

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND**

In re:

CHARLES R. LONGO,

*

* Case No. 90-5-4907-SD-A

Debtor.

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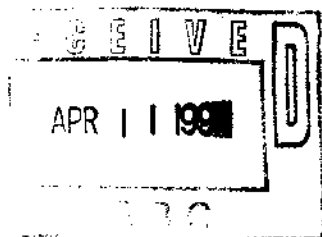
Chapter 11

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**MARYLAND HIGHER EDUCATION COMMISSION'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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In conjunction with its Closing Argument submitted simultaneously herewith, the Maryland Higher Education Commission submits the following proposed findings of fact and conclusions of law with respect to its claim against Charles R. Longo.^{1/} That Closing Argument and this document are intended to be complementary, not duplicative, and any factual matter or legal conclusion presented in one is incorporated into the other also.^{2/} The Commission also reserves the right to present

^{1/} The Commission initially filed parallel claims against National Training Systems, Inc. and Charles R. and Linda A. Longo, and this claim objection proceeding began as a joint proceeding on both claims and on the objections by both NTS and the Longos. After their divorce, the joint case of Charles and Linda Longo was severed, and the Commission and Linda Longo have recently settled the Commission's claim in her case. The National Training Systems case was dismissed by a different judge of this Court in July of 1993, after three of the four days of hearing in this claim objection proceeding, so of course the Commission does not seek allowance of any claims in the NTS case at this point. However, since NTS was formally a party throughout most of this case, represented by the same counsel as Mr. Longo, and since the Commission's claim against Mr. Longo is derivative of its claim against NTS, all of the findings and conclusions presented here should be deemed to apply to NTS as well.

^{2/} The majority of items presented here are proposed findings of fact, or mixed points of law and fact. A few legal conclusions (Continued)

additional or supplementary proposed findings and conclusions in response to those presented by Mr. Longo.^{3/}

I. General Matters

1. Charles R. Longo is and always has been the president and sole shareholder of National Training Systems, Inc. ("NTS"). Stip. 1.
2. Before NTS' hiring of Gary Boardwine in approximately 1981, and for a few months of transition thereafter, Linda Longo performed accounting duties for NTS, some of which were performed at her home. Thereafter, while she was Secretary/Treasurer of NTS she performed minimal duties consisting largely of signing bank account resolutions. Stip. 2.
3. Charles Longo personally made all of the major corporate decisions regarding NTS, and there were no meetings of stockholders, officers or directors held to decide any corporate matters. Ex. 185 at 2. All of the major divisions of NTS reported directly to Mr. Longo, who thereby controlled and made all of the key business decisions for NTS. T.I.96-97; T.IV.131. Even after the filing of NTS' bankruptcy petition, Mr. Longo continued to decide what payments to make on behalf of NTS. T.I.123.
4. Linda A. Longo generally took responsibility for paying the Longos' personal household expenses and bills, and generally did so out of their main joint checking account at Signet Bank. After at least January 1, 1988 the records for that account were kept on a home computer, and Exhibit 9 is an accurate listing of all deposits into and payments from that account, as kept by the Longos in the ordinary course of their personal financial affairs. Stip. 3.

are included with the related factual matter, rather than in a separate section, but the majority of the legal issues are presented in the Closing Argument. Some of the proposed findings presented here are phrased in the first person active voice for ease of grammar, and as proposals, not out of presumptuousness.

^{3/} The references used by the Commission are as follows: "T" refers to the transcript of the hearing, followed by a volume number corresponding to the four days of the hearing, and a page number. "Ex." refers to the Commission's exhibits, and "Debtor's Ex." refers to one of the six exhibits introduced by Mr. Longo. The references given after the proposed findings are illustrative, not necessarily all-inclusive, because the same subjects are often covered in multiple exhibits and testimony.

5. NTS has no corporate bylaws, minutes of shareholders meetings or resolutions, records of shares issued, or any other similar corporate records. See Ex. 185 at 2. Mr. Longo's prompted testimony at T.II.73-74 and in response to cross-examination at T.II.76-77 is not credible. It was somewhat confused as given, and no such documents were ever introduced at trial. In a case where the primary issue is an attempt to pierce the corporate veil, it would seem important to introduce as much of this type of evidence as possible to demonstrate that corporate formalities were observed, and I draw a negative inference from Mr. Longo's failure to introduce a single such document that none exists.
6. Shippers' Choice, Inc. is a new company formed by Mr. Longo in September of 1990. Ex.173; T.I.104-05. Mr. Longo admitted that Shippers' Choice was his company, that he was an incorporator of the company, and that nobody also owned any part of it, but he claimed that since stock had not been issued yet "nobody owns it right now." T.I.104-05. Whatever the details of the incomplete incorporation of Shippers' Choice may be, it is clearly wholly owned or controlled by Charles R. Longo.
7. The Maryland Higher Education Commission ("Commission") is a regulatory agency that licenses private career schools and performs a consumer protection function to protect students of those schools. T.I.26-27.
8. The Commission has a small staff of about four or five full-time equivalent employees responsible for over 100 private career schools in Maryland. T.I.30-31; T.IV.109-10. The Commission has no accountants on that staff and did not hire any supplemental staff or auditors in order to determine the refunds owed by NTS. T.I.31.
9. For proprietary school students, including those at NTS, unless they finish their program, "they essentially have nothing." T.I.28.
10. Students at NTS or other schools who are not able to finish their program cannot obtain the skill they desired leading to new job opportunities, and they have lost wages and other lost opportunity costs from their time spent in attempting to upgrade their skills. T.I.32. Many NTS students have been terribly harmed by the closure of the school. T.I.35.
11. Whether or not they received the training they contracted for at NTS, former students still have to pay any federally-guaranteed loans they may have received. T.I.35-

36. Because NTS was contractually entitled to keep the majority of the student's tuition after the fifteenth home study lesson of the tractor-trailer program, the school's and its representative's interest in students dropped off after the fifteenth lesson and their financial aid check was signed. T.I.98-99.
12. The Commission had limited success with arranging "teach outs" at other schools for the NTS students affected by the abrupt closure of its Baltimore and Glen Burnie locations, but there was no teachouts available for the vast majority of NTS students who were actually or nominally enrolled at the Laurel location. T.IV.117.
13. After NTS' abrupt closure, the Commission received "hundreds and hundreds" of calls from students, and even in February of 1994, over three years after NTS closed, the Commission continues to receive regular calls from former NTS students requesting assistance. T.IV.117-18. Because of their student loans and the unpaid refunds from NTS, these students frequently have been given bad credit ratings and are prevented from making ordinary types of consumer purchases; they have had their tax refunds intercepted; and they cannot obtain new financing to continue their education elsewhere. T.IV.119-20. For those students due full refund from NTS, if NTS had made the refunds the students' credit problems and the other negative consequences would not have occurred, and those problems may still be correctable to some extent now. T.IV.120.
14. NTS was heavily dependent upon financial aid for its students. According to the Maryland Higher Education Loan Corporation's report for the fiscal year ended June 30, 1990, NTS Laurel received \$9,099,624.00 in guaranteed student loans and NTS Baltimore received \$3,070,417.00 of such loans. NTS was the second largest recipient of student loans in Maryland. Ex. 107 at 9.
- II. Because NTS Forfeited its Corporate Charter, It Cannot Shield Mr. Longo from the Commission's Claim
- A. Corporate History
15. NTS was incorporated in Maryland on February 9, 1976. Ex. 171.
16. NTS forfeited its corporate charter on October 15, 1986 for nonpayment of its corporate personal property taxes. Ex. 171.
17. NTS filed articles of revival for its corporate charter on

January 11, 1989. Ex. 171; Ex. 172.

18. NTS forfeited its corporate charter again on October 10, 1990 for nonpayment of its corporate personal property taxes due on April 15, 1989. Ex. 171.
19. NTS did not pay any Maryland corporate personal property taxes after January 11, 1989. [Inference from Ex. 171.]

