

ADJUDICATORY ISSUE INFORMATION

March 2, 2004

SECY-04-0034

FOR: The Commission

FROM: John F. Cordes, Jr. /RA/
Solicitor

SUBJECT: LITIGATION REPORT - 2004 - 01

Connecticut Coalition Against Millstone v. NRC, No. 04-0109 (2d Cir., filed Jan. 6, 2004)

This lawsuit challenges a Commission adjudicatory decision (CLI-03-14) that turned down a request for a hearing in a Millstone license amendment proceeding. The amendment arose out of Millstone's effort to revise its technical specifications to take advantage of new "source term" information. The Licensing Board upheld petitioner's standing, but found no admissible contention. On appeal, the Commission affirmed the Licensing Board's decision.

The court of appeals has not yet set a briefing schedule, but the NRC's brief likely will be due in May or June.

CONTACT: Geraldine H. Fehst
415-1614

State of Oklahoma v. NRC, No. 04-9503 (10th Cir., filed Jan. 8, 2004)

This lawsuit challenges a Commission adjudicatory decision (CLI-03-15) approving the reclassification of waste at the Sequoyah Fuels Corporation site in Gore, Oklahoma. The Commission viewed the waste as properly classified as 11e(2) byproduct material. Petitioner, the State of Oklahoma, believes otherwise and has filed this suit.

The NRC's brief is due on April 24.

CONTACT: Jared K. Heck
415-1523

Citizens Awareness Network v. NRC, No. 04-1145 (1st Cir., filed Jan. 26, 2004)

This lawsuit challenges the NRC's recent changes in its adjudicatory rules (10 C.F.R. Part 2). The petition for review says that the changes violate section 189 of the Atomic Energy Act, and

various other laws, including the Administrative Procedure Act and the Due Process and Equal Protection clauses of the Constitution. The National Whistleblower Center and the Nuclear Energy Institute have moved to intervene in this lawsuit.

There is no briefing schedule yet, but the NRC's brief likely will be due late in the spring.

CONTACT: Steven F. Crockett
415-2871

Khoury v. Meserve, No. 03-1865 (4th Cir., Jan. 23, 2004)

This is a Title VII lawsuit claiming gender and national origin discrimination in employment. The district court ruled for the NRC, dismissing some claims and entering summary judgment on others. The United States Court of appeals affirmed in a short (unpublished) opinion.

CONTACT: Maryann Grodin (OIG)
415-5945

In re ATG, Inc., No. 03-4758 (U.S. Bankruptcy Ct., N.D. Cal., filed Nov. 7, 2003)

In this bankruptcy case, the bankruptcy trustee is trying set aside about \$40,000 in user fees paid by a bankrupt company to the NRC. The bankrupt company apparently held an NRC materials license. The theory of the complaint is that transfers of assets on the eve of bankruptcy (within the last 90 days before bankruptcy) are voidable, with the transferred assets to be returned to the trustee.

We are working with the United States Attorney's office in San Francisco in defending this case.

CONTACT: Maria E. Schwartz
415-1888

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CONNECTICUT COALITION	:	Docket No. 50-336 LA-2
AGAINST MILLSTONE,	:	
Petitioner	:	
	:	
v.	:	
	:	
U.S. NUCLEAR REGULATORY	:	
COMMISSION,	:	
Respondent	:	JANUARY 6, 2004

PETITION FOR REVIEW

The Intervenor, Connecticut Coalition Against Millstone, hereby petitions this Court, pursuant to 28 U.S.C. Sections 2342 and 2344 and Rule 15(a) of the Federal Rules of Appellate Procedure, to review the final decision of the U.S. Nuclear Regulatory Commission by Memorandum and Order dated October 23, 2003 (CLI-03-14), In the Matter of Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station Unit No. 2), Docket No. 50-336-LA-2, terminating reactor license amendment proceedings arising from Dominion Nuclear Connecticut, Inc.'s license amendment application dated September 26, 2002 seeking revisions to various technical specifications regarding Millstone Nuclear Power Station Unit 2.

