

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:

**VOLUNTEER ENERGY SERVICES,
INC.,**

Debtor.

Chapter 11

Case No. 22-50804

Judge Nami-Khorrami

**THE VOLUNTEER ENERGY
LIQUIDATING TRUST, THROUGH
JOHN B. PIDCOCK, AS LIQUIDATING
TRUSTEE OF VOLUNTEER ENERGY
LIQUIDATING TRUST,**

Plaintiff,

Adv. Proc. No. 2:24-ap-_____

V.

**RICHARD ALLEN CURNUTTE SR.,
10492 Allen Road
Pickerington, OH 43147**

and

LEAH J. CURNUTTE
10492 Allen Road
Pickerington, OH 43147

and

DEBORAH CHUVALAS
521 Westview Terrace
Lithopolis, OH 43136

and

RICHARD ALLEN CURNUTTE JR.
7960 Busey Road NW
Canal Winchester, OH 43110

and

SHAYNE D. CURNUTTE)
4387 Election House Road)
Lancaster, OH 43130)
)
and)
)
TRAVIS JAMES CURNUTTE)
10171 SNYDER CHURCH ROAD)
BALTIMORE, OH 43105)
)
and)
)
MARC C. RUNCK SR.)
6775 Stemen Road)
Pickerington, OH 43147-9388)
)
and)
)
DOROTHY J. RUNCK)
6775 Stemen Road)
Pickerington, OH 43147-9388)
)
and)
)
MARC C. RUNCK JR.)
6670 Kennington Square)
Pickerington, OH 43147)
)
and)
)
AMY MELOY)
13545 Tollgate Road)
Pickerington, OH 43147)
)
Defendants.)

**COMPLAINT FOR BREACH OF FIDUCIARY DUTY, CORPORATE WASTE,
CONVERSION, AIDING AND ABETTING BREACH OF FIDUCIARY DUTY,
AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFERS, UNJUST
ENRICHMENT, NEGLIGENCE, ACCOUNTING, EQUITABLE SUBORDINATION
AND RELATED RELIEF**

The Volunteer Energy Liquidating Trust (the “**Volunteer Energy Liquidating Trust**” or
the “**Plaintiff**”), through its trustee John B. Pidcock, (“**Liquidating Trustee**”), the successor in

interest to Volunteer Energy Services, Inc. (the “**Debtor**” or “**VESI**”), by and through his undersigned counsel, brings this action, alleging as follows based on his investigation to date:

NATURE OF THE ACTION

1. This case is about years of gross misconduct by Richard A. Curnutte Sr. (“**Curnutte Sr.**”). According to its public filings and financial records, VESI was insolvent since at least 2019, but probably earlier. Yet, Curnutte Sr., as the Chairperson of VESI’s Board of Directors and its sole shareholder, used the company as his family’s personal piggybank to fund their lavish lifestyles, essentially draining the company of its assets while it was insolvent. In total, Defendant looted VESI of more than \$5 million. VESI’s senior management, made up of Curnutte Sr.’s family and friends, facilitated much of this looting solely for the benefit of the extended Curnutte family.

2. The Family Defendants (defined herein) were, and frequently held themselves out to be, employees, management and principals of VESI. The Family Defendants’ management responsibilities extended through accounting, customer and vendor relationships, as well as energy compliance. Yet, the Family Defendants were completely derelict in these duties and responsibilities. As a result, they either aided and abetted, failed to detect, or failed to stop the misconduct, thereby enabling Curnutte Sr.’s looting of the company. Simply put, if the Family Defendants had been doing their jobs – honestly and faithfully – VESI may still be operating or Curnutte Sr.’s looting could have been prevented or would not have continued for so long.

3. VESI was operated as if it were the family piggy bank. Each of the Family Defendants received, directly or indirectly, huge sums of VESI money to fund personal business ventures and personal expenses such as extravagant homes, cars, recreation vehicles, and vacations. The Family Defendants’ misappropriation of VESI money ranged from the

extraordinary (million dollar plus valued homes and a “rock band styled” touring bus motorhome) to the routine (the use of VESI cash to pay their monthly credit card charges for restaurants, vacations, car washes, and streaming subscriptions). The means of diverting VESI’s money ranged from the simple (merely transferring money to the Family Defendants’ own personal bank accounts) to the complex (paying health care premium payments for the non-VESI employees of businesses owned by Family Defendants).

4. Curnutte Sr.’s looting took many forms, but most egregiously included: Curnutte Sr.’s use of VESI funds to pay more than \$500,000 of personal credit card bills and other personal expenses; Curnutte Sr.’s wrongful diversion of over \$5 million of VESI funds to or for the benefit of his family and/or side businesses they owned and/or controlled; and direct transfers of VESI funds to bank accounts of Curnutte Sr.’s family members well in excess of any amounts VESI legitimately owed them.

5. In addition to his looting, Curnutte Sr. also breached his fiduciary duties to VESI by keeping VESI operating solely to enrich himself and his family. Curnutte Sr. should have pulled the plug on VESI’s business no later than June 26, 2020 and likely earlier. Instead, he kept VESI alive, in breach of his duty of loyalty to the company, to continue looting the company of its remaining assets. As a result of this breach of loyalty, Curnutte Sr. caused VESI to squander virtually all of its assets by the date of its Chapter 11 filing on March 25, 2022 (the “**Petition Date**”) and to incur massive debts that should never have been incurred.

6. Curnutte’s family and Debtor’s board of directors (at Curnutte Sr.’s direction) aided and abetted Curnutte Sr.’s looting of VESI.

7. Plaintiff’s investigation of the obligations incurred by VESI, the transfers and subsequent transfers from VESI to or for the benefit of the Family Defendants, and the extent to

which the Family Defendants benefitted at the expense of VESI is ongoing. Through that continuing investigation and discovery in this action, the Plaintiff may identify further transfers and obligations avoidable and/or recoverable and further amounts by which the Family Defendants have been unjustly enriched. All of the factual allegations contained in this Complaint are based upon the information available to the Plaintiff at this time. The Plaintiff reserves the right, however, to supplement its allegations with respect to the amounts recoverable should further information become available.

