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Business Track

Involuntary Bankruptcies: Often Discussed, Seldom Used

Robert E. Kaelin, Moderator
Murtha Cullina LLP | Hartford, Conn.

Kathleen R. Cruickshank
Murphy & King | Boston

William L. Norton, III
Bradley Arant Boult Cummings LLP | Nashville, Tenn.

Hon. James J. Tancredi
U.S. Bankruptcy Court (D. Conn.) | Hartford

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INVOLUNTARY BANKRUPTCIES – OFTEN DISCUSSED, SELDOM USED

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PRESENTED BY:

Honorable James J. Tancredi,
US Bankruptcy Court (D. Conn.) Hartford, Connecticut

Robert E. Kaelin, Esq,
Murtha Cullina LLP, Hartford, Connecticut

Kathleen R. Cruickshank,
Murphy & King, Boston, Massachusetts

William L. Norton, lll,
Bradley Arant Boult Cummings, LLP, Nashville, Tennessee

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I. BRIEF OVERVIEW OF TOPIC

A. 11 USC § 303

(a) An involuntary case may be commenced only under chapter 7 or 11 of this title, and only against a person, except a farmer, family farmer, or a corporation that is not a moneyed, business, or commercial corporation, that may be a debtor under the chapter under which such case is commenced.

(b) An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title—

> **(1)** by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute as to liability *or amount*, or an indenture trustee representing such a holder, if such noncontingent, undisputed claims aggregate at least $10,000 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims; (Amended by BAPCPA 2005 (119 Stat. 23 § 1234 April 20, 2005).
>
> **(2)** if there are fewer than 12 such holders, excluding any employee or insider of such person and any transferee of a transfer that is voidable under section 544, 545, 547, 548, 549, or 724(a) of this title, by one or more of such holders that hold in the aggregate at least $10,000 [1] of such claims;
>
> **(3)** if such person is a partnership—
>
> > **(a)** by fewer than all of the general partners in such partnership; or
> > **(b)** if relief has been ordered under this title with respect to all of the general partners in such partnership, by a general partner in such partnership, the trustee of such a general partner, or a holder of a claim against such partnership; or
>
> **(4)** by a foreign representative of the estate in a foreign proceeding concerning such person.

(c) After the filing of a petition under this section but before the case is dismissed or relief is ordered, a creditor holding an unsecured claim that is not contingent, other than a creditor filing under subsection (b) of this section, may join in the petition with the same effect as if such joining creditor were a petitioning creditor under subsection (b) of this section.

(d) The debtor, or a general partner in a partnership debtor that did not join in the petition, may file an answer to a petition under this section.

(e) After notice and a hearing, and for cause, the court may require the petitioners under this section to file a bond to indemnify the debtor for such amounts as the court may later allow under subsection (i) of this section.

(f) Notwithstanding section 363 of this title, except to the extent that the court orders otherwise, and until an order for relief in the case, any business of the debtor may continue to operate, and the debtor may continue to use, acquire, or dispose of property as if an involuntary case concerning the debtor had not been commenced.

(g) At any time after the commencement of an involuntary case under chapter 7 of this title but before an order for relief in the case, the court, on request of a party in interest, after notice to the debtor and a hearing, and if necessary to preserve the property of the estate or to prevent loss to the estate, may order the United States trustee to appoint an interim trustee under section 701 of this title to take possession of the property of the estate and to operate any business of the debtor. Before an order for relief, the debtor may regain possession of property in the possession of a trustee ordered appointed under this subsection if the debtor files such bond as the court requires, conditioned on the debtor's accounting for and delivering to the trustee, if there is an order for relief in the case, such property, or the value, as of the date the debtor regains possession, of such property.

(h) If the petition is not timely controverted, the court shall order relief against the debtor in an involuntary case under the chapter under which the petition was filed. Otherwise, after trial, the court shall order relief against the debtor in an involuntary case under the chapter under which the petition was filed, only if—

> **(1)** the debtor is generally not paying such debtor's debts as such debts become due unless such debts are the subject of a bona fide dispute as to liability or amount; or
>
> **(2)** within 120 days before the date of the filing of the petition, a custodian, other than a trustee, receiver, or agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession.

(i) If the court dismisses a petition under this section other than on consent of all petitioners and the debtor, and if the debtor does not waive the right to judgment under this subsection, the court may grant judgment—

> **(1)** against the petitioners and in favor of the debtor for—
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> **(a)** costs; or
>
> **(b)** a reasonable attorney's fee; or
>
> **(2)** against any petitioner that filed the petition in bad faith, for—
>
> **(a)** any damages proximately caused by such filing; or
>
> **(b)** punitive damages.

(j) Only after notice to all creditors and a hearing may the court dismiss a petition filed under this section—

> **(1)** on the motion of a petitioner;
>
> **(2)** on consent of all petitioners and the debtor; or
>
> **(3)** for want of prosecution.

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(k)(1) If—

(a) the petition under this section is false or contains any materially false, fictitious, or fraudulent statement;

(b) the debtor is an individual; and

(c) the court dismisses such petition,

the court, upon the motion of the debtor, shall seal all the records of the court relating to such petition, and all references to such petition.

(2) If the debtor is an individual and the court dismisses a petition under this section, the court may enter an order prohibiting all consumer reporting agencies (as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f))) from making any consumer report (as defined in section 603(d) of that Act) that contains any information relating to such petition or to the case commenced by the filing of such petition.

(3) Upon the expiration of the statute of limitations described in section 3282 of title 18, for a violation of section 152 or 157 of such title, the court, upon the motion of the debtor and for good cause, may expunge any records relating to a petition filed under this section.

B. Applicable Bankruptcy Rules.

1. Rule 1003. Involuntary Petition

(a) TRANSFEROR OR TRANSFEREE OF CLAIM. A transferor or transferee of a claim shall annex to the original and each copy of the petition a copy of all documents evidencing the transfer, whether transferred unconditionally, for security, or otherwise, and a signed statement that the claim was not transferred for the purpose of commencing the case and setting forth the consideration for and terms of the transfer. An entity that has transferred or acquired a claim for the purpose of commencing a case for liquidation under chapter 7 or for reorganization under chapter 11 shall not be a qualified petitioner.

(b) JOINDER OF PETITIONERS AFTER FILING. If the answer to an involuntary petition filed by fewer than three creditors avers the existence of 12 or more creditors, the debtor shall file with the answer a list of all creditors with their addresses, a brief statement of the nature of their claims, and the amounts thereof. If it appears that there are 12 or more creditors as provided in §303(b) of the Code, the court shall afford a reasonable opportunity for other creditors to join in the petition before a hearing is held thereon.

2. Rule 1004. Involuntary Petition Against a Partnership

After filing of an involuntary petition under §303(b)(3) of the Code, (1) the petitioning partners or other petitioners shall promptly send to or serve on each general partner who is not a petitioner a copy of the petition; and (2) the clerk shall promptly issue a summons for service on each general partner who is not a petitioner. Rule 1010 applies to the form and service of the summons.

3. Rule 1010. Service of Involuntary Petition and Summons

(a) SERVICE OF INVOLUNTARY PETITION AND SUMMONS On the filing of an involuntary petition, the clerk shall forthwith issue a summons for service. When an involuntary petition is filed, service shall be made on the debtor. The summons shall be served with a copy of the petition in the manner provided for service of a summons and complaint by Rule 7004(a) or (b). If service cannot be so made, the court may order that the summons and petition be served by mailing copies to the party's last known address, and by at least one publication in a manner and form directed by the court. The summons and petition may be served on the party anywhere. Rule 7004(e) and Rule 4(*l*) F.R.Civ.P. apply when service is made or attempted under this rule.

(b) CORPORATE OWNERSHIP STATEMENT Each petitioner that is a corporation shall file with the involuntary petition a corporate ownership statement containing the information described in Rule 7007.1.