The Intervenor also petitions this Court, pursuant to 28 U.S.C. Sections 2342 and 2344 and Rule 15(a) of the Federal Rules of Appellate Procedure, to review the final decision of the U.S. Nuclear Regulatory Commission by Memorandum of

Order dated December 18, 2003 (CLI -03-18) denying the Intervenor's Petition for Reconsideration.

This Court has jurisdiction of this matter pursuant to 28 U.S.C. Section 2342. Venue lies in the Second Circuit pursuant to 28 U.S.C. Section 2343.

The Connecticut Coalition Against Millstone, an organization of statewide safe energy groups, families residing within the five-mile emergency evacuation zone of the Millstone Nuclear Power Station and former employees of the Millstone Nuclear Power Station, was admitted as an intervening party in the licensing proceedings below. The Connecticut Coalition Against Millstone submits that the U.S. Nuclear Regulatory Commission decision was contrary to law, was not supported by substantial evidence and was arbitrary and capricious. The Connecticut Coalition Against Millstone requests a declaration that the Commission's action was unlawful, an order to convene an evidentiary hearing and any other appropriate relief.

Respectfully submitted,



Nancy Burton, Esq.
147 Cross Highway
Redding Ridge CT 06876
Tel. 203-938-3952
Fax 203-938-3168
Fed. Bar No. 10836, ct5550

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Review has been served on the following via U.S. Mail, postage pre-paid, on January 6, 2004:

U.S. Nuclear Regulatory Commission
Washington DC 20555-0001

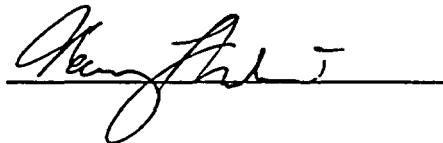
Office of the Secretary
ATTN: Rulemaking and Adjudication Staff
U.S. Nuclear Regulatory Commission
Washington DC 20555-0001

Office of Commission Appellate Jurisdiction
U.S. Nuclear Regulatory Commission
Washington DC 20555-0001

Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington DC 20555-0001

David A. Repka, Esq.
Winston & Strawn
1400 L Street NW
Washington DC 20005-3502

Office of General Counsel
U.S. Nuclear Regulatory Commission
Washington DC 20555-0001



UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

The State of Oklahoma,)
)
Petitioner,)
)
v.)
)
United States Nuclear Regulatory)
Commission and the United States)
of America,)
)
Respondents.)

Case File No. 04-9503

PETITION FOR REVIEW

The above-named Petitioner hereby petitions for review by this Court of the final order approving a license amendment request which reclassifies radioactive source material located at the Sequoyah Fuels Corporation facility in Gore, Oklahoma as byproduct material pursuant to 42 U.S.C. § 2014(e)(2) (2003) that was entered by the United States Nuclear Regulatory Commission on November 13, 2003. A copy of the decision is attached.

To date, no court has upheld the validity of the order.

Jurisdiction is asserted pursuant to 28 U.S.C.A. § 2342(4) (1994 & Supp. I 2003).

Venue is asserted pursuant to 28 U.S.C.A. § 2343 (1994) because Petitioner has its principal offices located in Oklahoma City, Oklahoma which is within the

jurisdiction of this judicial circuit.

This petition is timely filed pursuant to F.R.A.P. 15 and 28 U.S.C.A. § 2344 (1994) as it is filed within 60 days of the final order of license amendment.

Relief is sought on the basis that the proposed license amendment will alter the regulatory scheme applicable to the Sequoyah Fuels Corporation ("SFC") facility because the radioactive source material does not qualify as byproduct material and is therefore inconsistent with the Atomic Energy Act of 1954, as amended 42 U.S.C. § 2011 (2000), 10 C.F.R. Part 20, 10 C.F.R. Part 40, 10 C.F.R. Part 40, Appendix A, and Standard Review Plan for the Review of a Reclamation Plan for Tailings Sites Under Title II of the Uranium Mill Tailings Radiation Control Act of 1978 (NUREG -1620, Final Rev. 1) 2003. Relief is also sought on the basis that the proposed license amendment will have a negative impact on public health, safety and the environment by applying a different standard of decommissioning than is appropriate for the type of contamination at the SFC facility.

