



## Involuntary Bankruptcy Petition

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What's A Creditor To Do?

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**Date:** September 18, 2006

### **Can a Creditor Recover its costs and expenses incurred in the filing of an involuntary bankruptcy petition?**

When a creditor is owed money for an extended period of time, it may contemplate the filing of an involuntary case against the debtor entity. One of the questions that often arises is whether the creditor will be able to recover its costs incurred in connection with the filing of the involuntary petition. The answer is often yes. If the creditor is one of the entities involved in the commencement of an involuntary case, it is entitled to reimbursement for the actual, necessary expenses incurred with the filing. It is also entitled to reimbursement for reasonable attorney's and/or accountant's fees and costs, based on the time, nature, extent and value of the services provided. For the benefit of the estate compensable services include legal fees & costs for the preparation and filing of an involuntary petition, time involved in contacting other creditors to join in the filing of the petition and litigation that may ensue regarding whether an order for relief will be entered by the court.

If the court enters an order for relief,

then the creditor may seek payment of its costs through the filing of an administrative claim. Administrative claims receive first priority in a bankruptcy case and are paid before any other claims. However, the creditor's administrative claim will only be for costs and expenses through the entry of the order for relief. At that point, reimbursement for any further fees and expense incurred by the creditor must be based on activities other than the pursuit of the involuntary petition.

If the debtor files a voluntary petition after the filing of the involuntary petition, the creditor may still maintain its administrative claim in pursuing the involuntary. However, if no order for relief is entered by the court, the involuntary petition will be dismissed. In that case, there will be no means for a petitioning creditor to recover its costs in pursuing the filing.

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