

**SUMMARY OF CURRENT DOCUMENT**

|   |  |
|---|--|
| <b><i>Name of Issuing Party or Person:</i></b>                                  | <b><i>National Leasing Group Inc.</i></b>  |
| <b><i>Date of Document:</i></b>   | <b><i>January 2003</i></b>   |
| <b><i>Summary of Order/Relief Sought or Statement of Purpose in filing:</i></b> | <b><i>Interlocutory Application of National Leasing Group Inc. ("NLGI") for payment to NLGI of the proceeds from the sale by the Receiver of the equipment referenced in the Application and an Order with respect to the security interests of NLGI in other assets</i></b> |
| <b><i>Court Sub-File Number:</i></b>  | <b><i>7: 44</i></b>  |

**2002 01 T 0352****IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION**

**IN THE MATTER OF** a Court ordered Receivership  
of Hickman Equipment (1985) Limited  
("Hickman Equipment") pursuant to Rule 25 of  
the **Rules of the Supreme Court**, 1986 under  
the *Judicature Act*, R.S.N.L. 1990, c.J-4, as amended

**AND IN THE MATTER OF** the *Bankruptcy and  
Insolvency Act*, Chapter B-3 of the Revised  
Statutes of Canada, 1985, as amended (the "BIA")

**INTERLOCUTORY APPLICATION**

(Inter Partes)

The Application of National Leasing Group Inc. ("NLGI") says as follows:

1. By Order of this Court dated March 13, 2002 and filed March 14, 2002, PricewaterhouseCoopers Inc. ("PWC") was appointed Receiver of the assets of Hickman Equipment (the "Receivership Order").

2. By further Order of this Court dated March 13, 2002 and filed March 14, 2002, Hickman Equipment was adjudged bankrupt and PWC was appointed as Trustee of the estate of the bankruptcy (the "Receiving Order").
3. By further Order of this Court dated May 14, 2002 and filed May 17, 2002, PWC's plan for the realization of the assets of Hickman Equipment was approved (the "Realization Plan Order").
4. The Realization Plan Order approved PWC's plan for the determination of the rights and entitlement of creditors and claimants to the assets of Hickman Equipment (the "Claims Plan").
5. Under paragraphs 6 and 7 of the Claims Plan, the determination of the rights and entitlement of creditors and claimants to the assets of Hickman Equipment involved a two stage process, as follows:
  - (a) A determination of whether a claimant had a valid, perfected and enforceable ownership or security interests in the assets of Hickman Equipment or the proceeds arising therefrom; and
  - (b) A determination of the priority of a claimant's interests vis-a-vis other claimants.
6. Under paragraph 20 of the Claims Plan, PWC proposed that the order of priority of claims to an asset of Hickman Equipment or to the proceeds arising therefrom be determined using the priority rules established by the *Personal Property Security Act*, S.N.L. 1998, c.P-7.1 ("PPSA") and other applicable law.
7. Under paragraph 21 of the Claims Plan, issues of priority and entitlement to collateral between secured claimants may, upon Application, be brought before this Court for determination, pursuant to the provisions of Section 68 of the PPSA.
8. NLGI presented its security interest claim to PWC (the "NLGI Claim").
9. The NLGI Claim dealt with various assets as more particularly referenced in the Final Determination issued by PWC.
10. PWC holds in trust the proceeds from the sale of a 310SG Backhoe Loader, serial number T0310SG894504 (the "Backhoe Loader"), such sale having taken place prior to the bankruptcy of Hickman Equipment. The amount held in trust by PWC is \$70,200.00. There are other assets more particularly referenced in the Final Determination issued by PWC dealt with in the NLGI Claim which have not been sold by PWC (the "Other Assets").
11. PWC issued its Final Determination of the NLGI Claim and allowed the NLGI Claim as a valid secured claim.

12. PWC has not made any determination as to NLGI's priority or entitlement to the proceeds arising from the sale of the Backhoe Loader or to the Other Assets.
13. NLGI therefore applies, pursuant to paragraph 21 of the Claims Plan and Section 68 of the PPSA, (i) for a determination of the priority and entitlement of NLGI vis-a-vis's other claimants, to the proceeds from the sale of the Backhoe Loader and to their interest in the Other Assets, and (ii) for an order that PWC pay the proceeds from the sale of the Backhoe Loader to NLGI.

**DATED** at St. John's, in the Province of Newfoundland and Labrador this 15<sup>th</sup> day of January, A.D., 2003.

**MARTIN WHALEN HENNEBURY STAMP**

  
**R. PAUL BURGESS**

Solicitors for the Applicant

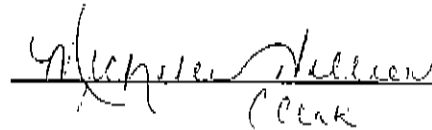
Whose address for service is:

15 Church Hill

St. John's, NL A1C 5X4

TO: Registry of the Supreme Court  
Duckworth Street  
St. John's, NL

**ISSUED** at St. John's, in the Province of Newfoundland and Labrador this 17<sup>th</sup> day of January, A.D., 2003.

  
Clerk

**SUMMARY OF CURRENT DOCUMENT**

|  |   |
|--|---|
| <b>Name of Issuing Party or Person:</b>                                  | <b>National Leasing Group Inc.</b>  |
| <b>Date of Document:</b>   | <b>January 2003</b>   |
| <b>Summary of Order/Relief Sought or Statement of Purpose in filing:</b> | <b>Interlocutory Application of National Leasing Group Inc. ("NLGI") for payment to NLGI of the proceeds from the sale by the Receiver of the equipment referenced in the Application and an Order with respect to the security interests of NLGI in other assets</b> |
| <b>Court Sub-File Number:</b>  | <b>7:</b>   |

**2002 01T 0352****IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION**

**IN THE MATTER OF** a Court ordered Receivership  
of Hickman Equipment (1985) Limited  
("Hickman Equipment") pursuant to Rule 25 of  
the **Rules of the Supreme Court**, 1986 under  
the *Judicature Act*, R.S.N.L. 1990, c.J-4, as amended

**AND IN THE MATTER OF** the *Bankruptcy and  
Insolvency Act*, Chapter B-3 of the Revised  
Statutes of Canada, 1985, as amended (the "BIA")

**NOTICE**

You are hereby notified that the foregoing application will be heard by a Judge of the Court of the Supreme Court sitting at St. John's, Newfoundland and Labrador on the 11 day of Feb., 2003 at 10:00 a.m. or so soon thereafter as the Application can be heard.

**MARTIN WHALEN HENNEBURY STAMP**
  
 R. PAUL BURGESS

Solicitors for the Applicant  
Whose address for service is:  
15 Church Hill  
St. John's, NL A1C 5X4

TO: Registry of the Supreme Court  
Duckworth Street  
St. John's, NL

SCHEDULE "A"DISTRIBUTION LIST**TO:**

|  |  |                                      |
|--|--|--------------------------------------|
| ABN Amro Bank Canada/<br>ABN Amro Leasing &<br>Tarmac Equipment Ltd.                                     | Aubrey L. Bonnell, Q.C.<br>Brian Winsor<br>David Timms<br>Brent Keenan | 709-722-7521<br><br><br>416-868-0673 |
| Bombardier Capital Leasing<br>& Culease Financial Services   | J. Vernon French, Q.C.   | 709-754-2701                         |
| Caterpillar Equipment  | Colin D. Grant   | 905-849-5512                         |
| CAT Finance  | James Smyth, Q.C.<br>Phillip Warren                                    | 709-754-5662                         |
| Cedarrapids  | Les Baumback<br>Francoise Belzil                                       | 319-399-4760<br>780-413-3152         |
| CIBC   | R. Wayne Myles<br>Geoffrey Spencer                                     | 709-579-2647                         |
| CIBC Equipment Finance Ltd./<br>CIT Financial Ltd.   | Gregory W. Dickie  | 709-722-9210                         |
| Contract Funding Group Inc.  | Mark G. Klar   | 416-218-1831                         |
| DaimlerChrysler Financial Services/<br>DaimlerChrysler Capital Services/<br>Mercedes-Benz of Canada Inc. | Philip Buckingham<br>Peter O'Flaherty<br>Elaine Gray                   | 709-722-4720<br><br>416-863-3527     |
| Fabtek Corp.   | Linc A. Rodgers<br>Rhodie E. Mercer, Q.C.                              | 416-863-2653<br>709-726-5705         |
| GE Capital   | Harvey Chaiton<br>Frederic Scalabini                                   | 416-218-1849<br>905-319-4855         |
| GMAC   | Thomas R. Kendell, Q.C.  | 709-722-1763                         |
| Group Holdings Ltd./Hickman  | Robert Stack/  | 709-726-2992                         |

