

# Unsecured Creditors Beware: The Bona Fide Dispute Requirement of Bankruptcy Code Section 303(b)(1) is Still Evolving

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## Introduction

When traditional out-of-court debt-collection efforts fail, the Bankruptcy Code provides unsecured creditors with a potentially powerful, albeit infrequently used, tool to try to obtain payment from a financially distressed counterparty: commencing an involuntary bankruptcy proceeding. At least in theory, by forcing a putative debtor into an involuntary bankruptcy proceeding, creditors are able to apply additional pressure in an effort to secure more immediate payment of an outstanding debt.

The Bankruptcy Code's requirements for commencing an involuntary proceeding are included in Section 303(b)(1). This section provides that an involuntary petition may be filed if a debtor has...

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Lindsay Sklar, Counsel, Bankruptcy & Restructuring Department at Lowenstein Sandler, helps clients navigate financial restructurings with creative strategies designed for maximal recovery. She represents creditors' committees, individual creditors, debtors, liquidating trustees, and other interested parties in complex Chapter 11 cases and related adversarial proceedings.

Lindsay's Chapter 11 representations have included creditors' committees for Proterra Inc, Vital Pharmaceuticals, Inc. (dba Bang Energy), Century 21, GNC, Maines Paper & Food Service, the Northwest Company, Fred's Inc., and Murray Metallurgical Coal Holdings. She has also represented securities class action plaintiffs' interests in several complex Chapter 11 cases such as Tricida, Inc., Athenex, Inc., Lannett Co., Inc., and Genesis Global Holdco, LLC.