8. As a result, all above-named Defendants are liable to the liquidating trust, as VESI's successor-in-interest, for the damages caused by their misconduct.

JURISDICTION AND VENUE

9. On March 25, 2022 (the "**Petition Date**"), VESI commenced its chapter 11 bankruptcy case by filing a petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Ohio (the "**Bankruptcy Court**").

10. This Court has jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b) because it is related to the Debtor's Chapter 11 case.

11. To the extent this action seeks to avoid and recover fraudulent transfers or preferences and equitable subordination, it is a core proceeding under 28 U.S.C. §157(b)(2)(A), (B), (E), (F), (H) and (O).

12. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1409(a).

13. Plaintiff consents to the entry of a final judgment by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

THE PARTIES

14. The Plaintiff is the duly appointed liquidating trust with the authority and right under sections 108, 323, 502, 541, 542, 544, 547, 548, 550 and 551 of the Bankruptcy Code to enforce and prosecute the causes of action asserted in this Complaint. By order dated July 27, 2023, the Court approved the appointment of the Liquidating Trustee to serve as the liquidating trustee for VESI and to exercise the functions, powers and duties of a trustee set forth in the Liquidating Trust Agreement and the Bankruptcy Code. The Liquidating Trustee is a citizen of the State of Ohio.

15. Curnutte Sr. is an individual with an address of 10492 Allen Road, Pickerington, Ohio 43147. On information and belief, Defendant is a citizen of the State of Ohio. As of the Petition Date, until plan confirmation, Defendant was the 100% sole shareholder of VESI and the chairperson of VESI's Board of Directors (the "**Board**").

16. Defendant Leah J. Curnutte ("**Mrs. Curnutte**") is an individual with an address of 10492 Allen Road, Pickerington, Ohio 43147. On information and belief, Mrs. Curnutte is a citizen of the State of Ohio and the wife of Defendant Curnutte Sr., as well as purportedly a "business liaison" of VESI.

17. Deborah Chuvalas ("**Mrs. Chuvalas**") is an individual with an address of 521 Westview Terrace, Lithopolis, Ohio 43136. On information and belief, Mrs. Chuvalas is a citizen of the State of Ohio, the sister of Curnutte Sr. and purportedly a sales representative for VESI.

18. Richard Allen Curnutte Jr. ("**Curnutte Jr.**") is an individual with an address of 7860 Busey Road NW, Canal Winchester, OH 43110. On information and belief, Curnutte Jr. is

a citizen of the State of Ohio, the son of Curnutte Sr., and purportedly a vice president of VESI as well as a member of its Board of Directors.

19. Shayne D. Curnutte (“**SD Curnutte**”) is an individual with an address of 4505 Election House Road, Lancaster, OH 43130. On information and belief, SD Curnutte is a citizen of the State of Ohio, the son of Curnutte Sr., and purportedly managed landscaping maintenance for VESI, despite the fact that VESI did not own any real estate and the location where VESI leased its office space was owned by a limited liability company in which Mrs. Curnutte was the sole member.

20. Travis J. Curnutte (“**TJ Curnutte**”) is an individual with an address of 10171 Snyder Church Road, Baltimore, OH 43105. On information and belief, TJ Curnutte is a citizen of the State of Ohio, the son of Curnutte Sr., and was involved in sales at VESI.

21. Defendant Marc C. Runck Sr. (“**Runck Sr.**”) is an individual with an address of 6775 Stemen Road, Pickerington, Ohio 43147-9388. On information and belief, Mr. Runck is a citizen of the State of Ohio. As of the Petition Date, Runck Sr. was VESI’s Vice President of Finance and a member of the Board of Directors. On information and belief, Runck Sr. came out of retirement from his career as a sales tax auditor for the State of Ohio Department of Taxation after his brother, Clark G. Runck, VESI’s former Corporate VP, and Chief Financial Officer passed away on March 31, 2011.

22. Dororthy “Dotty” J. Runck (“**Mrs. Runck**”) is an individual with an address of 6775 Stemen Road, Pickerington, Ohio 43147-9388. On information and belief, Mrs. Runck is a citizen of the State of Ohio, the wife of Runck Sr. and the sister of Curnutte Sr., as well as purportedly the company nurse and her husband’s partial administrative assistant.

23. Marc C. Runck Jr. (“**Runck Jr.**”) is an individual with an address of 6670 Kennington Square, Pickerington, OH 43147. On information and belief, Runck Jr. is a citizen of the State of Ohio and the son of Runck Sr., as well as purportedly an accountant for VESI.

24. Amy Meloy (“**Ms. Meloy**” and collectively with Curnutte Sr.; Mrs. Curnutte; Mrs. Chuvalas; Curnutte Jr.; SD Curnutte; TJ Curnutte; Runck Sr.; Mrs. Runck; and Runck Jr., the “**Family Defendants**”) is an individual with an address of 13545 Tollgate Lane, Pickerington, OH 43147. On information and belief, Ms. Meloy is a citizen of the State of Ohio and the niece of Runck Sr. and the daughter of Clark G. Runck, the former Corporate VP and Chief Financial Officer of VESI before Clark G. Runck passed away on March 31, 2011.

FACTUAL BACKGROUND

A. VESI’s History and Longstanding Insolvency

25. VESI was a family-owned retail energy provider headquartered in Pickerington, Ohio. Since 2001, VESI supplied retail electricity and natural gas to its various commercial, industrial, and residential customers across Ohio, Michigan, Pennsylvania, and Kentucky.

26. VESI also managed interstate transportation contracts, gas storage, and gas supplies via interstate and intrastate pipelines, and administered energy purchases, monitored energy deliveries, and reconciled all deliveries and imbalances with local distribution companies.