4. Rule 1011. Responsive Pleading or Motion in Involuntary and Cross-Border Cases

(a) WHO MAY CONTEST PETITION. The debtor named in an involuntary petition may contest the petition. In the case of a petition against a partnership under Rule 1004, a non-petitioning general partner, or a person who is alleged to be a general partner but denies the allegation, may contest the petition.

(b) DEFENSES AND OBJECTIONS - WHEN PRESENTED. Defenses and objections to the petition shall be presented in the manner prescribed by Rule 12 F.R.Civ.P. and shall be filed and served within 21 days after service of the summons, except that if service is made by publication on a party or partner not residing or found within the state in which the court sits, the court shall prescribe the time for filing and serving the response.

(c) EFFECT OF MOTION. Service of a motion under Rule 12(b) F.R.Civ.P. shall extend the time for filing and serving a responsive pleading as permitted by Rule 12(a) F.R.Civ.P.

(d) CLAIMS AGAINST PETITIONERS. A claim against a petitioning creditor may not be asserted in the answer except for the purpose of defeating the petition.

(e) OTHER PLEADINGS. No other pleadings shall be permitted, except that the court may order a reply to an answer and prescribe the time for filing and service.

(f) CORPORATE OWNERSHIP STATEMENT. If the entity responding to the involuntary petition is a corporation, the entity shall file with its first appearance, pleading, motion, response, or other request addressed to the court a corporate ownership statement containing the information described in Rule 7007.1.

5. Rule 1013. Hearing and Disposition of a Petition in an Involuntary Case

(c) CONTESTED PETITION The court shall determine the issues of a contested petition at the earliest practicable time and forthwith enter an order for relief, dismiss the petition, or enter any other appropriate order.

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(b) DEFAULT If no pleading or other defense to a petition is filed within the time provided by Rule 1011, the court, on the next day, or as soon thereafter as practicable, shall enter an order for the relief requested in the petition

6. Rule 1018. Contested Involuntary Petitions; Contested Petitions Commencing Chapter 15 Cases; Proceedings to Vacate Order for Relief; Applicability of Rules in Part VII Governing Adversary Proceedings

Unless the court otherwise directs and except as otherwise prescribed in Part I of these rules, the following rules in Part VII apply to all proceedings contesting an involuntary petition or a chapter 15 petition for recognition, and to all proceedings to vacate an order for relief: Rules 7005, 7008–7010, 7015, 7016, 7024–7026, 7028–7037, 7052, 7054, 7056, and 7062. The court may direct that other rules in Part VII shall also apply. For the purposes of this rule a reference in the Part VII rules to adversary proceedings shall be read as a reference to proceedings contesting an involuntary petition or a chapter 15 petition for recognition, or proceedings to vacate an order for relief. Reference in the Federal Rules of Civil Procedure to the complaint shall be read as a reference to the petition.

II. CLAIMS NOT SUBJECT TO BONA FIDE DISPUTE

A. In re Project Restore, LLC, 2022 W.L. 6233552 (Bankr. M.D. Tenn. Oct. 7, 2022)

Issue: Whether arbitration agreement precludes the bankruptcy court for making a determination of bonified dispute for purposes of Code § 303(b).

Holding: Courts have allowed arbitration to decide issues that are core if such an agreement would inherently conflict with the underlying purposes of the Bankruptcy Code. The determination of whether an order for relief should be granted in an involuntary case is a core proceeding and the court concluded that there was an inherent conflict between the arbitration and the underlying purposes of the Bankruptcy Code for determination of the involuntary petition. Since the bankruptcy court is the sole court within which a petition may be filed to commence a bankruptcy case, the Bankruptcy Court has exclusive jurisdiction over bankruptcy cases. Further, at this stage, the court will not make the ultimate determination about any claims that may be asserted against the debtor; only whether they are subject to bonified dispute. The actual determination of the claim may still be subject to determination by an arbitrator. Finally, the court held that "a creditor cannot contract away its right as a petitioner in an involuntary case anymore than a debtor can contract away its right to file a voluntary bankruptcy."

B. Dept. of Revenue v. Blixseth, 942 F.3d 1179 (9th Cir. 2019)

Issue: Whether bona fide dispute for amount is subject to a materiality standard.

Holding: Following the 2005 amendments that added "or amount" to the bona fide dispute standard, the courts have been split on whether a dispute as to any portion of a

claim, even if some dollar amount would be left undisputed in an amount sufficient to satisfy the requirements of Code § 303(b), would still mean that a bona fide dispute exists as to the amount of the claim. In this case, the petitioner's claim had an undisputed amount, but the vast majority of its claim remained disputed and thus the court concluded that a bona fide dispute existed. In rendering this decision, the Ninth Circuit. joined the First[t] and Fifth Circuits in interpreting congressional intent through the plain language of the statute. See *Fustolo v. 50 Thomas Patton Drive, LLC*, 816 F3d, 1, 9 (1st Cir. 2016); *In re A Green Hills Development Co.*, 741 F3d, 651, 656-57 (5th Cir. 2014). Lower courts holding that only a material dispute as to amount will strip a creditor as follows: *In re General Aeronautics Corp.*, 594 B.R. 442, 463-66 (Bankr. D. Utah 2018); *In re Miller*, 489 B.R. 74, 81-83 (Bankr. E. D. Tenn. 2013); *In re EM Equipment, LLC*, 504 B.R. 8, 18 (Bankr. D. Conn. 2013) and *In re ELRS Loss Mitigation, LLC*, 325 B.R. 604, 626-27 (Bankr. N.D. Okla. 2005).

C. **In re Fustolo v. Thomas Patton Drive, LLC**, 816 F3d 1 (1st Cir. 2016)

Issue: Whether petitioner's claims were subject to bonified dispute for amount.

Holding: Mere fact that a claim was based on a state court judgment did not categorically mean that it was free from any bonified dispute. Dispute as to amount of debt owed need not be material to generate a disqualifying bonified dispute. Although petitioning creditor may rely on undisputed component that underlies disputed multipart judgment that creditor has asserted as a claim entitling it to join in the involuntary petition with the amount of the undisputed claim is clearly severable from the amount of the total judgment. In this case, the petitioners held a $2.7 million claim under certain guaranteed notes upon which the debtor challenged the interest due on the assertion that the state trial court abused its equitable discretion in not applying a technical timing requirement of the state usury law in commercial transactions. The trial court granted the default interest on the notes despite the technical violation of the usury statute. While normally this claim would be merged into a final judgment, the First Circuit did not accord the judgment as final and affirmed the bankruptcy court's grant of summary judgment on the petition.

D. **In re Green Hills Development Co., LLC**, 741 F3d 651 (5th Cir. 2014)

Issue: Whether creditor's claim was subject to bonified dispute.

Holding: By adding the phrase "as to liability or amount" to Code § 303(b), Congress changed the meaning of the section and courts are recognizing that bonified dispute is to the amount of the debt is now sufficient to deny creditor standing to bring involuntary petition. In this case, the Fifth Circuit affirmed the finding of the bankruptcy court that the pending litigation evidenced a bonified dispute of the petitioner's claim. This involved Texas Litigation that had been pending for a year and involved numerous motions for summary judgment. A creditor whose claim is the object of unresolved, multi-year litigation "should not be permitted to short-circuit that process by forcing the debtor into bankruptcy".

E. **In re Manolo Blahnik USA, Ltd.**, 619 B.R. 81 (Bankr. S.D. N.Y. 2020)

Issue: Whether petitioning creditors claim for involuntary Chapter 7 petition was subject to "bonified dispute".

