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*Business*

## **Involuntary Bankruptcies**

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U.S. Bankruptcy Court (D. Ore.) | Portland

CONCURRENT SESSION

2023



**Navigating Involuntary Bankruptcies:  
Practical Considerations for Mitigating Risks**

<b>Hon. Peter C. McKittrick</b> U.S. Bankruptcy Court for the District of Oregon	<b>Bradley A. Cosman, Partner</b> Perkins Coie Phoenix
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## Benefits of an Involuntary Filing







Court oversight of the debtor—no further dissipation of assets




Powerful tools to recover preferentially or fraudulently transferred assets





Ability to take advantage of equality of distribution / the Code's priority scheme






## Risks of an Involuntary Filing


- 

Creditor loses control of estate causes of action
- 

Creditor must share estate assets pro rata with similarly situated creditors
- 

Creditor may be subject to punitive damages if the Court determines the filing was made in bad faith
- 

Creditor may be required to post a bond
- 

Risks for secured creditors
- 

Possible abstention

Available remedies to alleged debtors:



- § 303(i)(1): Costs; Attorney Fees
  - Attorney's fees *may* be awarded even where no finding of bad faith
  - 9<sup>th</sup> Cir. "totality of the circumstances" factors under § 303(i)(1): (1) the merits of the involuntary petition, (2) the role of any improper conduct on the part of the alleged debtor, (3) the reasonableness of the actions taken by the petitioning creditors, and (4) the motivation and objectives behind filing the petition, as well as other material factors a court deems necessary.
  - Most courts hold that there is a rebuttable presumption to atty's fees where petition has been dismissed
- § 303(i)(2) (If Bad Faith Filing): Actual Damages; Punitive Damages
- Are damages available under non bankruptcy law to non-debtors (spouses, relatives, related entities)?
  - No: *In re Miles*, 430 F.3d 1083 (9th Cir. 2005).
  - Yes: *Rosenberg v. DVI Receivables XVII, LLC*, 835 F.3d 414 (3d Cir. 2016).

Section 303(i) damages are usually not recoverable against counsel or parties "behind" the involuntary filing. See *McMillan v. Maestri (In re McMillan)*, 543 B.R. 808, 814 (Bankr. N.D. Tex. 2016) ("the plain language of § 303 allows relief only against the actual petitioning parties who signed and filed or joined in the involuntary petition").


However, although rare, courts have awarded damages under rule 9011 or § 105 against counsel to the petitioning creditor(s) in situations that include filing an involuntary petition:

- for the sole purpose of collecting a debt
- without inquiring as to the number of the debtor's creditors, or
- for the purpose of improper delay.

See *In re Commonwealth Sec. Corp.*, No. 06-30746-SGJ-7, 2007 Bankr. LEXIS 312, at \*23 (Bankr. N.D. Tex. Jan. 25, 2007)

