IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

IN RE:	)	
	)	**CHAPTER 7**
LAMBERT OIL COMPANY, INC.	)	
	)	**CASE NO. 03-01183-WSA**
	)	

WILLIAM E. CALLAHAN, JR., TRUSTEE FOR LAMBERT OIL COMPANY, INC.	)	
Plaintiff,	)	
v.	)	**Adversary Proceeding No. 05-07043**
PETRO STOPPING CENTER #72	)	
Defendant.	)	

MEMORANDUM DECISION

This adversary proceeding involves the attempt by the Chapter 7 bankruptcy trustee for Lambert Oil Company, Inc., the Debtor, to recover from the Defendant ("Petro"), a limited liability company of which the president and sole owner of the Debtor, Nick Lambert, was the managing member and 50% owner, certain payments made by the Debtor to it within ninety days preceding the bankruptcy filing on the ground that they constitute avoidable preferential transfers pursuant to 11 U.S.C. § 547. These payments were made in furtherance of an arrangement put in place by Mr. Lambert during the latter part of 2002 in which Petro, the Defendant, used its credit standing to acquire fuel oil product for Lambert Oil and for which the

latter was supposed to pay Petro before the payments for the fuel product and the accompanying Virginia taxes were due to be paid. In fact Lambert Oil did pay all obligations thereby incurred but in many instances not until after Petro was obliged to use its own funds to satisfy such obligations. Counsel for the parties have done an admirable job in reaching a stipulation as to the applicable facts and reducing the issues presented to this Court for decision by, for example, agreeing upon the proper application of the "new value" defense provided by 11 U.S.C. § 547(c)(4) to the Trustee's complaint. Accordingly, the transfers in question, in the aggregate amount of $61,945.11, cover the period January 6 thru January 22, 2003, within ninety days of the Debtor's Chapter 11 bankruptcy filing on March 23, 2003.

The Trustee sets forth the issues presented to the Court as being the following:

> 1. Were the Debtor's transfers to Petro in payment of the Virginia fuel taxes and Virginia Underground Tank Fund fee Petro incurred at the time of its purchase of the fuel to be supplied to the Debtor a transfer "made on or on account of an antecedent debt owed by the debtor before the transfer was made," in satisfaction of the requirement of 11 U.S.C. § 547(b)(2)?
>
> 2. Are any of the transfers excepted from avoidance under § 547(c)(1)?
>
> 3. Are any of the transfers excepted from avoidance under § 547(c)(2)?
>
> 4. Is the Trustee entitled to interest from the date of the transfers under the circumstances of this proceeding?

(Trustee's Mem. 4.)

FINDINGS OF FACT

The parties agree that the Stipulation they have agreed to contains the facts necessary for the Court to make its decision. A copy of that Stipulation (without accompanying exhibits) is attached as an exhibit to this Decision and is incorporated by reference. The Court will summarize those facts it believes to be critical to its decision.

Mr. Nick Lambert was in control of both Lambert Oil and Petro and therefore was able to effectuate an arrangement which put Petro's credit at risk for the benefit of Lambert Oil, which he solely owned, for no financial benefit to Petro, of which he was the managing member but only a 50% owner. Although the business reason for this arrangement is not stipulated, the Court infers and therefore finds that Lambert Oil had exhausted its own credit with its fuel suppliers and had to do something which would enable it to continue to get fuel for its own operations or face the prospect of having to cease them. Petro was purely a retail fuel operation and was not in the business of selling fuel on a wholesale basis, although it apparently did sell fuel on that basis to one unrelated customer, a construction company. In any event, Petro was certainly not in the business of selling fuel at its own cost and with no prospect of business gain. Mr. Lambert did not inform the other members of the limited liability company[1] which owned and operated Petro of these transactions and when they found about them, he assured them that Lambert Oil would pay for all fuel obtained before Petro was obliged to pay for it and that Petro would suffer no loss.

The following paragraphs are excerpted from the parties' Stipulation:

[1] Cardinal Travel Center, LLC.