Holding: A dispute as to the amount of a claim is not a bonified dispute if it is based on a counterclaim arising from a wholly separate transaction. However, a defense to a claim in the form of recoupment goes to the heart of the claim and results in a bonified dispute. In this case, the exclusive licensee to sell luxury shoe products of an Italian manufacturer in the United States demonstrated that a portion of the creditors claim was subject to "bonified dispute". However, the disputed portion of the claim was a separate transaction and severable from an undisputed portion of the claim arising from a different transaction and thus did not render the creditor ineligible to file an involuntary petition.

F. **In re International Oil Trading Co., LLC**, 545 B.R. 336 (Bankr. S.D. Fla. 2016)

Issue: Whether creditors' claims who filed an involuntary petition were subject to bonified dispute.

Holding: The standard for determining whether a claim is subject to a bonified dispute pursuant to Code § 303(b) is an objective one and thus the alleged subjective intent of the debtor is irrelevant. Further, the mere denial of a claim's validity or amount is not sufficient to create a bonified dispute. Once the petitioning creditor establishes prima facia a case that no bonified dispute exists, the burden shifts to the debtor to present evidence demonstrating that bonified dispute does exist. In making a determination the court may be required to conduct a limited analysis of the legal issues in order to ascertain whether an objective legal basis for the dispute exists.

A defense to a claim in the form of an independent counterclaim does not challenge the original claims and so does not place the original claim in bonified dispute. On the other hand, a claim of recoupment is in the nature of a defense arising out of a transaction and is purely a defensive matter which is available only to reduce or satisfy the original claim. In this case, the creditors' claims were not subject to bonified dispute and the debtor was not paying his debts as they became due.

G. **In re Elverson**, 492 B.R. 831 (Bankr. E.D. Pa. 2013)

Issue: Whether involuntary petitioner by the debtor's Aunt for alleged loans made over a period of twenty years was subject to bonified dispute.

Holding: Following the amendments to Code § 303 made by the BAPCPA in 2005, a petitioning creditor lacked standing even if only a portion of a claim is subject to bonified dispute because the bonified dispute includes disputes at "as to liability or *amount*." In this case it appears that a substantial amount of petitioner's claim is uncollectable due to the statute of limitations and thus the claim is subject to bonifide dispute for the purposes of Code § 303(b).

H. **In re Marcano**, 459 B.R. 27 (9th Cir. BAP 2011)

Issue: Whether an unstayed default state judgment of petitioning creditors claim is subject to bonified dispute?

Holding: In general, a no bonified dispute exists with respect to state court judgments where the judgment creditors have not obtained a stay pending appeal. In the 9th Circuit, a bonified dispute requires an *objective* basis for either a factual or legal dispute as to the validity of a debt. *See In re Vortex Fishing Systems, Inc.*, 277 F3d 1057, 1064 (9th Cir. 2002). In regards to whether a default judgment carries the same effect in determining a bonified dispute, the courts have not applied a per se ruling considering whether the underlying claim is in bonified dispute. In this case, the judgments were not default judgments in the classic sense because they were imposed as discovery sanctions. Thus, the court held that the state judgments were in bonified dispute.

I. **In re Tama Manufacturing Co., Inc.**, 436 B.R. 763 (Bankr. E.D. Pa. 2010)

Issue: Whether involuntary Chapter 7 case should be dismissed on the grounds that claims of the petitioning creditors were subject to bonified dispute because they were former employees that the debtor had laid off without prior notice and violation of the Warn Act.

Holding: WARN Act claims of petitioning creditors were subject to "bonified dispute" because substantial questions existed as to whether unforeseeable business circumstances exception to liability under the WARN Act existed for the debtor's failure to provide its employees sixty days written notice of plant closure. "Bonified dispute" is sufficient to prevent the filing of an involuntary bankruptcy petition if there is substantial factual or legal questions regarding the debtor's liability to claim it.

J. **In re Ransome Group Investors I, LLP**, 424 B.R. 547 (Bankr. N.D. Fla. 2009)

Issue: Whether general partners claim filed for an involuntary petition against partnership was subject to bonified dispute.

Holding: The standard to be applied in determining whether a debt is subject to bonified dispute is whether "there is a genuine issue of a material fact that bears upon the debtor's liability or a meritorious contention as to the application of law to the disputed facts." Under this standard, the bankruptcy court must determine whether there is an *objective* basis for either a factual or legal dispute as to the validity of the debt. Courts have generally found that a claim based on an unstayed judgment is not the subject of a bonified dispute even if the debtor has appealed the judgment. Additionally, courts have found that a debtor's assertion of a counterclaim against the petitioning creditor does not automatic render the creditor's claim subject to bonified dispute. This case involved a judgment arising out of claim for indemnification and advancement of expenses against investors based on attorney's fees and cost. The petitioning creditors are the holder of a judgment against the debtor for advancement of attorney's fees and cost. The investors present obligation to pay amounts due under consent order was not affected by

indemnity rights of the partnership that have not yet been determined. Thus, the issue is whether the petitioner's claim is contingent as to liability or the subject of bonified dispute within the meaning of Code § 303 because of indemnity rights of the debtor that have yet to be determined.

K. In re Bimini Island Air, Inc., 370 B.R. 408 (Bankr. S.D. Fla. 2007)

Issue: Whether involuntary petition by petitioning creditors was filed by petitioning creditors who claims were subject to bonified dispute.

Holding: The courts have adopted a summary judgment standard in determining whether a dispute exists. If there are material issues of law or fact regarding a claim it will be considered disputed. The majority of the courts have adopted an objective standard in making this determination and rejects a multifactored test which takes into account the debtor's subjective state of mind.
See In re BDC 56 LLC, 330 F3d 111 (2nd Cir. 2003); *In re BDW Associates, Inc.*, 865 F2d 65 (3rd Cir. 1989); *In re Sims*, 994 F2d 210 (5th Cir. 1993); *In re Busick*, 831 F2d 745 (7th Cir. 1987); *In re Rimell*, 946 F2d 1363 (8th Cir. 1991) and *In re Bartmann v. Maverick*, 853 F2d 1540 (10th Cir. 1988).

III. THE GAP PERIOD

A. What is the "Gap Period?"

The gap period is the interim period between the filing of the involuntary petition and the earlier of the entry of the order for relief or the appointment of a trustee.

1. What Are the Debtor's Rights During the Gap Period

a) Right to Operate its Business

During the gap period, the debtor obviously has the right to either answer or contest the involuntary petition. More importantly, the debtor can still operate its business in the ordinary course. That is, the debtor has the right to continue to operate its business and use, acquire, or dispose of assets as if an involuntary case had not been filed. For example, the alleged debtor in an involuntary chapter 11 does not need to obtain prior court approval for the employment of its attorneys or other professionals during the gap period. During the gap period, the restrictions on the use and disposition of property under Section 363 of the Bankruptcy Code do not apply. The purpose of this right is to minimize disruption to the debtor's business and financial affairs while the case is pending. However, debtors must operate the business prudently because trustees may later avoid certain transfers made during the gap period if the court enters an order for relief.

The bankruptcy court has the power to impose restrictions on the debtor's operations during the gap period under Section 303(f) of the Bankruptcy Code. If it appears that the debtor may abscond with assets, waste property, or sell goods for less than the fair market value, the bankruptcy court may enter orders controlling or limiting the debtor's powers. Alternatively, in

Chapter 7 cases, the court may order the US Trustee to appoint an interim trustee to operate the business

2. The Automatic Stay

Importantly, the automatic stay generally prohibits creditors from collecting prepetition debts, absent a court order granting relief from the stay during the gap period (See Section 362(a)(6) of the Bankruptcy Code).

