**News Release**

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**Calfee, Halter & Griswold LLP Files Appeal in New York Court
on Behalf of Asian Vendor Client in Sears Chapter 11 Bankruptcy Cases**

**NEW YORK, December 6, 2019** – [Calfee, Halter & Griswold LLP](https://www.calfee.com/), on behalf of a Hong Kong-based client, recently initiated an appeal from an order entered by the United States Bankruptcy Court for the Southern District of New York in the Chapter 11 bankruptcy cases of Sears Holding Corporation and its affiliated debtors.

Calfee brought the appeal to the United States District Court for the Southern District of New York to vindicate the interests of its client, an Asian vendor that physically delivered goods to Sears both in the 20 days prior to the bankruptcy filing and after the bankruptcy filing. Under federal bankruptcy law, those claims should be afforded administrative expense priority and must be paid in full under a plan of reorganization. Asian vendors, that could have stopped shipments as they crossed the ocean prior to delivery to Sears in the U.S., would face grievous harm by the result advocated by Sears and adopted by the bankruptcy court in its recent ruling.

Calfee [Business Restructuring and Insolvency](https://www.calfee.com/capabilities-practices-business-restructuring-and-insolvency) practice group co-chair and partner, [H. Jeffrey Schwartz](https://www.calfee.com/professionals-h-jeffrey-schwartz), lead counsel for the Asian vendor client, said “We believe Congress intended that vendors that deliver goods so that they are received both immediately prior to a bankruptcy, and on or after the bankruptcy filing date, have their claims treated similarly and paid as administrative expenses. The appeal asserts that both Sears and the bankruptcy court applied the Bankruptcy Code in a manner that imposes disparate treatment of similarly situated claims.”

The appeal recites that although at the beginning of the bankruptcy cases Sears requested, and the bankruptcy court *expressly granted*, administrative expense priority treatment for vendors that delivered goods on account of prepetition orders to Sears on and after the bankruptcy filing date, Sears subsequently objected to that very priority treatment and requested that the bankruptcy court change course and treat those claims as general unsecured claims. If Sears succeeds in stripping the priority from those claims, they, as general unsecured claims, will likely receive *de minimus* recovery in the bankruptcy cases.

Schwartz stated, “As the Third Circuit Court of Appeals recently held in the case of goods delivered in the 20 days prior to a bankruptcy case filing, the date goods of value are delivered to, and physically received by, a customer in bankruptcy is determinative of the priority of such claims, and the Bankruptcy Code should be read in a manner that harmonizes the subsections granting administrative expense priority and not in a manner that leads to an absurd result.”

Clarity on this issue of claim priority is critical to Asian vendors that ship products from China or other Asian countries weeks or even months before a bankruptcy filing and typically would receive payment in full in the ordinary course for those goods physically delivered after the bankruptcy filing. If Calfee’s client prevails in the appeal, a favorable precedent would be set for all foreign vendors, including in particular Asian vendors, by confirming administrative priority on claims for goods physically delivered to customers from and after 20 days preceding a bankruptcy filing date.

**About Calfee, Halter & Griswold LLP**

Calfee, Halter & Griswold LLP is a full-service corporate law firm with more than 160 attorneys located in offices in Cleveland, Columbus and Cincinnati, Ohio, Indianapolis, New York and Washington, D.C. Calfee has been recognized as a leading law firm by [*Chambers USA*](https://chambers.com/law-firm/calfee-halter-griswold-llp-usa-5%3A65727) in Banking and Finance, Corporate/M&A, Employee Benefits and Executive Compensation, General Commercial Litigation, Intellectual Property, Labor and Employment, and Real Estate and by [*Chambers HNW*](https://chambers.com/law-firm/calfee-halter-griswold-llp-high-net-worth-21%3A65727) in Private Wealth Law. The firm serves clients in the Midwest, nationally and globally in the areas of Business Restructuring and Insolvency, Commercial and Public Finance, Corporate and Capital Markets, Employee Benefits and Executive Compensation, Estate and Succession Planning and Administration, Government Relations and Legislation, Intellectual Property, Labor and Employment, Litigation, Public Utility Regulatory, and Real Estate as well as through its consultancies, Calfee Strategic Solutions and Calfee Zoning. A founding member of [Lex Mundi](https://www.lexmundi.com/lexmundi/default.asp), Calfee offers international representation through a network of independent law firms with access to 21,000 attorneys located in more than 100 countries. Additional information is available at [Calfee.com](https://www.calfee.com).

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