## Risks of an Involuntary Filing



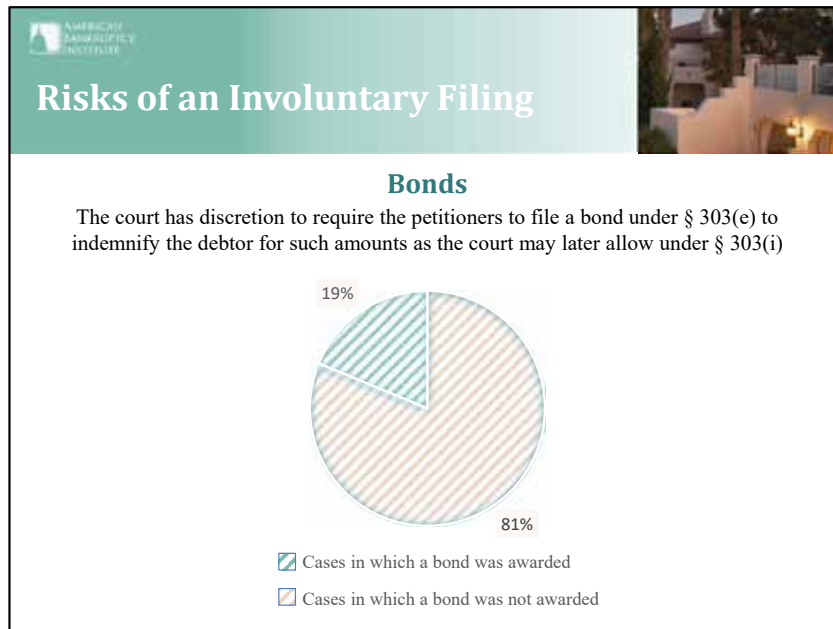
Punitive damages for bad faith

**Courts have found the following indicia of bad faith:**

- Knowledge that the petition cannot stand under § 303(b) (like knowing its claim was in bona fide dispute or that there is no basis for claiming the debtor is not generally paying its debts as they become due)
- Failure to investigate underlying Section 303 facts (like number of creditors)
- Ill will, malice, or for the purpose of embarrassing or harassing the debtor
- Two-party dispute
- Litigation strategy/ forum shopping

**Indicia of bad faith:**


- Knowledge that the petition cannot stand under § 303(b).
  - *In re Laroche*, 969 F.2d 1299 (1st Cir. 1992)
  - *In re Dino's Inc.*, 183 B.R. 779 (S.D. Ohio 1995)
  - *In re Anmuth Holdings LLC*, 600 B.R. 168, 189 (Bankr. E.D.N.Y. 2019)
  - *Atlas Mach & Iron Works, Inc. v. Bethlehem Steel Corp.*, 986 F.2d 709, 714-16. (4th Cir. 1993)
- Ill will, malice, or for the purpose of embarrassing or harassing the debtor.
  - *In re Forever Green Athletic Fields, Inc.*, 804 F.3d 328, 336 (3d Cir. 2015)
  - *Adell v. John Richards Homes Bldg. Co. (In re John Richards Homes Bldg. Co.)*, 439 F.3d 248 (6th Cir. 2006)
  - *Subway Equip. Leasing Corp. v. Sims (In re Sims)*, 994 F.2d 210, 222 (5th Cir. 1993)
- Failure to investigate underlying Section 303 facts.
  - *In re Walden*, 781 F.2d 1121, 1122 (5th Cir. 1986)
  - *In re CNG Foods LLC*, 2020 WL 4219679, at \*21 (Bankr. E.D.N.Y. July 13, 2020)
  - *In re Reveley*, 148 B.R. 398, 408 (Bankr. S.D.N.Y. 1992)
- Two-party dispute
  - *In re Murray*, 565 B.R. 527 (Bankr. S.D.N.Y. 2019), *aff'd*, 900 F.3d 53 (2d Cir. 2018)
  - *In re Tichy Elec. Co.*, 332 B.R. 365, 374 (Bankr. N.D. Iowa 2005)
- Litigation strategy/ forum shopping
  - *In re Forever Green Ath. Fields, Inc.*, 804 F.3d 328, 336 (3d Cir. 2015)
  - *Subway Equip. Leasing Corp. v. Sims (In re Sims)*, 994 F.2d 210 (5th Cir. 1993)
  - *In re Metrogate, LLC*, No. 15-12593 (KJC), 2016 Bankr. LEXIS 2242, at \*54 (Bankr. D. Del. May 26, 2016) (following *Forever Green*).
  - *But see In re Synergistics Techs., Inc.*, 2007 Bankr. LEXIS 2660, at \*20; *In re Allied Riser Commc's Corp.*, 283 B.R. 420, 424-25 (Bankr. N.D. 2002)
- But see - using bankruptcy in lieu of state law remedies (particularly when bankruptcy provides better remedies).
  - *In re Murray*, 543 B.R. 484, 488 (Bankr. S.D.N.Y. 2016) (an involuntary filed to execute on an interest in real property, a remedy not available under New York state law).




In order to be entitled to a bond, an alleged debtor must meet the burden of showing “cause,” *i.e.*, bad faith. See *In re Gen. Aeronautics Corp.*, 594 B.R. 442, 483 (Bankr. D. Utah 2018); *In re Ransome Grp. Inv’rs I, LP*, 423 B.R. 556, 558 (Bankr. M.D. Fla. 2009); *In re Savannah Yacht Corp.*, No. 03-41547, 2003 WL 26099689, at \*1 (Bankr. S.D. Ga. Nov. 26, 2003); *LNC Invs., Inc. v. Secured Equip. Tr. of E. Airlines, Inc. (In re Secured Equip. Tr. of E. Air Lines, Inc.)*, No. 91-5049, 1992 WL 295943, at \*8 (S.D.N.Y. Oct. 8, 1992); *Hutter Associates, Inc. v. Women, Inc. (In re Hutter Associates, Inc.)*, 138 B.R. 512, 516 (W.D. Va. 1992) (upholding lower court’s decision not to award a bond where the alleged debtor did not prove that the petition was filed in bad faith);