Almost all courts have held that the filing of an involuntary bankruptcy triggers the automatic stay, protecting the debtor in the same manner during the gap period and beyond as if it had filed for bankruptcy voluntarily. In re Betteroads Asphalt, LLC, 594 B.R. 516 (Bankr. D. Puerto Rico 2018); In re Colon, 474 B.R. 330 (Bankr. D. Puerto Rico 2012). See Healthcare Real Estate Partners, LLC v. Summit Healthcare REIT, Inc. (In re Healthcare Real Estate Partners, LLC), Adv. Pro. No. 16-50981*CTG) (Bankr. Del. May 12, 2023) (finding a stay violation after the filing of an involuntary petition noting the filing of a bankruptcy petition, whether voluntary or involuntary, automatically operates as a stay….)

One court has held that the automatic stay becomes effective in an involuntary only when the court enters the order for relief. In re Acelor, 169 B.R. 764, 765 (Bankr. S.D. Fla. 1994).

3. Seeking an Indemnity Bond

Importantly, during the gap period, the debtor may request that the case be dismissed unless petitioning creditors post a bond to indemnify it for any damages that the court may allow under Section 303(i) of the Bankruptcy Code if the court later dismisses the case This requires notice and a hearing, and for the debtor to demonstrate that cause exists for requiring the bond. S*ee, e.g.*, In re The Centre for Management and Technology, Inc., 2007 WL 3197221 (Bankr. D. Md 2007) (setting bond with responsibility pro rata among the moving creditors); *see also* In re Reed, 11 B.R. 755 (Bankr. S.D. W. Va. 1981); In re Dill, 13 B.R. 9, 11 (Bankr. D. Nev. 1981). Cause typically involves showing the substantial losses that the debtor will suffer as a result of the involuntary filing, including costs, attorneys' fees, and other professional expenses incurred in defending the petition. It may also involve a showing that the petitioning creditors have not satisfied the requirements for filing the involuntary petition.

Petitioning creditors can argue that no bond is necessary because they have satisfied all of the requirements for filing an involuntary proceeding, and therefore have a reasonable probability of success on its merits. They can also argue that the debtor overstated its potential damages by showing that discovery will be expeditious and a hearing on the contested petition will be held promptly.

The court has the discretion to set the amount of the bond, if any. However, courts do not routinely grant bonds because the Bankruptcy Code does not impose a mandatory bond requirement. See In re Reed, 11 B.R. 755, 757 (Bankr. S.D. Va. 1981). Instead, this provision is meant to discourage frivolous and spiteful petitions that are based on a desire to harm the debtor or put it out of business without good cause. In fact, some courts find a presumption that

petitioning creditors file involuntary cases in good faith, and refuse to require a bond unless the debtor overcomes that presumption. *See.* In re Ransome Group Invs. I, LP, 423 B.R. 556, 558 (Bankr. M.D. Fla. 2009).

4. Creditors' Rights During the Gap Period

Creditors do have certain, albeit more limited, rights during the Gap Period. These rights are designed to encourage them to continue doing business with the debtor. First, claims that arise in the *ordinary course of business or financial affairs* during the Gap Period are give a third priority in the bankruptcy distribution scheme. See Sections 502(f) and 507(a)(3). In addition, involuntary Gap claims are deemed to have arisen before the date of the involuntary petition and are determined as of the date they arose (See 507(f)). Third priority treatment puts Gap claims ahead of all other prepetition priority claims, but behind several other significant categories of claims. Those being secured claims, any unpaid claims for administrative expenses (those incurred after an unsuccessful chapter 11 is converted to a chapter 7 and general administrative claims), claims for adequate protection.

Recently, the District Court, in In re HealthTrio, Inc., 599 B.R. 119 (D. Colo 2019) held, in evaluating what could or could not be considered an appropriate gap period claim, that services performed during the "gap period" between the filing of an involuntary Chapter 7 petition and the entry of an order for relief more than three years later, not by a low-level employee who continued to work because he was unaware that the debtor was in financial difficulty, but by a corporate insider who was complicit in the transfer of the corporate debtor's assets to its principal, and whose gap-period services chiefly benefited the debtor's principal, were not ordinary (either under a horizontal dimension, or "industry comparison," test or under a vertical, or "creditor expectation," test).

In sum, a major policy reason to expeditiously determine a contested Involuntary is to not only protect the debtor's reputation, but creditors. In re Hunt, 2018 WL 3628892 (Bankr. E.D. La. 2018). That is because creditors who deal with the debtor during the gap period can find their claims being provided only third priority status (not a typical administrative claim) and payments made on prepetition claims may also later be avoided *ab initio*. Id.

5. Transfers Received During the Gap Period

While claims that arise during the gap period are considered prepetition claims, transfers of the debtor's property that occur during the gap period are deemed post-petition transfers and are generally voidable. See Section 549(a). However, the debtor's (or Trustee's) recovery of this property is subject to the following exceptions and protected from avoidance if the court later enters an order for relief and (i) the transfer was authorized by the court and (ii) to the extent that value was given in exchange for the transfer, but not including the satisfaction or securing of a prepetition debt. This means that any repayment the creditor receives during the gap period on account of goods, services, or funds it provided to the debtor during the gap period is not voidable, while a repayment it received on account of a prepetition debt is voidable.

As a precautionary measure, creditors who want to extend credit to a debtor during the gap period should seek court approval under section 363 or 364 of the Bankruptcy Code, to ensure protection under the more clearly defined first exception.

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Despite the risk of potential disgorgement, creditors should accept payments made on account of prepetition debt, as the court may abstain from hearing the case or dismiss it on other grounds. Alternatively, even if an order for relief is entered, the trustee or the debtor, in the interest of time or maintaining goodwill with trade creditors, may choose not to pursue every potential avoidance action.

IV. SOLICITING AND ADDING CREDITORS TO THE PETITION

A. Joining the Involuntary Petition – 11 U.S.C. § 303(c)

Section 303(c) of the Bankruptcy Code provides:

After the filing of a petition under this section but before the case is dismissed or relief is ordered, a creditor holding an unsecured claim that is not contingent, other than a creditor filing under subsection (b) of this section, may join in the petition with the same effect as if such joining creditor were a petitioning creditor under subsection (b) of this section.

11 U.S.C. § 303(c). Although not specifically stated in section 303(c), based upon the requirements of section 303(h), the joining creditor should also be one whose claim is not subject to a bona fide dispute as to liability or amount. *See* 11 U.S.C. § 303(h)(1); *see also*, *In re Braten*, 86 B.R. 340 (Bankr. S.D.N.Y. 1988) (Claim of joining creditor under § 303(c) may not be contingent or subject of bona fide dispute because joining creditor's status relates back to commencement of involuntary case and, therefore, such joining creditor must satisfy same qualifications required of petitioning creditors.).

Petitioning creditors can utilize section 303(c) to join additional creditors in an effort to prevent dismissal of the involuntary bankruptcy case in various instances:

a) Involuntary petition filed by an insufficient number of creditors, although the minimum dollar amount required was satisfied. See., e.g., *In re DemirCo Group (N.Am.), LLC*, 343 B.R. 898 (Bankr.C.D. Ill. 2006) (petitioning creditor granted 30 days to file amended petition with required number of creditors); *Hayden v. ODOS, Inc. (In re ODOS, Inc.),* 607 B.R. 338 (9th Cir. B.A.P. 2019) (bankruptcy court erred in not providing opportunity for joinder).
b) Certain of the petitioning creditors were found ineligible. See, e.g., *In re Petralex Stainless, Ltd*., 78 B.R. 738 (Bankr. E.D. Pa. 1987). (Even if bona fide dispute exists as to claim of one creditor, court can cure defective filing by allowing joinder of other creditors under § 303(c).)

All creditors have the right to consider whether to join in an involuntary petition when the Debtor is suffering from economic distress. *Hayden v. ODOS, Inc. (In re ODOS, Inc.),* 607 B.R. 338 (9th Cir. B.A.P. 2019). Where there are fewer than the three petitioning creditors and the

alleged debtor has 12 or more creditors, the Bankruptcy Code and Rules allow for joinder by additional eligible creditors. *Id.* (citing 11 U.S.C. § 303(c) and Fed. R. Bankr.P. 1018.) If the Debtor files an answer to a petition asserting that it has 12+ creditors, it is required to also file a list of its creditors, their addresses, and the nature and amount of their claims. Id., citing Fed. R. Bankr. P. 1003(b).

