

[Improper Involuntary Bankruptcy Petition Gives Rise to Award of Counsel Fees](#)

Posted on June 16, 2010 by [David J. McMahon](#)

In *Orange Blossom Limited Partnership v. Southern California Sunbelt Developers Inc.* 2010 DJDAR 8623, Ninth Circuit (2010), the [Ninth Circuit](#) concluded that a bankruptcy court properly awarded costs, attorney's fees and punitive damages against thirteen creditors that initiated an improper involuntary bankruptcy petition under [11 U.S.C. § 303 \(i\)](#).

The creditors filed involuntary bankruptcy petitions against IBT International Inc. ("IBT") and Southern California Sunbelt Developers Inc. ("SCSD") under [Chapter 11 of the Bankruptcy Code](#). Two individuals, Donald Grammer and David Tedder, controlled the entities that filed the petitions.

The bankruptcy court dismissed the petitions against SCSD after finding that the petitioners' claims were the subject of a bona fide dispute. [11 U.S.C. §303\(b\)](#). The court subsequently dismissed the involuntary petition against IBT on a motion by the petitioning creditors.

SCSD and IBT filed motions for costs, attorneys' fees and punitive damages against the petitioning creditors under § 303 (i). They also sought sanctions against the individuals who controlled the creditors under Bankruptcy Rule 9011 and the court's inherent power.

The court awarded IBT and SCSD costs, attorney fees and punitive damages under §303(i) of the Bankruptcy Code, and issued sanctions against Grammer and Tedder who then appealed.

The Ninth Circuit affirmed in part noting that §303(i) is a fee-shifting provision.

The court stated that the bankruptcy court may grant a debtor reasonable attorney fees when an involuntary bankruptcy petition is dismissed. The bankruptcy court awarded SCSD and IBT costs and fees incurred during the involuntary bankruptcy petition as well as those incurred while litigating claims for damages under §303(i). The Ninth Circuit concluded the award was appropriate, since a fee award can encompass all aspects of a §303 action, including claims for damages.

The Ninth Circuit reversed on one issue noting that the bankruptcy court did not have authority to award costs against Grammer and Tedder for fees incurred by SCSD and IBT's motions for sanctions.

Creditors who are considering initiating an involuntary petition under Chapter 11 of the Bankruptcy Code should study this decision carefully.