B. NTS Failed to Pay All Taxes Owning to the State of Maryland Upon its Attempted Revival

20. As of January 31, 1988, NTS owed \$84,942 in unpaid payroll taxes. Ex. 22 at 17. This amount exceeded its payroll (and other) tax expenses for the entire fiscal year, Ex. 22 at 14 (Statement 3). Therefore, since NTS was headquartered in Maryland and payroll tax deductions from employees' paychecks typically include both state and federal amounts, I find that a significant portion of the unpaid payroll taxes as of 1/31/88 were due and owing to the State of Maryland.
21. As of January 31, 1989, NTS owed at least \$32,932 in unpaid payroll taxes. Ex. 24 at 22 (Statement 10). Since its expense for payroll taxes for the fiscal year was \$111,042, Ex. 24 at 19 (Statement 3), it appears that about three or more months worth of taxes were still owing as of 1/31/89 [\$32,932 divided by \$111,042 multiplied by 12 months]. As above, I conclude that some of this debt was to the State of Maryland, so NTS was not fully paid up in its tax payments to the State of Maryland in January of 1989.
22. For the fiscal year ended 1/31/89, NTS initially calculated that it owed \$99,044 in income taxes to the State of Maryland, of which \$84,044 remained unpaid at the end of that fiscal year. Ex. 24 at 26. In addition, because NTS obtained an extension for filing that year's return and had to pay a penalty for underpayment of the tax during the year, Ex. 24 at 28, 26, it appears that the \$84,044 was included in the \$510,542 "provision for income tax" that was reflected on NTS' balance sheet as of 1/31/89, Ex. 24 at 4, 22, and that the income tax remained unpaid throughout most of 1989.
23. As of January 31, 1990, NTS owed at least \$10,404 in unpaid withholding taxes to the State of Maryland. Ex. 30 at 2 (account 213).
24. As of January 31, 1990, NTS reported a liability of at least \$412,783 in unpaid federal and state income taxes. Ex. 30 at 2 (account 210). It is reasonable to assume that some of this balance includes taxes owing to the State of

Maryland, as in the previous year. Cf. Ex. 29 at 5 (account 213 -- no payments to Maryland noted); Ex. 25 at 12 (no payments claimed).

25. As of July 24, 1990, NTS was delinquent in its payment of income tax owed to the State of Maryland for prior periods in the amount of \$72,317 in tax and \$29,437.96 interest and penalty. Ex. 107 at 17.
26. As of at least May 30, July 25, July 31 and September 10, 1990, NTS was delinquent in its payments of withholding taxes owed for prior periods to the State of Maryland Comptroller of the Treasury. Ex. 107 at 16.
27. As of September 21, 1990, NTS owed at least \$97,297 in income and withholding taxes and \$14,181 in unemployment taxes to the State of Maryland. Ex. 27 at 18.
28. As of July 30, 1990, NTS owed and had not paid the State of Maryland approximately \$12,100 for a required excise tax payment for the Higher Education Commission's Guaranty Student Tuition Fund. Ex. 108 at 20.
29. As of January 11, 1989, NTS had not paid all state and local taxes, except taxes on real estate, and all interest and penalties due from NTS to the State of Maryland.
30. At no time from at least January 31, 1988 through its bankruptcy case in 1990-93 had NTS paid all state and local taxes, except taxes on real estate, and all interest and penalties due from NTS to the State of Maryland.
31. At least with respect to the State of Maryland, including the Commission, NTS was not a legally viable entity on and after October 15, 1986, and Mr. Longo is personally liable as the sole shareholder/proprietor/operator of NTS for any debts to the State and the Commission incurred on or after that date.

III. NTS' Treatment of Students and Refunds Owed

A. General Policies and Practices

32. Making student refunds at NTS was generally a low priority. T.I.94. As one knowledgeable former NTS employee testified, "They generally didn't make a refund unless the student made enough stink about it just to get them off their back." T.I.94-95. Gary Boardwine, the NTS Controller, also admitted that he would only make refunds "if a student called me" or "if [the] financial aid [department] put through a phone call to me that a student

had called in reference to a refund." T.II.92, 95. Otherwise, he would wait until the end of the year when he prepared and reconciled his reports. Id.

33. Mr. Boardwine equivocated on whether making student refunds was a low priority for NTS, T.IV.98-100, but he did admit that NTS owed over \$1.5 million in student refunds as of January 31, 1990 that it did not pay, T.IV.102-03, that there was oftentimes substantial delay from his receipt of a refund form until he would prepare a check, T.IV.95, that even if a check was prepared there might be an additional delay before it was mailed out, id., and that even when it was mailed out the student refund checks might bounce. T.IV.100.
34. Mr. Boardwine also admitted that most refunds for students with financial aid would go back to the lending bank (for guaranteed loans) or to the federal government (for Pell grants), without a copy to the students, and that the student would not necessarily be informed of NTS' refund liability upon the student's withdrawal. T.IV.96-98.
35. In fact, most students would have no way of even knowing if a refund was owed on their account, and would not think about the issue until many months later when "the bank was calling them for their payment." T.IV.96
36. Although Mr. Boardwine had primary responsibility for preparing NTS checks, he did not have full authority to decide what disbursements to make. Those decisions were ultimately made and controlled by Charles R. Longo personally. T.I.95; T.IV.99-100. See also T.I.100 (Mr. Boardwine "couldn't make" student refunds).
37. The policy of NTS and Mr. Longo of not making student refunds unless the students called and complained went back several years, and at least before November 1989 was not at all attributable to a lack of money to make those refunds. T.I.96.
38. Over the years, students as a group were the largest creditor of NTS and were unknowingly supplying vast amounts of credit and working capital to NTS. See Summary S-2. For example, for the two years ending 1/31/89 and 1/31/90, NTS' financial statements reported at least \$2.8 million and \$3.5 million in liabilities to students. Id. And by the time of NTS' bankruptcy petition, NTS estimated that it owed \$7.8 million in student refunds, which was 76% of its total debt to all creditors. Id.; Ex. 27 at 44, 65.
39. NTS did not properly maintain academic and attendance information in its student files. The data was often

insufficient to determine whether students met entrance requirements for the program and whether their continued work was meeting the standards of progress requirement. NTS also failed to maintain proper refund records in each student file, as required by regulations. Ex. 107 at 22-23; see also Ex. 108 at 13-15 (deficient records).

40. During at least the summer of 1990, the refund records of NTS were "in a state of complete disarray and were not available for inspection upon reasonable notice. . . . [I]n the majority of the cases there was no verification that refunds had been made. Where there was verification, it showed the refunds were either late or the checks were not backed by sufficient funds." Ex. 107 at 26.
41. NTS (under the complete control of Mr. Longo) also deliberately falsified student records, including refund records, in preparation for the Commission's visit in June 1990, and deliberately denied the Commission access to important computer information during that visit. Ex. 108 at 16; T.IV.114-15.
42. One of the issues in the first deficiency statement hearing was NTS' improper refund policy. On that issue, the ALJ concluded: "This policy significantly differs from the required refund policy as set forth in COMAR 13B.01.01.07N. Under that regulation, students who completed 10-20% of the program are entitled an 80% refund. Under the NTS policy, however, they are entitled only to a 75% refund. Similarly students completing 25-30% of the program are entitled by regulation to a 60% refund; the NTS policy allows them only a 50% refund. I, therefore, find that there are significant deviations between the NTS policy and Commission regulations in this regard." Ex. 107 at 27-28.
43. In the administrative hearing, the Commission established that NTS "failed to keep proper records to insure that any refunds due to students were made in a timely and accurate manner," and that NTS "failed to maintain adequate financial records, particularly refund records." Ex. 107 at 35.
44. The tractor-trailer truck driving program was NTS' largest and most profitable program, in terms of number of students, total revenues and net income. E.g., Ex. 30; Ex. 114. That program was offered primarily out of the Laurel office of NTS. Ex. 107 at 8.
45. The tractor-trailer program consisted of 30 lessons of "home study" or correspondence courses, followed by a resident training program. E.g. Ex. 120 at 1-2. The home

study portion was flexible and could proceed according to the student's own pace in completing lessons, but the whole program was rated for financial aid and approval purposes as a six-month program, Ex. 107 at 13, and students had to complete a minimum of one lesson every 60 days. E.g., Ex. 120 at 1.

46. Following successful completion of all of the required 30 home study lessons, tractor-trailer students could begin the "residency" portion of the program. T.I.100-01. This portion consisted of classroom work and "field training" experience with tractor-trailer trucks at the Laurel location. Ex. 107 at 8; T.I.56-65.
47. Throughout 1989 and 1990, NTS' tuition for the tractor-trailer program was a total of \$3,495, of which \$2,495 was allocated to the home study portion and \$1,000 to the residency portion. E.g., Ex. 120 at 1-2; T.I.98.
48. An NTS student could cancel an enrollment agreement within seven days of execution with no penalty and would then be due a full refund of all moneys paid. E.g., Ex. 120 at 1.
49. After the 7-day initial cancellation period, NTS had separate refund policies or calculations for the home study and the residency portions of the tractor-trailer program, each of which involved a \$100 cancellation fee and then a prorated refund based on the percentage of that portion of the course completed.
50. One practical result of NTS' tuition and refund policy was that NTS could claim a minimum amount of 10% earned tuition for a student who cancelled after seven days without having attended any courses or completed lessons. E.g., Ex. 118 at 1 (lines 9, 11).
51. Another practical result of NTS' front-loading of the tuition on the home study portion of the program and its refund policies was that NTS would be contractually entitled to the full \$2,495 tuition for the home study portion of the tractor-trailer program after a student had completed 15 or more lessons. E.g., Ex 118 at 1, line 2; T.I.98.
52. The Commission does not regulate the amount or allocation of a private career school's tuition. See COMAR 13B.01.01.
53. In contrast to NTS' deliberate lack of attention regarding student refunds, NTS sales representatives would go to extraordinary lengths to get loan checks signed. E.g., T.I.86-87 (sneaking into high security work area to locate student during his employment); T.I.79 (traveling to

homeless shelter in Washington, D.C. or "cabbing" the student to the office); T.I.61-63 (salesman hounding student in person and by phone to sign the checks).