|  |   |                              |
|--|---|------------------------------|
| Equipment/Hickman Holdings Ltd.            | Griffith D. Roberts                             |                              |
| Ingersoll-Rand Canada Inc.                 | R. Barry Learmonth<br>Jonathan Wigley           | 709-739-8151<br>416-863-6275 |
| John Deere Ltd./<br>John Deere Credit Inc. | Neil L. Jacobs /<br>Bruce Grant/Maureen<br>Ryan | 709-722-4565                 |
| ORIX Financial Services Canada Ltd.        | Donald Yack                                     | 416-236-3010                 |
| Goodman Associates                         | Paul G. Goodman                                 | 902-425-3777                 |
| Merrick Holm                               | Carl Holm, Q.C.                                 | 902-429-8215                 |
| Royal Bank of Canada                       | Thomas O. Boyne, Q.C.                           | 902-463-7500                 |
| TD Asset Financial Corp.                   | D. Bradford L. Wicks                            | 709-753-5221                 |
| Wells Fargo Equipment Finance Co.          | Richard Jones                                   | 416-361-6303                 |
| Patterson Palmer Hunt Murphy               | Frederick. J. Constantine                       | 709-722-0483                 |

2002 01T 0352

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION**

**IN THE MATTER OF** a Court ordered Receivership  
of Hickman Equipment (1985) Limited  
("Hickman Equipment") pursuant to Rule 25 of  
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**AND IN THE MATTER OF** the *Bankruptcy and  
Insolvency Act*, Chapter B-3 of the Revised  
Statutes of Canada, 1985, as amended (the "BIA")

**AFFIDAVIT**

I, Sandra Futros, of the Town of Dugald, in the Province of Manitoba make oath and say that:

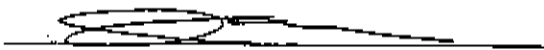
1. I am Legal Specialist, with National Leasing Group Inc. ("NLGI"), the Applicant in the Interlocutory Application, and as such have personal knowledge of the matters set forth herein, except where otherwise noted.
2. By a receiving Order dated March 13, 2002 and filed March 14, 2002 (the "Receiving Order") Hickman Equipment (1985) Limited ("HEL") was adjudged bankrupt and PrincewaterhouseCoopers Inc. ("PWC") was appointed Trustee in Bankruptcy in accordance with the BIA.
3. NLGI filed a Proof of Claim in the bankruptcy of HEL dated April 17, 2002.
4. By Final Determination dated December 11, 2002 (the "Final Determination"), PWC has allowed, *inter alia*, the claims of NLGI in respect of certain assets and proceeds as more particularly set forth therein (the "NLGI Claim"). A true copy of the Final Determination is attached as Exhibit "A" to this Affidavit.
5. NLGI has been advised by PWC and as is set forth in PWC's Final Determination with respect to NLGI that PWC holds in trust the proceeds from the sale of a 310SG Backhoe Loader, serial number T0310SG894504 (the "Backhoe Loader"), such sale having taken place prior to the bankruptcy of Hickman Equipment. The amount held in trust by PWC is \$70,200.00.
6. NLGI has a first ranking security interest in the Backhoe Loader and the other assets more particularly described in PWC's Final Determination by virtue of the security and



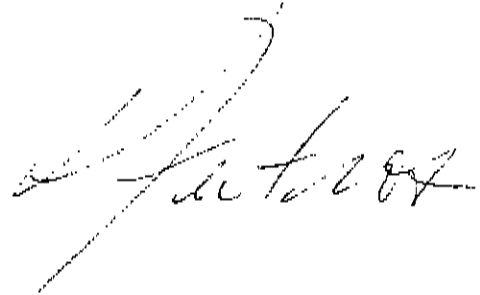
other documents referenced by PWC in the Final Determination as it relates to NLGI.

7. This Affidavit is sworn to and filed in support of NLGI's application to this Honourable Court for an Order approving the payment to NLGI by the Receiver of the proceeds in the amount of \$70,200 and an Order with respect to NLGI's first ranking security interest in the Other Assets.

**SWORN TO** at *Winnipeg, Manitoba*  
this *17<sup>th</sup>* day of January, 2003 before me:



A NOTARY PUBLIC  
in and for the Province of Manitoba



This is exhibit "A" referred to in the affidavit of Sandra Futros dated January 17, 2003.

## SCHEDULE A FINAL DETERMINATION

(Issued in accordance with paragraph 14 of the Claims Plan)

Secured Party: **NATIONAL LEASING GROUP INC. ("NLGI")**

### 1. Introduction

PWC as Receiver continues to hold the Assets of HEL under the terms of the Receivership Order granted on March 13, 2002. The Claims Plan is intended to provide a mechanism by which Claimants assert Claims to these Assets.

Pursuant to paragraph 14 of the Claims Plan a Final Determination is to be made by the PWC as Trustee either allowing or disallowing a Claim as a valid secured claim under section 135(4) of the BIA. This is the Trustee's Final Determination in respect of NLGI.

Capitalized terms used in this Final Determination shall have the meaning ascribed to them in the Claims Plan unless otherwise defined herein.

### 2. Summary Final Determination

As NLGI's claim is allowed as a valid secured claim in all of the Assets, the Trustee claims no interest in the assets that are the subject of the claim.

### 3. Defined Terms:

For ease of Reference in this Final Determination, the Trustee has applied the following definitions/ abbreviations:

|                 |   |  |
|-----------------|---|--|
| "HEL"           | - | Hickman Equipment (1985) Ltd.                                  |
| "JD"            | - | John Deere   |
| "PMSI"          | - | Purchase Money Security Interest                               |
| "PPR"           | - | Personal Property Registry                                     |
| "PPSA" or "Act" | - | <i>Personal Property Security Act</i> , S.N.L. 1998, c.P - 7.1 |
| "Province"      | - | Newfoundland and Labrador                                      |
| "Regulations"   | - | Personal Property Security Regulations (103/99)                |
| "s/n"           | - | Serial Number  |

#### **4. Assets**

NLGI's claim relates primarily to office equipment, including computer systems, software, servers, adapters, batteries, printers, scanners, etc. However, NLGI also claims an interest in three pieces of heavy equipment. At the time of bankruptcy all three pieces of heavy equipment had been sold to third parties. However, the proceeds from the sale of Asset #2 were held in trust by the Monitor and subsequently are now held in trust by the Trustee.

- |  |  |
|--|--|
| 1) 160LC Excavator<br>(P00160X041613)      | 2) 310SG Backhoe Loader<br>(T0310SG894504) |
| 3) 310SG Backhoe Loader<br>(T0310SG895013) |  |

#### **5. Assumptions**

In preparing this Final Determination, the Trustee has made the following assumptions:

- i) the genuineness of all signatures, the authenticity of all original Documents and the conformity to authentic originals of all Documents that are copies, whether facsimile, photostatic, certified or otherwise;
- ii) that each party to any of the Documents that create obligations for that party, has duly authorized, executed and delivered such Documents to which it is a party;
- iii) with the exception of security interests created by the Documents, the Documents that create obligations for parties, constitute legal, valid and binding obligations of each party thereto, enforceable against each of them in accordance with their terms;
- iv) that insofar as any obligation under any of the Documents is to be performed in any jurisdiction outside the Province, its performance will not be illegal or unenforceable by virtue of the laws of that other jurisdiction; and
- v) the accuracy and currency of the indices and filing systems maintained in relation to the public registries where we have searched or inquired or have caused searches or inquiries to be conducted.

