


<b>ADVERSARY PROCEEDING COVER SHEET</b> (Instructions on Reverse)		<b>ADVERSARY PROCEEDING NUMBER</b> (Court Use Only)
<b>PLAINTIFFS</b> ROBERT L. JOHNS, solely in his capacity as the Liquidating Trustee of the Union Stamping and Assembly, Inc. Liquidating Trust	<b>DEFENDANTS</b> FUCHS LUBRICANTS COMPANY	
<b>ATTORNEYS (Firm Name, Address, and Telephone No.)</b> BRIAN R. BLICKENSTAFF TURNER & JOHNS, PLLC, 216 BROOKS STREET, SUITE 301 CHARLESTON, WV 25301, PH NO. 304-720-2300	<b>ATTORNEYS (If Known)</b>	
<b>PARTY (Check One Box Only)</b> <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee	<b>PARTY (Check One Box Only)</b> <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee	
<b>CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)</b> Recovery of money/property - §547 preference, Disallowance of Claims - §502		
<b>NATURE OF SUIT</b> (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
<b>FRBP 7001(1) – Recovery of Money/Property</b> <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input checked="" type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other  <b>FRBP 7001(2) – Validity, Priority or Extent of Lien</b> <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property  <b>FRBP 7001(3) – Approval of Sale of Property</b> <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)  <b>FRBP 7001(4) – Objection/Revocation of Discharge</b> <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)  <b>FRBP 7001(5) – Revocation of Confirmation</b> <input type="checkbox"/> 51-Revocation of confirmation  <b>FRBP 7001(6) – Dischargeability</b> <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input checked="" type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny (continued next column)	<b>FRBP 7001(6) – Dischargeability (continued)</b> <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other  <b>FRBP 7001(7) – Injunctive Relief</b> <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other  <b>FRBP 7001(8) Subordination of Claim or Interest</b> <input type="checkbox"/> 81-Subordination of claim or interest  <b>FRBP 7001(9) Declaratory Judgment</b> <input type="checkbox"/> 91-Declaratory judgment  <b>FRBP 7001(10) Determination of Removed Action</b> <input type="checkbox"/> 01-Determination of removed claim or cause  <b>Other</b> <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)	
<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$ 10,379.92	
<b>Other Relief Sought</b> Disallowance of Claims; Attorney Fees and Costs		

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR UNION STAMPING AND ASSEMBLY, INC.	BANKRUPTCY CASE NO. 06-20586	
DISTRICT IN WHICH CASE IS PENDING Southern District of West Virginia	DIVISION OFFICE Charleston	NAME OF JUDGE Pearson
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE 09-12-2008	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Brian R. Blickenstaff	

### INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

**Plaintiffs and Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

**Attorneys.** Give the names and addresses of the attorneys, if known.

**Party.** Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

**Demand.** Enter the dollar amount being demanded in the complaint.

**Signature.** This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

In re

UNION STAMPING AND ASSEMBLY, INC.,       **Bankruptcy No. 06-20586**  
   **DEBTOR.**

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ROBERT L. JOHNS, solely in his capacity as  
the Liquidating Trustee of the Union Stamping  
and Assembly, Inc. Liquidating Trust,  
   **PLAINTIFF,**

v.     **Adversary Proceeding No. \_\_\_\_\_**

FUCHS LUBRICANTS COMPANY,  
   **DEFENDANT.**

**COMPLAINT TO AVOID AND RECOVER PREFERENTIAL TRANSFERS**

The Plaintiff, Robert L. Johns, solely in his capacity as the Liquidating Trustee of the Union Stamping & Assembly, Inc. Liquidating Trust (the “Plaintiff”), by undersigned counsel, pursuant to Sections 544, 547, and 550 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), and Rule 7001(1) of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”), for his complaint against Fuchs Lubricants Company (the “Defendant”), respectfully states and alleges as follows:

**THE PARTIES**

1.        The Plaintiff is the Liquidating Trustee of the Union Stamping & Assembly, Inc. Liquidating Trust (the “Liquidating Trust”).
2.        The Defendant, Fuchs Lubricant Company, is a company that provides industrial lubricants with a principle office located at 17050 Lathrop Avenue, Harvey, Illinois.

### **JURISDICTION AND VENUE**

3. The United States Bankruptcy Court for the Southern District of West Virginia (the “Bankruptcy Court”) has subject matter jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 1334 and 157(b)(2)(F) and (H) and Bankruptcy Rule 7001(1). This proceeding is referred to the Bankruptcy Court pursuant to Local Rule of Civil Procedure 83.13 of the United States District Court for the Southern District of West Virginia.

4. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(F) and (H).

5. Venue of this adversary proceeding is proper in this Court pursuant to 28 U.S.C. § 1409(a) because this adversary proceeding arises in and related to a Chapter 11 case pending in this district.

6. The statutory predicates for this relief requested in this adversary proceeding are Sections 502(d), 544(b), 547, and 550 of the Bankruptcy Code.

### **FACTUAL BACKGROUND**

7. On September 20, 2006 (the “Petition Date”), an involuntary petition for relief under Chapter 11 of the Bankruptcy Code was filed against Union Stamping & Assembly, Inc. (the “Debtor”) in the Bankruptcy Court.

