

B104 (FORM 104) (08/07)

<b>ADVERSARY PROCEEDING COVER SHEET</b> (Instructions on Reverse)		<b>ADVERSARY PROCEEDING NUMBER</b> (Court Use Only)
<b>PLAINTIFFS</b>  ELAINE T. RUDISILL, LIQUIDATING TRUSTEE	<b>DEFENDANTS</b>  ANTHONY FOXX	
<b>ATTORNEYS (Firm Name, Address, and Telephone No.)</b>  <small>MICHAEL J. BARRIE (admitted pro hac vice) JENNIFER R. HOOVER (admitted pro hac vice) BENESCH, FRIEDLANDER, COPLAN &amp; ARONOFF LLP 222 DELAWARE AVENUE, SUITE 801</small>	<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 type="checkbox"/> Other <input checked="" type="checkbox"/> Trustee	<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 Defendant <input type="checkbox"/> Trustee	
<b>CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)</b>  Avoidance of Transfers Under 11 U.S.C. §§ 544, 547 and 548 and Recovery Under 11 U.S.C. § 550		
<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 checked="" type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input checked="" 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 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 \$      420,997.21	
Other Relief Sought		

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR DESIGNLINE CORPORATION & DESIGNLINE USA, LLC		BANKRUPTCY CASE NO. 13-31943 & 31944
DISTRICT IN WHICH CASE IS PENDING Western	DIVISION OFFICE Charlotte	NAME OF JUDGE Whitley
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)  <i>/s/ Kevin M. Capuzzi</i>		
DATE  08/07/2015	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Kevin M. Capuzzi, Esquire (admitted pro hac vice)	

**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.



### **NATURE OF COMPLAINT**

1. The Liquidating Trustee brings this action to avoid no less than \$420,997.21 in transfers made by the Debtors to Defendant in the four years prior to the Petition Date. Specifically, this Complaint seeks to: (i) avoid, pursuant to 11 U.S.C. § 548, all fraudulent transfers of interests of the Debtors in property made or incurred within the two-year period prior to the filing of the Debtors' bankruptcy petitions (the "Two-Year Period"); (ii) avoid, pursuant to 11 U.S.C. § 544 and the North Carolina Uniform Fraudulent Transfer Act, all fraudulent transfers of interests of the Debtors in property made or incurred within the four-year period prior to the filing of the Debtors' bankruptcy petitions (the "Four-Year Period"); (iii) in the alternative, avoid, pursuant to 11 U.S.C. § 547, all preferential transfers of interests of the Debtors in property made to or for the benefit of Defendant, an insider, on account of an antecedent debt during the one-year period prior to the filing of the Debtors' bankruptcy petitions (the "Preference Period"); (iv) recover, under 11 U.S.C. § 550, from Defendant, or from any other person or entity for whose benefit the fraudulent and/or preferential transfers were made, the value of such transfers, plus interest and costs; and (v) obtain related relief.

2. To the extent that Defendant has filed a proof of claim or has otherwise requested payment (a "Claim") from the Debtors or their respective estates, this Complaint is not intended to be, nor should it be construed as, a waiver of Plaintiff's right to object to such Claim for any reason, including, but not limited to section 502(a) through (j) of title 11 of the United States Code (the "Bankruptcy Code"), and all such rights are expressly reserved. Notwithstanding this reservation of rights, certain relief pursuant to section 502 of the Bankruptcy Code may be sought by Plaintiff herein as stated below.

### **JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 1331, 1334(b), and 157(a), which is a civil proceeding arising under or arising in or related to a case under the Bankruptcy Code.

4. Personal jurisdiction over Defendant exists in this Court because Defendant conducted business in the United States, directed activities toward the Debtors in the United States, and/or the transfers at issue occurred in the United States.

5. This is a core proceeding as defined by 28 U.S.C. §§ 157(b)(2)(A), (F), and (O). Plaintiff consents to this Court's entry of a final adjudication of the merits of this Complaint in accordance with Rule 7008 of the Federal Rules of Bankruptcy Procedure.

6. Venue is proper in the Western District of North Carolina pursuant to 28 U.S.C. §§ 1408 and 1409.

7. The claims and causes of action set forth herein concern the determination, allowance, disallowance, and amount of claims under 11 U.S.C. §§ 502, 544, 547, 548, and 550, and the North Carolina Uniform Fraudulent Transfer Act, N.C. Gen. Stat. § 39-23.1, *et seq.*

8. Defendant is subject to nationwide service of process by first-class mail, postage prepaid, pursuant to Federal Rule of Bankruptcy Procedure 7004(b) and (d).

### **PROCEDURAL BACKGROUND AND PARTIES**

9. On August 15, 2013 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Delaware Bankruptcy Court").

10. Venue of the Debtors' bankruptcy cases was transferred to this Court by order of the Delaware Bankruptcy Court entered on September 4, 2013 [D.I. 59].