> 15. In October 2002, Nick Lambert, in his capacities as both the President of the Debtor and the Managing Member of Petro, caused Petro to begin selling gasoline and diesel fuel to the Debtor without any markup on Petro's cost of purchasing the gasoline and diesel fuel.
>
> . . . .
>
> 17. To accomplish these purchases, an employee of the Debtor would instruct a trucking company named JXN, LLC, or some other common carrier not related to the Debtor or Nick Lambert, to pick up a load of fuel at one of Petro's fuel suppliers, either Citgo or Marathon, with the cost thereof being charged to Petro's account with the fuel supplier, and to deliver that load of fuel to one of the Debtor's retail locations.
>
> 18. JXN, LLC had as its managing member, Nathan Lambert, the son of Nick Lambert, and had as its person in charge of dispatching deliveries, Terry Bailey, who was at the time of the transfers listed in Exhibit A an employee of the Debtor and who later became an employee of Petro after the conversion of the Debtor's case to chapter 7.
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> 19. Following the delivery of the fuel to the Debtor's retail location and the return of a bill of lading to the fuel supplier, the fuel supplier sent an invoice for the shipment to Petro.

(Stipulation 3 - 4.)

The payment obligations incurred by the Debtor as a result of these transactions contained two basic components, payment for the fuel itself owing to Petro's suppliers, which was drafted from Petro's bank account ten days after the fuel was picked up, and for gasoline tax and underground tank fee assessed[2] by the Commonwealth of Virginia which was drafted from the account approximately sixty days after the fuel had been picked up. Payment from Lambert Oil was effected by checks on Lambert's account which were deposited into Petro's bank account. Although the arrangement was supposed to be that Lambert would pay Petro for the fuel before Petro had to pay the supplier, this only happened for two transactions in the aggregate

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[2] Va. Code § 58.1-2217.

amount of $5,407.63 (checks # 124 and 127). The remaining transactions in the aggregate net[3] amount of $56,537.48[4] involved payment made by Petro to its suppliers for fuel before receiving payment from Lambert Oil. The period of time for these transactions between Petro's payment and the deposit of Lambert's covering check to Petro's account ranged from four to thirteen days. The longest period involved from the pickup of the fuel until Lambert's check was deposited to Petro's account was twenty days. Payment from Lambert to Petro for the Virginia tax obligations was made in every instance before Petro's account was drafted to pay the tax obligations to the Commonwealth of Virginia. According to the invoices aggregated as Exhibit D to the Stipulation, the last account drafts to pay the tax obligations were to be made on March 20, 2003; just days prior to Lambert Oil's bankruptcy filing. The aggregate amount of these tax obligations was $17,113.11 of the total of $61,945.11 payments challenged by the Trustee.

To the extent that it is an issue of fact, the Court finds that the payments received by Petro from Lambert Oil were not received by it in the ordinary course of its business because it was not in the business of allowing its credit to be used so that other businesses could obtain fuel at its cost and with no chance of economic benefit therefrom. The Court further finds, to the extent that such matter is an issue of fact, that the arrangement structured by Mr. Lambert for the benefit of Lambert Oil was not intended by the parties to be a contemporaneous exchange for new value because Mr. Lambert intended for Lambert Oil to obtain the benefit of the credit terms available to Petro and had no intention of paying for the fuel on a "COD" basis. In other words,

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[3] After taking into account the aggregate amount of "new value" provided by Petro to Lambert Oil following such payments within the meaning of 11 U.S.C. § 547(c)(4).

[4] Before subtraction of the Virginia tax component of such transactions.

it was contemplated that credit would be extended by Petro for the benefit of the Debtor because Petro incurred liability by the use of its accounts to acquire the fuel on the expectation, but no actual assurance, that Lambert Oil would pay before Petro had to pay. Finally, the Court finds that the trucking companies which picked up the fuel at the terminals of Petro's suppliers were acting as Lambert Oil's agents.

CONCLUSIONS OF LAW

This Court has jurisdiction of this proceeding by virtue of the provisions of 28 U.S.C. §§ 1334(a) and 157(a) and the delegation made to this Court by Order from the District Court on July 24, 1984. Recovery of alleged preferential pre-bankruptcy transfers made by a bankruptcy debtor is a "core" bankruptcy matter pursuant to 28 U.S.C. § 157(b)(2)(F).