We were able to find 48 opinions referencing § 303(e) bonds. Out of these cases, only nine awarded bonds or noted that bonds were previously awarded, with the highest bond totaling \$250,000:

- *Fisher Island Ltd. v. Fisher Island Investments, Inc.*, 518 F. App’x 663, 665 (11th Cir. 2013) (\$100,000 bond)
- *In re Antar*, No. 12-13288, 2012 WL 6200366, at \*1 (Bankr. S.D. Fla. Dec. 12, 2012) (\$30,000 bond)
- *In re Lai Di Zhu*, No. 10-19901, 2010 WL 4259553, at \*1 (Bankr. D. Md. Oct. 21, 2010) (\$7,500 bond)
- *In re Commonwealth Sec. Corp.*, No. 06-30746, 2007 WL 309942, at \*2 (Bankr. N.D. Tex. Jan. 25, 2007) (\$50,000 bond)
- *In re Smith*, 243 B.R. 169 (Bankr. N.D. Ga. 1999) (\$100,000 bond)
- *In re Val W. Poterek & Sons, Inc.*, 169 B.R. 896 (Bankr. N.D. Ill. 1994) (\$10,000 bond)
- *In re Tarasi & Tighe*, 82 B.R. 795 (Bankr. W.D. Pa. 1988) (\$10,000 bond)
- *In re Cinnamon Lake Corp.*, 48 B.R. 70, 74 (Bankr. M.D. Fla. 1985) (\$2,500 bond)
- *In re Guaranteed Ins. Underwriters, Inc.*, 33 B.R. 582, 584 (Bankr. S.D. Fla. 1983) (\$250,000 bond)

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## Risks of an Involuntary Filing

Risks for secured creditors


- Alleged Debtor has right to operate in the ordinary course. § 303(f)
  - May obtain secured credit if ordinary course and may spend cash collateral without restriction.
  - No accounting to court or parties
- Automatic Stay in Effect on Petition Date. § 362
  - Creditors stayed from collection action.
  - Creditors left with burden to restrict alleged debtor's operations
- Effect of § 552 during gap period.
- Other Issues:
  - Delay in obtaining entry of order for relief
  - Exclusivity Period


**Resources:**

- ABI Article: Curbing Gap Period Abuses Under 303, Am. Bankr. Inst. J., Nov. 1997, <https://www.abi.org/abi-journal/curbing-gap-period-abuses-under-303>.
- 2 Collier on Bankruptcy ¶ 303.26 (16th ed. 2023).



## Risks of an Involuntary Filing





### Possible abstention

- Often invoked where the bankruptcy constitutes a two-party dispute
- Extraordinary remedy requiring specific and substantiated findings
- Standard requires interests of both debtor and creditors be better served


As the statutory language and legislative history demonstrate, the test under [§ 305\(a\)](#) is not whether dismissal would give rise to a substantial prejudice to the debtor. Nor is the test whether a balancing process favors dismissal. Rather, the test is whether both the debtor and the creditors would be "better served" by a dismissal.

- Moving party bears burden
- Limited appellate review (§ 305(c) limits appellate review to dist. ct.)


**Resources:**


- In re Eastman*, 188 B.R. 621, 624-25 (B.A.P. 9th Cir. 1995).
- The moving party has the burden of proving that dismissal or suspension benefits both the debtor and creditors. *In re Betterroads Asphalt, LLC*, 594 B.R. 516, 561 (Bankr. D. P. R. 2018); *In re Mikkelsen*, 499 B.R. 683 (Bankr. D. N. Dakota 2013).