11. Pursuant to this Court's Order entered on November 15, 2013 [D.I. 203], Elaine T. Rudisill was appointed to serve as the Chapter 11 Trustee of the Debtors' estates.

12. On March 17, 2014, this Court entered an Order [D.I. 297] confirming the *Amended Liquidating Plan of the Official Committee of the Unsecured Creditors of DesignLine Corporation and DesignLine USA, LLC, Pursuant to Chapter 11 of the United States Bankruptcy Code* [D.I. 256] (the "Liquidating Plan").

13. The Liquidating Plan became effective on March 17, 2014, and the Liquidating Trustee was appointed pursuant to the terms of the Liquidating Plan [D.I. 256, 305]. Pursuant to Article IV of the Liquidating Plan, Plaintiff has standing to bring this action.

14. Upon information and belief, Defendant is an individual with a place of residence at 8623 Terrace Garden Way, Bethesda, MD 20814.

15. Upon information and belief, Defendant also serves as the United States Secretary of Transportation and regularly conducts a business or profession at 1200 New Jersey Avenue, SE, Washington, DC 20590.

### **FACTUAL BACKGROUND**

16. On or about December 21, 2009, Defendant joined the Debtors' in-house legal department as their Deputy General Counsel. During that same period of time, Defendant also served as Mayor of Charlotte. Defendant purportedly served as the Deputy General Counsel of the Debtors through and including his resignation on or about July 1, 2013, one day prior to becoming the United States Secretary of Transportation. At no time did the Debtors ever have an in-house General Counsel.

17. Upon information and belief, Defendant received no less than \$420,997.21 in purported payroll and overtime pay from the Debtors during the time period that he served as Deputy General Counsel. During that same period of time, the Debtors also engaged two law

firms (the “Outside Firms”) to assist the Debtors with, among other things, obtaining financing, board meetings, collection issues, contract negotiations, and general legal counsel. The Outside Firms received millions of dollars from the Debtors during the same period of time that Defendant received transfers from the Debtors in his purported role as Deputy General Counsel (at the same time that he simultaneously served as the Mayor of Charlotte). The Debtors’ books and records do not reflect any communications between Defendant and the Outside Firms, nor do they reflect any activities or actions of Defendant in his role as Deputy General Counsel. Upon information and belief, Defendant spent little to no time at the Debtors’ facilities during the relevant time period.

18. Before the Petition Date, the Debtors routinely deposited, withdrew, and otherwise transferred funds to, from, and among certain bank accounts by various methods, which included the transfer of certain property, either by checks, cashier checks, wire transfers, automated clearinghouse transfers (“ACH Transfers”), electronic funds transfers, direct deposits, or otherwise to certain entities, including to creditors.

19. Specifically, Defendant received no less than \$420,997.21 (collectively, the “Transfers”) from the Debtors during the four year period prior to the Petition Date.

20. The Debtors were insolvent on the date of the Transfers or were rendered insolvent by the Transfers, because, among other things, their liabilities far exceeded their assets. At all points in time prior to the Petition Date, the Debtors’ assets allegedly totaled no more than between \$19 million and \$33 million dollars, and its liabilities allegedly totaled at least between \$16 million and \$65 million. At all points in time relevant hereto, the Debtors’ assets never exceeded its liabilities on its audited financial statements. Moreover, the Debtors’ auditors

expressed going concern opinions each year since 2009 because of the Debtors' perilous financial condition.

**COUNT I**

**Avoidance of Fraudulent Transfers Pursuant to 11 U.S.C. § 548**

21. Plaintiff hereby incorporates all preceding paragraphs as if fully set forth herein.

22. Each transfer made by the Debtors to Defendant during the Two-Year Period, the details of which are set forth in Exhibit A attached hereto and incorporated herein by reference (collectively, the "Code Fraudulent Transfers"), may be avoided under 11 U.S.C. § 548. The aggregate amount of the Code Fraudulent Transfers is not less than \$271,547.23.

23. During the course of this proceeding, Plaintiff may learn of additional transfers made by the Debtors to Defendant during the Two-Year Period. Plaintiff intends to avoid and recover all fraudulent transfers made by the Debtors of an interest of the Debtors in property, and/or transfers made for the benefit of Defendant or any other transferee. Plaintiff reserves the right to make amendments to this Complaint, which relate back to the date of the filing of this Complaint, to add: detail on the Code Fraudulent Transfers, other transfers, defendants or causes of action that may become known to Plaintiff at any time, through formal discovery or otherwise, and/or to revise Defendant's name.

24. Each Code Fraudulent Transfer was made during the Two-Year Period.

25. The Code Fraudulent Transfers were made with:

(a) the actual intent to hinder, delay, or defraud any entity to which the Debtors were, or after the date such Code Fraudulent Transfers were made became, indebted; or

(b) the Debtors received less than reasonably equivalent value in exchange for such Code Fraudulent Transfers.