27. VESI served gas customers in eleven utility regions throughout Ohio, Michigan, Pennsylvania, and Kentucky, and power customers in three utility regions throughout Ohio. As of the Petition Date, VESI has approximately 212,000 customers that consumed approximately 25 billion cubic feet of annualized gas and approximately 500,000 megawatt hours of annualized power.

B. Under Curnutte Sr.'s Control, VESI Grossly Overstated Its Profits

28. In late 2014, VESI entered into a \$150 million syndicated credit facility (the “**Syndicated Facility**”) led by PNC Bank, N.A. (“**PNC Bank**”), as Lender, Administrative Agent, Collateral Agent, and Issuer, and PNC Capital Markets LLC (“**PNC Capital**” and, together with PNC Bank, “**PNC**”) and five additional lenders (collectively, the “**Syndicated Lenders**”). Less than one year into the Syndicated Facility, the Syndicated Lenders expressed concerns about VESI’s financial performance and the Syndicated Facility. As a result, VESI retained David Warner (“**Mr. Warner**”) as a consultant.

29. When Mr. Warner reviewed VESI’s audited financials from 2010-2014 and year to date unaudited 2015 financial statements, it became clear that VESI’s gross profit accounting (*i.e.* gas accounting) was incorrect, which caused inaccuracies in VESI’s profit and loss as well as balance sheet reporting.

30. From July 2015 through the summer of 2016, Mr. Warner worked with Tony DiGioia (“**Mr. DiGioia**”) to correct VESI’s gross profit accounting. These efforts resulted in restated audited financials for the period ending December 31, 2015, which included the elimination of approximately \$40 million of previously reported pre-tax net income and retained earnings. Shortly thereafter, the Syndicated Facility was terminated.

31. After resolving VESI’s accounting issues, Messrs. Warner and DiGioia were hired by VESI as full time employees.

32. On or about June 16, 2016, VESI, as borrower, PNC as Lead Arranger executed that certain *Amended and Restated Credit and Security Agreement* (as amended, supplemented, or otherwise modified from time to time, the “**Credit Agreement**”), pursuant to which PNC agreed to make available to VESI a revolving credit line in the maximum principal amount of \$42 million,

over \$100 million less than the principal amount of the Syndicated Facility executed less than two years earlier.

33. As of the Petition Date, approximately \$30 million was outstanding under the Credit Agreement.

34. From 2016 to 2021, although VESI's gross profit remained positive, VESI's net income financial performance was inconsistent due to, among other things, the reckless spending of Defendant Curnutte Sr. and the other Family Defendants without consideration making adjustments in such practices (and, upon information and belief, other business practices) in response to certain negative economic factors, including warm winters, COVID, and Winter Storm Uri¹. As a result, VESI triggered various events of default under the Credit Agreement for, among other things, failing to maintain (i) minimum undrawn availability and (ii) average balance of revolving advances, which prompted amendments to the Credit Agreement to remedy such default on July 21, 2017; August 2, 2018; July 25, 2019; May 13, 2020; and June 26, 2020.

35. On June 26, 2020, VESI and PNC entered into a seventh amendment to the Credit Agreement and, at the request of PNC, VESI began efforts to refinance to close out PNC's position. Since the June 26, 2020 amendment to the Credit Agreement, PNC lent money to VESI pursuant to a series of weekly or monthly extensions and forbearance agreements.

36. In January 2021, after VESI was not able to find replacement financing for the PNC Credit Facility, VESI began searching for a subordinated debt facility to PNC's Credit Agreement.

¹ Winter Storm Uri was a historic blast of arctic weather that wreaked havoc on much of United States in mid-February 2021, causing a number of short-term natural gas supply disruptions to the U.S. natural gas industry, including without limitation, natural gas well head freeze offs, pipeline operational constraints, and redirection of existing gas to alternate markets. As a result, the available gas supply within the market dramatically decreased at a time when there was a significant short-term increase in consumer demand for gas in Texas and the entire Midwest.

37. In May 2021, unable to find replacement financing or a subordinated debt facility to PNC's Credit Agreement, VESI commenced efforts to sell its book of customers or the company as a going concern.

C. VESI's Sale and Refinance Efforts Failed

38. In or around April 2021, VESI retained Keystone Consulting Group ("**KCG**") as a financial advisor to assist with ongoing refinancing efforts. In mid-May 2021, VESI commenced a process to sell the company's assets (or as a going concern). This sale process was conducted in parallel with the ongoing refinancing efforts. In connection with this process, in late May 2021, VESI hired a broker (the "**Broker**") with merger and acquisition experience in retail energy to run the sale process.

39. The Broker marketed VESI's assets to prospective purchasers that had the capability to acquire the assets or the business as a going concern and take assignment of VESI's customer contracts in the states VESI operates. In total, the Broker contacted 24 parties that are active buyers in the retail energy market, and approximately 13 parties executed confidentiality agreements ("**NDAs**") with VESI to gain access to VESI's virtual data room to conduct preliminary due diligence.

40. Ultimately, the Broker's efforts to sell the company's assets or the company as a going concern failed, and VESI had no other option but to file for bankruptcy protection.

D. VESI'S Bankruptcy Filing and The Liquidating Trust's Creation

41. As set forth above, on the Petition Date, VESI commenced its chapter 11 bankruptcy case (the "**Bankruptcy Case**") by filing a petition for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

42. The Bankruptcy Case filing was authorized by VESI's Board of Directors, which as of the Petition Date, consisted of (i) Curnutte Sr.; (ii) Runck Sr.; (iii) Curnutte Jr.; and (iv) Jeffrey M. Horsley ("**Mr. Horsley**") and collectively with Curnutte Sr., Runck Sr.; and Curnutte Jr., the "**Board**"). On information and belief, the Board did not meet with any regularity and most decisions, other than filing for bankruptcy protection, were made by Defendant Curnutte Sr. individually.