## Risks of an Involuntary Filing







### Possible abstention

Courts have applied a 7-factor test:

1. **Economy and efficiency** of administration;
2. Whether **another forum** is available to protect the interests of both parties or there is already a pending proceeding in state court;
3. Whether **federal proceedings** are necessary to reach a just and equitable solution;
4. Whether there is an **alternative means of achieving an equitable distribution** of assets;
5. Whether the debtor and the creditors are able to work out a less expensive **out-of-court arrangement**;
6. Whether a **non-federal insolvency has proceeded so far** that it would be costly and time consuming to start afresh; and
7. **Purpose** for filing the bankruptcy


**Resources:**

- *In re Marciano*, 446 B.R. 407, 432 (Bankr. C.D. Cal. 2010); aff'd, 459 B.R. 27 (B.A.P. 9<sup>th</sup> Cir. 2011); aff'd 708 F.3d 1123 (9<sup>th</sup> Cir. 2013); *In re Monitor Single Lift I, Ltd.*, 381 B.R. 455, 464-65 (Bankr. S.D.N.Y. 2008); *see also In re 801 South Wells Street Ltd. P'ship*, 192 B.R. 718, 723 (Bankr. N.D. Ill. 1996).

## Strategies to Mitigate Risks

**When filing an involuntary bankruptcy,**  
**“the operative principle [is] that one who swats at the hornet had best kill it.”**  
*In re Kidwell*, 158 B.R. 203, 213 (Bankr. E.D. Cal. 1993)



**Conduct a thorough investigation into § 303 facts.**



Proceeding as a single creditor – less than 12 creditors

- Need to conduct a “reasonable investigation” into number of creditors
  - Post-judgment written discovery
  - Depositions/debtor exams
  - Review of UCC lien searches/books and records
- Can you just guess and get creditors to join later if needed?
  - Maybe. *Compare In re Coppertone Communications, Inc.*, 96 B.R. 233, 236 (Bankr. W.D.Mo. 1989) (essential prerequisite for allowing additional creditors to join to cure a defective petition is that the original petition was filed in good faith) with *In re Kidwell*, 158 B.R. 203, 213 (Bankr. E.D. Cal. 1993) (“misbehavior” of the first petitioning creditor is not a bar to joinder of additional creditors)


*In re Crown Sportswear, Inc.*, 575 F.2d 991, 992-94 (1st Cir. 1978) (a single petitioner has not filed in bad faith if the petitioner believed the debtor had fewer than twelve creditors when it filed, even if its belief was based on a “mistaken assumption.”).

*In re Molen Drilling Co.*, 68 B.R. 840, 843-44 (Bankr. D. Mont. 1987); *In re Fox*, 171 B.R. 31, 33 (Bankr. E.D. Va 1994); *IBM Credit Corp. v. Compuhouse Systems*, 179 B.R. 474 (W.D. Pa. 1995) *aff’d* 85 F.3d 612 (3d Cir. 1996); *Fetner v. Haggerty*, 99 F.3d 1180 (D.C. Cir. 1996); *In re FKF Madison Park Group Owner, LLC*, 435 B.R. 906 (Bankr. D. De. 2010); *In re Houston Regulation Sports Network, LP*, 505 B.R. 468 (Bankr. S.D. Tex. 2014); *In re On-Site Fuel Serv.*, 2019 Bankr. LEXIS 1596 (Bankr. S.D. Miss. May 24, 2019); *Atlas Mach & Iron Works, Inc. v. Bethlehem Steel Corp.*, 986 F.2d 709, 714-16. (4th Cir. 1993) (upholding both a finding of bad faith and the determination that the petitioning creditor was not entitled to “a reasonable opportunity [to have] other creditors . . . join in the petition before a hearing [was] heard thereon”).

Disallowing joinder where initial petition not filed in good faith: *See, e.g., In re McDonald Trucking Co., Inc.*, 74 B.R. 474, 479 (Bankr. W.D. Pa. 1987) (petitioning creditor's deliberate omission of statement regarding the number of debtor's creditors is itself a “measure of [the petitioning creditor's] intent and is sufficient to reach a finding of bad faith.”); *In re Alta Title Co.*, 55 B.R. 133, 137 (Bankr. D. Utah 1985) (essential prerequisite for allowing joinder of additional creditors to cure defective petition is that original petition must have been filed in good faith); *In re Godroy Wholesale Co.*, 37 B.R. 496, 500 (Bankr. D. Mass. 1984) (a single creditor may not commence involuntary proceeding without due investigation and escape a bad faith finding); *In re Rite-Cap, Inc.*, 1 B.R. 740, 741 (Bankr. D.R.I. 1979) (essential prerequisite prior to joinder is that petition must be filed in good faith; if original petition was a sham, prepared with view of later being supported by creditors, joinder should be denied).

