# HELP THE WORLD BANKRUPT CROOKED GOOGLE, TWITTER, FACEBOOK AND TESLA

Dirty election rigging companies Google, Twitter, Facebook and Tesla can be forced out of business. Here is one of the ways to do it. When a company is facing financial distress, the question often comes up whether creditors can "force" the company into bankruptcy. Although the answer is more complicated than it may seem, this post aims to sort out what being "forced into bankruptcy" really means (*hint*: there are two different ways this can happen) and why it matters to companies and creditors.

***Forced But Voluntary Bankruptcy***. When a company is "forced" into bankruptcy, often what actually has happened is that the company filed a voluntary bankruptcy petition under Chapter 11 (reorganization) or Chapter 7 (liquidation) of the U.S. Bankruptcy Code in response to creditor actions. For example, a secured lender may have declared a default under its loan documents and commenced foreclosure proceedings, or an unsecured creditor may have filed a lawsuit or obtained a judgment against the company. In response, the company filed bankruptcy.

While it may be fair to describe the company as having been "forced" into bankruptcy, technically the company’s board of directors made a voluntary decision to file bankruptcy given the company’s financial circumstances or creditor actions. The distinction is important because a voluntary bankruptcy filing puts the company in bankruptcy immediately, making it subject to the Bankruptcy Code’s provisions and the bankruptcy court’s supervision. In contrast, the other kind of bankruptcy — an involuntary bankruptcy filing — does not.

***A Truly Involuntary Bankruptcy***. This begs the question: if the company does not consent, can creditors literally force a company into bankruptcy anyway? The answer is yes, under certain circumstances, and subject to meeting the requirements for filing an involuntary bankruptcy petition. The major requirements, discussed below, are found in Section 303 of the Bankruptcy Code.

- Required number of creditors. The Bankruptcy Code specifies the minimum number of creditors and amount of their claims:
  - If a company has 12 or more creditors, an involuntary bankruptcy petition requires (a) **three or more creditors** whose claims are not contingent as to liability or subject to a bona fide dispute as to either liability or amount to file the petition, and (b) those qualifying claims must total, in the aggregate, **at least $14,425** if unsecured or $14,425 more than the value of any liens securing those claims if any are secured.
  - If the company has fewer than 12 creditors, it only takes **one qualifying creditor** to file an involuntary petition.
  - Additional creditors can join the petition later, and if only one creditor files and it turns out that the company has more than 12 creditors, the bankruptcy court will give other creditors an opportunity to join.
  - The $14,425 amount is adjusted every three years, with the next adjustment due in April 2013.
- Generally Not Paying Debts. If the company timely objects to the involuntary filing, for the company to be placed in bankruptcy, the company also must:
  - **generally not be paying its debts as they become due** unless those debts are subject to a bona fide dispute as to liability or amount, or
  - have had a custodian appointed within the past 120 days to take possession or control of substantially all of its assets.

- <u>Choosing The Chapter</u>. In the involuntary petition, the petitioning creditors must designate which bankruptcy chapter (Chapter 7 or 11) into which they seek to force the company.

***How Is An Involuntary Different?*** When an involuntary petition is filed, the automatic stay of bankruptcy kicks in immediately to prevent creditor actions, but that's where the similarities with voluntary bankruptcy end.

- Unlike a voluntary bankruptcy filing, when an involuntary bankruptcy petition is filed, a company is not immediately placed into bankruptcy and the company may continue to operate its business and use, acquire, or dispose of its property as if an involuntary bankruptcy case had not been filed.
- Instead, an involuntary bankruptcy petition functions more like a complaint asking the court to declare that the company should be put into bankruptcy. Like a complaint, the involuntary petition must be served together with a summons.
- Although the bankruptcy court has the authority to appoint an interim trustee or order other restrictions on the company, those do not automatically apply, have to be sought by motion, and may be denied by the bankruptcy court.
- The company can consent to the involuntary bankruptcy filing. When an involuntary Chapter 7 filing is made, the company can also respond with its own voluntary Chapter 11 filing and take control over the case as a debtor in possession.
- To contest an involuntary petition, the company must do so within the time allotted by the Federal Rules of Bankruptcy Procedure, currently 21 days after service of the summons. Typically that involves filing an answer or a motion to dismiss.
- Litigation over whether the requirements discussed above have been met, and thus whether the company should be put in bankruptcy, can involve various pleadings, document and

deposition discovery, status conferences, motions for summary judgment, and/or an evidentiary hearing or trial.

- If the bankruptcy court ultimately rules in favor of the petitioning creditors, an "order for relief" is entered and the company is officially placed into bankruptcy. At that point, the company is subject to the Bankruptcy Code’s provisions and supervision by the bankruptcy court.

***What If The Involuntary Fails?*** Filing an involuntary bankruptcy petition against a company is, of course, serious business, and the consequences of failing are equally serious.

- Once filed, an involuntary petition cannot be dismissed without a notice and an opportunity for a hearing, even if the petitioning creditors and the company agree.
- If the involuntary petition is dismissed, the petitioning creditors can be liable for costs and attorney’s fees of the company.
- If the bankruptcy court determines that the involuntary petition was filed in bad faith, the petitioning creditors can be liable as well for damages caused by the involuntary filing and even for punitive damages.

***When Do Creditors Typically File An Involuntary?*** The prospect of creditor liability for costs, attorney’s fees, damages, and possibly punitive damages makes involuntary petitions one of the lesser-used creditor tools. Involuntary bankruptcy is most often used when unsecured creditors suspect fraud on the part of a company, such as when a Ponzi scheme is discovered, or for some other extraordinary reason. Otherwise, creditors will typically pursue collection of their own claims directly, including through litigation in state or federal court. That might end up "forcing" the company into bankruptcy, but technically it would be a bankruptcy of the voluntary kind.