43. On July 27, 2023, the Court entered an order [Docket No. 891] (the "**Confirmation Order**") confirming the *Third Amended Chapter 11 Plan of Liquidation of Volunteer Energy Services, Inc.* [Docket No. 655] (as amended, modified, or supplemented, the "**VESI Plan**").

44. The Effective Date of the VESI Plan occurred on August 17, 2023 [Docket No. 916].

45. As of the Effective Date and pursuant to the Confirmation Order, the VESI Plan and that certain *Liquidating Trust Agreement* (the "**Trust Agreement**"): (i) VESI's Assets were transferred to the Volunteer Energy Liquidating Trust, which was empowered, among other things, to collect and administer VESI's Assets (including Causes of Action (as defined therein)) and resolve Claims against VESI and its estate and (ii) John B. Pidcock was appointed to act as Liquidating Trustee.

46. The causes of action asserted in this Complaint are assets of the Volunteer Energy Liquidating Trust.

E. Despite Long Term Insolvency, Curnutte Sr. was Fixated on Personal Gain to the Detriment of VESI, the Estate, and Its Creditors

47. The Board's failure to perform its legal obligations and sustained failure to exercise oversight, as described herein, exposed the company to extraordinary liability. VESI was ultimately unable to pay its debts and its unsecured creditors were harmed at the expense of

favoring the Family Defendants. Nowhere is this more notable than in the salaries of the purported “employees,” *i.e.* the Family Defendants.

48. For his services to the obviously insolvent VESI, Curnutte Sr. paid himself \$1,764,812.72 between 2020 and the Petition Date (\$796,615.14 in 2020; \$845,090.00 in 2021; and \$123,107.58 in 2022 prior to the Petition Date).

49. SD Curnutte was paid \$268,588.60 (\$127,826.76 in 2020; \$128,299.84 in 2021; and \$12,462 in 2022) for “landscaping maintenance” and “other business management” at VESI. VESI’s commercial real estate lease with LJC Real Estate Holdings did not obligate VESI to maintain the real property. VESI’s commercial real estate lease did not contain any lawn care maintenance obligations either. Conveniently, on information and belief, SD Curnutte owned and operated his own landscaping business. Yet, as a lessee, VESI paid Curnutte Sr.’s adult son more than a quarter of a million dollars to cut the yard between 2020-2022, while VESI was insolvent. The real estate was owned by LJC Real Estate Holdings, LLC, a limited liability company owned by Curnutte Sr.’s wife, Mrs. Curnutte.

50. TJ Curnutte was paid \$752,988.41 (\$369,578.43 in 2020; \$346,741.98; and 36,668.00 in 2022 before the Petition Date) plus other benefits and reimbursement as an “agent and sales support” for VESI between 2020 and 2022 before the Petition Date.

51. Similarly, between 2020 and the Petition Date, Curnutte Jr. was paid \$405,816.67 (\$206,836.18 in 2020; \$174,757.40 in 2021 and \$24,223.09 in 2022) as a Vice President and a Board member. Curnutte Jr.’s employment with VESI terminated on the eve of the bankruptcy filing and he immediately commenced working in the marketing department for Volli Communications, the telecommunications firm owned by his mother and co-defendant, Mrs. Curnutte.

52. Despite owning a real estate company and telecommunications company, Mrs. Curnutte also found time to be purportedly employed as a “business liaison” at VESI. Between 2020 and the Petition Date, Mrs. Curnutte was paid \$204,519.55 (\$91,500.35 in 2020, \$112,250.20 in 2021 and \$769.00 in 2022) for her purported contributions to VESI, in addition to the money she syphoned from VESI through LJC Real Estate Holdings and Volli Communications, Inc.

53. Mrs. Chuvalas, Curnutte Sr.’s sister, was paid \$231,123.82 (\$116,275.87 in 2020; \$103,094.13 in 2021; and \$11,753.82 in 2022 before the Petition Date) as VESI’s “Energy Specialist”. In the 341 Meeting of Creditors, Mr. Warner also testified that Mrs. Chuvalas was VESI’s on-site nurse.

54. Between 2020 and 2022 before the Petition Date, Runck Sr. was paid \$476,755.12 (\$218,769.19 in 2020; \$198,655.20 in 2021; and \$59,330.73 in 2022 before the Petition Date) as a director on VESI’s Board and the Vice-President of Accounting.

55. Runck Sr.’s wife who also is Curnutte Sr.’s sister, Mrs. Runck, was paid \$154,922.23 (\$86,000.35 in 2020; \$67,875.20 in 2021; and \$1,046.68 in 2022 before the Petition Date), purportedly as her husband’s accounting administrative assistant.

56. During the same period, Runck Jr. was paid \$365,819.24 (\$218,769.19 in 2020; \$121,800.08 in 2021; and \$25,249.97 in 2022 before the Petition Date) as an accountant for VESI.

57. Ms. Meloy was paid (\$136,423.24 in 2020; \$127,900.20 in 2021; and \$27,365.39 in 2022 before the Petition Date) as the company’s controller. As set forth above, Ms. Meloy is Runck Sr.’s niece. Also, it should be pointed out that every Runck related Family Defendant worked in VESI’s accounting department.

58. In total, the Family Defendants received not less than \$4,917,034.99 from 2020 until the Petition Date in salary and reimbursement of expenses from VESI while the company was insolvent.

F. VESI Paid the Health Insurance Premium Benefits for the Employees of One of Rick Curnutte's Wife's Companies - Volli Communications, Inc.

59. On information and belief, Volli Communications, Inc. ("**Volli**") is an Ohio corporation solely owned by Defendant Curnutte Sr., or his wife, Defendant Mrs. Curnutte. Volli provides telecommunication services to Debtor and other customers. On further belief, Volli's business is unrelated to VESI's business.

60. In the year prior to the Petition Date, Debtor paid \$22,327.00 to Volli allegedly for services rendered.

61. Nevertheless, on information and belief, and as listed in the notes to Debtor's schedules and statement of financial affairs, Volli's employees were covered under Debtor's health insurance benefit plan and Debtor, at Defendant Curnutte Sr.'s direction, paid the premiums on behalf of Volli.