If the Debtor contests the number of petitioning creditors, the original petitioning creditor(s) may solicit the joinder by creditors in the original involuntary petition and may propound discovery to ensure that the list is correct and to determine whether any creditors are not qualified to be petitioning creditors. See, e.g., *In re Rassi, 701 F.2d* 627, 629-31. While the filing of an involuntary petition is intended to be a summary process, creditors must be given an opportunity to join additional creditors as appropriate. The *ODOS* Court notes:

> [T]he requirement that contested involuntary petitions be resolved quickly must be read in tandem with the fact the Civil Rule 26 governs the pre-trial process and that discovery is available under Civil Rules 7028 through 7037. Rule 1013(a) directs bankruptcy courts to 'determine the issues of a contested petition at the earliest practicable time and forthwith enter an order for relief, dismiss the petition, or enter any other appropriate order.' Fed. R. Bankr.P. 1013(a). The 'earliest practicable time' is when the bankruptcy court has 'sufficient information to resolve the conflict' before it. *Hayes v. Rewald (In re Bishop, Baldwin, Rewald, Dillingham & Wong, Inc.*, 779 F. 2d 471, 475 (9th Cir. 1985). Often the bankruptcy court will acquire this information at trial.

Hayden v. ODOS, Inc. (In re ODOS, Inc.), 607 B.R. at 346.

A petitioning creditor must be diligent in preserving his rights, especially in light of the expedited nature of involuntary proceedings. The First Circuit Bankruptcy Appellate Panel determined that it was not an abuse of discretion by the bankruptcy court to deny a petitioning creditor the chance to conduct discovery in light of its delays. The BAP also held that the bankruptcy court was at least required to ensure all creditors had notice and the opportunity for a hearing prior to dismissal under Fed. R. Bankr. P. 1017 and found that the bankruptcy court erred in dismissing the case without doing so. *Banco Popular de Puerto Rico v. Colon (In re Colon*), 2008 WL 8664760, *7, 2008 Bankr. LEXIS 3960, *1 (B.A.P. 1st Cir. November 21, 2008). See also, *Liberty Tool & Mfg. v. Vortex Fishing Systems, Inc. (In re* Vortex Fishing Sys.), 277 F.3d 1057, 1061 (9th Cir. 2002) (if the debtor places the number of petitioning creditors in dispute, Rule 1003(b) requires that creditors be given a "reasonably opportunity" to join the petition; the Rule functions to provide an opportunity to moot the alleged debtor's numbers defense, and all creditors may not receive notice of an involuntary filing).

B. Soliciting of Creditors

1. Cases Holding Solicitation of Creditors Was Not in Bad Faith

Solicitation of other creditors to join in the involuntary petition was not evidence of bad faith on the part of the petitioning creditors, who were concerned that fraudulent dissipation of the debtor's assets was imminent and were seeking to prevent assets from moving out of the

reach of creditors. *In re Hrobuchak*, 2015 WL 1651974, 2015 WL 1651974 (Bankr.M.D.Pa. April 8, 2015)

Communications by petitioning creditor with other creditors does not prove bad faith where creditor had valid reason to be concerned, to seek additional information from other creditors, to consult and even to solicit their cooperation and assistance in pursuing legitimate actions together. Section 303(b) contemplates such communications and cooperation because it requires three petitioning creditors to file together if debtor has more than 12 creditors. *In re CLE Corp.*, 59 B.R. 579 (Bankr. N.D. Ga. 1986).

Burden is not on petitioning creditor to prove, in response to alleged debtor's allegation that it has more than 12 creditors, that it filed the involuntary petition in good faith, but rather on debtor to prove bad faith, thereby preventing that creditor from soliciting other creditors to join in involuntary petition to cure the numerosity defect. Further, the alleged debtor must prove that it has more than 12 creditors. *Jauregui v. San Antonio Fed. Credit Union (In re Jauregui)*, 185 B.R. 34, 27 (Bankr. W.D. Tex. 1995).

Joinder of other creditors in involuntary petition was not improper because alleged debtor produced no evidence of false statements, fraudulent conduct, or undue pressure exhibited by original creditor in soliciting other creditors to join in petition. *In re On-Site Fuel Serv.*, 2019 Bankr. LEXIS 1596, 67 Bankr. Ct. Dec. 67 (Bankr. S.D. Miss. May 24, 2019).

2. <u>Cases Holding Solicitation of Creditors Was in Bad Faith</u>

Involuntary petition was filed in bad faith under § 303(b) where primarily goal of the creditor who initiated contact and solicited other petitioning creditors was to take control of alleged debtor, now a profitable corporation. *In re F.R.P. Industries, Inc.*, 73 B.R. 309 (Bankr. N.D. Fla. 1987).

Lender held both debt and equity position in debtor. The lender's equity position prevented the debtor from filing a voluntary bankruptcy without the lender's consent, which it would not provide. In order to stop the lender's foreclosure, the debtor solicited creditors to file an involuntary petition at the eleventh hour. Based upon debtor's orchestration of the filing, the court considered the filing to be in bad faith. Other factors that played into the court's decision included that that lender was owed far more than the value of the assets, such that other creditors would not be impacted by the foreclosure. Further, the debtor made no showing that a successful reorganization could be accomplished. The court noted that the fact that an involuntary case was filed at the suggestion of the debtor to circumvent corporate bylaws provisions limiting a bankruptcy filing without consent of certain parties is not conclusive evidence of bad faith. The Court distinguished the facts in the case before it from those in the case of *In re Kingston Square Assocs*., 214 B.R 713, 733-35 (Bankr.S.D.N.Y. 1997), where the debtor's orchestrated filing of an involuntary petition was allowed because creditors had a good faith belief that this was the only way to prevent a foreclosure and preserve the equity in the property. *In re Global Ship Sys., LLC*, 391 B.R. 193 (Bankr.S.D.Ga. 2007).

C. Can Joinder by Creditors Acting in Good Faith Save an Involuntary filed in Bad Faith

The good faith of a petitioning creditor in filing an involuntary case may impact whether a court will permit additional creditors to join the petition.

1. Courts holding that initial involuntary petition must be filed in good faith for intervening creditors to join

The First Circuit, in a case decided under the Bankruptcy Act, held that the intervention of additional creditors is a matter of right unless the bankruptcy court finds that the petition was filed in bad faith for "the purpose of improperly invoking its jurisdiction." *In re Crown Sportswear, Inc.*, 575 F.2d 991, 993 (1st Cir. 1978). In the absence of a showing of bad faith by the petitioning creditor, the court shall provide a reasonable opportunity for other creditors to join in the petition prior to a hearing. *Id*. The First Circuit noted that petitioning creditor's good faith is presumed, and the alleged debtor has the burden of proving the bad faith of that creditor as an affirmative defense. In making its determination, the court employs both an objective and subjective standard, asking: Did the creditor know, or should he have known, that the petition was defective in number? In this case, the Court determined there was no evidence that the petitioning creditor knew or should have known that there were more than twelve creditors.

When debtor challenges the number of creditors under 11 U.S.C. § 303, petitioning creditor may solicit others to join with same effect as if they had been party to original petition; creditor intervention in involuntary proceeding is matter of right unless bad faith is shown. *In re Braten*, 74 B.R. 1021 (Bankr.S.D.N.Y. 1987).

It was unnecessary for Bankruptcy Court to determine validity of petitioning creditor's claim because three additional creditors have joined in petition, provided that Bankruptcy Court finds no fraud on part of original petitioning creditor to bar joinder of additional creditors. *In re J. v. Knitting Services, Inc.*, 4 B.R. 597 (Bankr. S.D. Fla. 1980).