The source of the Trustee's authority to seek recovery from Petro of amounts Lambert Oil was unquestionably liable to pay and Petro was unquestionably entitled to be paid may be found in sections 547 and 550 of the Bankruptcy Code. The basic rationale for such sections is that a debtor who is in the last throes of financial distress before entering bankruptcy should not be able to favor, either voluntarily or under compulsion, certain creditors with payment to the detriment of other similarly situated creditors not so favored. The period of time utilized to make such determination is the ninety day period preceding the bankruptcy filing, or in the case of payments or other transfers to "insiders" of the debtor as defined in 11 U.S.C. § 101(31), the period of one year prior to the filing date. Section 547 provides certain exceptions to certain transfers which otherwise would come within the scope of that section. The exceptions which are relevant to this decision are commonly called the "contemporaneous exchange for

new value" and "ordinary course of business" defenses, which are contained in subsections (c)(1) and (c)(2), respectively, of section 547.[5] These subsections are intended to insulate from attack by the bankruptcy trustee those pre-bankruptcy payments which do not bear the hallmark of payments made under a creditor's duress or the debtor's intent to favor and which therefore were likely received by the creditor as a normal business transaction and without any cause to know of their suspect nature. Once the Trustee satisfies his initial burden of establishing the avoidability of a particular transfer under the general provisions of section 547(b), the defendant has the burden of proving the applicability of these defenses. 11 U.S.C. § 547(g). Section 550(a) authorizes the Trustee to recover the property transferred or its value from "the initial transferee of such transfer", but sub-section (b) of such section prohibits transfer from a "transferee that takes for value, including satisfaction . . . of a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided."

The Virginia gasoline tax and underground tank fees which were incurred as a

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[5] 11 U.S.C. § 547©) provides the following:

> The trustee may not avoid under this section a transfer -
>
> (1) to the extent that such transfer was –
> (A) intended by the debtor and the creditor to or for whose benefit such transfer was made to be a contemporaneous exchange for new value given to the debtor; and
> (B) in fact a substantially contemporaneous exchange;
>
> (2) to the extent that such transfer was –
> (A) in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee;
> (B) made in the ordinary course of business or financial affairs of the debtor and the transferee; and
> ©) made according to ordinary business terms.

result of these transactions were imposed by section 58.1-2217 of the Code of Virginia. Section 58.1-2219(B) of such Code assesses these taxes against "the person that first receives the fuel upon its removal from the terminal." For purposes of preferential transfer analysis under 11 U.S.C. § 547, "a debt for a tax is incurred on the day when such tax is last payable without penalty, including any extension." 11 U.S.C. § 547(a)(4).

Liability for Gasoline Tax and Underground Storage Tank Fee Payments

The Court concludes that whether or not the tax obligation payments are avoidable preferential payments turns on the question of whether Petro or Lambert Oil was the party legally responsible to pay such obligations under Virginia law. If Petro incurred this liability when the fuel was picked up at the terminal, irrespective of when it was obliged to make payment to the Commonwealth of Virginia, it extended credit to Lambert Oil until such time as the latter would make it whole. Under this analysis, the time that Petro was obliged to pay or actually did pay the tax liability to the Commonwealth is irrelevant. Conversely, if Lambert Oil was actually the party which under the law was liable to pay such taxes, its payment of these taxes via its payments to Petro, in each case before such taxes were actually due to be paid to the Commonwealth of Virginia, could not be payments upon an "antecedent debt" owing to Petro. Because they were for taxes and were paid prior to the due date for payment, neither could they be deemed "antecedent debts" at all. 11 U.S.C. § 547(a)(4). *See* 5 *Collier on Bankruptcy* ¶ 547.02[4] (Alan N. Resnick & Henry J. Sommer eds., 15th ed. rev.). The Court concludes that Lambert Oil was the entity legally liable to the Commonwealth for payment of these taxes. This conclusion is rooted in its finding based on the Stipulation that the trucking companies which