62. On information and belief, these expenses exceeded \$130,000 on an annual basis.

63. Volli failed to reimburse the Debtor for these expenses.

G. VESI Paid for the Repairs to an Evangelical Southern Gospel Band's Tour Bus

64. On information and belief, Defendant Curnutte Sr. and his twin brother, George H. Curnutte Jr. ("**G. Curnutte**") grew up as members of the Church of the Nazarene. G. Curnutte was employed at VESI and was a member of its Board before he passed away on July 28, 2012.

65. Before G. Curnutte died, he was the "Transportation Executive Coordinator" for an evangelical southern gospel musical group called "Three Bridges", which was based in Nashville, TN.

66. At all times relevant for this Complaint, Curnutte Sr. individually owns a private charter bus (the “**Tour Bus**”), which Tour Bus was used by Three Bridges for touring purposes. The Tour Bus was not used for any Debtor-related business, other than Curnutte Sr. purportedly attaching a VESI advertisement on the back of the Tour Bus.

67. On information and belief, at the direction of Curnutte Sr., Debtor paid Prevost Car (US) Inc. (“**Prevost**”) approximately \$17,100 in fiscal year 2021 and approximately \$12,570 in 2022 for maintenance of the Tour Bus, despite the fact that the Tour Bus was not owned by the Debtor or used for Debtor-related business.

68. In addition, on information and belief, the Debtor reimbursed Defendant Curnutte Sr. for certain expenses related to the Tour Bus.

69. On information and belief, VESI paid the health care benefit premium payments for one of the members of Three Bridges, despite the fact that this member did not perform any services for VESI.

H. Debtor Paid for Life Insurance Policies for the Benefit of Curnutte Sr.’s and Runck Sr.’s Respective Wives

(i) Curnutte Sr.’s Life Insurance Policy

70. On or about August 29, 2019, VESI paid The Guardian Life Insurance Company of America (“**Guardian**”) \$90,262.50 for the issuance of a \$5 million term life insurance policy (Guardian Policy Number 4524309) (the “**Curnutte Life Insurance Policy**”) on Defendant Curnutte Sr. Defendant Curnutte Sr.’s wife, Defendant Mrs. Curnutte, was named as the beneficiary in the Curnutte Life Insurance Policy.

71. VESI was not named as a beneficiary under the Curnutte Life Insurance Policy, despite the fact that VESI paid for the Curnutte Life Insurance Policy.

72. On information and belief, VESI paid additional annual premium payments on the Curnutte Life Insurance Policy between 2020 and 2022 prior to the Petition Date.

73. In 2021, VESI paid Guardian \$10,183.78 in premium payments on the Curnutte Life Insurance Policy for the benefit of Defendant Curnutte Sr. (as the policy's owner) and Mrs. Curnutte (as the policy's beneficiary). In 2022, VESI paid Guardian \$9,980.19 in premium payments on the Curnutte Life Insurance Policy for the benefit of Defendant Curnutte Sr. (as the policy's owner) and Mrs. Curnutte (as the policy's beneficiary).

74. Despite paying not less than \$110,426.47 for the Curnutte Life Insurance Policy for the benefit of Defendant Curnutte Sr. (as policy holder) and Defendant Ms. Curnutte (as the policy beneficiary), Debtor did not receive any benefit.

(ii) Runck Sr.'s Life Insurance Policy

75. On or about August 29, 2019, VESI paid Guardian \$22,328.50 for the issuance of a \$1 million term life insurance policy (Guardian Policy Number 4524349) (the "**Runck Life Insurance Policy**") on the life of Defendant Runck Sr. Defendant Mrs. Runck was named as the beneficiary in the Runck Life Insurance Policy.

76. On information and belief, VESI paid additional annual premium payments on the Runck Life Insurance Policy between 2020 and 2022 prior to the Petition Date.

77. In 2021, VESI paid Guardian \$10,183.78 in premium payments on the Runck Life Insurance Policy for the benefit of Runck Sr. (as policy owner) and Defendant Mrs. Runck (as policy beneficiary).

78. In 2022, VESI paid Guardian \$9,159.03 in premium payments on the Runck Life Insurance Policy for the benefit of Defendant Runck Sr. (as policy owner) and Defendant Mrs. Runck (as policy beneficiary).

79. Despite paying not less than \$41,671.31 for the Runck Life Insurance Policy for the benefit of Defendant Runck Sr. (as policy owner) and Mrs. Runck (as policy beneficiary), Debtor did not receive any benefit.

H. Defendant Curnutte Sr. Never Repaid Personal Loans

80. On information and belief, on or before January 2016, VESI purported to “loan” Curnutte Sr. \$20,844.26, which has never been repaid by Curnutte Sr. *See* Schedules [Docket No. 235] at Part 11, No. 71.

NATURE OF THE CAUSES OF ACTION AGAINST THE FAMILY DEFENDANTS

81. At all times relevant hereto, VESI was insolvent in that: (i) its liabilities exceeded the value of its assets by millions of dollars; (ii) it could not meet its obligations as they came due; and/or (iii) at the time of the transfers to or for the benefit of the Family Defendants described herein, VESI was left with insufficient capital.

82. The adversary proceeding is being brought to avoid obligations and to avoid and recover transfers made to or for the benefit of the Family Defendants, and to recover money by which the Family Defendants have been unjustly enriched, so that this estate property can be equitably distributed among the creditors of VESI in accordance with the provisions of the Plan and the Volunteer Energy Liquidating Trust.