## Strategies to Mitigate Risks



**Ensure your client's debt is not subject to bona fide dispute**

Courts are split on whether a bona fide dispute as to a mere portion of a claim, even if the remainder is undisputed, is sufficient to divest a creditor of standing. Compare *Mont. Dep't of Revenue v. Blixseth*, 942 F.3d 1179 (9th Cir. 2019), and *Fustolo v. 50 Thomas Patton Dr., LLC*, 816 F.3d 1, 10 (1st Cir. 2016), with *In re Williams*, 616 B.R. 690 (Bankr. N.D. Tex. 2020), *In re Gen. Aeronautics Corp.*, 594 B.R. 442, 464-65 (Bankr. D. Utah 2018), and *In re Tucker*, No. 5:09-914, 2010 WL 4823917, at \*6 (Bankr. N.D.W. Va. Nov. 22, 2010), *aff'd*, No. 5:11CV38, 2011 WL 5192801 (N.D.W. Va. Oct. 31, 2011), *aff'd*, 487 F. App'x 826 (4th Cir. 2012).



Collier believes "the better view" is that a dispute as to amount is immaterial unless it will reduce the amount of the claim below the statutory threshold in § 303(b).  
2 Collier on Bankruptcy ¶ 303.11[2].

Under Section 303 of the Bankruptcy Code, an involuntary petition may be brought only by the "holder of a claim ... that is not ... the subject of a bona fide dispute as to liability or amount." 11 U.S.C. § 303. This requirement prevents creditors with legitimately disputed claims from threatening a debtor with bankruptcy as a way to extract payment on those claims and promotes the settlement of these claims outside of bankruptcy. Courts focus on whether the debt is subject to any factual or legal dispute. However, the court need not resolve these issues, but only determine if they exist. See *Subway Equip. Leasing Corp. v. Sims (In re Sims)*, 994 F.2d 210, 221 (5th Cir. 1993)


Bona fide dispute standard: most courts, including the **First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Circuits** have adopted an objective approach. Under this standard, the bankruptcy court is to "determine whether there is an objective basis for either a factual or a legal dispute as to the validity of the debt." *Subway Equip. Leasing Corp. v. Sims (In re Sims)*, 994 F.2d 210, 221 (5th Cir. 1993) (citing *Rimell v. Mark Twain Bank (In re Rimell)*, 946 F.2d 1363, 1365 (8th Cir. 1991)).

*Montana Dep't of Revenue v. Blixseth*, 942 F.3d 1179 (9th Cir. 2019)

- The Court of Appeals for the Ninth Circuit analyzed whether a creditor holding a claim that is partially disputed as to the amount has standing to act as a petitioning creditor under § 303(b). The court held that a dispute as to any amount of the claim strips a creditor of standing.

## Strategies to Mitigate Risks



**Ensure the Debtor is “generally not paying” its debts.**

Several circuits apply a “totality of the circumstances test” looking at “the number of unpaid claims, the amount of the unpaid claims, the materiality of the nonpayments, and the debtor’s overall conduct of its financial affairs.” *In re EB Holdings II, Inc.*, 589 B.R. 704, 722 (Bankr. D. Nev. 2017) (citing *In re Vortex Fishing Systems, Inc.*, 277 F.3d 1057 (9th Cir. 2001); *General Trading Inc. v. Yale Materials Handling Corp.*, 119 F.3d 1485, 1504 n. 41 (11th Cir. 1997).

Several courts say a debtor is not generally paying its debts if just one debt is “sufficiently substantial to establish the generality of the alleged debtor’s default.”



*Minority Position* (applying the “almost per se” rule) - *In re Huggins*, 380 B.R. 75, 83 (Bankr. M.D. Fla. 2007) (a sole creditor can never meet its burden of demonstrating that the alleged debtor is not *generally* paying its debts as they become due.)