## 6. Qualifications

Since there is no title registration system in the Province relating to personal property, any opinion respecting title is based solely upon the relevant Documentation.

For the purpose of determining the validity under prior law of security interests created and registered before the implementation of the PPSA and transitioned by registration in the PPR, the Trustee has only reviewed the security agreements and their registrations referenced in the PPR search report section entitled: "Pre-PPSA registration information continued by this registration", endorsements, if any, on the security agreements reviewed and the pre-PPSA legislation relating to their registration.

Both the PPSA, and the *Conditional Sales Act* (the latter statute being part of the "prior law") provide that property in goods pass to a purchaser from a seller or trader where the sale is in the ordinary course of business of the seller or trader. In some instances HEL transferred equipment subject to a security interest to a purchaser without discharging the security interest. In some cases the purchaser granted a security interest to another lender, while in other cases the purchaser transferred the equipment to a third party who, in turn granted a security interest to a lender. Due to the lack of evidence concerning all transactions involving the Assets, we are unable to determine if sales by HEL were "in the ordinary course of business" such as to enable the purchaser to receive clear title to the equipment in order to allow a subsequent lender to obtain a valid security interest or a subsequent transferee to obtain clear title.

No opinion is expressed as to the rank or priority of any security interest created by the Documentation.

No opinion is expressed with regard to any collateral covered by the Documentation, but not referred to in this Final Determination.

Pursuant to the terms of the Court Order establishing the Claims Plan, this Final Determination determines the validity of security claimed and whether such security has been properly perfected. For the assistance of readers, the Trustee has sometimes provided comments concerning the priority of such security vis-à-vis other parties but such priority-related comments are made without prejudice to any position which may be taken at any future date by any other party in regards to priorities.

Notwithstanding the findings in this Final Determination concerning the validity of the Claim as secured or otherwise, PricewaterhouseCoopers Inc. is not precluded by such determination from challenging the Claim as being reviewable or fraudulent pursuant to the provisions of the BIA or any applicable provincial legislation.

Except where a specific claim to proceeds has been made and material provided in support of that claim, the Trustee expresses no opinion with respect to claims to proceeds or claims

involving tracing. An outline of the proceeds claims processes and issues are set out in s.13.

## **7. Overview of Claim**

NLGI claims that it holds a secured PMSI in the office equipment listed in the various Lease Agreements entered into by HEL and NLGI and with respect to the heavy equipment, NLGI claims it holds a first charge priority position in the collateral and any proceeds therefrom.

The Proof of Claim, dated 17 April 2002, indicates a total claim of \$557,740.82 comprised of an Unsecured Claim in the amount of \$0.00 and a Secured Claim in the amount of \$557,740.82. The total claim results from 14 separate lease agreements:

- 1) Lease #2069724 – Balance outstanding of \$6,147.90 + buyout of \$10.00
- 2) Lease #2094295 – Balance outstanding of \$11,553.90 + buyout of \$1,586.34
- 3) Lease #2073988 – Balance outstanding of \$13,363.00 + buyout of \$10.00
- 4) Lease #2075799 – Balance outstanding of \$14,938.50 + buyout of \$10.00
- 5) Lease #2077894 – Balance outstanding of \$7,615.30 + buyout of \$10.00
- 6) Lease #2079924 – Balance outstanding of \$12,308.10 + buyout of \$10.00
- 7) Lease #2120456 – Balance outstanding of \$4,512.20 + buyout of \$398.60
- 8) Lease #2075797 – Balance outstanding of \$2,640.00 + buyout of \$10.00
- 9) Lease #2096477 – Balance outstanding of \$32,248.00 + buyout of \$4,319.10
- 10) Lease #2089410 – Balance outstanding of \$5,830.40 + buyout of \$10.00
- 11) Lease #2129759 – Balance outstanding of \$22,245.60 + buyout of \$1,908.90
- 12) Lease #2140104 – Balance outstanding of \$29,257.34 + buyout of \$2,174.30
- 13) Lease #2108928 – Balance outstanding of \$374,831.54 + buyout of \$1.00
- 14) Lease #2106175 – Balance outstanding of \$9,074.70 + buyout of \$909.00

## **8. Documentation**

In preparing this final determination, the Trustee has considered and relied upon only the following information provided to it from all sources:

- i. PPR search conducted in the name of the debtor on March 21, 2002.
- ii. Proof of Claim (Form 33) dated 17 April 2002.
- iii. Various invoices from HEL:
  - From HEL to J. Eales Equipment Rentals Ltd., dated January 16, 2002, for the sale of a John Deere 310SG Backhoe (T0310SG894504).
  - From HEL to Triple A Excavating, dated October 31, 2001, for the sale of a 160LC Excavator (P00160X041613). Trade-in was a used JD 310D Backhoe (T0310DG793724).
  - From HEL to Hurley Construction Ltd., dated February 22, 2001, for the sale of a 310SG Backhoe (T0310SG895013). Trade-in was a used JD 310SE Backhoe (T0310SE832756).
- iv. Correspondence from Paul Burgess, solicitor for NLGI, dated 29 October 2002
- v. **Master Lease Agreement (No. 48001254)**
  - Lease Agreement, dated February 20, 2001, between NLGI as Lessor and HEL as Lessee. This agreement covers the three pieces of heavy equipment; 2 - 310SG Backhoe Loaders (s/n T0310SG894504 & T0310SG894013) and a 160LC Excavator (P00160X041613). The lease was for a 48-month term commencing March 1, 2001 and with a \$1.00 residual. Attached to the Agreement is a Delivery and Acceptance Certificate dated February 20, 2001 signed by HEL.
  - Waiver letters:
    - From John Deere Limited dated February 26, 2001
    - From CIBC Equipment Finance Limited dated February 27, 2001
    - From CIBC dated February 21, 2001
    - From MTC Leasing Inc. dated March 8, 2001
    - From GMAC dated February 27, 2001
    - From Mellon Leasing/Mellon Bank dated February 27, 2001
    - From Cyberlease Corporation dated February 27, 2001
    - From ABN/AMRO dated February 26, 2001
  - Invoice from HEL to NLGI, dated 21 February 2001, for the purchase of the three heavy equipment Assets by NLGI.
  - Payment requisition from NLGI to John Deere Ltd. (Canada), dated 7 March 2001, for \$353,494.49. (This amount equals the total amount less HST for the three items noted in the HEL Invoice above.)
  - Cheque from NLGI to John Deere Ltd. (Canada), dated 7 March 2001, for \$353,494.49.
- vi. **Lease No. 2140104**

- Lease Agreement, dated December 3, 2001, between HEL as Lessee and NLGI as Lessor. The Lease is for a term of 40 months with an option to purchase after 36 months for \$2174.30. The Lease covers the following office equipment:
  - 2 printers (4520 DN1 IBM Infoprint 1000 20 DUPLX/ET
  - 2 Chip (IPDS) Chip for IP1000 20
  - 2 Memory Upgrades (32MB Memory Upgrade for IP1000 20)
  - 5 Cisco 350 Series Adapters
  - 2 Cisco 350 Series Access Point
  - 1 Cisco 350 Series PCI Desktop Adapter
  - 2 3 year IBM Onsite Warranties
  - 1 Cisco 350 PCM Wireless Client Adapter
  - 1 HP Switch
  - 1 NA Active Virus Defense Suite
  - 7 Exabyte cart 35/70
  - 75 Symantec Nav Corp ED DT/SVR
  - 1 Symante Norton Anti-Virus CD
  - 1 Arcserve NT 2000 WorkGroup
  - 1 Veritas Backup
  - 1 Veritas Backup
  - 1 Veritas Backup
- Invoice from PFW Systems Corporation dated 9 November 2001, showing the purchase of various items by NLGI for shipment to HEL.
- Invoice from PFW Systems Corporation dated 21 November 2001, showing the purchase of various items by NLGI for shipment to HEL
- Cheque from NLGI to PFW Systems Corporation dated 3 December 2001 for \$15,735.45.
- Invoice from X-Wave, dated 16 November 2001, showing the purchase of various items by NLGI for shipment to HEL.
- Invoice from X-Wave, dated 3 October 2001, showing the purchase of various items by NLGI for shipment to HEL.
- Invoice from X-Wave, dated 30 October 2001, showing the purchase of various items by NLGI for shipment to HEL
- Cheque from NLGI to X-Wave dated 3 December 2001 for \$9,269.00.