When two instead of three qualified creditors have filed an involuntary petition against debtor, Bankruptcy Court will not dismiss case, but instead will grant 30 days' time within which third creditor may join petition before dismissing, where there is no evidence that such intervention would be prevented by bad faith in filing of original involuntary petition. *In re Nazarian*, 5 B.R. 279 (Bankr. D. Md. 1980).

Section 303(c) of the Bankruptcy Code provides for intervention as matter of right for any creditor of debtor holding unsecured claim that is not contingent and therefore court may not deny intervention to creditors until debtor's defense of bad faith as regards original involuntary petition has been determined. *In re Rush*, 10 B.R. 526 (Bankr. N.D. Ala. 1981).

2. Cases where the addition of creditors not barred despite bad faith of initial creditors

While a bad faith involuntary filing may give rise to a claim for attorney's fees and damages, it will not prevent the bankruptcy court from determining whether the requirement of

three petitioning creditors was met, as joinder is contemplated by section 303(c). *In re Hrobuchak*, 2015 WL 1651974; 2015 Bankr. LEXIS 1156 * (Bankr. M.D. Pa. April 8, 2015)

Joining petitioning creditors acting in good faith may "cure" the involuntary petition allegedly filed in bad faith, as the joining creditors are not tainted by any bad faith of the original creditors. *In re Houston Reg'l Sports Network, L.P.,* 505 B.R. 468 (Bankr. S.D. Tex. 2014)

Language of § 303(c) was plain and unambiguous, group of creditors was allowed to join in involuntary bankruptcy petitions and under § 303(b) were given status of creditors filing original involuntary petitions, as there is no condition to joinder based on good faith of original petitioner. *In re FKF Madison Park Group Owner, LLC*, 435 B.R. 906 (Bankr. D. Del. 2010).

Bad faith involuntary petition does not bar joinder of other valid claim holders, as there are other means for addressing bad faith filers without punishing good faith joining creditors. *Fetner v. Haggerty*, 99 F.3d 1180 (D.C. Cir. 1996).

While intervention of good-faith creditor typically does not purge taint of original petitioning creditor's bad-faith, court found special circumstances existed warranting exception to three creditor requirement where debtors allegedly made fraudulent and preferential transfers to insiders. *In re Norriss Bros. Lumber Co.*, 133 B.R. 599 (Bankr. N.D. Tex. 1991).

Although petitioning creditor allegedly acted in bad faith, since at least 3 such creditors were required to file involuntary petition, later creditors are not prohibited from intervention by alleged bad faith of original petitioning creditor, since, although it may be appropriate to punish guilty creditor by depriving him of his option for bankruptcy instead of state court insolvency proceedings, it improper to allow debtor to block other creditors from joining petition who are innocent of fault. *In re Trans-High Corp.*, 3 B.R. 1 (Bankr. S.D.N.Y. 1980) (granting dismissal on other grounds).

D. **Time of Joinder**

Intervention in involuntary petition is timely under 11 U.S.C. § 303 until order for relief is entered or case is dismissed. Court will not dismiss joinder petitions filed after deadlines set by court when case is still pending and no order for relief or order of dismissal has been entered. *In re Elsub Corp.*, 70 B.R. 797 (Bankr. D.N.J. 1987).

The bankruptcy court did not err in establishing a joinder deadline that was earlier than the time referenced in 11 U.S.C. § 303 ("before the case is dismissed or relief is ordered") and denying the creditor's motion to join that was filed after the court ordered deadline. The Court relied on the Federal Rule 1003(b) of the Federal Rules of Bankruptcy Procedure and its inherent authority to set deadlines to justify establishing and enforcing its joinder deadline. *Riverview Trenton R.R. v. DSC, Ltd. (In re DSC, Ltd.*), 486 F.3d 940, 947 (6th Cir. 2007) ("Rule 1003(b) requires the bankruptcy court to afford reasonable notice to other creditors while simultaneously resolving the merits of the involuntary petition 'at the earliest practicable time.'") (citation omitted)

Creditor's motion to join involuntary petition pursuant to 11 U.S.C. § 303, filed after order for relief was entered, is timely when the qualifications of petitioning creditor have been challenged; fact that debtor filed appeal with respect to another petitioning creditor, when no stay was sought pending appeal, does not divest Bankruptcy Court of jurisdiction over involuntary petition, rather, the Bankruptcy Court maintains jurisdiction over all matters except those concerning creditor subject of appeal. *In re Eastern Co.*, 136 B.R. 333 (Bankr. D. Mass. 1991).

Creditor's motion to join involuntary petition was timely under 11 U.S.C. § 303(c) despite not being filed prior to court ordered deadline where record does not show creditor and other petitioning creditors are so closely linked that corporate form of creditor may be disregarded. Notice to creditor through press or existence of public record is insufficient, and deadline for joinder was scheduled to run from time debtors complied with Rule 1003 of the Federal Rules of Bankruptcy Procedures, and debtors never complied with rule, as they omitted creditor from list of creditors. *Efron v. Gutierrez*, 226 B.R. 305 (D.P.R. 1998).

V. DISMISSAL FOR BAD FAITH & DAMAGES - RISKS

A. Driving Question

a. Over the past five (5) years, only two-hundred thirty-two (232) ***involuntary*** petitions have been filed across the country
   i. In that same timeframe, only twelve (12) have been filed in the State of Connecticut
   ii. Meanwhile, hundreds of thousands of ***voluntary*** petitions were filed per year during those same five (5) years across the country

b. reasons to file an involuntary petition:
   i. Avoidance actions, fraudulent conduct, statute of limitations, venue, complexity of potential recovery prospects in other forums, disposition of assets, favorable law or remedies in bankruptcy

c. reasons ***not*** to file an involuntary petition:
   i. Ill will, to gain disproportionate advantage over other creditors, collection goals, competitive goals
   ii. ***SEE 11 U.S.C. § 303(i)***
   iii. *In re Murray*, 900 F.3d 53, 59-60 (2d Cir. 2018)
      1. "[N]ot intended to redress the special grievances, no matter how legitimate, of particular creditors . . . ."
         a. Exists "for the overall benefit of the creditor body"
   iv. *In re Edgar A. Reyes-Colon*, Nos. 17-1971, 17-1972, 2019 WL 1785039, at *1 (1st Cir. Apr. 24, 2019)

1. Court dismissed properly filed involuntary petition of only two creditors — court required at least three creditors to file, following logic of the *Murray* court

B. Section 303(i)

a. if the court dismisses a petition under this section other than on consent of all petitioners and the debtor, and if the debtor does not waive the right to judgment under this subsection, the court ***may*** grant judgment —

i. against the petitioners and in favor of the debtor for —
ii. costs; or
iii. a reasonable attorney's fee; or

b. against any petitioner that filed the petition in ***bad faith***, for —

i. any damages proximately caused by such filing; or
ii. punitive damages

C. On 'Bad Faith' Requirement

a. **In re Best Home Performance of CT, LLC**, No. 19-20688 (JJT), 2019 Bankr. LEXIS 3682, at *33 (Bankr. D. Conn. Dec. 2, 2019) (citing *In re TPG Troy, LLC*, 793 F.3d 228, 235 (2d. Cir. 2015))

i. Court noted that Subsection (1) does *not* require a finding of bad faith
ii. Court also noted that when involuntary petition is dismissed, "there is a ***presumption*** that costs and attorney's fees will be awarded to alleged debtor"

b. Burden of proof on *petitioner(s)* to justify denial of costs and/or fees

i. **In re K.P. Enterprise**, 135 B.R. 174, 177 (Bankr. D. Me. 1992)
ii. Similar to above, "unsuccessful petitioners should generally expect that fees and costs will be rewarded to the debtor" (i.e., no bad faith required)

c. **In re Bayshore Wire Prods**., 209 F.3d 100, 105 (2d. Cir. 2000)

i. Subsection (2) ***requires*** that the debtor show bad faith on the part of petitioner(s), who has/have the presumption of good faith