8. On October 3, 2006, upon the consent of the Debtor to the relief requested in the involuntary petition, the Bankruptcy Court entered a Consent Order for Relief Pursuant to 11 U.S.C. § 303 and converted the involuntary case to a voluntary case.

9. On June 7, 2007, the Bankruptcy Court entered an order (the “Confirmation Order”) confirming the Debtor’s Amended Liquidating Chapter 11 Plan (the “Plan”). The Effective Date of the Plan occurred on June 21, 2007.

10. Pursuant to the Plan, the Confirmation Order, and that certain Liquidating Trust Agreement dated June 21, 2007 executed by the Plaintiff and the Debtor (the “Liquidating Trust

Agreement”), the Plaintiff was appointed as the Liquidating Trustee of the Liquidating Trust as of June 21, 2007. The Liquidating Trust was created for the purpose of receiving, holding and effectuating an orderly liquidation of various assets for the benefit of the Debtor’s creditors in accordance with the Plan

11. Pursuant to the Plan, the Confirmation Order, and the Liquidating Trust Agreement, the Plaintiff has the power to prosecute any and all causes of action of the Debtor arising under Sections 544, 547, and 550 of the Bankruptcy Code.

### **COUNT I**

#### **Avoidance of Preferential Transfers Under 11 U.S.C. § 547(b)**

12. The Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 11 above as if set forth fully herein.

13. Defendant received from the Debtor certain transfers of interests of the Debtor in property totaling ten thousand three hundred seventy-nine dollars and ninety-two cents (\$10,379.92) as more particularly described on Exhibit A attached hereto and incorporated by this references as if set forth fully herein (the “Transfers”).

14. The Transfers were made by the Debtor to or for the benefit of the Defendant.

15. The Transfers were made by the Debtor to the Defendant for or on account of an antecedent debt owed by the Debtor to the Defendant before the Transfers were made.

16. At the time the Transfers were made, the Debtor was insolvent.

17. The Transfers were made by the Debtor to the Defendant on or within 90 (ninety) days before the Petition Date.

18. The Transfers enabled the Defendant to receive more than the Defendant would have received if (i) the Debtor’s case was a case under Chapter 7 of the Bankruptcy Code; (ii) the Transfers had not been made; and (iii) the Defendant received from the Debtor’s Chapter 7 estate

payment of the debts satisfied by the Transfers to the extent permitted by the provisions of the Bankruptcy Code.

19. By reason of the foregoing, the Trustee may avoid the Transfers pursuant to Section 547 of the Bankruptcy Code.

## COUNT II

### **Recovery of Preferential Transfers Under 11 U.S.C. § 550(a)**

20. The Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 19 above as if set forth fully herein.

21. Section 550(a) of the Bankruptcy Code provides:

[To] the extent that a transfer is avoided under section . . . 547 . . . , the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from –

(1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or

(2) any immediate or mediate transferee of such initial transferee.

22. The Defendant is the initial transferee of the Transfers from the Debtor, the entity for whose benefit the Transfers were made, or an immediate or mediate transferee of the initial transferee pursuant to Section 550(a) of the Bankruptcy Code.

23. To the extent that the Transfers are avoided, Plaintiff may recover the property transferred, or the value of the transferred property, from the Defendant pursuant to Section 550(a) of the Bankruptcy Code, together with interest on that amount from the date of the Transfers until the date of payment and the Plaintiff's attorney fees and costs incurred in this adversary proceeding.

### **COUNT III**

#### **Disallowance of Claims Under 11 U.S.C. § 502(d)**

24. The Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 23 above as if set forth fully herein.

25. Pursuant to Section 502(d) of the Bankruptcy Code, any claims of Defendant against the Debtor must be disallowed until such time as the Defendant pays to Plaintiff an amount equal to the aggregate amount of all the Transfers.

### **COUNT IV**

#### **Attorney Fees and Costs**

26. The Plaintiff repeats and realleges each of the allegations contained in paragraphs 1 through 25 above as if set forth fully herein.

27. The Plaintiff has found it necessary to employ attorneys to investigate and prosecute the claims stated herein. Accordingly, the Plaintiff seeks recovery from the Defendant for the Plaintiff's reasonable and necessary attorney fees and costs as are equitable and just, and such other costs and fees as may otherwise be permitted by law.

**WHEREFORE**, the Plaintiff respectfully prays that the Court grant and enter a judgment in his favor and against the Defendant as follows:

- (a) Avoiding the Transfers as preferential transfers pursuant to Section 547(b) of the Bankruptcy Code;
- (b) Directing and ordering the Defendant to pay to the Plaintiff the value of the Transfers or return the property transferred, with interest thereon at the highest legally permissible rate from the date of the Transfers until payment or transfer of such amount by the Defendant pursuant to Section 550 of the Bankruptcy Code;

- (c) Disallowing any claim held by the Defendant until the Defendant satisfies the judgment pursuant to Section 502(d) of the Bankruptcy Code;
- (d) Awarding the Plaintiff his costs and attorney fees incurred in connection with the prosecution of this adversary proceeding; and
- (e) Granting such other and further relief as the Bankruptcy Court deems just, equitable, and proper.

Dated: Charleston, West Virginia  
September 12<sup>th</sup>, 2008

**ROBERT L. JOHNS**, solely in his capacity  
as the Liquidating Trustee of the Union  
Stamping & Assembly, Inc. Liquidating  
Trust

By Counsel



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