26. The Debtors were insolvent at the time the Code Fraudulent Transfers were made.

27. The Transfers made by the Debtors to Defendant were property in which the Debtors had an interest.

28. Pursuant to 11 U.S.C. § 548, Plaintiff is entitled to entry of an order and judgment avoiding the Code Fraudulent Transfers.

## **COUNT II**

### **Avoidance of Fraudulent Transfers Pursuant to 11 U.S.C. § 544 and the North Carolina Uniform Fraudulent Transfer Act**

29. Plaintiff hereby incorporates all preceding paragraphs as if fully set forth herein.

30. Each transfer made by the Debtors to Defendant during the Four-Year Period, the details of which are set forth in Exhibit B attached hereto and incorporated herein by reference (collectively, the “State Fraudulent Transfers”), may be avoided under 11 U.S.C. § 544 and the North Carolina Uniform Fraudulent Transfer Act, N.C. Gen. Stat. § 39-23.1, *et seq.* The aggregate amount of the State Fraudulent Transfers is not less than \$420,997.21.

31. During the course of this proceeding, Plaintiff may learn of additional transfers made by the Debtors to Defendant during the Four-Year Period. Plaintiff intends to avoid and recover all fraudulent transfers made by the Debtors of an interest of the Debtors in property, and/or transfers made for the benefit of Defendant or any other transferee. Plaintiff reserves the right to make amendments to this Complaint, which relate back to the date of the filing of this Complaint, to add: detail on the State Fraudulent Transfers, other transfers, defendants or causes of action that may become known to Plaintiff at any time, through formal discovery or otherwise, and/or to revise Defendant’s name.

32. Each State Fraudulent Transfer was made during the Four-Year Period.

33. The State Fraudulent Transfers were made with:

(a) the actual intent to hinder, delay, or defraud any entity to which the Debtors were, or after the date such State Fraudulent Transfers were made became, indebted; or

(b) the Debtors received less than reasonably equivalent value in exchange for such State Fraudulent Transfers.

34. The Debtors were insolvent at the time the State Fraudulent Transfers were made.

35. The Transfers made by the Debtors to Defendant were property in which the Debtors had an interest.

36. Pursuant to 11 U.S.C. § 544 and the North Carolina Uniform Fraudulent Transfer Act, Plaintiff is entitled to entry of an order and judgment avoiding the State Fraudulent Transfers.

### **COUNT III**

#### **In the Alternative, Avoidance of Preferential Transfers Pursuant to 11 U.S.C. § 547**

37. Plaintiff hereby incorporates all preceding paragraphs as if fully set forth herein.

38. During the Preference Period, the Debtors continued to operate their business, which included the transfer of certain property, either by checks, cashier checks, wire transfers, ACH Transfers, electronic funds transfers, direct deposits, or otherwise to Defendant.

39. In the alternative to the relief sought in Counts I and II, the aggregate amount transferred by the Debtors to Defendant during the Preference Period was not less than \$110,403.09 which Plaintiff seeks to avoid (collectively, the “Preferential Transfers,” and each, a “Preferential Transfer”). The details of each of the Preferential Transfers are set forth in Exhibit C attached hereto and incorporated herein by reference.

40. During the course of this proceeding, Plaintiff may learn of additional transfers made by the Debtors to Defendant during the Preference Period. Plaintiff intends to avoid and

recover all preferential transfers made by the Debtors of an interest of the Debtors in property, and/or transfers made for the benefit of Defendant or any other transferee. Plaintiff reserves the right to make amendments to this Complaint, which relate back to the date of the filing of this Complaint, to add: detail on the Preferential Transfers, other transfers, defendants or causes of action that may become known to Plaintiff at any time, through formal discovery or otherwise, and/or to revise Defendant's name.

41. Defendant is an insider of the Debtors.

42. Each Preferential Transfer was made during the Preference Period.

43. At the time each Preferential Transfer was made, Defendant was a creditor of the Debtors within the meaning of 11 U.S.C. § 101(10)(A) by virtue of supplying goods and/or services, for which the Debtors were obligated to pay following delivery and/or performance of services.

44. The Preferential Transfers were to or for the benefit of Defendant within the meaning of 11 U.S.C. § 547(b)(1) because each Preferential Transfer either reduced or fully satisfied a debt or debts then owed by the Debtors to Defendant as set forth in Exhibit C.

45. The Preferential Transfers were for, or on account of, antecedent debts owed by the Debtors before the Preferential Transfers were made.

46. The Debtors were insolvent at all times during the Preference Period.

47. As a result of the Preferential Transfers, Defendant received more than he would have received if: (i) this case was a case under chapter 7 of the Bankruptcy Code; (ii) the Preferential Transfers had not been made; and (iii) Defendant received payment of such antecedent debts under the provisions of the Bankruptcy Code.