vii. **Lease No. 2129759**

- Lease Agreement, dated September 20, 2001, between HEL as Lessee and NLGI as Lessor. The Lease is for a term of 36 months with an option to purchase after 33 months for \$1,908.90. The Lease covers the following office equipment:
  - 1 HP Laserjet 2200 DTN
  - 1 HP Deskjet
  - 3 Thinkpad X21 PII with accessories.
- Invoice from MicroAge Computer Centres, dated 20 August 2001 showing the purchase of various items by NLGI for shipment to HEL.
- Invoice from MicroAge Computer Centres, dated 20 August 2001 showing

- the purchase of various items by NLGI for shipment to HEL.
- Invoice from MicroAge Computer Centres, dated 5 September 2001 showing the purchase of various items by NLGI for shipment to HEL.
- Invoice from MicroAge Computer Centres, dated 16 August 2001, showing the purchase of various items by NLGI for shipment to HEL.
- Invoice from MicroAge Computer Centres, dated 20 August 2001, showing the purchase of various items by NLGI for shipment to HEL.
- Invoice from MicroAge Computer Centres, dated 10 September 2001, showing the purchase of various items by NLGI for shipment to HEL.
- Invoice from MicroAge Computer Centres, dated 16 August 2001, showing the purchase of various items by NLGI for shipment to HEL.
- Invoice from MicroAge Computer Centres, dated 16 August 2001, showing the purchase of various items by NLGI for shipment to HEL.
- Correspondence from Lillian Davis dated 24 October 2002 to NLGI confirming payment to MicroAge Computer on 19 September 2001 for \$21,952.35.

**viii. Lease No. 2120456**

- Lease Agreement, dated July 1, 2001, between HEL as Lessee and NLGI as Lessor. The Lease is for a term of 36 months with an option to purchase after 33 months for \$398.60. The Lease covers the following office equipment:
  - 1 Hewlett Packard Laserjet 455 ON Color
  - 1 64 MB for HP
- Invoice from MicroAge Computer Centres, dated 13 June 2001, showing the purchase of various items by NLGI for shipment to HEL.
- Cheque from NLGI to MicroAge Computer Centres, dated 29 June 2001, for \$4,583.90.

**ix. Lease No. 2106175**

- Lease Agreement, dated March 1, 2001, between HEL as Lessee and NLGI as Lessor. The Lease is for a term of 39 months with an option to purchase after 36 months for \$909.00. The Lease covers the following office equipment:
  - 1 server installed in configuration
  - 1 75 Microsoft exchange CAL 5.5 Bus
  - 1 Microsoft exchange server 5.5 Bus
  - 1 Microsoft kit
- Invoice from X-Wave, dated 15 February 2001, showing the purchase of various items by NLGI for shipment to HEL.
- Invoice from X-Wave, dated 15 February 2001, showing the purchase of various items by NLGI for shipment to HEL.
- Cheque from NLGI to X-Wave, dated 1 March June 2001, for \$10,453.50.

**x. Lease No. 2096477**

- Lease Agreement, dated November 1, 2000, between HEL as Lessee and NLGI as Lessor. The Lease is for a term of 36 months with an option to



purchase after 33 months for \$4,319.10. The Lease covers the following office equipment:

- 1 IBM SVR5100 P3667 128MB 256KB
- 1 IBM Tape Drive 20/40 GB SCSI DLT INT
- 1 IBM ENET SVR Adapter 10/100
- 1 IBM P/S Netfinity Hotswap Kit
- 2 IBM HD SCSI 18.2GB Hotswap
- 1 IBM HD SCSI 18.2 GB Hotswap
- 1 Kingston MEM 128MB DIMM Netfinity
- 1 Kingston MEM 256 MB DIMM Netfinity
- 1 APC Smart UPS 1000 XL NET
- 1 IBM Cable SVR RAID-3L Ultra 2 SCSI Adapter
- 1 KDS Monitor 15" CLR
- 1 IBM TP 600X PIII 500MHZ
- 1 IBM 64MG SO-DIMM SDRAM MEM
- 1 Realprot Ethernet 10/100
- 2 IBM 56W Ultrastim AC Adapter
- 1 Thinkpad A20P P111/750 12
- 1 IBM 128MB 100MHZ
- 1 IBM Thinkpad Prot Replica
- 1 IBM Thinkpad 72W AC ADAPT
- 1 Realprot Ethernet 10/100
- HP Laserjet 4050 1200X120
- 1 HP Duplex Printing Option
- 1 HP Jetdirect 600N Multipr
- 9 NEC 17" Monitors
- 6 IBM PC P111 500 MHZ
- 5 IBM Etherlink 10/100 PCI
- 1 IBM Power Supply 250W NF5600
- 1 IBM 10/100 Network Card
- 1 HP Procurve Switch 224M 10BT
- 6 64MB Ram Upgrade
- 1 ARC Software PKG
- 1 IBM Internal CD-Rewriter
- 1 IBM Battery
- 1 IBM 56W Ultrastim AC Adaport
- 1 IBM 64MB 100MHZ Non-ECC D
- 1 IBM 126 MB Non-Parity
- Accessories and Support
- Invoice from X-Wave, dated 27 October 2000, showing the purchase of various items by NLGI for shipment to HEL.
- Invoice from X-Wave, dated 16 October 2000, showing the purchase of various items by NLGI for shipment to HEL.
- Invoice from X-Wave, dated 16 October 2000, showing the purchase of various items by NLGI for shipment to HEL.

- Invoice from X-Wave, dated 16 October 2000, showing the purchase of various items by NLGI for shipment to HEL.
- Invoice from X-Wave, dated 19 October 2000, showing the purchase of various items by NLGI for shipment to HEL.
- Invoice from X-Wave, dated 24 October 2000, showing the purchase of various items by NLGI for shipment to HEL.
- Cheque from NLGI to X-Wave Solutions, dated 31 October 2000, for \$14,377.30.
- Invoice from MicroAge Computer Centres, dated 29 August 2000, showing the purchase of various items by NLGI for shipment to HEL.
- Invoice from MicroAge Computer Centres, dated 10 October 2000, showing the purchase of various items by NLGI for shipment to HEL.
- Invoice from MicroAge Computer Centres, dated 21 September 2000, showing the purchase of various items by NLGI for shipment to HEL.
- Invoice from MicroAge Computer Centres, dated 8 October 2000, showing the purchase of various items by NLGI for shipment to HEL.
- Invoice from MicroAge Computer Centres, dated 12 October 2000, showing the purchase of various items by NLGI for shipment to HEL.
- Invoice from MicroAge Computer Centres, dated 11 August 2000, showing the purchase of various items by NLGI for shipment to HEL.
- Invoice from MicroAge Computer Centres, dated 13 October 2000, showing the purchase of various items by NLGI for shipment to HEL.
- Invoice from MicroAge Computer Centres, dated 21 September 2000, showing the purchase of various items by NLGI for shipment to HEL.
- Invoice from MicroAge Computer Centres, dated 25 September 2000, showing the purchase of various items by NLGI for shipment to HEL.
- Invoice from MicroAge Computer Centres, dated 25 September 2000, showing the purchase of various items by NLGI for shipment to HEL.
- Invoice from MicroAge Computer Centres, dated 28 September 2000, showing the purchase of various items by NLGI for shipment to HEL.
- Cheque from NLGI to MicroAge Computer Centres, dated 31 October 2000, for \$35,292.35.