picked up the fuel from Petro's suppliers were acting as Lambert Oil's agents, not Petro's. Under the Stipulation, "an employee of the Debtor would instruct a trucking company . . . to pick up a load of fuel at one of Petro's fuel suppliers . . . and to deliver that load of fuel to one of the Debtor's retail locations." (Stipulation 3 - 4.) The only actual involvement of Petro in these transactions was permitting Lambert Oil to use its good credit with Petro's suppliers to obtain fuel which was delivered directly to Lambert Oil with no exercise of either dominion or control over such fuel by Petro. It is clear that these transport services were provided at the behest of the Debtor's agents, not those of Petro. It is critical to note that the liability for the tax obligations is not simply coextensive with the liability for payment to the supplier whose release of the fuel to the truckers precipitated the accrual of the tax obligations even though the suppliers billed Petro for both the fuel and the taxes. The fact that as an administrative matter the tax liability for the fuel obtained by Lambert Oil by means of Petro's accounts for its purposes was aggregated with the liability for the fuel which Petro acquired for its own operations is not controlling. Because Lambert Oil did pay for all of these taxes by means of checks payable to Petro, of which the former's president and sole owner was in actual control, before such taxes were actually payable, Petro never had any reason to confront the issue of whether it would have been legally liable for such taxes had such payments not been made. Such issue must be confronted now, however, in order to determine whether these taxes were "antecedent debts" owing by Lambert Oil to Petro or rather were debts owing by Lambert Oil to the Commonwealth of Virginia which it paid via Petro prior to Petro's payment of such taxes. Under the language of the Virginia statute and the Court's determination of which party's agent took possession of the fuel at the terminals on the strength of Petro's credit standing, the Court concludes that Lambert Oil incurred tax obligations

directly and not just derivatively to the Commonwealth. Petro's payment of such taxes to the Commonwealth of Virginia, in good faith and without knowledge of the avoidability of the transfers, in satisfaction of Lambert Oil's liability therefore, secures its entitlement to the protection of section 550(b)(1) for its satisfaction of Lambert Oil's obligations to the recipient of such taxes. Furthermore, because these taxes were paid before their due dates, they were not on account of "antecedent debts" within the reach of section 547. Therefore, the Court concludes that Lambert Oil's payment of such taxes cannot be grounds for recovery of same by the Trustee as a preferential transfer within the meaning of 11 U.S.C. § 547(b).

Contemporaneous Transfer of New Value Defense

The Court has found that the parties, in actuality Mr. Lambert, did not intend the use of Petro's credit standing to obtain fuel product for Lambert Oil to be a contemporaneous exchange of new value because it was clearly intended to be a credit arrangement whereby Petro would extend credit to Lambert Oil, on a short-term basis to be sure but a credit arrangement nevertheless. The critical term of the arrangement was supposed to be that Lambert Oil would pay Petro before Petro itself had to pay, in clear contrast to an arrangement where Lambert would have paid Petro at the time of or before picking up the fuel at the suppliers' terminals. If there had been an intent to have a contemporaneous exchange of value, Lambert Oil would have paid Petro prior to or at the time of picking up the fuel, not days or weeks later. Accordingly, there is no basis for sheltering the arrangement under the contemporaneous exchange for new value defense, which expressly requires that the parties mutually intend the transactions to be a contemporaneous exchange for new value. 11 U.S.C. § 547(c)(1)(A). *Collier on Bankruptcy*

points out that this section was intended "to protect exchanges of property that might be considered credit transactions when the transactions were contemporaneous transfers", such as payment by a simultaneous check although this might be deemed to be on credit under state law until the check actually cleared the drawer's bank. *Collier, supra,* ¶ 547.04[1]. Therefore, the Petro/Lambert Oil arrangement is not protected from attack by 11 U.S.C. § 547(c)(1).

Ordinary Course of Business Defense

This defense requires that the debt be incurred in the ordinary course of business for both the debtor and the transferee. If it was not in the ordinary course of business for either of them, it makes no difference that it might have been in the ordinary course of business for the other. The Court has found as fact that this arrangement was not in the ordinary course of Petro's business. To the extent that such determination is a mixed issue of fact and law, the Court concludes that Petro has not established that this arrangement whereby it allowed the use of its credit for no apparent consideration for the benefit of Lambert Oil was in the ordinary course of Petro's business. *Collier* asserts that "[t]he better reasoned decisions hold that a debt will not be considered incurred in the ordinary course of business if creation of the debt is atypical, fraudulent or not consistent with an arms-length commercial transaction." *Collier, supra,* ¶ 547.04[1][a]. Simply describing the essentials of the arrangement crafted by Mr. Lambert is sufficient on its face in the Court's view to make it obvious that it was not an arms-length normal commercial transaction. Accordingly, the transaction does not qualify as an "ordinary course of business" transaction within the meaning of 11 U.S.C. § 547(c)(2).