54. When the mail arrived or at other points during the day, Mr. Longo frequently used to say "get the money." T.I.99. This slogan, particularly viewed in light of the other evidence in this case, demonstrates Mr. Longo's overriding interest in milking students and the student financial aid system for the most money he personally could obtain, rather than in educational quality or proper business practices.

B. Specific Examples

The evidence of record relating to just a very small sampling of former NTS students is illustrative of the practices of NTS and the damaging consequences to the students who were harmed by those practices and by the abrupt closure of the school.

55. Vanessa Hawkins enrolled in the Computer Office Technology program in October of 1988 and had to withdraw after only about a month and a half in order to care for her children. Ex. 136; T.I.39. Her tuition was to be paid by two loans and a Pell grant, and NTS received the first two disbursements on her loans before she withdrew. T.I.40; Ex. 136 at 2-3, 7. She thought NTS was supposed to return her loan checks when she withdrew, T.I.40, and NTS prepared a form admitting at least a \$492.83 refund liability on her account, Ex. 136 at 6, but that check was never received by the lending bank. T.I.40; Ex. 136 at 7. Her program was originally supposed to be 32 weeks, and she attended at most eight of those weeks, so she would be obligated for 40% of the \$4,795 tuition (\$1,918) according to NTS' deficient refund policy in the enrollment contract. Ex. 136 at 1, 6. NTS' final report shows that \$3,252.83 was received on her account, Ex. 194 at 20, which equals the sum of the first two disbursements on her loans plus the first disbursement of her Pell grant. See Ex. 136 at 3-5. Therefore, she was entitled to a total refund of \$1,334.83, rather than the mere \$492.83 that NTS calculated, which if it had been made would have reduced her loan liability by more than 50%. That refund was not made, however, in the almost two years it was owing from December of 1988 through the time of NTS' bankruptcy. As a consequence she continues to receive collection calls, has had her tax refund intercepted, and cannot attend another school to gain desired vocational skills. T.I.44-45.

56. Keith Brockington enrolled in the Computer Service and Repair program at the Eutaw Street location in October of 1989. Ex. 124 at 1. His tuition was to be paid by two student loans and a Pell grant. Ex. 124 at 2-4; T.I.47. He attended until mid-December 1989, when he had to discontinue for medical reasons. T.I.48. At that time NTS had already received the entire disbursements of both of his student loans, and calculated the refund owed to his lending bank as \$3,478.14, but NTS never made that refund. Ex. 124 at 2-3, 5, 7. Mr. Brockington had no knowledge of any refund owing from NTS to his lending bank at that time or throughout his many dealings with the school. T.I.48-53. During the fall of 1989, NTS had already received a Pell grant disbursement for Mr. Brockington, and was doling it out in "allowance" checks to him of about \$31 per week. T.I.51-52. At one point while his medical condition was improving, Mr. Brockington was to re-enroll in the school for a new full six month program running from April through October of 1990, Ex. 124 at 6, but by the time he was actually able to re-enroll the school had closed. T.I.49-50. Mr. Brockington currently has a bad credit rating because of the NTS student loans, and his tax refund has also been intercepted to repay this debt. T.I.53, 55.
57. Deborah Robertson enrolled in the tractor-trailer program at Laurel in late 1989, and although she was never sent all of the home study lessons she was scheduled to start the resident training portion of the program on September 15, 1990, which was a Saturday. Ex. 152; T.I.56-57. She attended on that day, got to drive a truck for about 10 minutes, and then the next day the school was closed. T.I.57, 64-65. Her tuition was to be paid by a student loan and a Pell grant, and NTS received both disbursements on her loan and at least the first payment of her Pell grant, for a total of \$2,928.25, by June 26, 1990. Ex. 152 at 3; Ex. 186 at 11. Ms. Robertson has not been able to go to another school to complete her training because she cannot afford to pay cash for the tutition, and she cannot get another student loan with the one from NTS outstanding. T.I.65.
58. Ms. Robertson was recruited by a salesman for NTS going door-to-door, who represented that she could earn \$22,000 to \$32,000, would be guaranteed a job upon completion, and could get "free money" to pay for her school expenses. T.I.57-60, 63; Ex. 152 at 4-5. These are the type of illegal tactics for which the Commission cited NTS in the summer of 1990. See Ex. 108 at 17.
59. Edna (Woodyard) Reiman was also recruited in person,

initially outside of a welfare office and then by a salesman coming to her home two or three times and called her repeatedly. T.I.72-73, 76-77. She was also guaranteed job placement upon completion of the NTS program. Id. She was also deceived into endorsing a student loan check at her own home (and an attempt was made on the second loan check), before she had attended a single class, and in fact she never did attend a single class at NTS. T.I.74-75. Nevertheless, NTS kept her student loan proceeds, from 1988 through its closure in 1990, and she currently has a bad credit rating, cannot obtain financing for a home, and has had her tax refund intercepted because of that student loan debt that should have been cancelled in the first place. T.I.75; Ex. 168 at 6-10.

60. Richard Lonon was recruited in December of 1988 at a homeless shelter in Washington, D.C., by a NTS sales representative who would come there to get Mr. Lonon to endorse checks and to help Mr. Lonon with the home study courses. T.I.78-79. (Mr. Lonon also stated that he was "just a fraction of the guys" recruited by NTS at that shelter. T.I.80-81.) Once Mr. Lonon completed what he thought was the last home study course and (most importantly) signed the last student loan check, he "received nothing" and did not see or hear from the sales representative any more. T.I.79-80. NTS' records reflect that Mr. Lonon actually completed only 16 of the 30 lessons. Ex. 145 at 12, 13; T.I.81. Also, although NTS received at least the first \$287 Pell grant disbursement for Mr. Lonon, Ex. 145 at 5, 15, Mr. Lonon never received any expense money checks from those proceeds. T.I.80. Because NTS front-loaded the tuition onto the home study portion of the program, and because Mr. Lonon completed more than 50% of that portion of the program, he was liable for the full \$2,495 tuition for that part. Thus, even though Mr. Lonon was only enrolled or active for about two weeks out of a six-month course and never came close to seeing a NTS truck, see Ex. 145 at 1-2, 13, NTS kept the full \$2,207.82 student loan proceeds and actually had him as owing the school another \$387. See Ex. 191 at 52 (also showing he completed only sixteen lessons and was enrolled for less than a month).
61. Purcell Cozzens, one of the students illegally enrolled in the ACT program in March of 1989, was recruited in part by false and deceptive promises, never received the computer for his home study, and has been unable to complete his education and has received a bad credit rating because of the NTS loans. T.I.82-84.
62. Mr. Dale Klamut was also recruited on the basis of a guarantee of job placement ("he probably said it about five

or six times") and on the false promise of a starting salary of \$80,000 to \$100,000. T.I.87. Mr. Klamut was forced to take a lot of time off work to deal with the consequences of NTS' abrupt closure, and has been threatened with bad credit and wage garnishment because of his student loan to attend NTS before it closed. T.I.88-89.

63. NTS enrolled Mr. Sanders Adams in the tractor trailer program on January 9, 1989 and promptly sent him fifteen or sixteen lessons. He cancelled from the program by written notice only 21 days later, on January 30, 1989. Ex. 120 at 1-5, 8. In connection with his enrollment at NTS, Mr. Adams applied for and received a single disbursement guaranteed student loan in the gross amount of \$2,625, which was paid by him to NTS. Ex. 120 at 11. According to NTS' deficient refund policy and its allocation of tuition, although Mr. Adams was enrolled in the six-month tractor-trailer program for only three weeks, NTS was entitled to the entire \$2,495 tuition for the home study portion of the course, because it mailed him 15 or 16 lessons out of 30. Ex. 120 at 1-2, 8. NTS did not promptly report the cancellation of Mr. Sanders Adams to his guaranteed student lender, as required by federal regulations and agreements, because in February of 1990 that lender still listed his separation date from NTS as 08/89, which would have been his originally scheduled graduation date and the end of his initial loan period. Ex. 120 at 11. NTS did not make any refund to Sanders Adams or his guaranteed student loan lender upon or after his cancellation from NTS. Id.