- The Sixth Circuit has noted that courts applying the almost per se “single creditor rule” also developed an exception where evidence of “fraud, artifice or scam” exists. See *Concrete Pumping*, 943 F.2d 627, 630 (6th Cir 1991)


Section 303(h) of the Bankruptcy Code requires that a court enter order for relief in an involuntary case “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...” 11 U.S.C. § 303(h). The determination is made as of the filing date of the involuntary petition. *Subway Equip. Leasing Corp. v. Sims (In re Sims)*, 994 F.2d 210, 222 (5th Cir. 1993)

The Court should consider both the amount of the debt not being paid and the number of creditors not being paid in determining whether the debtor was generally paying his debts as they became due. *In re Edwards*, 501 B.R. 666, 681 (Bankr. N.D. Tex. 2013) (Houser, J.) (citing *In re Smith*, 415 B.R. 222, 232 (Bankr. N.D. Tex. 2009) (Hale, J.). A debtor may not be “generally” paying his debts as they come due when he is *either* not paying one hundred percent of his debts to a single creditor, *or* paying most of his debts in number to small recurring creditors, but not paying a few creditors who make up the bulk of the debts. *Smith*, 415 B.R. at 231; see *In re Moss*, 249 B.R. 411, 418 (Bankr. N.D. Tex. 2000) (Houser, J.).

Several courts have held that the failure to pay one significant creditor can support a finding that the debtor is generally not paying its debts for purposes of § 303(h)(1) if the debt is “sufficiently substantial to establish the generality of the alleged debtor’s default.” *In re Euro-American Lodging Corp.*, 357 B.R. 700, 713 (Bankr. S.D.N.Y. 2007) (quoting *Crown Heights Jewish Cmty. Council, Inc. v. Fischer (In re Fischer)*, 202 B.R. 341, 350–351 (Bankr. E.D.N.Y. 1996); see *In re Morabito*, No. NV-14-1593-FBD, 2016 WL 3267406, at \*10 (B.A.P. 9th Cir. June 6, 2016); *In re Concrete Pumping Serv., Inc. v. King Constr. Co. (Concrete Pumping Serv. Inc.)*, 943 F.2d 627, 630 (6th Cir. 1991) (holding that debtor was not paying debts as they became due where debtor was in default on 100% of its debt to only one creditor). In *In re Euro-American Lodging Corp.*, the court found that one large, undisputed debt of \$224 million, which represented over 90% of the debtor’s total debt, was sufficient to show the debtor was not substantially paying its debts as they became due “given the substantiality” of the debt compared to other, alleged debts.

## Strategies to Mitigate Risks




Find other petitioning creditors to team up with your client.


- If the alleged debtor has 12 or more qualifying creditors, at least 3 petitioning creditors are required. (§ 303(b)(1)).
- *Sony Music Publishing U.S. LLC v. Priddis (In re Priddis)*, No. 22-15457, 2023 WL 2203562, 2023 U.S. App. LEXIS 4478 (9th Cir. Feb. 24, 2023) (unpublished)
  - Fourteen creditors filed an involuntary bankruptcy against the debtor to collect a \$3 million judgment entered pursuant to a settlement agreement. The Court of Appeals for the Ninth Circuit considered whether the creditors, all of whom shared one judgment, should be considered one creditor, or separate petitioning creditors who each held a separate claim for purposes of the numerosity requirement under § 303(b).

If the alleged debtor has 12 or more qualifying creditors, at least 3 petitioning creditors are required. (§ 303(b)(1)). If the alleged debtor has less than 12 creditors, subject to certain exclusions, only one petitioning creditor is required (§ 303(b)(2))

- *Sony Music Publishing U.S. LLC v. Priddis (In re Priddis)*, No. 22-15457, 2023 WL 2203562, 2023 U.S. App. LEXIS 4478 (9th Cir. Feb. 24, 2023) (unpublished)
  - Fourteen creditors filed an involuntary bankruptcy against the debtor to collect a \$3 million judgment entered pursuant to a settlement agreement. The Court of Appeals for the Ninth Circuit considered whether the creditors, all of whom shared one judgment, should be considered one creditor, or separate petitioning creditors who each held a separate claim for purposes of the numerosity requirement under § 303(b).
- Consider the potential ethical implications of a lawyer approaching other (non-client) potential petitioning creditors.
- Keep in mind that if the Debtor makes transfers in the gap period prior to an order for relief, such transfers are avoidable under 549(a), and the recipients of such transfers may be removed from the numerosity calculation.