Award of Interest

As the Trustee acknowledges, the award of pre-judgment interest is in the discretion of the court based on the equities of the case. *Sigmon v. Royal Cake Co. (In re Cybermech, Inc.)*, 13 F.3d 818, 822 (4th Cir. 1994). The Court for several reasons believes that such an award is not justified in this proceeding. First and most importantly, Petro did nothing wrong here; in fact, its involvement occurred only by reason of the fact that Mr. Nick Lambert had the opportunity as Petro's managing member to use its credit standing for Lambert Oil's benefit. It received no benefit thereby and although it suffered no immediate direct loss as a result of the arrangement, it was put in a situation whereby it became a target for Lambert Oil's bankruptcy trustee. It was paid nothing by Lambert Oil for taking the original credit risk, not to mention the risk of litigation in a bankruptcy case. It simply would be highly inequitable under the facts presented here to saddle it with pre-judgment interest upon transfers which outside of bankruptcy it would be perfectly entitled to retain. Second, its position of non-liability has been partially upheld, albeit upon somewhat different legal reasoning than its counsel believed to be the correct one. Therefore, there has been no liquidated amount which was demanded of it and for which the court has found it liable. Third, based on the highly unusual nature of the facts of this dispute, its rejection of the Trustee's demand was not unreasonable. For these reasons the Court will deny the Trustee's prayer for pre-judgment interest and will award interest upon the judgment amount only from the date of judgment until such debt has been paid.

CONCLUSION

For the reasons set forth above, the Court will enter judgment by means of a separate order in favor of the Trustee and against Petro in the amount of $44,832 plus interest thereon from the date of judgment until paid.

This 28th day of December, 2005.

William F. Stone, Jr.

UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA
Roanoke Division

In re:	)	Chapter 7
LAMBERT OIL COMPANY, INC.,	)	Case No. **03-01183-WSA**
Debtor.	)	
WILLIAM E. CALLAHAN, JR., TRUSTEE, FOR LAMBERT OIL COMPANY, INC.,	)	
Plaintiff,	)	
v.	)	Adversary Proceeding No. **05-7043**
PETRO STOPPING CENTER #72,	)	
Defendant.	)	

STIPULATION

William E. Callahan, Jr. (the "Trustee"), by counsel, and Cardinal Travel Center, LLC d/b/a Petro Stopping Center #72 ("Petro"), by counsel, stipulate and agree to facts and issues for the purposes of this Adversary Proceeding, as follows:

1. Lambert Oil Company, Inc. (the "Debtor") filed a voluntary petition under Chapter 11, Title 11, United States Code in the United States Bankruptcy Court for the Western District of Virginia, Roanoke Division on March 24, 2003, commencing the captioned case (the "Case"). The Court converted the Case to a case under Chapter 7 on September 16, 2003.

2. The Trustee was appointed the trustee in this case and continues to serve in that capacity.

3. This adversary proceeding arises under Title 11. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and § 157(a).

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

5. Each of the transfers listed on Exhibit A hereto are checks the Debtor issued and delivered to Petro. The date on each Debtor's check, the check number, the check amount, the number of the Marathon Ashland invoice paid by the Debtor's check, and the date the bank on which the check was drawn honored the check are correctly shown on in the corresponding columns on Exhibit A for each check. A true and complete copy of each check shown on Exhibit A is attached hereto collectively as Exhibit B.

6. Each of Debtor's checks paid an amount shown on the Marathon Ashland invoice for fuel purchased and an amount shown on the Marathon Ashland invoice for Virginia gasoline tax and the Virginia Underground Tank Fund fee. The portion of each of the transfers listed on Exhibit A hereto that paid the charge for fuel is a transfer that satisfies each element of proof required by 11 U.S.C. § 547(b) for avoidance of a transfer, subject to any exception to avoidance that may exist under 11 U.S.C. § 547(c). The portion of each of the transfers listed on Exhibit A hereto that paid the Virginia gasoline tax and the Virginia Underground Tank fee is a transfer that satisfies each element of proof required by 11 U.S.C. § 547(b), except for § 547(b)(2), for avoidance of a transfer, subject to any exception to avoidance that may exist under 11 U.S.C. § 547(c).

7. Petro is the initial transferee of each of the transfers listed on Exhibit A hereto that is avoided by the Court in this proceeding.