IV. Calculation of the Amount of Commission's Claim

A. ACT Students Illegally Enrolled by Mr. Longo

64. The Applied Computer Technology ("ACT") program was a 100% home-study program offered out of NTS's Laurel location. It provided training in three computer software packages: spreadsheet, word processing, and database. The total cost of the program was \$3,695.00. Ex. 107 at 19.
65. NTS submitted its application for approval of the new ACT program on January 4, 1989. ACT was approved by operation of law on June 3, 1989, pursuant to section 11-205(a)(3) of the Education Article, Annotated Code of Maryland. Ex. 107 at 19.
66. Prior to NTS receiving approval of the ACT program by operation of law on June 3, 1989, Mr. Longo had been informed by a Commission Staff member that marketing and enrolling out-of-state students in the program before

receiving Commission approval would violate COMAR 13B.01.01.01.K(1)(b) [superseded -- see COMAR 13B.01.01.05.A(1)(e)]. Ex. 107 at 19.

67. During the Commission's on-site visit to NTS in June of 1990, NTS staff members provided Mr. Beck, a Commission staff member, with a list of students in the ACT program. According to that list, 198 students had been enrolled in the program prior to June 3, 1989. Ex. 107 at 20-21. Despite Mr. Longo's denials, several employees of NTS admitted that NTS had exclusively provided technical support for ACT at the Laurel office, at all times after the program started, that all test grading was done at the Laurel branch, that Laurel personnel sent all lessons to ACT students, and that all ACT files had been maintained at the Laurel location since the beginning of the ACT program. Ex. 107 at 21.
68. Mr. Longo testified that while the test materials, contracts, and other material for ACT directed the students to send all correspondence to the Laurel location, it was in fact then sent from the Laurel office to the out-of-state locations where the program was being run. The Administrative Law Judge who heard this testimony specifically found it "not to be credible." Ex. 107 at 21.^{4/}
69. The ALJ also expressly concluded that NTS had "enrolled 180 students in the ACT program, corrected, graded and otherwise serviced the ACT program in the State of Maryland prior to its approval on June 3, 1989", in violation of COMAR 13B.01.01.01K(1)(b). Ex. 107 at 22, 36.

^{4/} Although Mr. Longo's illegal enrollment of the ACT students was already established and was not an issue in this case, part of his own testimony on direct confirms his attitude that directly caused that violation. He stated:

Most of the curriculum development was delegated. I'm a result orientated [sic] person. So, in other words, I would have him go ahead and put together a program and then we would go ahead and test the program, we would submit it or whatever.

T.IV.134. Going ahead and testing the program may be consistent with a result-oriented style, but doing so before or at the same time that it was submitted for approval was expressly prohibited by regulation. Moreover, Mr. Longo was well aware of that prohibition from an earlier unapproved program that he introduced in a similar manner, and from the resulting litigation with the Commission's predecessor in the mid-1980's.

70. The Secretary of Higher Education had the authority to order NTS to issue refunds to each student who enrolled in the ACT program prior to Commission approval. Ex. 107 at 39.
71. NTS owed and owes former students of its ACT program \$731,610 in refunds for students who were illegally enrolled between January and June 3, 1989.

B. Student Refunds Owed -- Summary Reports

1. Active Students at Closure

72. During August and September of 1990, NTS closed, cancelled and discontinued all of its courses and programs.
73. As of September 21, 1990, NTS had received at least \$4,549,216.93 in tuition and fees from students of its tractor-trailer and diesel mechanics programs who were actively enrolled at the time of the closure of their programs. Ex. 186, page 33 ("amount paid" column); T.IV.74-79.
74. Pursuant to COMAR 13B.01.01.12(H) and the enrollment contracts entered into between NTS and its students, if NTS closed, cancelled or discontinued a course or program it owed the students a full refund of all tuition and fees paid.
75. As of September 21, 1990, NTS had received at least \$565,134.33 in tuition and fees from students of its Applied Computer Technology program who were actively enrolled at the time of the closure of that program. Ex. 187, page 6 ("paid to date" column); T.IV.80-82.
76. As of September 21, 1990, NTS had received at least \$287,746.75 in tuition and fees from students of its Baltimore and Glen Burnie computer school programs who were actively enrolled at the time of the closure of those programs. Ex. 188, page 10 ("student paid to date" column); T.IV. 83.
77. In addition, NTS had received \$51,293.73 in tuition and fees from another group of students of its Baltimore and Glen Burnie computer school programs who had not yet completed their programs at the time of the closure of those programs. Ex. 189 ("student paid to date" column); T.IV.83-84. [Although Mr. Boardwine did not know or remember what the code "L" meant on Exhibit 189, the majority of students on that report have the status code "E" for enrolled, and the "L" code does not mean cancelled

or graduated. T.IV.84. Therefore, the only reasonable inference is that students with status "L" were still enrolled at NTS.]

- 78. The total amount of refunds owed to actively enrolled NTS students upon the closure of its programs is \$5,453,391.24.
- 79. Each of the students listed on Exhibits 186, 187, 188 and 189 is owed a full refund of all amounts paid to NTS. Up to the first \$900.00 of each such claim is an allowed priority claim pursuant to 11 U.S.C. § 507(a)(6), and the balance of each such claim is an allowed general unsecured claim. The total priority amount is \$1,640,046.08. [Summary S-1.]

2. Prior Unpaid Refunds

- 80. As of September 21, 1990, NTS owed graduates of its tractor-trailer and diesel mechanics programs \$6,237.64 in refunds that had not been paid. Ex. 190, page 14 ("refunds due" column); T.IV.85-86.
- 81. Each of the students listed on Exhibit 190 with a positive amount in the "Refunds Due" column has an allowed general unsecured claim in the amount listed, for a total of \$6,237.64
- 82. As of September 21, 1990, NTS owed graduates of its computer school programs \$29,363.24 in refunds that had not been paid. T.IV.92-93; Ex. 193; Summary S-193.
- 83. Each of the students listed on Exhibit 193 with a greater amount in the "Student Paid to Date" column than in the "Contract Amount" column has an allowed general unsecured claim in the amount of the difference, as reflected on Summary S-193.
- 84. As of September 21, 1990, NTS owed students of its tractor-trailer and diesel mechanics programs who had cancelled a total of \$1,247,070.25 in refunds that it had not paid. Ex. 191, page 58 ("refunds due" column); T.IV.86-87.
- 85. Each of the students listed on Exhibit 191 with a positive amount in the "Refunds Due" column has an allowed general unsecured claim in the amount listed, for a total of \$1,247,070.25.
- 86. NTS did not perform individualized calculations of the amount of refunds owed to cancelled students in its ACT and computer school programs in 1990. T.IV.87, 93-94. The NTS earned income reports for those students do not include a

"refund due" column, but NTS has no better information than the earned income reports admitted into evidence from which to determine student refunds owed. Exs. 192, 194; T.IV.107.

87. The amount of refund owed to any particular cancelled student is a function of the percentage of the course completed and the amount paid by or on behalf of that student. T.IV.87-88, 89-90; e.g., Ex. 120 (refund policy).
88. By far the vast majority of NTS students were dependent on federal student financial aid for payment of their NTS tuition, and the students in the ACT and computer school programs were eligible for the same types of financial aid as the students in the tractor-trailer program. T.IV.88-89, 94.
89. A reasonable method of estimating the amount of refunds due to the cancelled ACT and computer school students would be to apply the same percentage of refunds due to total amount paid from the tractor-trailer and diesel mechanics programs, which is 22.4%. T.IV.91; Ex. 191, page 58 (total "refunds due" divided by total "amount paid").
90. Applying that method of estimation, the amount of refunds owed by NTS to cancelled ACT and computer school students as of September 21, 1990 is \$106,300.58 and \$435,969.09 respectively. Ex. 192, page 8 (22.4% multiplied by \$474,556.17 paid to date); Ex. 194, page 23 (22.4% multiplied by \$1,946,290.64 student paid to date).

C. Student Refunds Owed -- Additional Individual Students

Most of the students who testified at trial or whose partial records were introduced into evidence are included on the summary reports prepared by NTS during the trial. However, some other students of which the Commission is aware are also owed refunds but are not included in those reports.

91. Mr. Lionel Adams was recruited by NTS at a shelter in Washington, D.C. without explaining the interview checklist and student borrower's responsibilities to him. Ex. 119. Although on paper Mr. Adams completed sixteen of the thirty home study lessons, which would ordinarily allow NTS to keep all of that portion of the tuition (\$2,495), this was accomplished only by the sales representative coming to the shelter and providing Mr. Adams with the answers to the

lessons. Ex. 119 at 2. Therefore, Mr. Adams should be given a refund by NTS in the full amount of the financial aid that was advanced on his behalf, and for which he remains liable, which is at least \$3,036. Ex. 116 at 1.

