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## “BAD FAITH” BANKRUPTCY DISMISSALS IN THE WAKE OF LTL MANAGEMENT: RECENT DEVELOPMENTS

*In 2023, the Third Circuit Court of Appeals made headlines by dismissing a Chapter 11 bankruptcy filing by a Johnson & Johnson subsidiary, LTL Management, LLC, on “bad faith” grounds. The LTL Management decision helped to provide some clarity around the traditionally poorly defined “bad faith” filing doctrine by holding that, at a minimum, a bankruptcy petition must be dismissed on “bad faith” grounds if the debtor is not “financially distressed.” However, the LTL Management decision also raised many new questions. Will courts outside the Third Circuit adopt the Third Circuit’s “financial distress” requirement? Is it possible for corporate parents to artificially “manufacture” the required “financial distress”? Is mere “financial distress” actually distinguishable from true insolvency? And how does the Third Circuit’s “bad faith” dismissal standard differ from the Fourth Circuit’s standard, which requires “objective futility” as a prerequisite for a “bad faith” dismissal? This article discusses important cases decided in the wake of LTL Management that have started to answer some of these questions.*

By Casey Servais \*

Few doctrines in bankruptcy law have as long a pedigree, but as diffuse a definition, as the doctrine that a bankruptcy case must be dismissed if not filed in “good faith.” This doctrine has its origins partially in the Bankruptcy Act of 1898, which remained in effect in various iterations until the enactment of the modern Bankruptcy Code in 1978, and which at various times included express statutory requirements that a debtor file a bankruptcy petition in “good faith.”<sup>1</sup> The modern

Bankruptcy Code dispenses with any mention of “good faith” as an express requirement for filing a bankruptcy petition or “bad faith” as an express grounds for dismissing a bankruptcy case, but courts have nonetheless continued to rely on “bad faith” or lack of “good faith” as a grounds for dismissal. Despite this long history and the resulting extensive case law, however, courts continue to struggle to give clear parameters to the “bad faith” filing doctrine, instead often emphasizing that “bad faith” is a “fact-intensive” issue that must be assessed based on the “totality of the circumstances.”

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<sup>1</sup> For an analysis of the pre-Bankruptcy-Code “bad faith” doctrine, including both the statutory context and the most relevant pre-Code decisional law, *see, e.g., In re The Bible Speaks*, 65 B.R. 415, 420–22 (Bankr. D. Mass. 1986) and in *In re Victory Constr. Co., Inc.* 9 B.R. 549, 552–54, 568–69, *modified on other grounds*, 9 B.R. 570 (Bankr. C.D. Cal. 1981), *vacated as moot*, 37 B.R. 222 (BAP 9th Cir. 1984).

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