

BAD NEWS FOR BAD FAITH PETITIONING CREDITOR

Dismissal of Involuntary
Bankruptcy Petition and
Exposure to Debtor's
Damage Claims



A TRADE CREDITOR CONCERNED ABOUT A FINANCIALLY DISTRESSED CUSTOMER'S FAILURE TO PAY ITS DEBTS MAY CONSIDER JOINING IN THE FILING OF AN INVOLUNTARY BANKRUPTCY PETITION AGAINST THAT CUSTOMER. FORCING A CUSTOMER INTO AN INVOLUNTARY BANKRUPTCY PROCEEDING IS A POWERFUL TOOL—BUT WITH GREAT POWER COMES GREAT RESPONSIBILITY. A PETITIONING CREDITOR THAT FAILS TO SATISFY THE BANKRUPTCY CODE'S REQUIREMENTS FOR AN INVOLUNTARY PETITION RISKS NOT ONLY DISMISSAL OF THE INVOLUNTARY BANKRUPTCY CASE, BUT ALSO EXPOSURE TO LARGE DAMAGE CLAIMS THAT A DEBTOR MAY ASSERT.

Even where petitioning creditors satisfy the requirements of the Bankruptcy Code, a court may still dismiss an involuntary petition if it finds that the petition was filed in bad faith. This happened in *In re PTGi International Carrier Services, Inc.*, where the United States Bankruptcy Court in Delaware, in a March 2025 decision, held that a petitioning creditor commenced an involuntary bankruptcy case in bad faith and ordered the creditor to pay the debtor's fees and costs in defending against the petition (and even reserved the debtor's right to seek actual and punitive damages against the petitioning creditor!).

A creditor considering joining an involuntary bankruptcy petition should consult with counsel and heavily scrutinize the circumstances and timing of a potential involuntary petition. Otherwise, the creditor may be subject to significant sanctions if the involuntary petition is dismissed.

BACKGROUND ON INVOLUNTARY BANKRUPTCY PETITIONS

Section 303 of the Bankruptcy Code sets forth the following requirements for the filing of an involuntary bankruptcy petition:

1. If a debtor has twelve or more creditors, at least three creditors must join in the involuntary petition and collectively hold claims in an aggregate amount of at least \$21,050¹ that are not contingent or the subject of a "*bona fide* dispute" as to liability or amount. This numerosity

requirement is intended to discourage creditors from using an involuntary petition to coerce a debtor to pay debts to which the debtor has legitimate defenses.

2. If a debtor contests an involuntary petition, the petitioning creditors must prove that the debtor is generally not paying its debts that are not otherwise subject to a *bona fide* dispute as to liability or amount as they become due.

If the petitioning creditors satisfy all of section 303's requirements, the bankruptcy court will usually enter an order for relief on their involuntary bankruptcy petition, and the petitioning creditors can then assert an administrative expense priority claim for the fees they incurred prosecuting the petition. However, if the petitioning creditors fail to satisfy section 303's requirements and the involuntary petition is dismissed, the petitioners face significant risks. Following the dismissal of an involuntary petition, the bankruptcy court could require the petitioning creditors to pay a debtor's attorneys' and other fees and costs incurred in contesting the petition. And where the involuntary filing was in bad faith, the court may also award the debtor compensatory damages for its actual losses incurred as a result of the filing and, in the most egregious cases, punitive damages. These claims are intended to compensate the debtor for the harm caused by an improperly filed involuntary petition and discourage petitioning creditors from joining a frivolous involuntary petition.

IF THE PETITIONING CREDITORS FAIL TO SATISFY SECTION 303'S REQUIREMENTS AND THE INVOLUNTARY PETITION IS DISMISSED, THE PETITIONERS FACE SIGNIFICANT RISKS.

A CREDITOR CONSIDERING JOINING AN INVOLUNTARY
BANKRUPTCY PETITION SHOULD CONSULT WITH COUNSEL
**AND HEAVILY SCRUTINIZE THE CIRCUMSTANCES AND
TIMING OF A POTENTIAL INVOLUNTARY PETITION.**



Courts have also held that even where the petitioning creditors satisfy Section 303's requirements, an involuntary petition may be dismissed if it was filed in bad faith. That is precisely what happened in the *PTGi* case.

**BACKGROUND REGARDING
THE *PTGi* DECISION**

On November 30, 2023, the board of directors of PTGi International Carrier Services, Inc. decided to cease all of PTGi's operations and begin winding down the company effective as of Dec. 1, 2023. Shortly thereafter, on Dec. 20, 2023, Acmetel USA, Inc. sued PTGi in the U.S. District Court for the Southern District of New York, seeking to collect approximately \$6.7 million that PTGi owed to Acmetel on account of telecommunication minutes that Acmetel had provided to PTGi. The parties ultimately entered into a stipulated judgment in Acmetel's favor, which the District Court entered on or about Apr. 24, 2024. However, Acmetel never obtained an execution or enforcement order to perfect a judgment lien—as such, Acmetel's claim against PTGi remained unsecured.