92. The following finding emerged from the first deficiency hearing:^{5/}

Ms. Janice Gange enrolled at the Glen Burnie branch, and was scheduled to start classes in September of 1989. That class did not start and she was rescheduled to start in October of 1989. When that class did not start, Ms. Gange withdrew from the program in November of 1989. She never received a refund. She was never informed by NTS that she was entitled to a refund. Rather, she was contacted by the bank making the loan on several occasions to arrange to pay back the loan which was for \$5,000. When Ms. Gange contacted the school, she was shown a photocopy of a check that had been made out to the bank in February of 1990. However, the bank informed her that the check had been returned for insufficient funds. Ms. Gange has received a final demand notice from the bank. Ex. 107 at 23-24; see also Ex. 134.

In addition, the evidence reveals that NTS received the first disbursement of Janice Gange's guaranteed student loan in the amount of \$1,221.09 (Ex. 134 at 3) and her SLS [Supplemental Loan for Students] in the amount of \$1,568.00 (Ex. 134 at 5) in approximately September of 1989, even though she had not started and in fact never did start her program at NTS. Ex. 134 at 1, 8. NTS calculated and admitted its refund liability to her in the amount of \$2,789.09, but Crestar Bank never received this refund to credit to Ms. Gange's account, and as of 2/25/92 Ms. Gange's loans (which should have been fully cancelled) were still outstanding in the amount of \$3,292.89. Ex. 134 at 7. NTS owes Ms. Gange a refund in the amount of \$2,789.09, of which \$900.00 is a priority claim.

93. David Hryn enrolled in the NTS tractor-trailer program on May 25, 1990. Ex. 139 at 1-2. Before closure, NTS received two student financial aid checks on his behalf, \$1,225 as the first disbursement of his SLS loan, and

^{5/} All of the findings and conclusions of that decision are incorporated herein by reference and are binding on the parties, in part because the stay was lifted in both the NTS and Longo cases specifically to allow completion of that hearing on issues of state law and regulations related to the Commission's claim.

\$474.30 as the first disbursement of his guaranteed student loan. Ex. 139 at 3-4. He was not able to finish this six-month program before NTS' closure, and therefore is entitled to a full refund in the amount of \$1,699.30, of which \$900.00 is a priority claim.

D. Guaranty Fund Claim

94. The Commission also has an allowed § 507(a)(7) priority claim in the amount of \$12,100 for NTS' nonpayment of its assessment for the Guaranty Student Tuition Fund in 1990. See Proof of Claim (para. 9); Ex. 108 at 20. NTS and the Longos agreed to this claim as a general unsecured claim against NTS only. T.I.7. Pursuant to my August 28, 1992 Memorandum decision, I determined that this claim did qualify for § 507(a)(7) excise tax priority, Mem. at 17-19, and pursuant to this decision I conclude that it is a proper claim against Mr. Longo, with the same priority status.

E. Summary of Commission Claim

95. In sum, the total amount of the Commission's claim for student refunds and the Guaranty Fund debt owed by NTS as of September 21, 1990 is as follows:

A. Active Students

Tractor-Trailer/Diesel	\$4,549,216.93	Ex. 186
Applied Computer Technology	565,134.33	Ex. 187
Computer School	287,746.75	Ex. 188
Computer School	51,293.73	Ex. 189
Subtotal	\$5,453,391.24	

B. Prior Refunds Owed

Tractor-Trailer/DM-graduates	\$ 6,237.64	Ex. 190
Computer School-graduates	29,363.24	Ex. 193; (S-193)
Tractor-Trailer/DM-cancelled	1,247,070.25	Ex. 191
ACT-cancelled	106,300.58	Ex. 192
Computer School-cancelled	435,969.09	Ex. 194
Subtotal	\$1,824,940.80	

C. Illegally Enrolled Students

ACT Program	\$ 731,610.00	Ex. 107
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D. Other Students

Adams, Gange, Hryn	7,524.39	
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E. Guaranty Student Tuition Fund

1990 Assessment	12,100.00	Ex. 108
TOTAL	\$8,029,566.43	

96. The Commission's claim is hereby allowed as follows:

\$1,641,846.08	Class 2 Priority Claim [\$507(a)(6)] (see Summary S-1)
12,100.00	Class 3 Priority Claim [\$507(a)(7)]
<u>6,375,620.35</u>	Class 9 General Unsecured Claim
\$8,029,566.43	

V. Basic NTS Financial Information

A. NTS Was Always Undercapitalized

97. At all times since at least February 1, 1983, NTS had only \$3,000 in paid-in capital in the form of common stock. See Schedule L, line 21(b), on Ex. 18 (page 4), Ex. 19 (page 6), Ex. 20 (page 4), Ex. 21 (page 4), Ex. 22 (page 4), Ex. 24 (page 4), Ex. 25 (page 5).
98. \$3,000 is an unreasonably small amount of capital for a business with multi-million dollar liabilities and annual income.

B. NTS Was Always Insolvent

99. For purposes of bankruptcy law and this case, "insolvent" means a financial condition such that the sum of NTS' liabilities or debts is greater than the sum of its assets or property, at a fair valuation. 11 U.S.C. § 101(32).
100. For purposes of Maryland fraudulent transfer law and this case, "insolvent" means a financial condition such that the present fair market value of NTS' assets is less than the amount required to pay NTS' probable liabilities on its existing debts as they become absolute and matured. Md. Comm. Law Article § 15-202.
101. As of February 1, 1983, the reported liabilities of NTS exceeded its assets by \$176,928 and NTS was therefore insolvent. Ex. 18 (page 4, Schedule L, lines 21 plus 24, column B).
102. As of January 31, 1984, the reported liabilities of NTS exceed its assets by \$139,318, and NTS was therefore insolvent. Ex. 18 (page 4, Schedule L, lines 21 plus 24, column D); Ex. 19 (page 6, Schedule L, lines 21 plus 24,

column B).

103. As of January 31, 1985, NTS' liabilities exceeded its assets by at least \$69,532 and NTS was therefore insolvent. Debtor's Ex. 1 (comparing pages 3 and 4, and the negative stockholders' equity balance). On its tax return for the period ended January 31, 1985, NTS initially reported an even larger insolvency of liabilities greater than assets of (\$259,675). Ex. 19 (page 6, Schedule L, lines 21 plus 24, column D), but by the next year its tax return agreed with its financial statement. See Ex. 20 (page 4, Schedule L, lines 21 plus 24, column B).
104. As of January 31, 1986, NTS' financial statements reflect a positive stockholders' equity balance of \$6,475. Debtor's Ex. 1; Ex. 20 (page 4, Schedule L, lines 21 plus 24, column D). However, its reported assets for that year included \$480,000 in land for the Giblin Property. Ex. 20 (page 4, Schedule L, line 11, column D); T.II.13.
105. NTS was insolvent on January 31, 1986, because the value of the Giblin Property had been overstated by at least \$30,000. Therefore, NTS' liabilities exceeded its assets by at least \$23,625, even including the Giblin Property as an asset.
106. Since the Giblin Property was in fact was never transferred to NTS, NTS was actually insolvent by approximately \$473,525 as of January 31, 1986.
107. As of January 31, 1987, NTS reported a positive stockholders' equity balance of \$163,491, Debtor's Ex. 2, or of \$163,688. Ex. 21 (page 4, Schedule L, lines 21 plus 24, column D). However, the reported assets for this year also included \$480,000 in land for the Giblin Property, e.g. Ex. 21 (page 4, Schedule L, line 11), which is overstated and in fact was never transferred to NTS. Therefore, NTS was still insolvent on January 31, 1987.
108. As of January 31, 1988, NTS originally reported a positive stockholders' equity balance of \$131,531. Debtor's Ex. 3; Ex. 22 (page 4, Schedule L, lines 21 plus 24, column D). This figure was later revised and restated to be only \$56,024. Debtor's Ex. 4. However, the assets for this year included \$480,000 in land for the Giblin Property, e.g. Ex. 22 (page 4, Schedule L, line 11), which is overstated and in fact was never transferred to NTS. Therefore, NTS was still insolvent on January 31, 1988.
109. Based on NTS' financial statements and tax returns it is reasonable to conclude that NTS was also insolvent at all times between its year-end reporting times when it was

insolvent, and I so find. In other words, NTS was insolvent at all times from at least February 1, 1983 through January 31, 1988.