D. When Will Court Award Costs, Fees, and/or Damages

a. Court award is ***DISCRETIONARY***

b. In re TPG Troy, LLC, 793 F.3d 228, 235 (2d. Cir. 2015)

i. In determining whether to award costs or fees **under Subsection** (1), courts are to consider the ***totality of the circumstances*** of the petition, which entails:

(a) Merits of the involuntary petition

(b) Role of any improper conduct on the part of the alleged debtor

(c) Reasonableness of actions taken by petitioner(s)

(d) Motivations and/or objectives of the involuntary petition

c. **In re Bayshore Wire Prods**., 209 F.3d 100, 105–06 (2d. Cir. 2000)

i. Court articulates, without choosing, a variety of tests in determining whether to award damages **under Subsection (2)**

1. Improper use
    a. Petitioner seeks disproportionate advantage over other creditors, and not to protect itself from other creditors gaining disproportionate advantages over petitioner
    b. Petitioner had available means to advance interests in different forum
2. Improper purpose
    a. Ill will, malice, etc.
3. Objective test
    a. Test for bad faith is what 'reasonable person' would have believed
4. Analysis under Fed. R. Bankr. P. 9011

d. In re Anmuth Holdings LLC, 600 B.R. 168, 191–92 (Bankr. E.D.N.Y. 2019)

i. Court applies totality of circumstances case to determine bad faith, which it calls a ***proper 'amalgam'*** of tests set out in *Bayshore*

ii. Indication is that courts can look at the *Bayshore* tests or a totality test

E. How Much? Determining Costs and/or Damages

a. Subsection 1

i**. In re Meltzer**, 535 B.R. 803, 815 (Bankr. N.D. Ill. 2015)

a) Court suggests useful guide on defining ***costs***: "compensable litigation costs of the kind ordinarily recovered in civil actions"

ii. ***In re Best Home Performance of CT, LLC***, No. 19-20688 (JJT), 2019 Bankr. LEXIS 3682, at *33 (Bankr. D. Conn. Dec. 2, 2019) (citing *Millea v. Metro-North R.R.*, 658 F.3d 154, 166 (2d. Cir. 2011)
a) Court delineated presumptively ***reasonable attorney's fees*** fee as ***product*** of reasonable hourly rate (what reasonable paying client would pay) and reasonable number of hours

b. Subsection 2

i. In re Anmuth Holdings LLC, 600 B.R. 168, 201 (Bankr. E.D.N.Y. 2019)
a) Court delineated ***damages*** as "renumeration for present and future lost sales, loss of goodwill, and increased credit and bank costs, and ***litigation costs***"
b) Indicating award of damages under Subsections (1) and (2) are not mutually exclusive

c. *Healthcare Real Estate Partners, LLC v. Summit Healthcare REIT, Inc.*, No. 16-50981 (CTG) (Bankr. D. Del. May 12, 2023) (unpublished) (Mem. Op. 25–26, ECF No. 209)

i. Delaware Bankruptcy Court found that a debtor already on the brink of failure could not show that involuntary petition was ***proximate cause*** of loss of business (i.e., damages), as debtor was already functionally defunct
a) Proximate cause a "substantial factor in bringing about the [debtor's] harm
ii. **In re Best Home Performance of CT, LLC**, No. 19-20688 (JJT), 2019 Bankr. LEXIS 3682, at *45–46 (Bankr. D. Conn. Dec. 2, 2019)
a. Court noted that ***punitive damages*** are not necessarily damages measured in actual loss or by a measure of creditor's bad faith
iii. **In re Anmuth Holdings LLC**, 600 B.R. 168, 201 (Bankr. E.D.N.Y. 2019)
a. Punitive damages are meant to ***punish*** wrongdoer and ***deter*** future misconduct
b. Factors in determining punitive damages:
1. Nature of wrong to debtor
2. Intent of petitioner(s)
3. Aggravating or mitigating circumstances
4. Petitioner(s) net worth

5. Gravity of consequences of involuntary petition

c. Limit on damages: few “awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process”

Other Resources

- "Involuntary Bankruptcy: Limited Remedy and Strong Sanctions for Abuse", published by Schulte Roth & Zabel LLP (https://www.srz.com/images/content/1/6/v2/164414/050719-Involuntary-Bankruptcy-Limited-Remedy-and-Strong-Sanction.pdf)

- "Involuntary Bankruptcy Petition Risk: Dismissal Can be Costly to Petitioning Creditors", published by Lowenstein Sandler LLP (https://www.lowenstein.com/media/3131/involuntary-bankruptcy-petition-risk.pdf)

- "Litigants Beware: Filing an Involuntary Bankruptcy Could Make You a Debtor Rather Than a Creditor", published by Squire Patton Boggs LLP (https://www.restructuring-globalview.com/2015/07/litigants-beware-filing-an-involuntary-bankruptcy-could-make-you-a-debtor-rather-than-a-creditor/)

Table F-2A. U.S. Bankruptcy Courts
Involuntary Bankruptcy Cases Commenced, by Chapter of the Bankruptcy Code
During the 12-Month Period Ending December 31, 2018

Circuit and District	All Cases	Involuntary Cases				
		All Chapters	Chapter 7	Chapter 11	Chapter 13	Other Chapters
Total	**773,418**	**281**	**251**	**30**	**0**	**0**
1st	**21,892**	**12**	**10**	**2**	**0**	**0**
ME	1,476	0	-	-	-	-
MA	8,582	7	7	0	0	0
NH	1,808	1	1	0	0	0
RI	2,165	4	2	2	0	0
PR	7,861	0	-	-	-	0
2nd	**41,343**	**47**	**45**	**2**	**0**	**0**
CT	6,077	1	1	0	0	0
NY, N	5,899	0	-	-	-	0
NY, E	16,217	32	30	2	0	0
NY, S	8,478	13	13	0	0	0
NY, W	4,117	0	-	-	-	0
VT	555	1	1	0	0	0

Table F-2A.
U.S. Bankruptcy Courts—Involuntary Bankruptcy Cases Commenced, by Chapter of the Bankruptcy Code, During the 12-Month Period Ending December 31, 2019

Circuit and District	All Cases	Involuntary Cases				
		All Chapters	Chapter 7	Chapter 11	Chapter 13	Other Chapters
Total	**774,940**	**294**	**243**	**51**	**0**	**0**
1st	**20,637**	**7**	**6**	**1**	**0**	**0**
ME	1,357	0	-	-	-	-
MA	7,622	1	1	0	0	0
NH	1,812	2	1	1	0	0
RI	2,036	0	-	-	-	-
PR	7,810	4	4	0	0	0
2nd	**41,880**	**43**	**36**	**7**	**0**	**0**
CT	6,148	9	9	0	0	0
NY,N	6,052	0	-	-	-	-
NY,E	16,600	24	18	6	0	0
NY,S	8,446	10	9	1	0	0
NY,W	4,073	0	-	-	-	-
VT	561	0	-	-	-	-

Table F-2A.
U.S. Bankruptcy Courts— Involuntary Bankruptcy Cases Commenced, by Chapter of the Bankruptcy Code,
During the 12-Month Period Ending December 31, 2020