48. Pursuant to 11 U.S.C. § 547(b), Plaintiff is entitled to entry of an order and judgment avoiding the Preferential Transfers.

**COUNT IV**  
**Recovery of Transfers Pursuant to 11 U.S.C. § 550**

49. Plaintiff hereby incorporates all preceding paragraphs as if fully set forth herein.

50. Defendant is the initial transferee of the Code Fraudulent Transfers, the State Fraudulent Transfers, and/or the Preferential Transfers (collectively, the “Transfers”), or the immediate or mediate transferee of such initial transferee, or the person for whose benefit the Transfers were made.

51. Pursuant to 11 U.S.C. § 550(a), Plaintiff is entitled to recover from Defendant the value of the Transfers, plus interest thereon to the date of payment, and the costs of this action.

**COUNT V**  
**Disallowance of all Claims Pursuant to 11 U.S.C. § 502(d) and (j)**

52. Plaintiff hereby incorporates all preceding paragraphs as if fully set forth herein.

53. Defendant is a transferee of the Transfers, which are avoidable under 11 U.S.C. §§ 544, 547, and/or 548.

54. Defendant is an individual from whom property is recoverable under 11 U.S.C. § 550.

55. Defendant has not paid the value of the Transfers, or turned over such property, for which Defendant is liable to the Liquidating Trustee under 11 U.S.C. § 550.

56. Pursuant to 11 U.S.C. § 502(d), any and all Claims of Defendant, and/or his assignee, against the estates of the Debtors must be disallowed until Defendant pays to Plaintiff an amount equal to the aggregate amount of all of the Transfers, plus interest thereon and costs.

57. Pursuant to 11 U.S.C. § 502(j), any and all Claims of Defendant, and/or his assignee, against the Debtors' estates previously allowed, must be reconsidered and disallowed until Defendant pays to Plaintiff an amount equal to the aggregate amount of all of the Transfers.

58. During the course of this adversary proceeding, Plaintiff may learn of additional facts that give rise to additional claims for relief against Defendant. In the event that the statute of limitations has expired for bringing such claims under applicable law, then Plaintiff submits that the Court should toll the applicable limitations period under the doctrine of equitable tolling. Plaintiff has acted diligently in conducting her investigation into the financial affairs of the Debtors including without limitation, issuing and taking discovery under Rule 2004, including but not limited to, issuing in excess of 20 subpoenas *duces tecum* directed to discovering assets and the true nature of various transactions that were concealed or attempted to be concealed, not listed in the Debtors' Schedules and Statement of Financial Affairs, and/or which appear to have been intentionally mischaracterized to disguise the true nature of the underlying transaction(s). Notwithstanding the foregoing, during the course of this adversary proceeding, Plaintiff may learn of additional facts that give rise to additional claims for relief against Defendant. Plaintiff reserves all rights to assert such claims, though amendment of this Complaint or otherwise.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that this Court enter judgment in her favor:

- A. That all Code Fraudulent Transfers avoidable under 11 U.S.C. § 548 be avoided;
- B. That all State Fraudulent Transfers avoidable under 11 U.S.C. § 544 and the North Carolina Uniform Fraudulent Transfer Act be avoided;
- C. In the alternative to the foregoing relief, that all Preferential Transfers avoidable under 11 U.S.C. § 547(b) be avoided;

D. That all Transfers avoidable under 11 U.S.C. §§ 544, 547, and/or 548, be recovered by Plaintiff pursuant to 11 U.S.C. § 550(a);

E. Against Defendant in an amount not less than \$420,997.21 (the “Judgment”);

F. Disallowing, in accordance with 11 U.S.C. § 502(d), any Claims held by Defendant, and/or his assignee, if Defendant or his assignee refuses to turn over any Transfer to Plaintiff;

G. Disallowing, in accordance with 11 U.S.C. § 502(j), any Claims held by Defendant, and/or his assignee, until Defendant satisfies the Judgment;

H. Awarding pre-judgment interest at the maximum legal rate running from the date of each Transfer to the date of Judgment herein;

I. Awarding post-judgment interest at the maximum legal rate running from the date of Judgment herein until the date the Judgment is paid in full, plus costs;

J. Awarding Plaintiff her reasonable attorneys’ fees and costs incurred in the prosecution of this action to the extent allowed by law or equity; and

K. Granting Plaintiff such other and further relief as the Court deems just and proper.

[signature page follows]

Dated: August 7, 2015

**BENESCH, FRIEDLANDER,  
COPLAN & ARONOFF LLP**

By: /s/ Michael J. Barrie  
Michael J. Barrie (admitted *pro hac vice*)  
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- and -

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Liquidating Trustee*