110. As of January 31, 1989, NTS reported a positive stockholders' equity balance of \$993,780. Debtor's Ex. 4; Ex. 24 (page 4, Schedule L, lines 21 plus 24, column D). However, the assets for this year included \$480,000 for the Giblin Property, e.g. Ex. 24 (page 4, Schedule L, line 11), which is overstated and in fact was never transferred to NTS. Thus, the reported stockholders' equity amount must be reduced by at least \$480,000.00, to no more than \$513,780.
111. Although perhaps proper from an accounting perspective for financial statement presentation, the fair valuation of NTS' actual assets was overstated by substantial amounts each year by inclusion of prepaid selling expenses as an asset. As reported in NTS' financial statements, "Certain prepaid expenses associated with recruitment (i.e. advertising, commissions, salaries, supplies) are expensed in the quarter following the students enrollment to properly match expense to income as it is earned." Debtor's Exs. 1-4 (Note 2). These expenses were also listed on the balance sheets as assets, even though they were already spent. Unlike other prepaid expenses like a utility deposit or an insurance policy paid ahead for a whole year, NTS had no apparent right to cancel and recover the prepaid selling expenses. These expenses were only reported as an asset temporarily for income reporting purposes, but at a "fair valuation" their actual value was zero.
112. The approximate amounts by which NTS' assets were overstated because of inclusion of prepaid selling expenses were as follows:

<u>Fiscal Year Ended January 31</u>	<u>Selling Expenses</u>	<u>Debtor's Ex. Reference</u>
1985	\$ 113,506	Ex. 1 at 3
1986	174,942	Ex. 1 at 3
1987	147,312	Ex. 2 at 4
1988	420,348	Ex. 3 at 4
1989	393,832	Ex. 4 at 10[2]

113. NTS' reported stockholder's equity as of 1/31/89 should be further reduced by \$393,832 because of inclusion of prepaid selling expenses, from \$513,780 to no more than \$119, 948.
114. In light of NTS' long insolvency before January 31, 1989, and its documented insolvency shortly thereafter, leading

to financial collapse by September of 1990, and because NTS and Mr. Longo presented no evidence of the "fair valuation" of NTS' other assets as of January 31, 1989, the supposed solvency of NTS at that time is questionable, and I cannot find that NTS was solvent at that time. In fact, based on the evidence of record, it appears that NTS was insolvent then. For example, NTS' assets at that time apparently included \$136,090 for the Lamborghini, which Mr. Longo later claimed was owned by him personally and which he removed from the NTS estate without payment of any consideration. See Ex. 53 (page 1, asset no. 267: \$138,650 cost less \$2,560 prior total depreciation). Removal of this amount alone would render NTS insolvent, and the evidence also causes doubt about the "fair valuation" of at least the employee receivables and loans from others that may be included as assets on the 1/31/89 financial statements.

115. During the period from January through June 3, 1989, NTS incurred liabilities for illegally enrolling students in the unapproved ACT program in the total amount of \$731,610.00. Ex. 107, pages 35-36, 39-40. These liabilities were initially disputed by NTS when asserted by the Commission in June of 1990, and since they were not recognized by NTS in 1989 they were not reported by NTS on its financial statements for 1989 or 1990. This understatement of liabilities affects the 1/31/89 statements in part, and it contributes to a finding that NTS was definitely insolvent in the first few months of 1989.
116. On March 10, 1989, NTS paid out a \$600,000 dividend to Charles R. Longo. Ex. 78 (page 5, lines 30-31); Ex. 9 (page 17, line 13). If NTS was briefly solvent before this time as reported on its financial statements, which I do not find to be true and reliable, this payment would have had the effect of rendering it insolvent, and in fact NTS was insolvent after the payment of this dividend.
117. Only \$300,000 of the \$600,000 dividend payment was later reported as a dividend on NTS' and Mr. Longo's tax returns. Ex. 25 (page 5, Schedule M-2, line 5); Ex. 4 (page 1, line 9, and page 4, line 4). Nevertheless, even this \$300,000 partial reporting of the dividend contributed to the decline in retained earnings and insolvency of NTS as reported for January 31, 1990. T.IV.35-36.
118. As of January 31, 1990, NTS reported a negative stockholders' equity balance of (\$923,411). Ex. 25 (page 5, Schedule L, line 22 plus line 25). NTS was therefore insolvent by a great extent as of January 31, 1990, even without considering the effect of Giblin Property, the

unreported ACT liabilities, and other matters.

119. As of September 21, 1990 when NTS filed its bankruptcy petition, NTS reported total liabilities of \$10,219,491.34, and total assets of only \$401,409.32. Ex. 27 at 65. NTS was therefore grossly insolvent on September 21, 1990.
120. In light of the above figures reported by NTS, and in light of the other evidence in the record about NTS' cash flow problems, bounced checks, and other financial difficulties, I find that NTS was insolvent at all times on and after at least March 10, 1989.

C. Mr. Longo's Salary Was Excessive

121. Mr. Longo's salary from NTS was at least in the following amounts:

<u>Fiscal Year Ended</u> <u>January 31</u>	<u>Salary</u>	<u>Reference</u>
1984	\$ 97,960	Ex. 18 at 2
1985	227,642	Ex. 19 at 4
1986	255,040	Ex. 20 at 2
1987	298,236	Ex. 21 at 2
1988	306,475	Ex. 22 at 2
1989	349,388	Ex. 24 at 2
1990	403,180	Ex. 25 at 3

122. Mr. Longo's salary for NTS' fiscal year ended 1/31/90 may have actually been \$1,003,179.68, rather than the \$403,180 listed above. See Ex. 29 at 12 (account 550); Ex. 30 at 3 (account 550).
123. According to Mr. Longo's personal tax returns (which were filed on a calendar year basis), his salary from NTS was \$310,331 for 1987 (Ex. 2 at 1), \$344,500 for 1988 (Ex. 3 at 1), \$372,060 for 1989 (Ex. 4 at 1), and \$196,364 for 1990, when NTS filed bankruptcy on September 21, 1990. (Ex. 6 at 6).
124. Mr. Longo's annual salary from NTS from 1986 through 1990 was excessive in light of its assets, liabilities and capitalization, and NTS received less than a reasonably equivalent value from Mr. Longo in exchange for those salary payments.
125. Since NTS was essentially insolvent and operating with an unreasonably small capital from 1985 through 1990, the majority of Mr. Longo's excessive salary for 1986 through 1990 constituted fraudulent transfers under state and federal bankruptcy law.

VI. Fraudulent Transfers of NTS Property to Mr. Longo

A. Real Property

1. Giblin Property

126. On January 14, 1986, Charles and Linda Longo purchased in their own names approximately eight acres of vacant land in Laurel adjacent to NTS' headquarters. The land was acquired from Thomas R. Giblin and Arthur E. Cook, and is identified on a map of the area (Exhibit 48) as lots 1, 2, 4, and part of lot 5 in Allen's Place Subdivision (the "Giblin Property"). Exs. 48-51.
127. The purchase price for the Giblin Property was nominally \$450,000.00, which was payable at the rate of \$4,000 per month principal only (without interest) for 48 months, i.e. until January 14, 1990, and then at \$4,000 per month at $8\frac{1}{2}\%$ interest until paid in full. Exs. 49, 50. Because of the four years of seller financing without a stated interest rate, the stated purchase price includes a substantial amount of imputed interest and the true purchase price was actually closer to \$258,000. T.IV.42.
128. At settlement for the Giblin Property on January 14, 1986, \$17,935.33 in closing costs was due from the Longos. Ex. 50. Mr. Longo stated that he did not know who paid these costs, and he admitted that it could have been National Training Systems. Ex. 178 at 189; see also T.II.22-23.
129. Based on Mr. Longo's and NTS' actions with respect to other transactions, and the lack of any evidence that Mr. Longo personally paid the closing costs, I conclude that NTS paid the \$17,935.33 in closing costs for the Giblin Property.
130. NTS never held the legal or record title to the Giblin Property. Ex. 178 at 185; T.II.14-15.
131. Despite the purported transfer of the Giblin Property to NTS with only a contingent obligation of NTS on the underlying mortgage, Mr. Longo admitted that NTS then made the loan payments on the Giblin Property for about 1- $\frac{1}{2}$ years. Ex. 178 at 117-18.
132. NTS never used the Giblin Property, and it was never leased or otherwise transferred to NTS. T.II.14-15; Ex. 180 at 83-84.
133. At the direction of Mr. Longo, NTS did pay at least some of the real property tax bills for the Giblin Property. Ex. 180 at 81-84; Ex. 52; see also T.II.23-24.

134. The audited financial statements for NTS as of January 31, 1986, included the following statement:

During the fiscal year, the Company entered into an agreement with its stockholders to purchase additional land for its driver training program. The purchase price, based on a fair market appraisal, was exchanged for the stockholders loan in the amount of \$480,000. The transfer was by land installment contract whereby the stockholder is still obligated to pay-off the first mortgage on this property. The Company would only have an obligation to pay this mortgage if the stockholder defaulted on the agreement, which is unlikely.

Debtors Exhibit 1, at Note 7.

