

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

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-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 <i>c 9:30 am</i>

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*)
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383 Main Avenue
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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. 03-4758

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

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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.

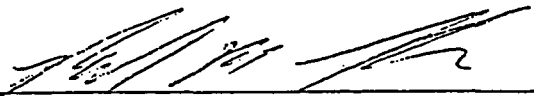
25 WHEREFORE, the Chapter 11 Trustee requests that judgment be entered in its favor
26 and against the Defendant avoiding the Transfer(s) in the amount of \$39,941.00, and that the
27 Court grant the additional relief set forth below.

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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
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383 Main Avenue, PH
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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. § 527

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)