Acmetel sought to enforce its judgment against PTGi. On Jun. 7, 2024, Acmetel served a subpoena and restraining notice on PNC Bank, seeking to preclude PNC Bank from transferring any funds held in PTGi's account with PNC.²

On Jul. 30, 2024, the secured lender moved to intervene and filed a motion to quash Acmetel's restraining notice in light of the secured lender's first priority lien in PTGi's assets. On Oct. 10, 2024, the court vacated Acmetel's restraining notice, concluding that

the secured lender had a pre-existing right to any funds held at PNC. The court also noted that Acmetel lacked any right to the funds since it had never obtained a judgment lien and was just an unsecured creditor.

Acmetel notified the secured lender, PTGi, and PNC that it intended to file an appeal. However, on the deadline to file an appeal, Acmetel, along with two other creditors Acmetel had recruited, filed an involuntary bankruptcy petition against PTGi.

On Jan. 10, 2025, PTGi filed a motion to dismiss the involuntary bankruptcy case. PTGi conceded that the petitioning creditors satisfied the statutory requirements for filing an involuntary petition under Section 303 of the Bankruptcy Code—that is, PTGi was not paying its debts as they came due and the creditors' undisputed claims far exceeded the minimum claim amount required by Bankruptcy Code section 303. However, PTGi argued that Acmetel joined the involuntary petition in bad faith, solely as a litigation tactic in response to the quashing of Acmetel's restraining notice.

In response, Acmetel argued that its involuntary petition was for the benefit of all creditors, particularly since other creditors had contacted them regarding potentially joining the involuntary petition. Acmetel contended that the bankruptcy court provided certain remedies unavailable in other forums. For example, a Chapter 7 trustee could investigate the prepetition conduct of PTGi and the secured lender and assert fraudulent transfer and other potential claims against the secured lender (and other third parties), and the bankruptcy court may equitably subordinate the secured lender's claims.

THE BANKRUPTCY COURT'S DECISION

The bankruptcy court granted PTGI's motion to dismiss the involuntary petition, finding that Acmetel had filed the petition in bad faith. The court relied on a decision by the U.S. Third Circuit Court of Appeals in *In re Forever Green Athletic Fields, Inc.* The Third Circuit held that a court can consider a variety of factors in finding a bad faith filing, including whether:

- The petitioning creditors satisfied the statutory criteria for filing the petition;
- The involuntary petition was meritorious;
- The creditors made a reasonable inquiry into the relevant facts and pertinent law before filing;
- There was evidence of preferential payments to certain creditors or of dissipation of the debtor's assets;
- The filing was motivated by ill will or a desire to harass;
- The petitioning creditors used the filing to obtain a disproportionate advantage for themselves rather than to protect against other creditors doing the same;
- The filing was used as a tactical advantage in pending actions;
- The filing was used as a substitute for customary debt-collection procedures; and
- The filing had suspicious timing.

In the *PTGI* case, the bankruptcy court acknowledged that Acmetel had satisfied section 303's numerosity requirement by recruiting the two other creditors to join in the involuntary petition. However, the other two creditors had taken no action to pursue their debts before the involuntary filing, causing the court to presume they had only joined in the petition due to Acmetel's efforts. As the court noted, the numerosity requirement is intended to prevent filings by "a single recalcitrant creditor who is more concerned with a collection action than with the alleged debtor's well-being as a going concern"—which is precisely what occurred in the *PTGI* case.

The court also concluded that Acmetel had orchestrated the involuntary bankruptcy filing "as a substitute for debt-collection procedures" in light of Acmetel's failure to obtain a judgment lien in PTGI's assets and lack of success in levying on PTGI's account. Filing the involuntary case on the last day that Acmetel could have filed an appeal of the order quashing Acmetel's restraining notice on PTGI's account was, as the court put it, "suspect", and indicative that the involuntary petition was merely a litigation tactic.

The bankruptcy court rejected each of Acmetel's arguments in opposition to the motion to dismiss the involuntary petition. Despite Acmetel's assertion that other creditors had contacted them about joining the involuntary petition, Acmetel had introduced no

evidence of such communications, and the docket did not reflect any involvement by any other creditors during the four months since the commencement of the involuntary bankruptcy case. In addition, Acmetel offered no evidence to support its argument that a Chapter 7 trustee's investigation into prepetition conduct would uncover any viable claims against or basis to equitably subordinate the secured lender's claim, or would otherwise provide any benefit to the alleged-debtor's bankruptcy estate.

The bankruptcy court held that Acmetel had filed the involuntary petition in bad faith, since the petition did not serve any proper bankruptcy purpose. The court then disqualified Acmetel as a petitioning creditor and dismissed the involuntary petition since it lacked the requisite number of petitioning creditors (there were only two remaining petitioning creditors). The bankruptcy court also ordered Acmetel to pay PTGI's attorneys' fees and costs incurred in defending the involuntary filing, without prejudice to PTGI's right to seek actual and punitive damages as a result of Acmetel's bad-faith filing. As the bankruptcy court succinctly concluded, "PTGI should not have to bear the costs of Acmetel's bad faith." **BC**

1. For cases filed on or after Apr. 1, 2025.
2. Acmetel had also opposed a foreclosure process commenced by the secured lender.



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THE COURT
CONCLUDED THAT
ACMETEL HAD
ORCHESTRATED
THE INVOLUNTARY
BANKRUPTCY
FILING "AS A
SUBSTITUTE FOR
DEBT-COLLECTION
PROCEDURES."