135. The outside accountant for NTS who prepared the January 31, 1986 audited financial statements for NTS was questioned about this transaction and this note in particular before the hearing, and was subpoenaed in 1992 and in 1994 to appear and testify and produce documents that would include the workpapers for this note. E.g., T.IV.37-38. Nevertheless, he could not find the alleged fair market appraisal, or the alleged land installment contract transferring the Giblin Property from the Longos to NTS. T.IV.38-39. He had no deed, contract or document of any sort purportedly transferring the Giblin Property from the Longos to NTS. T.IV.43. Moreover, although Mr. Longo stated that the accountant would be the best person to know the meaning of the above financial statement note, the accountant's testimony on this matter was confused and generally unhelpful. See T.IV.36-43.
136. Mr. Longo was also questioned about the Giblin Property and this transaction at his deposition in 1992, e.g. Ex. 178 at 126-28, and at trial in April of 1992, T.II.6-27, but he also failed to introduce any appraisal, land installment contract or other document supporting the purported transfer of the Giblin Property to NTS. See T.II.17 (he doesn't have the appraisal); T.II.19 (he doesn't know if there ever were any written documents on this supposed exchange).
137. The fair market value of the Giblin Property in January of 1986 was certainly no more than \$450,000, the nominal purchase price agreed to by the Longos. Exs. 49, 50. In particular, the value of the Giblin Property did not appreciate by \$30,000 between January 14th and 31st of 1986. See T.II.18 (Mr. Longo had no idea how the value supposedly increased by \$30,000 in two weeks, and he

admitted that the sale price would usually determine the value). Therefore, the value of the Giblin Property listed on NTS' financial records was overstated by at least \$30,000, and even if the transaction had occurred as stated in Note 7 above it would have involved a \$30,000 or more transfer of property from NTS (cancellation of the stockholder's loan) for no consideration in return from Mr. Longo.

138. In fact, Mr. Longo never obtained the zoning classification that he desired for the Giblin Property and that allegedly would have justified its claimed value. T.II.11-12. Instead, by November 15, 1991, the Longos recognized that the Giblin Property was worth no more than \$200,000. Paper No. 100, Debtors' Proposed Disclosure Statement at 4. In fact, the Giblin Property must have been worth almost nothing after the Longos and NTS filed for bankruptcy protection, because the Longos listed the outstanding claim on the underlying mortgage as of November 13, 1990 as \$240,183.00, Ex. 1 (page 8), and after the Giblin Property was foreclosed upon the deficiency claim was listed as of July 24, 1992 as \$240,183.00. Debtor's Ex. 6 (Schedule F, page 3); see also T.II.26; Ex. 178 at 179. [To the best of the Commission's knowledge, there was no report of sale filed in the Longo bankruptcy case after the foreclosure sale on the Giblin Property.]
139. The preexisting stockholders loan in the amount of \$480,000 was an accumulation of cash withdrawals made or directed by Mr. Longo from NTS, primarily for the purpose of finishing the construction and improvements for his home at 624 Harbor Drive, Annapolis Maryland. T.III.16; Ex.178 at 4-5.
140. As of January 31, 1986 and at the end of every year thereafter through January 31, 1990, the Giblin Property was included as an asset (Land) valued at \$480,000 on NTS' financial statements. E.g., T.II.12-13; Ex. 20 at 4; Ex. 22 at 4; Ex. 23 at 4; Ex. 24 at 4; Ex. 25 at 5. However, the Giblin Property was not listed as an asset of NTS on its bankruptcy schedules. See Ex. 27 at 46 (Schedule B-1).
141. Because NTS in fact did not own (and never acquired title to) the Giblin Property, its assets (Land) were overstated by \$480,000 as of January 31, 1986 and at all times thereafter, through January 31, 1990.
142. After January 31, 1986, Mr. Longo never repaid, or had any intention to repay, any principal or interest on the \$480,000 stockholders loan that was "exchanged" on NTS' books for the Giblin Property. T.II.21-22.
143. The transaction described in Note 7 of Debtors Exhibit 1

was a sham and a fraudulent transfer. That transaction materially enriched the Longos personally and resulted in draining \$480,000 in cash from NTS in exchange for no consideration from the Longos.

144. A land installment contract is a type of financing arrangement for real estate transactions whose predominant feature is that the seller continues to hold title over some time until the buyer completes payment of the purchase price. See Md. Real Property Code Ann. § 10-101(b).
145. Maryland law requires the payment of recordation and transfer taxes in substantial amounts upon recording a transfer of title of real property. See generally Md. Tax-Property Code Ann. §§ 12-102, 13-202.
146. A land installment contract is generally exempt from Maryland transfer and recording taxes. Md. Tax-Property Code Ann. §§ 12-108(r), 13-207(a)(11).
147. If a land installment contract was prepared in connection with the purported transfer of the Giblin Property from the Longos to NTS in January of 1986, the main purpose and effect of using that device would have been to avoid Maryland's recordation and transfer taxes. In addition, the ultimate effect of the purported transaction was that NTS acquired no recorded or legally enforceable interest in the Giblin Property at all.
148. If the Longos and NTS actually intended to exchange the Giblin Property for a stockholder's loan in January of 1986 as described in Note 7 of Debtors Exhibit 1, a land installment contract would have been an inappropriate device for that transfer, because NTS had already paid the full consideration in one lump sum by cancelling the stockholder's loan; it was not even described as making "five or more subsequent payments." See Md. Real Property Code Ann. § 10-101(b); T.IV.43.
149. As of December 4, 1986, the Longos did not list or consider the Giblin Property as a personal asset. T.II.12; Ex. 12 at 2.
150. As of March 15 and August 15, 1990, the Longos did list the Giblin Property as a personal asset, valued at \$550,000. Exs. 14, 15; T.II.13-14.
151. As of the filing of NTS' bankruptcy petition, the Giblin Property was no longer listed as an asset of NTS. Ex. 27 at 46. As of the filing of the Longos' bankruptcy petition the Giblin Property was listed as a personal asset, valued at \$500,000. Ex. 1 at 10.

152. If in fact the Giblin Property was transferred back from NTS to the Longos between January 31, 1990 and March 15, 1990 as the above financial statements suggest, that transfer should have been disclosed in some manner on both bankruptcy schedules, particularly at item 14 of NTS' Statement of Financial Affairs, Ex. 27 at 3.
153. If in fact the Giblin Property was transferred back from NTS to the Longos between January 31, 1990 and March 15, 1990, that transfer occurred without consideration to NTS, while NTS was insolvent, and was a fraudulent transfer.
154. The Giblin Property was not transferred back to the Longos between January and March of 1990, because the entire transaction was a sham and NTS had never acquired title or any other transferable interest in the Giblin Property.
155. Both Charles R. Longo and the comptroller of NTS, Gary Boardwine, are unable to explain in a credible and reasonable manner the actual and alleged transactions concerning the Giblin Property since January of 1986. Ex. 179 at 182-91; Ex. 180 at 24-25. Indeed, Charles R. Longo testified in a false and misleading manner with respect to the Giblin Property, particularly regarding the facts that a \$480,000 stockholder loan was in fact eliminated from the books of NTS in connection with an alleged transfer of this property, and that NTS never paid anything in connection with this property. See Ex. 178 at 184-85.
156. The transactions concerning the Giblin Property demonstrate that Charles R. Longo had no regard for the separateness of NTS as a corporate entity. In his own mind and in actual practice, the financial affairs of NTS and the Longos were inextricably intertwined. Such affairs were not kept separate and were not accounted for properly.

2. Mayfair Road Townhouse

157. On January 27, 1989, National Training Systems, Inc. purchased a townhouse condominium located at 6913 Mayfair Road in Laurel, Maryland for \$163,113.00, plus \$5,097.51 in closing costs. Ex. 31.
158. Charles R. Longo occupied the Mayfair Road property as his primary personal residence from at least May 1, 1990 -- when he separated from his wife -- until it was sold on June 7, 1991, and he had stayed there overnight on an occasional basis during the period from January of 1989 through April of 1990. T.I.111-12; Ex. 178 at 159-60; Ex. 33.

159. No one other than Charles R. Longo ever lived in, stayed overnight in or occupied the Mayfair Road condominium. T.I.110-11; Ex. 178 at 160-61.
160. Before the filing of NTS' bankruptcy petition, Charles R. Longo had not paid, agreed to pay or even considered paying any rent to NTS for use and occupancy of the Mayfair Road property. T.I.111-13; Ex. 178 at 162-63. In addition, neither NTS nor Mr. Longo accounted for or reported the use of the townhouse as income to Mr. Longo. Ex. 178 at 162; Ex. 6; T.IV.11 (lines 13-16), .13 (lines 9-12); T.I.113-19.
161. After the filing of NTS' bankruptcy petition, at the requirement of his attorney, Charles R. Longo agreed to pay \$950.00 per month to NTS as rent for the use of the Mayfair Road property. T.I.119; Ex. 178 at 162-63.
162. From September 21, 1990 through June 6, 1991 Mr. Longo made only one actual monthly rental payment for use of the Mayfair Road property. Ex. 8 (page 25) and Ex. 28 (page 19). [As a result of a hearing held on April 13, 1992 on the Longos' claim for administrative rent from NTS, the remaining postpetition rent due from him for the Mayfair Road Property was to be constructively "paid" as an offset to that administrative rent claim. However, since NTS was administratively insolvent it never paid that claim, and Mr. Longo achieved the benefit of that "offset" by having simply not paid NTS.] During this same period of time, Mr. Longo continued to pay himself much greater sums of administrative rent from the NTS estate.
163. NTS paid all of the gas, electric, water and sewer, repair, and real property tax bills for the Mayfair Road property that were paid. T.I.120; Ex. 35; Ex. 178 at 163-64; Ex. 176 at 101-04. None of such expenses were paid personally by Charles R. Longo, either before or after the filing of NTS' bankruptcy petition, id., and Mr. Longo did not consider any of these payments by NTS as income to himself personally, although he admitted receiving a personal benefit by living there. T.I.121.
164. After the filing of NTS' bankruptcy petition, NTS paid at least a \$262.00 deposit by check number 145 on December 14, 1991 and \$476.15 by check number 171 on April 24, 1991 for the gas and electric utility bills at 6913 Mayfair Road. Ex. 28; Ex. 36; T.I.121-23. These expenses were not for any necessary business purpose of NTS but were for the personal use and convenience of Charles R. Longo. See T.I.123-25.
165. The phone number at the Mayfair Road condominium was (301) 498-7011, and NTS paid at least some phone bills for 6913

Mayfair Road, including the periods when it was occupied by Mr. Longo as his residence. Ex. 34; Ex. 178 at 163-64.