**xi. Lease No. 2094295**

- Lease Agreement, dated October 1, 2000 between HEL as Lessee and NLGI as Lessor. The Lease is for a term of 36 months with an option to purchase after 33 months for \$1,586.34. The Lease covers the following office equipment:
  - 3 IBM Infoprint 21 Printers
  - 3 service packs
- Invoice from PFW Systems Corporation, dated 22 September 2000, showing purchase of various items by NLGI to HEL.
- Invoice from PFW Systems Corporation, dated 26 September 2000, showing purchase of various items by NLGI to HEL.
- Cheque from NLGI to PFW Systems Corporation, dated 5 October 2000, for \$15,921.75.

- Invoice from Reprographics Ltd., dated 26 September 2000, showing purchase of various items by NLGI for shipment to HEL
- An internal document of NLGI dated 5 October 2000, requisitioning cheque for payment to Reporgraphics Ltd.
- Cheque from NLGI to Reporgraphics Ltd., dated 5 October 2000, \$1,782.50.

**xii. Lease No. 2089410**

- Lease Agreement, dated September 1, 2000, between HEL as Lessee and NLGI as Lessor. The Lease is for a term of 36 months with an option to purchase after 33 months for \$10.00. The Lease covers the following office equipment:
  - 2 IBM Thinkpads 390E PII
- Invoice from MicroAge Computer Centres, dated 31 July 2000, showing purchase of various items by NLGI for shipment to HEL.
- Cheque from NLGI to MicroAge Computer Centres, dated 18 August 2000, for \$9,057.40.

**xiii. Lease No. 2079924**

- Lease Agreement, dated June 1, 2000, between HEL as Lessee and NLGI as Lessor. The Lease is for a term of 36 months with an option to purchase after 36 months for \$10.00. The Lease covers the following office equipment:
  - 1 Pentium 111 500 Mhz, computer
  - 1 Data Protection Adapter
  - 1 VGA Color Monitor
  - 2 Printers
  - 1 Receipt Printer
  - 1 Diagnostic Modem
  - 1 UPS
  - Accessories
- Foreign Exchange Agreement dated 15 May 2000 and executed by HEL
- Invoice from Computer Support Services Inc., dated 17 April 2000, showing the purchase of various items by NLGI for shipment to HEL
- Invoice from Solutions by Computer, dated 17 April 2000, showing the purchase of various items by NLGI for shipment to HEL
- Correspondence from Sylvia Harnett-Dove, NLGI to John King, HEL dated 25 June 2000
- E-mail correspondence from Sylvia Harnett-Dove, NLGI dated 10 May 2000
- Cash Flow Statement
- Cheque from NLGI to Computer Support, dated 18 May 2000, for \$14,712.68 (US)
- Authorization slip signed by National Leasing authorizing transfer of \$22,201.43 (Can.) to \$14,712.68 (US).

**xiv. Lease No. 2077894**

- Lease Agreement, dated May 1, 2000, between HEL as Lessee and NLGI as Lessor. The Lease is for a term of 36 months with an option to purchase after 36 months for \$10.00. The Lease covers the following office equipment:
  - 2 Ricoh Photocopiers
  - 2 Ricoh Faxes
  - 2 Cabinets
  - 2 Computer Systems & Accessories
- Invoice from Reporgrahics Ltd., dated 23 March 2000, showing purchase of various items by NLGI for shipment to HEL
- Internal document of NLGI requisitioning payment to Repograhics Ltd., dated 25 April 2000.
- Cheque from NLGI to Reporgrahics Ltd., dated 25 April 2000, for \$10,557.00
- Invoice from MicroAge Computer Centres, dated 13 April 2000, showing the purchase of various items by NLGI for shipment to HEL
- Internal document of NLGI, dated 24 April 2000, requisitioning payment to MicroAge.
- Cheque from NLGI to MicroAge Computer Centres, dated 25 April 2000, for \$6,254.85.

**xv. Lease No. 2075799**

- Lease Agreement, dated May 1, 2000, between HEL as Lessee and NLGI as Lessor. The Lease is for a term of 36 months with an option to purchase after 36 months for \$10.00. The Lease covers the following office equipment:
  - 2 IBM PC300GL PIII 64/13/5G
  - 2 DT 1726D 17" Monitor
  - 2 64MB EDD 133 MHZ
  - 2 IBM 64 MB 100MHZ NP SDRAM
  - 1 IBM 64 MB 100MHZ Non-Ecc D
  - 1 DT 1726 17" Monitor
  - 1 Burglar Alarm System
  - 1 Cellular Backup
  - 1 Cisco 1605 Dual Ethernet Router
  - 2 HP Procurve 10/100 24 Port Hub
  - 1 HP Netserver 10/100 TX PCI Network Card
  - 1 Kingston 64 MB Upgrade for IBM 300 GL
  - 1 32 MB Upgrade for IBM 300GL
  - 1 Kingston 32MB Module F/IBM PC
  - 1 Kingston 32MB Module F/IBM TP 760 ETC
  - 4 3COM Fast Etherlink 10/100BTX PCI Adapt.
  - 4 3COM Megahertz 10/100 PC Network Card
  - HP Procurve 10/100 24 Port Hub
  - 1 32 MB Upgrade for IBM 300GL
  - 1 3COM Fast Elinkxl PCMCIA 10/100 No DOC
  - 38 Total Virus Defence Suite (26-50)
- Invoice from MicroAge Computer Centres, dated 8 March 2000, showing purchase of various items by NLGI for shipment to HEL.

- Invoice from MicroAge Computer Centres, dated 13 March 2000, showing purchase of various items by NLGI for shipment to HEL.
- Invoice from MicroAge Computer Centres, dated 15 March 2000, showing purchase of various items by NLGI for shipment to HEL.
- Invoice from MicroAge Computer Centres, dated 29 March 2000, showing purchase of various items by NLGI for shipment to HEL.
- Invoice from MicroAge Computer Centres, dated 22 March 2000, showing purchase of various items by NLGI for shipment to HEL.
- Invoice from MicroAge Computer Centres, dated 22 March 2000, showing purchase of various items by NLGI for shipment to HEL.
- Internal document of NLGI, dated 17 April 2000, requisitioning payment to MicroAge.
- Cheque from NLGI to MicroAge Computer Centres, dated 17 April 2000, for \$6,499.80.
- Invoice from X-Wave Solutions, dated 31 March 2000, showing the purchase of various items by NLGI for shipment to HEL.
- Invoice from X-Wave Solutions, dated 31 December 1999, showing the purchase of various items by NLGI for shipment to HEL.
- Invoice from X-Wave Solutions, dated 6 January 2000, showing the purchase of various items by NLGI for shipment to HEL.
- Invoice from X-Wave Solutions, dated 25 February 2000, showing the purchase of various items by NLGI for shipment to HEL.
- Invoice from X-Wave Solutions, dated 27 January 2000, showing the purchase of various items by NLGI for shipment to HEL.
- Internal document of NLGI, dated 17 April 2000, requisitioning payment to X-Wave Solutions.
- Cheque from NLGI to X-Wave Solutions, dated 17 April 2000, for \$20,053.70.
- Invoice from MIT Information Technology Inc., dated 5 April 2000, showing the purchase of various items by NLGI for shipment to HEL.
- Internal document of NLGI, dated 17 April 2000, requisitioning payment to MIT Information Technology.
- Cheque from NLGI to MIT Information Technology, dated 17 April 2000, for \$2,407.87.
- Invoice from Techni-Services Limited, dated 3 April 2000, showing purchase of various items by NLGI for shipment to Show Tech Audio.
- Invoice from Techni-Services Limited, dated 3 April 2000, showing purchase of various items by NLGI for shipment to Show Tech Audio.
- Internal document of NLGI, dated 17 April 2000, requisitioning payment to Techni-Services Limited.
- Cheque from NLGI to Techni-Services Limited, dated 17 April 2000, for \$1,827.52.

xvi. **Lease No. 2075797**

- Lease Agreement, dated June 1, 2000, between HEL as Lessee and NLGI as Lessor. The Lease is for a term of 36 months with an option to purchase after 36 months for \$10.00. The Lease covers the following office equipment:

- 1 telephone system and accessories.
- Invoice from NewTel Communications, dated 24 April 2000 addressed to National Leasing Group.
- Internal document of NLGI, dated 29 May 2000, requisitioning payment to NewTel Communications.
- Cheque from NLGI to NewTel Communications, dated 30 May 2000, for \$4,610.47.