Therefore, Petitioner prays for a reversal of the decision issued by Respondent and a denial of the license amendment request.

Respectfully submitted,



Guy L. Hurst OBA# 4509
Assistant Attorney General
Office of Attorney General
State of Oklahoma
4545 N. Lincoln Blvd., Suite 260
Oklahoma City, Oklahoma 73105-3498
tel.: 405/522-2916
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e-mail: guy_hurst@oag.state.ok.us
Attorney for Petitioner

January 8, 2003

**Before the
United States Court of Appeals
for the First Circuit**

Citizens Awareness Network, Inc.)		
	<i>Petitioner</i>)	Petition for Review
	v.)	
United States of America)		Docket no. 04-1145
and)		
United States Nuclear Regulatory Commission,)		
	<i>Respondents</i>)	

Parties, Jurisdiction and Venue

Pursuant to 28 U.S.C. §§2341, 2343, 2344 and F.R.A.P. 15, Petitioner Citizens Awareness Network, Inc., an environmental organization with principal offices in the Commonwealth of Massachusetts, hereby petitions the Court for review of an order of the United States Nuclear Regulatory Commission promulgating final rules entitled "Changes to Adjudicatory Process" published in the Federal Register at 69 FR 2182 - 2282 (January 14, 2004, effective February 13, 2004), in which rulemaking Petitioner actively participated. *See* copy of Final Rule attached as Petitioners' Exhibit 'A'.

Grounds for Relief

Petitioner seeks relief from the effects of the new rules, alleging that the agency's rulemaking violates the Atomic Energy Act, 42 U.S.C. §2239, the Administrative Procedure Act, 5 U.S.C. § 501 et seq., and the Due Process and Equal Protection clauses of the United States Constitution, by, in pertinent part,

failing to consider and appropriately respond to comments received in the course of the rulemaking, by issuing final rules that effectively eliminate or curtail Petitioners' rights to a formal hearing in agency licensing and license amendment proceedings, including the right to present and examine witnesses and cross examine witnesses of opposing parties, and, generally, by issuing rules that provide lesser hearing rights to Petitioner than the hearing rights the agency provides to its licensees.

Requested Relief

Petitioner prays this Court: (1) declare that the new rules violate the Atomic Energy Act, 42 U.S.C. §2239, the Administrative Procedure Act, 5 U.S.C. §501 *et. seq.*, and the Due Process and Equal Protection clauses of the United States Constitution, (2) permanently enjoin implementation of the rules, (3) hold unlawful and set aside the rulemaking, and (4) provide all further relief the Court deems just, equitable, and within its power.

Dated at Putney, Vermont, this 26th day of January in the year 2004.

Respectfully submitted:

Jonathan Mark Block
Attorney for Petitioners
94 Main Street
P.O. Box 566
Putney, Vermont 05346-0566
(802) 387-2646 (office)
(802) 387-2667 (fax)

jonb@sover.net

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

SUSAN A. KHOURY,
Plaintiff-Appellant,

v.

RICHARD A. MESERVE, Chairman,
Nuclear Regulatory Commission,
Defendant-Appellee.

No. 03-1865

Appeal from the United States District Court
for the District of Maryland, at Greenbelt.
Deborah K. Chasanow, District Judge.
(CA-02-3511-DKC-8)

Submitted: November 12, 2003

Decided: January 23, 2004

Before LUTTIG and MICHAEL, Circuit Judges, and
HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

COUNSEL

Susan A. Khoury, Appellant Pro Se. Thomas Michael DiBiagio,
United States Attorney, Ariana Wright Arnold, OFFICE OF THE
UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Susan Khoury appeals the district court's order dismissing some claims and granting summary judgment against her on others in her gender and national origin based discrimination and retaliation action. Khoury alleged discriminatory denial of promotion, denial of rights under grievance procedures, discriminatory discharge, hostile work environment, and retaliation claims. We affirm.

