress to protect
3 recent suppliers of goods to debtors without unraveling other
4 provisions of the Code meant to facilitate reorganization.¹² I
5 prefer this result to the crazy quilt patched together by my
6 brethren.

23
24 ¹²Specifically, I would hold that a creditor would not be
25 entitled to priority status for its twenty-day sales claim to the
26 extent the claim is indubitably secured, applying any security first
to claims other than the twenty-day sales claim. I note that AGI
might well end up with an allowed priority twenty-day sales claim
under this rule.