**xvii. Lease No. 2073988**

- Lease Agreement, dated April 1, 2000, between HEL as Lessee and NLGI as Lessor. The Lease is for a term of 36 months with an option to purchase after 36 months for \$10.00. The Lease covers the following office equipment:
  - 133860 PC – 300PL PII 400 64/6.4GB
  - 134335 IBM 64 MB 100MHZ NP SDRAM
  - 358126 Daytek 17" Monitor
  - SER 800 Install of Ram
  - 132252 IBM Thinkpad 390X CEL 400
  - 132109 IBM PC300PL PIII 500MHZ 6
  - 514503 Office 2000 Prowin 9XNT 0
  - 755259 Realport Ethernet Cardbus
  - CEC016 64 MB RAM Upgrade
  - 447895 Kingston 32 MB RAM
  - 511092 Windows 98 Second Edition
  - 358126 Daytek 17" Monitor
- Correspondence from Sylvia Harnett-Dove, NLGI to HEL dated 17 March 2000
- Invoice from MicroAge Computer Centres, dated 23 February 2000, showing the purchase of various items by NLGI for shipment to HEL
- Invoice from MicroAge Computer Centres, dated 24 February 2000, showing the purchase of various items by NLGI for shipment to HEL
- Invoice from MicroAge Computer Centres, dated 11 February 2000, showing the purchase of various items by NLGI for shipment to HEL
- Invoice from MicroAge Computer Centres, dated 14 February 2000, showing the purchase of various items by NLGI for shipment to HEL
- Invoice from MicroAge Computer Centres, dated 18 February 2000, showing the purchase of various items by NLGI for shipment to HEL
- Internal document of NLGI, dated 8 March 2000, requisitioning payment to MicroAge.
- Cheque from NLGI to MicroAge Computer Centres, dated 8 March 2000, for \$29,513.60

**xviii. Lease No. 2069724**

- Lease Agreement, dated February 1, 2000, between HEL as Lessee and NLGI as Lessor. The Lease is for a term of 36 months with an option to purchase after 36 months for \$10.00. The Lease covers the following office equipment:

- 2 IBM TP 600X Notebook Computers with accessories
- Invoice from MicroAge Computer Centres, dated 1 February 2000, showing the purchase of various items by NLGI for shipment to HEL
- Internal document of NLGI, dated 2 February 2000, requisitioning payment to MicroAge Computer Centres
- Cheque from NLGI to MicroAge Computer Centres, dated 2 February 2000, for \$17,285.65

## **9. Classification of the Assets**

The actual subjective use to which the assets are put by the debtor dictates whether the assets will be classified as inventory, equipment or consumer goods. It is the opinion of the Trustee that the 3 pieces of heavy equipment were held by HEL for sale or lease and as such, form part of the inventory of HEL (s.2(x) of the PPSA). The remainder of the Assets to the best of the Trustee's knowledge was used by HEL in their office and therefore constitute equipment of HEL (s.2(p) of the PPSA).

## **10. Application of the PPSA**

As indicated by the above-noted documentation the secured transactions between NLGI and HEL were in the form of inventory and equipment leases. The lease which secured the 3 pieces of heavy equipment (as listed above), was for a term of more than one year and was a financing lease as opposed to a true lease; s.4 of the PPSA confirms that such a secured transaction is governed by the PPSA. With respect to the other Lease Agreements, all were for a term of greater than one year and therefore are subject to the PPSA

## **11. PRE-PPSA/ Transitioning Issues**

Not applicable in this instance as all transactions took place in 2000 and 2001 and therefore were subsequent to the coming into force of the PPSA in the Province.

## **12. Perfection**

Section 20 of the PPSA holds that there are two required elements to a perfected security interest in collateral, regardless of the order of occurrence. There must be:

(l) attachment in accordance with section 13, which requires:

1. Value must be given. Value is defined in s. 2(tt) to include any consideration sufficient to support a simple contract. However, a secured party need not have actually advanced the loan funds or the

purchase money credit in order to satisfy the value requirement of section 13. Value is given as soon as a secured party makes a binding commitment to extend the loan or purchase money credited to the debtor.<sup>1</sup>

2. The debtor must have rights in the collateral; and
3. There must be a security agreement that meets the requirements of s. 11.

- (ii) a perfection step in accordance with section 25 (perfection by possession) or section 26 (perfection by registration of a financing statement in the PPR.

Is there attachment?

- (i) Value given?

**YES** The Trustee has been provided with evidence of value passing from NLGI to HEL with respect to these transactions.

- (ii) Rights in the collateral?

**YES** HEL held possession of the assets and any real right in the collateral that the debtor may have, including but not limited to, a right of possession is sufficient to meet the requirements of s. 13.<sup>2</sup> Furthermore, s. 13 (3) confirms that a lessee under a lease for a term of more than one year has rights in the goods for purposes of attachment when s/he obtains possession of them under the lease.

**Note:** For the purposes of expressing an opinion with respect to HEL's rights in the collateral, the Trustee has not made any determination with respect to HEL's title in the collateral at issue nor with respect to the lawfulness of HEL's possession thereof.

- (iii) Have the evidentiary requirements of s. 11 been met?

**YES** The evidentiary requirements of s. 11, required for attachment, are established by the 14 leases. Specifically, in accordance with s.11(1)(b), all 14 leases are in writing, have been signed by HEL as the debtor and each provides an adequate description of the collateral that is secured.

Is there a perfection step?

**Master Lease Agreement (No. 48001254)**

**YES**

<sup>1</sup> C. Walsh, *An Introduction to the New Brunswick Personal Property Act*, (1995) at p.83.

<sup>2</sup> Ibid. at p.84.



Registration number 809277 contains the following information:

- **General Description of Collateral:** "All backhoe loaders, excavator of every nature or kind described in Lease Schedule number 2108928 dated February 20, 2001, which Lease Schedule is attached to and forms part of Master Lease Agreement number 48001254 between the Secured Party, as Lessor and the Debtor as Lessee, as amended from time to time, together with all attachments, accessories and substitutions."
- **Serial Numbered Collateral:** "2001 310SG Backhole Loader (s/n T0310SG894504); 2001 310SG Backhole Loader (s/n T0310SG895013); 2001 160LC Excavator (s/n P00160X041613)"

Registration number 809244 contains the following information:

- **General Description of Collateral:** "All goods and equipment of every nature or kind leased pursuant to Master Lease Agreement number 48001254 dated February 20, 2001 between the Secured Party, as Lessor and the Debtor as Lessee, as amended from time to time, together with all attachments, accessories and substitutions, including all after acquired goods and equipment and any Lease Schedules attached to and forming part of Master Lease Agreement number 48001254."
- **Serial Numbered Collateral:** Blank

By operation of s.26 of the PPSA, these registrations qualify as a perfection step with respect to NLGI's security interest in the 3 pieces of heavy equipment in Lease Schedule #2108928. What constitutes an appropriate description of collateral comes from ss.23-24 of the Regulations. In particular, in accordance with s.23(1)(e) of the Regulations, items of inventory must be described in accordance with s.24(1) and s.24(2). It is the opinion of the Trustee that the collateral description in the above-noted financing statement does satisfy these requirements.