83. Plaintiff also seeks an accounting of all monies received by the Family Defendants during their employment at VESI during the four years prior to the Petition Date, and a constructive trust imposed as a result of the past unjust enrichment of – and to prevent any further unjust enrichment by – the Family Defendants on all assets they acquired directly or indirectly from VESI. Plaintiff specifically looks to place any properties that were purchased by, for, or for the benefit of, any of the Family Defendants with VESI funds, in a constructive trust, to prevent their

transfer, sale, or other dissipation during the pendency of this action. The accounting and constructive trust are necessary in this case in light of the size of the Family Defendants' malfeasance and the amount of money improperly transferred to the Family Defendants to finance their personal lives and personal investments.

84. Without regard to the extent to which the Family Defendants know of Curnutte Sr.'s looting of the company assets while the company was insolvent, each of the Family Defendants, including Curnutte Sr. knew or should have known that they were not entitled to these excessive distributions of "free" money. The Family Defendants were intimately involved with the "family business" and were close relatives of the mastermind of this looting scheme. The Family Defendants travelled together, vacationed together, and spent many holidays together. The Family Defendants all had senior positions at VESI. Among other things, and at the very least, the Family Defendants were on notice of the irregularity and fraud, and either failed to make sufficient inquiry or knew of the fraud, ignored it, and profited from it.

FIRST CAUSE OF ACTION – BREACH OF FIDUCIARY DUTY

85. Plaintiff repeats and incorporates all preceding paragraphs as if fully re-alleged herein.

86. Defendant Curnutte Sr. owed fiduciary duties to VESI in his capacity as a senior officer and sole shareholder of the company. Those duties included duties of loyalty, good faith, and care.

87. Defendant Curnutte Sr. breached his fiduciary duties to VESI by looting VESI's assets over an extended period, and by keeping the company alive, solely for his own personal benefit, after it was clear the business was not sustainable.

88. The Board breached its fiduciary duty to VESI and its creditors by failing to take the appropriate actions to curtail Curnutte Sr.'s looting of the company for his personal gain.

89. As a proximate result of Defendant Curnutte Sr.'s breaches of fiduciary duty, VESI suffered damages in excess of \$5 million. Plaintiff is entitled to recover these damages on behalf of the Liquidating Trust, jointly and severally, from Curnutte Sr. and each Defendant Board member.

SECOND CAUSE OF ACTION – CORPORATE WASTE

90. Plaintiff repeats and incorporates all preceding paragraphs as if fully re-alleged herein.

91. Defendant Curnutte Sr. wasted VESI's corporate assets by misappropriating VESI funds for his personal benefit. Defendant Curnutte Sr.'s looting of VESI served no legitimate business purpose. Rather, it benefitted Defendant Curnutte Sr. at VESI's expense.

92. Defendant Curnutte Sr. also wasted VESI's corporate assets by keeping the company alive, solely for his own benefit, after it was clear the business was not sustainable. By this action, Defendant Curnutte Sr. caused VESI to dissipate virtually all of its assets by the Petition Date and to incur substantial debts that should not have been incurred.

93. As a proximate result of Defendant Curnutte Sr.'s acts of corporate waste, VESI suffered damages in excess of \$5 million. Plaintiff is entitled to recover these damages on behalf of the Liquidating Trust, joint and severally, from Curnutte Sr. and each Defendant Board member.

THIRD CAUSE OF ACTION - CONVERSION

94. Plaintiff repeats and incorporates all preceding paragraphs as if fully re-alleged herein.

95. Defendant Curnutte Sr. misappropriated assets of VESI for his own benefit, without justification or consent. Defendant Curnutte Sr.'s misappropriations constitute conversion under applicable law.

96. As a proximate result of Defendant Curnutte Sr.'s acts of conversion, VESI suffered damages in excess of \$5 million. Plaintiff is entitled to recover these damages on behalf of the Liquidating Trust from Curnutte Sr. and each Defendant that converted money and other property from VESI.

FOURTH CAUSE OF ACTION – AIDING AND ABETTING BREACH OF FIDUCIARY DUTY

97. The Plaintiff repeats and incorporates all preceding paragraphs as if full re-alleged herein.

98. Defendant Curnutte Sr. was a senior VESI officer and a VESI Director, and he thus owed fiduciary duties to the company. Defendant Curnutte Sr. breached those duties by looting the company, as described herein.

99. Defendants Runck Sr. and Defendant Curnutte Jr. knowingly aided and abetted Defendant Curnutte Sr.'s breaches of fiduciary duty by executing his instructions to transfer substantial assets of VESI to, or on behalf of, Defendant Curnutte Sr. and the other Family Defendants. Defendants Runck Sr. and Defendant Curnutte Jr. knew that these transfers for Curnutte Sr.'s personal benefit served no legitimate VESI business purpose.

100. As a proximate result of Defendants Runck Sr.'s and Defendant Curnutte Jr.'s acts of aiding and abetting Defendant Curnutte Sr.'s breaches of fiduciary duty, VESI suffered substantial damages. The Plaintiff is entitled to recover these damages on behalf of the VESI estate, joint and severally, from Defendants Curnutte Jr., and Runck Sr.

FIFTH CAUSE OF ACTION - FRAUDULENT TRANSFERS
11 U.S.C. §§ 548(a)(1)(A), 550 and 551

101. The Plaintiff repeats and incorporates all preceding paragraphs as if fully re-alleged herein.

102. The Family Defendants received certain transfer on or within two years prior to the Petition Date.

103. The Family Defendants' receipt of transfers within the two years prior to the Petition Date were made and incurred by VESI with the actual intent to hinder, delay, and defraud some or all of VESI's then-existing or future creditors.

104. The transfers received by the Family Defendants within the two years prior to the Petition Date from VESI constitute fraudulent transfers avoidable by the Plaintiff pursuant to section 548(a)(1)(A) of the Bankruptcy Code and recoverable from the Family Defendants pursuant to section 550(a) of the Bankruptcy Code.

105. As a result of the foregoing, pursuant to sections 548(a)(1)(A), 550(a) and 551 of the Bankruptcy Code, the Plaintiff is entitled to a judgment: (i) avoiding and preserving the transfers received by the Family Defendants from VESI in the two years prior to the Petition Date; (ii) directing that the transfers received by the Family Defendants from VESI in the two years prior to the Petition Date be set aside; and (iii) recovering from the Family Defendants the transfers received by the Family Defendants from VESI in the two years prior to the Petition Date, or the value thereof, for the benefit of the estate of VESI.