This Court reviews de novo a district court's grant of a motion to dismiss for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1). *Columbia Gas Transmission Corp. v. Drain*, 237 F.3d 366, 369 (4th Cir. 2001). Before a plaintiff has standing to file suit under Title VII, she must exhaust her administrative remedies by filing a charge with the Equal Employment Opportunity Commission (EEOC). *Bryant v. Bell Atlantic Maryland, Inc.*, 288 F.3d 124, 132 (4th Cir. 2002). The EEOC charge defines the scope of the plaintiff's right to institute a civil suit. *Id.* An administrative charge of discrimination does not strictly limit a Title VII suit which may follow; rather, the scope of the civil action is confined only by the scope of the administrative investigation that can reasonably be expected to follow the charge of discrimination. *Id.*

A federal employee who believes herself to be aggrieved must initiate contact with a counselor within forty-five days of the date of the matter alleged to be discriminatory or, in the case of personnel action, within forty-five days of the effective date of the action. 29 C.F.R. § 1614.105(a) (July 12, 1999). A plaintiff's failure to timely consult an EEO counselor requires dismissal of her claims for failure to exhaust her administrative remedies. *See Zografou v. Veteran's Admin. Med. Ctr.*, 779 F.2d 967, 968-69 (4th Cir. 1985). Courts strictly adhere to these time limits and rarely allow equitable tolling of limitations periods. *See Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 95-96 (1990).

We conclude that the district court did not err when it dismissed Khoury's denial of promotion, denial of rights under grievance procedures, and gender and national origin based termination claims for failure to exhaust administrative remedies.

This Court reviews a grant of summary judgment de novo. *Higgins v. E.I. DuPont de Nemours & Co.*, 863 F.2d 1162, 1167 (4th Cir. 1988). Summary judgment is appropriate only if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 324-25 (1986). This Court must view the factual evidence, and all justifiable inferences drawn therefrom, in the light most favorable to the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

We conclude that viewing the evidence in a light most favorable to Khoury, the Government is entitled to summary judgment on Khoury's hostile work environment and retaliation claims as a matter of law. We also conclude that the district court did not err when it denied further discovery on Khoury's retaliation claim. Finally, Khoury has waived her claim that the EEOC erred when it failed to rule on her formal charge within 180 days because she did not assert it before the district court. *Muth v. United States*, 1 F.3d 246, 250 (4th Cir. 1993).

Accordingly, we affirm the decision of the district court. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

8
-1/104

In re ATG, Inc., et al.

Bankruptcy Case No. 01-46389, et al.
(Jointly Administrated)

Debtor

Robert I. Hanfling, Chapter 11 Trustee
for ATG, Inc.

Plaintiff

Adversary Proceeding No.

United States of America, Nuclear
Regulatory Commission

Defendant

03-4758

SUMMONS AND NOTICE OF STATUS CONFERENCE
IN AN ADVERSARY PROCEEDING

YOU ARE SUMMONED and required to submit a motion or answer to the complaint which is attached to this summons to the Clerk of the Bankruptcy Court within 30 days after the date of issuance of this summons, except that the United States and its offices and agencies shall submit a motion or answer to the complaint within 35 days.

Address of Clerk Clerk of the Court, U.S. Bankruptcy Court 1300 Clay Street, Oakland, CA 94612
--

At the same time, you must also serve a copy of the motion or answer upon the plaintiff's attorney.

Name and Address of Plaintiff's Attorney Mark R. Jacobs, Robert M. Fleischer, Les L. Lane Jacobs Partners LLC 383 Main Avenue Norwalk, CT 06851

If you make a motion, your time to answer is governed by Bankruptcy Rule 7012.

YOU ARE NOTIFIED that a status conference of the proceeding commenced by the filing of the complaint will be held at the following time and place.