#### Lease No. 2140104

YES

Registration number 1544225 contains the following information:

- **General Description of Collateral:** "All computer systems, software, adapters, servers, upgrades of every nature or kind described in Lease Number 2140104 dated December 3, 2001 between the Secured Party, as Lessor and the Debtor as Lessee, as amended from time to time, together with all attachments, accessories and substitutions."
- **Serial Numbered Collateral:** Blank

By operation of s.26 of the PPSA, this registration qualifies as a perfection step with respect to NLGI's security interest in the assets listed in Lease No.2140104. What constitutes an appropriate description of collateral comes from ss.23-24 of the Regulations. In particular, in accordance with s.23(1)(d) of the Regulations, items of equipment must be described in

accordance with s.24(1) and s.24(2). It is the opinion of the Trustee that the collateral description in the above-noted financing statement does satisfy these requirements.

**Lease No. 2129759**

**YES**

Registration number 1239412 contains the following information:

- **General Description of Collateral:** "All computer systems, software, CD-RW, printers, battery and scanners of every nature or kind described in Lease number 2129759 dated September 20, 2001 between the Secured Party, as Lessor and the Debtor as Lessee, as amended from time to time, together with all attachments, accessories and substitutions."
- **Serial Numbered Collateral:** Blank

By operation of s.26 of the PPSA, this registration qualifies as a perfection step with respect to NLGI's security interest in the assets listed in Lease No.2129759. What constitutes an appropriate description of collateral comes from ss.23-24 of the Regulations. In particular, in accordance with s.23(1)(d) of the Regulations, items of equipment must be described in accordance with s.24(1) and s.24(2). It is the opinion of the Trustee that the collateral description in the above-noted financing statement does satisfy these requirements.

**Lease No. 2120456**

**YES**

Registration number 1067133 contains the following information:

- **General Description of Collateral:** "All printers of every nature or kind described in Lease number 2120456 dated June 29, 2001 between the Secured Party, as Lessor and the Debtor as Lessee, as amended from time to time, together with all attachments, accessories and substitutions."
- **Serial Numbered Collateral:** Blank

By operation of s.26 of the PPSA, this registration qualifies as a perfection step with respect to NLGI's security interest in the assets listed in Lease No.2120456. What constitutes an appropriate description of collateral comes from ss.23-24 of the Regulations. In particular, in accordance with s.23(1)(d) of the Regulations, items of equipment must be described in accordance with s.24(1) and s.24(2). It is the opinion of the Trustee that the collateral description in the above-noted financing statement does satisfy these requirements.

**Lease No. 2106175**

**YES**

Registration number 825232 contains the following information:

- **General Description of Collateral:** "All computer software of every nature or kind described in Lease number 2106175 dated March 1, 2001 between the Secured Party, as Lessor and the Debtor as Lessee, as amended from time to time, together with all attachments, accessories and substitutions."
- **Serial Numbered Collateral:** Blank

By operation of s.26 of the PPSA, this registration qualifies as a perfection step with respect to NLGI's security interest in the assets listed in Lease No.2106175. What constitutes an appropriate description of collateral comes from ss.23-24 of the Regulations. In particular, in accordance with s.23(1)(d) of the Regulations, items of equipment must be described in accordance with s.24(1) and s.24(2). It is the opinion of the Trustee that the collateral description in the above-noted financing statement does satisfy these requirements.

#### Lease No. 2096477

YES

Registration number 627521 contains the following information:

- **General Description of Collateral:** "All portable and desktop computer systems, tape drives, adapters, hotswaps, kits, RAM, monitors, printers, CD-RW, power supplies, switches, software, batteries, port replicators of every nature or kind described in Lease number 2096477 dated Oct 31, 2000 between the Secured Party, as Lessor and the Debtor as Lessee, as amended from time to time, together with all attachments, accessories and substitutions."
- **Serial Numbered Collateral:** Blank

By operation of s.26 of the PPSA, this registration qualifies as a perfection step with respect to NLGI's security interest in the assets listed in Lease No.2096477. What constitutes an appropriate description of collateral comes from ss.23-24 of the Regulations. In particular, in accordance with s.23(1)(d) of the Regulations, items of equipment must be described in accordance with s.24(1) and s.24(2). It is the opinion of the Trustee that the collateral description in the above-noted financing statement does satisfy these requirements.

#### Lease No. 2094295

YES

Registration number 583005 contains the following information:

- **General Description of Collateral:** "All printing equipment of every nature or kind described in Lease number 2094295 dated October 31, 2000 between the Secured Party, as Lessor and the Debtor as Lessee, as amended from time to time, together with all attachments, accessories and substitutions."
- **Serial Numbered Collateral:** Blank

By operation of s.26 of the PPSA, this registration qualifies as a perfection step with respect to NLGI's security interest in the assets listed in Lease No.2094295. What constitutes an appropriate description of collateral comes from ss.23-24 of the Regulations. In particular, in accordance with s.23(1)(d) of the Regulations, items of equipment must be described in accordance with s.24(1) and s.24(2). It is the opinion of the Trustee that the collateral description in the above-noted financing statement does satisfy these requirements.

**Lease No. 2089410**

**YES**

Registration number 493304 contains the following information:

- **General Description of Collateral:** "All portable computer systems, software of every nature or kind described in Lease number 2089410 dated August 18, 2000 between the Secured Party, as Lessor and the Debtor as Lessee, as amended from time to time, together with all attachments, accessories and substitutions."
- **Serial Numbered Collateral:** Blank

By operation of s.26 of the PPSA, this registration qualifies as a perfection step with respect to NLGI's security interest in the assets listed in Lease No.2089410. What constitutes an appropriate description of collateral comes from ss.23-24 of the Regulations. In particular, in accordance with s.23(1)(d) of the Regulations, items of equipment must be described in accordance with s.24(1) and s.24(2). It is the opinion of the Trustee that the collateral description in the above-noted financing statement does satisfy these requirements.

**Lease No. 2079924**

**YES**

Registration number 292037 contains the following information:

- **General Description of Collateral:** "All computer systems, software, monitors, and printers of every nature or kind described in Lease number 2079924 dated May 17, 2000 between the Secured Party, as Lessor and the Debtor as Lessee, as amended from time to time, together with all attachments, accessories and substitutions."
- **Serial Numbered Collateral:** Blank

By operation of s.26 of the PPSA, this registration qualifies as a perfection step with respect to NLGI's security interest in the assets listed in Lease No.2079924. What constitutes an appropriate description of collateral comes from ss.23-24 of the Regulations. In particular, in accordance with s.23(1)(d) of the Regulations, items of equipment must be described in accordance with s.24(1) and s.24(2). It is the opinion of the Trustee that the collateral description in the above-noted financing statement does satisfy these requirements.

**Lease No. 2077894**

YES

Registration number 242305 contains the following information:

- **General Description of Collateral:** "All photocopiers, fax machines, office furniture, computer systems, software, monitors, upgrades of every nature or kind described in Lease number 2077894 dated April 25, 2000 between the Secured Party, as Lessor and the Debtor as Lessee, as amended from time to time, together with all attachments, accessories and substitutions."
- **Serial Numbered Collateral:** Blank

By operation of s.26 of the PPSA, this registration qualifies as a perfection step with respect to NLGI's security interest in the assets listed in Lease No.2077894. What constitutes an appropriate description of collateral comes from ss.23-24 of the Regulations. In particular, in accordance with s.23(1)(d) of the Regulations, items of equipment must be described in accordance with s.24(1) and s.24(2). It is the opinion of the Trustee that the collateral description in the above-noted financing statement does satisfy these requirements.