8. Exhibit C hereto are true and complete copies of the monthly bank statements for the Debtor's bank accounts on which the checks listed on Exhibit A were drawn.

9. Petro is in the business of selling retail diesel fuel and gasoline and operates a retail convenience store, restaurant, and a shop to repair tractor-trailer trucks at Exit 29 of Interstate 81 in Washington County, Virginia.

10. The Debtor was in the business of operating retail convenience stores and until mid-2002, was also in the business of selling gasoline and diesel fuel on a wholesale basis to customers operating retail outlets for fuel, including Petro.

11. Nick Lambert was and is the owner of fifty percent (50%) of the membership of Petro and its managing member at all times relevant to this Adversary Proceeding.

12. Nick Lambert is the owner of one hundred percent (100%) of the stock of the Debtor and its President at all times relevant to this Adversary Proceeding.

13. Prior to October 2002, Petro had purchased fuel on a wholesale basis from the Debtor.

14. Prior to October 2002 and through the period during which the transfers at issue in this Adversary Proceeding occurred, Petro never sold fuel to the Debtor or to any other retail fuel outlet on a wholesale basis. Petro occasionally did sell fuel on a wholesale basis to a local construction company for the use in its business.

15. In October 2002, Nick Lambert, in his capacities as both the President of the Debtor and the Managing Member of Petro, caused Petro to begin selling gasoline and diesel fuel to the Debtor without any markup on Petro's cost of purchasing the gasoline and diesel fuel.

16. Nick Lambert did not discuss this arrangement with the other members of Petro prior to commencing this arrangement and the other members of Petro were unaware of this arrangement until they were made aware of it by the controller of Petro, Greg Dingus, after sales by Petro to the Debtor had begun.

17. To accomplish these purchases, an employee of the Debtor would instruct a trucking company named JXN, LLC, or some other common carrier not related to the Debtor or Nick Lambert, to pick up a load of fuel at one of Petro's fuel suppliers, either Citgo or Marathon,

with the cost thereof being charged to Petro's account with the fuel supplier, and to deliver that load of fuel to one of the Debtor's retail locations.

18. JXN, LLC had as its managing member, Nathan Lambert, the son of Nick Lambert, and had as its person in charge of dispatching deliveries, Terry Bailey, who was at the time of the transfers listed in Exhibit A an employee of the Debtor and who later became an employee of Petro after the conversion of the Debtor's case to chapter 7.

19. Following the delivery of the fuel to the Debtor's retail location and the return of a bill of lading to the fuel supplier, the fuel supplier sent an invoice for the shipment to Petro.

20. The invoice from the fuel supplier, Marathon Ashland, to Petro listed the date on which the fuel supplier would execute an electronic draft of Petro's bank account to pay for the fuel and Virginia taxes. A true and complete copy of each invoice from the fuel supplier to Petro is attached hereto as Exhibit D. The Marathon Ashland invoice number, amount of the invoice, the fuel shipment date, and the dates on which Marathon Ashland would electronically draft Petro's bank account are correctly shown on in the corresponding columns on Exhibit A for each invoice.

21. When the invoice from the fuel supplier was received, Greg Dingus, would fax a copy of the invoice to the Debtor for purposes of payment.

22. The terms of payment between Petro and the Debtor were that the Debtor would pay Petro for a shipment before the date of the first electronic draft from Petro's bank account, in order that Petro would be financially unaffected by these transactions. When the other members of Petro were made aware of these transactions and spoke with Nick Lambert about them, Nick Lambert assured the other Petro members that the Debtor would make the payments to Petro in this manner.

23. The Trustee made written demand upon Petro for the return of the transfers listed on Exhibit A on February 2, 2005.

24. Each of the transfers listed on Exhibit E hereto is a transfer that is not avoidable under 11 U.S.C. 547(b) in that each such transfer is not a transfer of an interest of the debtor in property.

25. Attached hereto as Exhibit F is a true and complete copy of the Highlands Union Bank monthly bank statements for the Petro account into which Petro deposited the checks received by it from the Debtor.

WILLIAM E. CALLAHAN, JR., TRUSTEE
FOR LAMBERT OIL COMPANY, INC.

By: /s/ William E. Callahan, Jr.
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PETRO STOPPING CENTER #72

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