Address United States Bankruptcy Court 1300 Clay Street Oakland, CA 94612	Room 200 220
	Date and Time APR 28 2004 @ 9:30 AM

IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR CONSENT TO ENTRY OF A JUDGMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT. PLAINTIFF SHALL PROMPTLY SERVE A COPY OF THE BANKRUPTCY DISPUTE RESOLUTION PROGRAM INFORMATION SHEET ON ALL PARTIES. A COPY OF THE INFORMATION SHEET IS AVAILABLE ON THE COURT'S WEB SITE AT WWW.CANB.USCOURTS.GOV, AND AT THE CLERK'S OFFICE.

GLORIA L. FRANKLIN

Clerk of the Bankruptcy Court

By:

Deputy Clerk

JAN 20 2004

Date

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JACOBS PARTNERS LLC
Mark R. Jacobs (*Pro Hac Vice*)
Robert M. Fleischer (*Pro Hac Vice*)
Leslie L. Lane (*Pro Hac Vice*)
Merritt View
383 Main Avenue
Norwalk, Connecticut 06851
Telephone: (203) 846-6622
Facsimile: (203) 846-6621

- and -

LAW OFFICES OF JEFFREY D. KIRK, ESQ.
1414 Park Avenue
Alameda, CA 94501
Telephone: (510) 522-0822
Facsimile: (510) 864-8898

Attorneys for Robert I. Hanfling, Chapter 11 Trustee

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:
ATG, INC., et al,

Debtors.

ROBERT I. HANFLING, CHAPTER 11
TRUSTEE FOR ATG, INC..

Plaintiff.

vs.

UNITED STATES OF AMERICA,
NUCLEAR REGULATORY COMMISSION.

Defendant.

Case Nos.: 01-46389 N11
02-43161 N11
02-43163 N11
02-43164 N11

Chapter 11
(Jointly Administered)

Adv. Pro. No. 03

03-4758

COMPLAINT TO AVOID
TRANSFERS PURSUANT TO
11 U.S.C. § 547 AND TO
RECOVER SUCH TRANSFERS
PURSUANT TO 11 U.S.C. § 550

ORIGINAL FILED

NOV 7 2003

BANKRUPTCY COURT
OAKLAND, CALIFORNIA

1 The plaintiff, Robert I. Hanfling (the "Plaintiff" or the "Chapter 11 Trustee"), the duly
2 appointed Chapter 11 Trustee for the ATG, Inc. (the "Debtor"), by his undersigned counsel,
3 hereby files this complaint against the defendant, The United States of America, Nuclear
4 Regulatory Commission (the "Defendant") and, as grounds for his complaint (the "Complaint")
5 against Defendant, respectfully states as follows:

6 1. This Complaint initiates an adversary proceeding pursuant to 11 U.S.C. §§ 547
7 and 550, and Federal Rule of Bankruptcy Procedure 7001(1), to avoid and recover for the benefit
8 of the estate all preferential transfers of the Debtor's property made to of for the benefit of the
9 Defendant on or within 90 days before the commencement of the Debtor's bankruptcy case, and
10 to recover for the benefit of the estate the value of such property.

11 JURISDICTION AND VENUE

12 2. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §
13 1334.

14 3. This adversary proceeding is a core proceeding to be heard and determined by the
15 Bankruptcy Court pursuant to 28 U.S.C. §§ 157(b)(2)(A), (F), and (O) and 11 U.S.C. §§ 542,
16 547, 550 and 553.

17 4. Venue is proper before this Court by virtue of, and in accordance with, 28 U.S.C.
18 § 1409(a).

19 5. The Defendant has filed at least three separate proofs of claims in the Debtor's
20 Bankruptcy proceeding (Claim Nos. 199, 306 and 547), at least one of which claims, upon
21 information and belief, arose out to the same transaction or occurrence out of which this
22 proceeding arose, and, therefore, has thereby waived sovereign immunity with respect to this
23 proceeding.

24 NATURE OF THIS ACTION

25 6. The Chapter 11 Trustee brings this action in order to (i) to request a determination
26 that the transfers constitute avoidable transfers pursuant to § 547(b) of title 11 of the United
27 States Code (the "Bankruptcy Code") and (ii) to avoid Defendant's transfers pursuant to section

1 547 of the Bankruptcy Code and to recover the value of such transfers for the benefit of the
2 estate pursuant to section 542 and 550 of the Bankruptcy Code.