SIXTH CAUSE OF ACTION – FRAUDULENT TRANSFERS
11 U.S.C. §§ 548(a)(1)(B), 550 AND 551

106. The Plaintiff repeats and incorporates all preceding paragraphs as if fully re-alleged herein.

107. The Family Defendants received certain transfer on or within two years prior to the Petition Date.

108. VESI received less than a reasonably equivalent value in exchange for each of the transfers received by each of the Family Defendants within the two years prior to the Petition Date.

109. At the time of receipt of each of the transfers received by each of the Family Defendants within the two years prior to the Petition Date, VESI was insolvent, or became insolvent, as a result of the transfers in question.

110. At the time of receipt of each of the transfers received by each of the Family Defendants within the two years prior to the Petition Date, VESI was engaged in a business or a transaction, or was about to engage in a business or a transaction, for which any property remaining with VESI was an unreasonably small capital.

111. At the time of receipt of each of the transfers received by each of the Family Defendants within the two years prior to the Petition Date, VESI intended to incur, or believe that it would incur, debts that would be beyond VESI's ability to pay as such debts matured.

112. The transfers made to the Family Defendants as "compensation" paid to, or for the benefit of the Family Defendants, were not made by VESI in the ordinary course of business.

113. Each of the transfers received by each of the Family Defendants within the two years prior to the Petition Date constitute fraudulent transfers avoidable by the Plaintiff pursuant to 548(a)(1)(B) of the Bankruptcy Code and recoverable from the Family Defendants pursuant to section 550(a) of the Bankruptcy Code.

114. As a result of the foregoing, pursuant to sections 548(a)(1)(B), 550(a) and 551 of the Bankruptcy Code, the Plaintiff is entitled to a judgment: (i) avoiding and preserving the transfers received by the Family Defendants from VESI in the two years prior to the Petition Date;

(ii) directing that the transfers received by the Family Defendants from VESI in the two years prior to the Petition Date be set aside; and (iii) recovering from the Family Defendants the transfers received by the Family Defendants from VESI in the two years prior to the Petition Date, or the value thereof, for the benefit of the estate of VESI.

SEVENTH CAUSE OF ACTION – FRAUDULENT TRANSFERS
OHIO UNIFORM FRAUDULENT TRANSFER ACT O.R.C. § 1336.04(A)(1)
AND/OR 11 U.S.C. § §§544, 550(a), AND 551

115. The Plaintiff repeats and incorporates all preceding paragraphs as if fully re-alleged herein.

116. At all times relevant herein, the Family Defendants received transfers from VESI within four years of the Petition Date.

117. The Family Defendants' receipt of transfers within the four years prior to the Petition Date were made and incurred by VESI with the actual intent to hinder, delay, and defraud some or all of VESI's then-existing or future creditors.

118. The transfers received by the Family Defendants within the four years prior to the Petition Date from VESI constitute fraudulent transfers avoidable by the Plaintiff pursuant to Ohio Revised Code Section 1336.04(A)(1) and are recoverable from the Family Defendants pursuant to sections 544, 550(a), and 551 of the Bankruptcy Code.

119. VESI was insolvent at the time it made each of the transfers to the Family Defendants in the four years prior to the Petition Date or, in the alternative, VESI became insolvent as a result of each of the transfers made to the Family Defendants in the four years prior to the Petition Date.

120. As a result of the foregoing, pursuant to Ohio Revised Code Section 1336.04(A)(1), sections 544, 550(a), and 551 of the Bankruptcy Code: (i) avoiding and preserving the transfers

received by the Family Defendants from VESI in the four years prior to the Petition Date; (ii) directing that the transfers received by the Family Defendants from VESI in the four years prior to the Petition Date be set aside; and (iii) recovering from the Family Defendants the transfers received by the Family Defendants from VESI in the four years prior to the Petition Date, or the value thereof, for the benefit of the estate of VESI.

EIGHTH CAUSE OF ACTION – FRAUDULENT TRANSFERS
OHIO UNIFORM FRAUDULENT TRANSFER ACT O.R.C. § 1336.04(A)(2)
AND/OR 11 U.S.C. § §§544, 550(a), AND 551

121. The Plaintiff repeats and incorporates all preceding paragraphs as if fully re-alleged herein.

122. At all times relevant herein, the Family Defendants received transfers from VESI within four years of the Petition Date.

123. VESI did not receive fair consideration for the transfers made to the respective Family Defendants in the four years prior to the Petition Date.

124. As of the time of each transfer made to the respective Family Defendants in the four years prior to the Petition Date, VESI was engaged or was about to engage in a business or a transaction for which the remaining assets of VESI were unreasonably small in relation to the business or the transaction and VESI. In the alternative, VESI intended to incur, or believed or reasonably believed that it would incur, debts beyond VESI's ability to pay as they became due.

125. VESI was insolvent at the time it made each of the transfers to the Family Defendants in the four years prior to the Petition Date or, in the alternative, VESI became insolvent as a result of each of the transfers made to the Family Defendants in the four years prior to the Petition Date.

126. As a result of the foregoing, pursuant to Ohio Revised Code Section 1336.04(A)(2), sections 544, 550(a), and 551 of the Bankruptcy Code: (i) avoiding and preserving the transfers received by the Family Defendants from VESI in the four years prior to the Petition Date; (ii) directing that the transfers received by the Family Defendants from VESI in the four years prior to the Petition Date be set aside; and (iii) recovering from the Family Defendants the transfers received by the Family Defendants from VESI in the four years prior to the Petition Date, or the value thereof, for the benefit of the estate of VESI.