**Lease No. 2075799**

YES

Registration number 226886 contains the following information:

- **General Description of Collateral:** "All computer systems, software, upgrades, monitors, burglar alarm systems, computer networking equipment, backup systems of every nature or kind described in Lease number 2075799 dated April 17, 2000 between the Secured Party, as Lessor and the Debtor as Lessee, as amended from time to time, together with all attachments, accessories and substitutions."
- **Serial Numbered Collateral:** Blank

By operation of s.26 of the PPSA, this registration qualifies as a perfection step with respect to NLGI's security interest in the assets listed in Lease No. 2075799. What constitutes an appropriate description of collateral comes from ss.23-24 of the Regulations. In particular, in accordance with s.23(1)(d) of the Regulations, items of equipment must be described in accordance with s.24(1) and s.24(2). It is the opinion of the Trustee that the collateral description in the above-noted financing statement does satisfy these requirements.

**Lease No. 2075797**

YES

Registration number 318550 contains the following information:

- **General Description of Collateral:** "All telephone equipment of every nature or kind described in Lease number 2075797 dated May 30, 2000 between the Secured Party, as Lessor and the Debtor as Lessee, as amended from time to time, together with all attachments, accessories and substitutions."
- **Serial Numbered Collateral:** Blank

By operation of s.26 of the PPSA, this registration qualifies as a perfection step with respect to NLGI's security interest in the assets listed in Lease No.2075797. What constitutes an appropriate description of collateral comes from ss.23-24 of the Regulations. In particular, in accordance with s.23(1)(d) of the Regulations, items of equipment must be described in accordance with s.24(1) and s.24(2). It is the opinion of the Trustee that the collateral description in the above-noted financing statement does satisfy these requirements.

**Lease No. 2073988**

**YES**

Registration number 147215 contains the following information:

- **General Description of Collateral:** "All computer systems, monitors, portable computer systems and software of every nature or kind described in Lease number 2073988 dated March 8, 2000 between the Secured Party, as Lessor and the Debtor as Lessee, as amended from time to time, together with all attachments, accessories and substitutions."
- **Serial Numbered Collateral:** Blank

By operation of s.26 of the PPSA, this registration qualifies as a perfection step with respect to NLGI's security interest in the assets listed in Lease No. 2073988. What constitutes an appropriate description of collateral comes from ss.23-24 of the Regulations. In particular, in accordance with s.23(1)(d) of the Regulations, items of equipment must be described in accordance with s.24(1) and s.24(2). It is the opinion of the Trustee that the collateral description in the above-noted financing statement does satisfy these requirements.

**Lease No. 2069724**

**YES**

Registration number 85847 contains the following information:

- **General Description of Collateral:** "All computer systems of every nature or kind described in Lease number 2069724 dated February 2, 2000 between the Secured Party, as Lessor and the Debtor as Lessee, as amended from time to time, together with all attachments, accessories and substitutions."
- **Serial Numbered Collateral:** Blank

By operation of s.26 of the PPSA, this registration qualifies as a perfection step with respect to NLGI's security interest in the assets listed in Lease No. 2069724. What constitutes an appropriate description of collateral comes from ss.23-24 of the Regulations. In particular, in accordance with s.23(1)(d) of the Regulations, items of equipment must be described in accordance with s.24(1) and s.24(2). It is the opinion of the Trustee that the collateral description in the above-noted financing statement does satisfy these requirements.

**13. Proceeds**

Section 29(1) of the Act provides a secured party with an automatic and statutory interest in the proceeds from the disposition of a secured asset by the debtor. While this right is automatic as against the debtor, the entitlement to proceeds must be perfected, in order to protect the secured party's entitlement as against competing creditors.

The Trustee has not made any determination as to NLGI's entitlement to proceeds with respect to other creditors as this is an issue of priority and not within the Trustee's mandate under the Claims Plan. However, the Trustee has outlined below the statutory requirements that must be met by a secured party in order to assert a claim to proceeds from the disposition of collateral as against other secured creditors.

The perfected status of a security interest in proceeds depends firstly on whether the security interest in the original collateral was perfected when the proceeds arose. If not, the secured party will have to perfect its security interest in the proceeds as original collateral either by registration or taking possession. If so, the question of whether the secured party must independently perfect its security interest in the proceeds depends on the method by which the security interest in the original collateral was perfected.<sup>3</sup>

Section 29(3) provides for 3 instances where perfection in proceeds is automatic and continuous. A security interest in proceeds is a continuously perfected security interest where the interest in the original collateral is perfected by a registration of a financing statement under Section 26 that:

- (a) Includes a description of the proceeds that would be sufficient to perfect a security interest in original collateral of the same kind;
- (b) Includes a description of the original collateral, where the proceeds are of a kind that are within the description of the original collateral; or
- (c) Includes a description of the original collateral, where the proceeds consist of money, cheques or deposit accounts in a bank, credit union, or similar financial institutions.

If proceeds do not fall into one of these categories, s. 29(4) of the PPSA requires registration with respect to the proceeds collateral within fifteen days after such proceeds arise. Such registration would be in accordance with the same rules as the original collateral.<sup>4</sup>

As indicated above, collateral descriptions are governed by ss.23-24 of the Regulations. These rules extend to descriptions of collateral in the form of proceeds as well.

Note as well that the ability to assert a claim to proceeds is contingent upon two conditions. The debtor must have acquired rights in the proceeds and the proceeds themselves must be traceable (ref. s. s.2(ff)).

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<sup>3</sup> Ibid. at p.140.

<sup>4</sup> Ibid.

#### 14. Additional Comments on Priorities

While it is not within the mandate of the Trustee or Trustee's counsel to determine priorities, we nevertheless offer the following comments, in order to provide assistance to any creditors who may also have a valid and perfected security interest in the assets and wish to determine, for their own benefit, their ranking with respect to same:

- There are instances whereby an inventory financier may be entitled to claim a super-priority status (ref: s. 35(2)). As NLGI is unable to provide evidentiary support for such an entitlement, its security interest in the 3 pieces of heavy equipment is subject to the residual priority rules of the PPSA.
- As established by s. 36 of the PPSA, the relevant date for the determination of the priority of an inventory financier's interest is typically the date of registration of its financing statement in the PPR:

| <u>Lease</u>                           | <u>Registration Date</u> | <u>Registration No.</u> |
|--|--------------------------|-------------------------|
| Master Lease Agreement<br>(# 48001254) | 20 February 2001         | 809277                  |
| Lease # 2140104                        | 4 December 2001          | 1436360                 |
| Lease # 2129759                        | 21 September 2001        | 1239412                 |
| Lease # 2120456                        | 3 July 2001              | 1067133                 |
| Lease # 2106175                        | 2 March 2001             | 825232                  |
| Lease # 2096477                        | 1 November 2000          | 627521                  |
| Lease # 2094295                        | 6 October 2000           | 583005                  |
| Lease # 2089410                        | 21 August 2000           | 493304                  |
| Lease # 2079924                        | 19 May 2000              | 292037                  |
| Lease # 2077894                        | 26 April 2000            | 242305                  |
| Lease # 2075799                        | 18 April 2000            | 226886                  |
| Lease # 2075797                        | 1 June 2000              | 318550                  |
| Lease # 2073988                        | 9 March 2000             | 147215                  |



|                 |                 |       |
|-----------------|-----------------|-------|
| Lease # 2069724 | 3 February 2000 | 85847 |
|-----------------|-----------------|-------|

- There are instances whereby an equipment financier may be entitled to claim a super-priority (ref. s.35(1)). NLGI has provided the Trustee with evidentiary support for such an entitlement with respect to the office equipment provided to HEL.

## **15. Auction Results**

The three heavy equipment Assets were sold prior to HEL's bankruptcy and therefore were not included in the goods sold at the Trustee's auction on July 12, 2002, in Halifax, Nova Scotia. However, as noted above, the proceeds from the sale of Asset #2, being \$70,200.00, is being held in trust by the Trustee.