Circuit and District	All Cases	Involuntary Cases				
		All Chapters	Chapter 7	Chapter 11	Chapter 13	Other Chapters
Total	**544,463**	**235**	**163**	**72**	**0**	**0**
1st	**13,171**	**8**	**6**	**2**	**0**	**0**
ME	1,015	1	0	1	0	0
MA	4,415	6	6	0	0	0
NH	1,081	0	-	-	-	-
RI	1,413	0	-	-	-	-
PR	5,247	1	0	1	0	0
2nd	**25,560**	**35**	**25**	**10**	**0**	**0**
CT	4,194	0	-	-	-	-
NY,N	4,397	2	2	0	0	0
NY,E	8,295	20	13	7	0	0
NY,S	5,668	12	9	3	0	0
NY,W	2,627	1	1	0	0	0
VT	379	0	-	-	-	-

Table F-2A.
U.S. Bankruptcy Courts— Involuntary Bankruptcy Cases Commenced, by Chapter of the Bankruptcy Code,
During the 12-Month Period Ending December 31, 2021

Circuit and District	All Cases	Involuntary Cases			
		All Chapters	Chapter 7	Chapter 11	Other Chapters
Total	**413,616**	**183**	**132**	**51**	**0**
1st	**9,868**	**10**	**10**	**0**	**0**
ME	654	1	1	0	0
MA	3,492	4	4	0	0
NH	753	0	-	-	-
RI	992	5	5	0	0
PR	3,977	0	-	-	-
2nd	**18,025**	**17**	**13**	**4**	**0**
CT	3,018	1	1	0	0
NY,N	3,190	0	-	-	-
NY,E	5,559	9	6	3	0
NY,S	3,940	4	3	1	0
NY,W	2,045	2	2	0	0
VT	273	1	1	0	0

Table F-2A.
U.S. Bankruptcy Courts— Involuntary Bankruptcy Cases Commenced, by Chapter of the Bankruptcy Code, During the 12-Month Period Ending December 31, 2022

Circuit and District	All Cases	Involuntary Cases			
		All Chapters	Chapter 7	Chapter 11	Other Chapters
Total	**387,721**	**173**	**147**	**26**	**0**
1st	**9,331**	**5**	**5**	**0**	**0**
ME	534	0	-	-	-
MA	3,384	5	5	0	0
NH	675	0	-	-	-
RI	793	0	-	-	-
PR	3,945	0	-	-	-
2nd	**18,232**	**25**	**19**	**6**	**0**
CT	2,512	1	1	0	0
NY,N	3,009	4	4	0	0
NY,E	7,006	9	6	3	0
NY,S	3,624	11	8	3	0
NY,W	1,903	0	-	-	-
VT	178	0	-	-	-

Faculty

Kathleen R. Cruickshank is a shareholder with Murphy & King in Boston, where she focuses her practice on representing debtors, trustees and creditors in complex chapter 11 and 7 cases and representing debtors in nonbankruptcy workouts. She appears regularly in the U.S. Bankruptcy Court, represents plaintiffs and defendants in litigation arising in bankruptcy proceedings, and has represented bankruptcy trustees before the Supreme Judicial Court of Massachusetts and the U.S. Court of Appeals for the First Circuit, and the Alcoholic Beverages and Control Commission. Ms. Cruickshank was formerly an attorney with the Office of the U.S. Trustee and the U.S. Department of Justice for the Districts of Maine, Massachusetts, New Hampshire and Rhode Island, and she was the Assistant U.S. Trustee in the San Jose Office of the U.S. Trustee for the Northern District of California. Prior to her 10 years of service with the U.S. Department of Justice, she represented debtors and creditors in bankruptcy matters, and clerked for the U.S. Trustee for the Districts of Maine, New Hampshire, Massachusetts and Rhode Island. Ms. Cruickshank received her B.S. in 1984 from Brown University and her J.D. in 1987 from Boston University School of Law.

Robert E. Kaelin is a partner with Murtha Cullina LLP in Hartford, Conn., and co-chairs the firm's Bankruptcy & Creditors' Rights Practice Group. He concentrates his practice in commercial litigation and bankruptcy, representing both creditors and debtors in chapter 11, 13 and 7 bankruptcy cases. Mr. Kaelin has represented numerous debtors, creditors' committees, secured creditors, landlords and trustees. He first joined the firm in 1992, practicing in the areas of civil litigation and bankruptcy. Mr. Kaelin is a member of the Connecticut Bar and the District Courts for the Districts of Connecticut, Vermont and the Southern and Eastern Districts of New York, and he is admitted to practice before the Second Circuit Court of Appeals. He is a member of the Litigation and Commercial Law and Bankruptcy Sections of the Connecticut Bar Association, and he is a past chair of the Bankruptcy Section. Mr. Kaelin is a past president of the Hartford County Bar Association and a member of ABI, for which he serves on its Northeast Bankruptcy Conference Advisory Board. He is also a contributing editor to *Norton Bankruptcy Law and Practice, 3d* (Thomson-West) and a faculty member for the Norton Bankruptcy Litigation Institute I in Park City, Utah. Mr. Kaelin has written and lectured on a number of bankruptcy topics. He recevied his B.A. from Miami University in Oxford, Ohio, and his J.D. from Duke University.

William L. Norton, III is a partner in the Nashville, Tenn., office of Bradley Arant Boult Cummings, PLC, which he joined in 1984. He practices in the commercial finance area and focuses primarily on creditors' rights and insolvency law. Mr. Norton is an adjunct professor at Vanderbilt University School of Law and a board member for the Nashville Conflict Resolution Center. He served as chairman of the board for 10 years after its founding by the Nashville Bar Association. Mr. Norton conducts volunteer mediations for the NCRC in General Sessions Court in Davidson County. Additionally, he is the editor-in-chief of *Norton Bankruptcy Law & Practice, 3d*, co-wrote the *Norton Creditors' Rights Handbook* (Thomson Reuters) and is president of the Norton Institutes on Bankruptcy Law (www.nortoninstitutes.org). He is a Fellow at the American College of Bankruptcy, a Fellow of the Tennessee and Nashville Bar Foundations, a past vice-president of the Nashville Bar Association, a past chair of the ADR Committee for the Nashville Bar Association, a past-president and emeritus board member of the American Board of Certification, a past-president and founder of the Tennessee Turnaround Management Association, a founding member of ABI, and a past president, former board

member and frequent speaker at the Mid-South Commercial Law Institute. Mr. Norton received both his B.A. in 1975 and his J.D. in 1982 from Vanderbilt University.

Hon. James J. Tancredi is a U.S. Bankruptcy Judge for the District of Connecticut in Hartford, sworn in on Sept. 1, 2016. Prior to his appointment to the bench, he was a commercial litigation and business restructuring partner at Day Pitney, LLP (f/k/a Day Berry & Howard), where, as a business litigator and commercial restructuring lawyer, he co-founded the firm's regional and national bankruptcy practice. During his 37-year career at Day Pitney, LLP, Judge Tancredi he represented financial institutions and other major constituents in a broad range of prominent insolvency-related proceedings pending in courts along the Amtrak corridor. He frequently lectured at the University of Connecticut School of Law and at bar association Continuing Legal Education programs on a broad range of commercial, real estate and restructuring issues and strategies. His professional and bar association activities included service as president and director of the Hartford County Bar Association and the Connecticut Turnaround Management Association. Judge Tancredi has been an active member of the Connecticut Bar Association, American Bar Association and American Trial Lawyers Association, and he was a director of the Hartford County Bar Foundation and Connecticut Mental Health Association. He is also a Connecticut Bar Foundation James W. Cooper Fellow. These platforms provided invaluable opportunities for enhanced legal education and service to the bench and bar and served to drive local community *pro bono* initiatives. Judge Tancredi has written widely about business restructuring issues and co-authored the Connecticut chapter in *Strategic Alternatives for and Against Distressed Businesses* (2016 Edition), published by Thomson Reuters. He received his B.A. *magna cum laude* in urban studies and political science from the College of the Holy Cross in Worcester, Mass., and his J.D. *magna cum laude* from the University of Connecticut School of Law.