3 PARTIES

4 7. The Chapter 11 Trustee is the duly appointed chapter 11 trustee for ATG, Inc.,
5 the debtor in the above-captioned chapter 11 proceeding (together with ATG Richland Corp.,
6 ATG Catalytics, LLC and ATG Nuclear Services LLC, "ATG" or the "Debtor").

7 8. Upon information and belief, the Defendant is a duly organized agency of the
8 United States of America with headquarters located in Washington D.C. 20555-0001.

9 FACTUAL BACKGROUND

10 9. On December 3, 2001 (the "Petition Date"), ATG filed a voluntary petition for
11 relief under chapter 11 of the Bankruptcy Code.

12 10. By order dated January 25, 2002, the Court directed that the United States Trustee
13 appoint a chapter 11 trustee for ATG.

14 11. On February 6, 2002, the United States Trustee appointed, subject to Court
15 approval, the Plaintiff to serve as the chapter 11 trustee for ATG.

16 12. On February 11, 2002, the Court entered an Order Approving the Appointment of
17 the Plaintiff as Chapter 11 Trustee for ATG.

18 13. During the ninety (90) days prior to the Petition Date, the Debtor made transfer(s)
19 to the Defendant totaling \$39,941.00 (collectively, the "Transfer(s)") as follows:

<u>Date (on or about)</u>	<u>Amount Transferred</u>	<u>Method of Transfer</u>
September 28, 2001	\$18,075.00	Check
October 5, 2001	\$3,761.00	Check
November 16, 2001	\$18,075.00	Wire Transfer

20
21
22
23 14. The Debtor was insolvent at all times during the ninety (90) days prior to the
24 Petition Date.

25 FIRST COUNT

26 AVOIDANCE OF TRANSFER OF DEBTOR'S INTEREST

27 11 U.S.C. § 547

1 15. The Debtor incorporates herein the allegations set forth in all of the above
2 paragraphs in their entirety as if set forth in full herein.

3 16. During the ninety (90) days prior to the Petition Date, the Debtor made the
4 Transfer(s) to the Defendant.

5 17. The Transfer(s) were to or for the benefit of the Defendant, a creditor of the
6 Debtor.

7 18. The Transfer(s) were for or on account of an antecedent debt owed by the Debtor
8 before such Transfer(s) were made.

9 19. The Transfer(s) were made while the Debtor was insolvent.

10 20. Due to such Transfer(s), the Defendant received more than it would have received
11 if: (i) this were a case under Chapter 7 of the Bankruptcy Code; (ii) the Transfer(s) had not been
12 made; and (iii) the Defendant received payment on its debt to the extent provided by the
13 provisions of the Bankruptcy Code.

14 21. The Debtor, on behalf of the estate and general unsecured creditors is entitled to
15 avoid the Transfer(s) pursuant to § 547(b) of the Bankruptcy Code.

16 22. The Transfer(s) constitute avoidable transfers pursuant to § 547(b) of the
17 Bankruptcy Code.

18 23. In accordance with the provisions of § 550(a) of the Bankruptcy Code, the Debtor
19 is entitled to immediately recover from the Defendant an amount equal to \$39,941.00.

20 24. Pursuant to section 550(a) of the Bankruptcy Code, to the extent that a transfer is
21 avoided under section 547 of the Bankruptcy Code, the Chapter 11 Trustee may recover for the
22 benefit of the estate, the property transferred, or, if the Court so orders, the value of such
23 property, from the Defendant or the entity for whose benefit such transfer was made, or, any
24 immediate or mediate transferee of the Defendant.

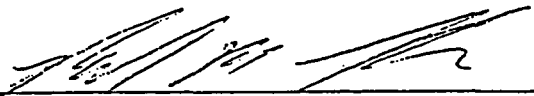
25 WHEREFORE, the Chapter 11 Trustee requests that judgment be entered in its favor
26 and against the Defendant avoiding the Transfer(s) in the amount of \$39,941.00, and that the
27 Court grant the additional relief set forth below.