NINTH CAUSE OF ACTION – UNJUST ENRICHMENT

127. The Plaintiff repeats and incorporates all preceding paragraphs as if fully re-alleged herein.

128. The Family Defendants benefited, directly or indirectly, from the receipt of money from VESI in the form of loans, payments, and other transfers which was the property of VESI, and for which the Family Defendants, among other things, did not adequately compensate VESI or provide value.

129. This enrichment was at the expense of VESI and, ultimately, at the expense of VESI's unsecured creditors.

130. Equity and good conscience require full restitution of the monies unjustly received by the Family Defendants from VESI.

131. In addition, the Family Defendants' conscious, intentional, and willful tortious conduct entitles Plaintiff to recapture profits derived by the Family Defendants utilizing monies they received from VESI, including, by way of example and without limitation, profits earned from real estate interest they purchased with funds derived from VESI.

132. By reason of the above, the Plaintiff, on behalf of VESI and its creditors, is entitled to recover from the Family Defendants an award of compensatory damages in an amount to be determined at trial.

TENTH CAUSE OF ACTION - NEGLIGENCE

133. The Plaintiff repeats and incorporates all preceding paragraphs as if fully re-alleged herein.

134. Each of the Family Defendants had a duty to protect VESI and its creditors from unreasonable risks and actions, including without limitation, the loss of assets due to the self-dealing of management and senior executives, the failure to prepare, implement, and carry out compliance and supervisory responsibilities and policies, and other tortious conduct by or unjust enrichment of the Family Defendants and others.

135. Each of the Family Defendants breached these duties by failing to conform to the appropriate stands of care commensurate with their senior positions at VESI.

136. As the direct and proximate cause of the actions of the Family Defendants, VESI has been damaged by the Family Defendants' negligence and failure to adhere to the standard of appropriate care.

137. By the reason of the above, the Plaintiff, on behalf of VESI and its creditors, is entitled to recover from the Family Defendants an award of compensatory damages in an amount to be determined at trial.

138. The Family Defendants' conscious, willful, wanton, and malicious conduct entitles the Plaintiff, on behalf of VESI and its creditors, to recover from the Family Defendants an award of punitive damages in amount to be determined at trial.'

ELEVENTH CAUSE OF ACTION – CONSTRUCTIVE TRUST

139. The Plaintiff repeats and incorporates all preceding paragraphs as if fully re-alleged herein.

140. As set forth above, the assets of VESI have been wrongfully diverted as a result of fraudulent conveyances, fraudulent transfers, preferential transfers, breaches of fiduciary duties, and other wrongdoing of the Family Defendants for their own individual interests and enrichment.

141. The Plaintiff has no adequate remedy at law.

142. Because of the past unjust enrichment of the Family Defendants, the Plaintiff is entitled to the imposition of a constructive trust with respect to any transfer of funds, assets, or property from VESI as well as to any profits received by the Family Defendants in the past or on a going forward basis in connection with VESI.

143. In addition, upon information and belief, with the sums the Family Defendants unjustly received as a result of the fraudulent conveyances, fraudulent transfers, preferential transfers, breached of fiduciary duties, and other wrongdoing, the Family Defendants purchased, or satisfied mortgages on real property, which should be held in trust for the Plaintiff's use, benefit and account. The Plaintiff is entitled to, and demands title, possession, and the proceeds from the lease, use or sale of any VESI property or real estate acquired from the improper possession and control of VESI money, or their value, for the benefit of the estate of VESI.

TWELFTH CAUSE OF ACTION - ACCOUNTING

144. The Plaintiff repeats and incorporates all preceding paragraphs as if fully re-alleged herein.

145. As set forth above, the assets of VESI have been wrongfully diverted as a result of fraudulent conveyances, fraudulent transfers, preferential transfers, breaches of fiduciary duties, and other wrongdoing of the Family Defendants for their own individual interest and enrichment.

146. The Plaintiff has no adequate remedy at law.

147. To compensate VESI for the amount of monies the Family Defendants diverted from VESI for their own benefit, it is necessary for the Family Defendants to provide an accounting of any transfer of funds, assets, or property received from VESI, as well as to any profits in the past and on a going forward basis in connection with VESI. Complete information regarding the amount of such transfers misused by the Family Defendants for their own benefit is within their possession, custody, and control.

THIRTEENTH CAUSE OF ACTION – EQUITABLE SUBORDINATION

148. The Plaintiff repeats and incorporates all preceding paragraphs as if fully re-alleged herein.

149. Family Defendants are listed as creditors of VESI on the bankruptcy schedules filed by Debtor prior to the Liquidating Trustee's appointment.

150. Family Defendants each are insiders of VESI.

151. Family Defendants engaged in the inequitable conduct described in this Complaint, including looting VESI and breaching their fiduciary duties to the company.

152. Family Defendants' inequitable conduct has resulted in injury to VESI and its creditors and has conferred an unfair advantage on the Family Defendants.

153. To the extent Family Defendants have valid claims in VESI's bankruptcy case, those claims are subject to equitable subordination based upon the inequitable conduct described herein.

154. The equitable subordination of the Family Defendants' respective claims is consistent with the provisions and purpose of the Bankruptcy Code.

155. Accordingly, the Court should equitably subordinate any claim the Family Defendants have in VESI's bankruptcy case, pursuant to 11 U.S.C. § 510(c).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully demands judgment as follows:

- A. Actual damages against each Family Defendant, including compensatory and consequential damages, the precise amount of which shall be determined at trial;
- B. An award of prejudgment interest in the amount to be determined at trial;
- C. Punitive damages, attorneys' fees and costs to the fullest extent permitted by law;
- D. Equitable subordination of any claim any Defendant may have in VESI's bankruptcy case;
- E. Imposition of a constructive trust over any property unjustly diverted from VESI;
- F. An accounting for all property diverted from VESI; and
- G. Such other relief, both at law and in equity, as may be just and proper.

Dated: March 23, 2024

Respectfully submitted,

/s/ Christopher B. Wick
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Energy Liquidating Trust