## Contact Information




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## Appendix A: *Key Procedural Rules*



- **Rule 1003: “Involuntary Petition”**
  - Rule 1003(a): Transferor or Transferee of a Claim
  - Rule 1003(b): Joinder of Petitioners After Filing
- **Rule 1004: “Involuntary Petition Against a Partnership”**
- **Rule 1010: “Service of Involuntary Petition and Summons”**
  - Note: This section requires that service of the summons be made in the manner provided under Rule 7004.
- **Rule 1011: “Responsive Pleading or Motion in Involuntary Cases”**
- **Rule 1013: “Hearing and Disposition of a Petition in an Involuntary Case”**
- **Rule 1018: “Contested Involuntary Petitions...”**
- **Rule 7004: “Process; Service of Summons, Complaint”**



## Appendix B: References



- **Numerosity:**
  - *Denham v. Shellman Grain Elevator, Inc. (In re Denham)*, 444 F.2d 1376, 1379 (5th Cir. 1971)
  - *Hornblower & Weeks-Hemphill, Noyes v. Okamoto (In re Okamoto)*, 491 F.2d 496 (9th Cir. 1974)
  - *Theis v. Luther*, 151 F.2d 397 (8th Cir. 1945)
  - *Jefferson Tr. & Sav. Bank v. Rossi (In re Rossi)*, 701 F.2d 627, 632 (7th Cir. 1983)
- **“Generally Not Paying” Requirement:**
  - *Subway Equip. Leasing Corp. v. Sims (In re Sims)*, 994 F.2d 210 (5th Cir. 1993)
  - *Concrete Pumping Serv., Inc. v. King Constr. Co. (In re Concrete Pumping Serv., Inc.)*, 943 F.2d 627 (6th Cir. 1991)
- **Contingent Claims**
  - *Chicago Title Ins. Co. v. Seko Invs., Inc. (In re Seko Invs., Inc.)*, 156 F.3d 1005, 1008 (9th Cir. 1998), *cert. denied*, 526 U.S. 1066 (1999)
  - *Subway Equip. Leasing Corp. v. Sims (In re Sims)*, 994 F.2d 210 (5th Cir. 1993)
  - *In re All Media Props. Inc.*, 5 B.R. 126 (Bankr. S.D. Tex. 1980), *aff’d per curiam*, 646 F.2d 193 (5th Cir. 1981)
- **Bona Fide Disputes:**
  - *Fustolo v. 50 Thomas Patton Drive, LLC*, 816 F.3d 1 (1st Cir. 2016)
  - *Crest One Spa v. TPG Troy, LLC (In re TPG Troy, LLC)*, 793 F.3d 228 (2d Cir. 2015)
  - *B.D.W. Assocs., Inc. v. Busy Beaver Bldg. Centers, Inc.*, 865 F.2d 65 (3d Cir. 1989)
  - *Platinum Fin. Servs. Corp. v. Byrd (In re Byrd)*, 357 F.3d 433 (4th Cir. 2004)
  - *Subway Equip. Leasing Corp. v. Sims (In re Sims)*, 994 F.2d 210, 221 (5th Cir. 1993)
  - *Riverview Trenton R.R. Co. v. DSC, Ltd. (In re DSC, Ltd.)*, 486 F.3d 940 (6th Cir. 2007)
  - *In re Busick*, 831 F.2d 745 (7th Cir. 1987)
  - *Rimell v. Mark Twain Bank (In re Rimell)*, 946 F.2d 1363 (8th Cir. 1991)
  - *Liberty Tool & Mfg. v. Vortex Fishing Sys., Inc. (In re Vortex Fishing Sys., Inc.)*, 277 F.3d 1057 (9th Cir. 2002)
  - *Bartmann v. Maverick Tube Corp.*, 853 F.2d 1540 (10th Cir. 1988)







## Appendix B: References





- **Special Circumstances Exception:**
  - *In re Stewart*, No. 14-03177, 2015 WL 1282971, at \*9 (Bankr. S.D. Ala. Mar. 18, 2015)
  - *In re 7H Land & Cattle Co.*, 6 B.R. 29, 34 (Bankr. D. Nev. 1980)
  - *Concrete Pumping Serv., Inc. v. King Constr. Co.* (*In re Concrete Pumping Serv., Inc.*), 943 F.2d 627, 630 (6th Cir. 1991)
  - *H.I.J.R. Props. Denver v. Schideler* (*In re H.I.J.R. Props. Denver*), 115 B.R. 275, 279 (D. Colo. 1990)
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