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- i. Avoiding the amount of the Transfer(s), \$39,941.00, pursuant to Section 547(b) of the Bankruptcy Code;
- ii. Granting a judgment pursuant to Section 550(a) of the Bankruptcy Code in favor of the Debtor against the Defendant to immediately pay \$39,941.00 to the Debtor;
- iii. Awarding the Debtor its costs, including attorneys' fees, to the extent permitted by law, and expenses incurred by the Debtor in the commencement and prosecution of this Complaint from its initial analysis to preparation through trial and any subsequent appeal ("Costs");
- iv. Awarding the Debtor interest, at a per annum rate deemed by this Court to be appropriate, from the Petition Date until such amount ordered by this Court, together with all interest and Costs, is paid in full to the estate;
- v. Granting the Debtor such other and further relief as is just and proper.

Dated this 9th day of November, 2003 at Norwalk, Connecticut.

JACOBS PARTNERS LLC
Counsel for Robert I. Hanfling,
Chapter 11 Trustee

By: 

Mark R. Jacobs
Robert M. Fleischer
Leslie L. Lane
Merritt View
383 Main Avenue, PH
Norwalk, CT 06851
Tel: 203.846.6622
Fax: 203.846.6621

FD-104

Rev. 5/97

ADVERSARY PROCEEDING COVER SHEET

ADVERSARY PROCEEDING NUMBER

(Court Use Only)

RECEIVED

NOV 7 2003

PLAINTIFFS

Robert I. Harfling, Chapter 11 Trustee for ATG, Inc.

DEFENDANTS

United State of America Nuclear Regulatory Commission
BANKRUPTCY COURT
OAKLAND, CALIFORNIA

ATTORNEYS (Firm Name, Address, and telephone No.)

Jacobs Partners LLC (203) 846-6622
383 Main Avenue
Norwalk, CT 06851

ATTORNEYS (If Known)

03-4758

PARTY (Check only one box) 1 U.S. PLAINTIFF 2 U.S. DEFENDANT 3 U.S. NOT A PARTY

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)

Action to recover preferential transfer, 11 U.S.C. §§ 547, 550

NATURE OF SUIT

(Check the one most appropriate box only)

454 To recover Money or Property
435 To determine Validity, Priority,
or Extent of a Lien, or Other
Interest in Property
458 To obtain approval for the sale
of both interest of the estate and
of a co-owner in property
424 To object or to revoke a
discharge 11 U.S.C. § 727

455 To revoke an order of confirmation of a
Chap. 11 or Chap. 13 Plan
426 To determine the dischargeability of a
debt 11 U.S.C. § 523
434 To obtain an injunction or other
equitable relief
457 To subordinate any allowed claim or
interest except where such
subordination is provided in a plan

456 To obtain a declaratory
judgment relating to any
of foregoing causes of
action
459 To determine a claim or
cause of action removed to
a bankruptcy court
498 Other (specify)

ORIGINAL OF PROCEEDINGS 1 Original Proceeding 2 Removed Proceeding 4 Reinstated Or Reopened 5 Transferred From another Bankruptcy Court
(Check one box only)

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$39,947.00 NEAREST THOUSAND OTHER RELIEF SOUGHT JURY DEMAND

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES

NAME OF DEBTOR In re: ATG, Inc. BANKRUPTCY CASE NO. 01-46389 N 11

DISTRICT IN WHICH CASE IS PENDING DIVISIONAL OFFICE Oakland NAME OF JUDGE Randall J Newsome

RELATED ADVERSARY PROCEEDING (IF ANY)

PLAINTIFF DEFENDANT ADVERSARY
DISTRICT DIVISIONAL OFFICE NAME OF JUDGE

FILLING FEE: (Check one box only) FEE ATTACHED FEE NOT REQUIRED FEE IS DEFERRED

DATE 11/11/03 PRINT NAME Robert M. Fielscher, Esq. SIGNATURE OF ATTORNEY (OR PLAINTIFF)