166. The Mayfair Road property was furnished at least in part by National Training Systems, Inc. T.I.110. In particular, NTS purchased at least the washer and dryer, one couch, two chairs and two lamps for that property. T.I.146-47; Ex. 31; Ex. 32; Ex. 178 at 158-59, 164-65.
167. Charles R. Longo initially testified at trial that he couldn't recall what happened to the washer and dryer, and then he testified that the washer and dryer purchased by NTS for the Mayfair Road condominium were sold with that condominium. T.I.146-47; see also Ex. 178 at 164-65. In fact, those items were excluded by him from the sale contract, Ex. 37 (page 5, at bottom), T.I.147-48, and thereby were converted to his own personal use, with a corresponding detriment to the NTS estate.
168. It is not clear if the purchase of the Mayfair Road townhouse had an ostensibly valid corporate purpose when made. In any event, the net effect of the whole transaction was simply to provide Mr. Longo with a separate personal residence or place to stay while he was having marital difficulties, almost entirely at the expense of NTS, and without proper accounting or reporting of the additional income to Mr. Longo.
169. All of the payments by NTS for expenses of the Mayfair Road townhouse while NTS was insolvent, and Mr. Longo's use of that property without payment of rent after at least May 1, 1990, constituted fraudulent transfers to or for the benefit of Mr. Longo.

3. Eutaw Street Property

170. On March 10, 1989, Charles R. Longo agreed to purchase the land and building located at 312 N. Eutaw Street, Baltimore City, Maryland, for a total purchase price of \$825,000.00. Ex. 38; T.I.127-28.
171. Also on or about March 10, 1989, National Training Systems, Inc. paid a \$25,000.00 deposit for the purchase of the Eutaw Street Property on behalf of Mr. Longo. T.I.128; Ex. 178 at 192.
172. At the May 12, 1989 closing on the sale of 312 N. Eutaw Street, an additional \$78,887.02 was due from Charles R. and Linda A. Longo, the purchasers, which was also paid by NTS. T.I.128; Ex. 39; Ex. 178 at 192.
173. The remaining purchase price of the Eutaw Street property

not already paid by NTS was financed by a \$750,000.00 secured note from the Longos to Provident Bank. That loan called for monthly principal and interest payments of \$10,760.33. Ex. 42; T.I.129.

174. Title to 312 N. Eutaw Street was placed in the names of Charles R. and Linda A. Longo. Ex. 39; T.I.129.
175. Simultaneously with their acquisition of the Eutaw Street property on May 12, 1989, the Longos executed a lease of the entire premises to NTS. Mr. Longo signed the lease on behalf of NTS and himself personally. Ex. 40; T.I.129-30.
176. The lease was for a 10-year period, with monthly rental payments to the Longos of \$21,000.00. The lease also required NTS to procure and maintain insurance on the land and building to protect both NTS and the Longos, and contained provisions for increased taxes and CPI adjustment in the rent. The lease did not mention payment of utilities. Ex. 40. The terms of the lease were determined solely by Mr. Longo. T.I.130-31.
177. After NTS paid the purchase costs of 312 N. Eutaw Street; it also paid for at least \$100,000 to \$120,000 in necessary leasehold improvements at that location. T.I.132; Ex. 178 at 195-96. In fact, as of 1/31/90, its accounting records indicated a total of \$244,347.10 in leasehold improvements for the Baltimore School, which was primarily at Eutaw Street. Ex. 30 (page 1, account 142, column B).
178. After May 12, 1989, NTS (rather than the Longos) paid all of the electric utility bills for 312 N. Eutaw Street that were paid, and NTS paid the insurance premiums to cover both NTS and the Longos at that location. Ex. 178 at 195; T.I.132-34.
179. The Data Processing division of NTS, which included the Baltimore and Glen Burnie locations, operated at a substantial loss both immediately before and at all times after the purchase of the Eutaw Street property. See T.I.131-32; Debtor's Ex. 4 (page 4 - million dollar losses in 1988 and 1989); Ex. 30 (page 3 - \$728,000 loss for 1990).
180. All of the electric utility payments made by NTS for the Eutaw Street property after May 12, 1989 were fraudulent transfers of NTS' property, because they were made for the benefit of the Longos in exchange for no consideration, for a debt NTS was not required by the lease to pay, while NTS was insolvent.
181. For 1989, the Longos received \$168,871 in rental income for

the Eutaw Street property, and reported total deductible expenses of \$94,704, yielding a net income for tax purposes of \$74,167 for that property. Ex. 4 at 11. Accordingly, for the 7 1/2 months that the Longos owned 312 N. Eutaw Street in 1989, they made a net profit for tax purposes of approximately \$10,000 a month, all of which was paid for by NTS.

182. On a cash flow basis, the Longos also profited handsomely from their acquisition of the Eutaw Street property in 1989. Their personal check register, Ex. 9, and Provident Bank's records, Ex. 42, indicate that during calendar year 1989, the Longos made principal and interest payments on the Provident Bank loan totalling only \$69,561.98. In addition, the Longos benefited on a cash flow basis from the \$15,121 deduction for depreciation that they took on their income tax returns for the 312 N. Eutaw Street property. Ex. 4 at 11. Therefore, on a cash flow basis, the Longos received from NTS \$66,860.02 more than they had to pay out for that property in 1989. (\$168,871 rent, minus 69,561.98 loan payments, minus 94,704 in deductions, plus 15,121 in depreciation, plus 47,134 deducted as mortgage interest and included in loan payments).
183. The Longos' personal check register, Ex. 9, indicates that before September 21, 1990, NTS made at least the following rent payments to the Longos for 312 N. Eutaw Street:

1/24/90	\$ 21,000
2/14/90	\$ 21,000
5/7/90	\$ 21,000
7/6/90	<u>\$ 42,000</u>
TOTAL	\$105,000

184. Each of the above payments was a preferential transfer voidable under 11 U.S.C. § 547, because each was to an insider creditor on account of an antecedent debt made while NTS was insolvent. In addition, since the NTS estate was administratively insolvent and did not pay any unsecured claims, each rental payment listed above enabled the Longos to receive more than they would have received if the NTS case had been a case under Chapter 7, if the payment had not been made, and if the Longos had received payment of the rent debt to the extent provided by Title 11 of the U.S. Code.
185. For 1990, the Longos received rental income of \$105,000 for the Eutaw Street property, and reported deductible expenses of \$79,820, yielding a net income for tax purposes of \$25,180. Ex. 6 at 18; Ex. 7 at 12. Accordingly, for 1990 the Longos made a net profit for income tax purposes of

\$25,180 on 312 N. Eutaw Street, even though NTS made only five monthly rental payments and filed bankruptcy on September 21, 1990.

186. On a cash flow basis, the Longos also profited handsomely from the Eutaw Street property during 1990. The Longos' personal check register, Ex. 9, and Provident Bank's records, Ex. 42, indicate that during 1990 the Longos made \$76,398.35 in payments on the Provident Bank loan for 312 N. Eutaw Street. In addition, they benefited on a cash flow basis from the \$24,198 depreciation deduction they took on their income tax returns for that year. Ex. 6 at 18; Ex. 7 at 12. Therefore, during 1990 the Longos received \$27,586.65 more from NTS than they had to pay out for the Eutaw Street property. (\$105,000 in rent, minus 76,398.35 in loan payments, minus 79,820 in deductions, plus 24,198 in depreciation, plus 54,067 in mortgage interest already counted in other deductions).
187. Despite the receipt of substantial postpetition rent payments from NTS, the Longos did not make any postpetition mortgage payments to Provident Bank for the Eutaw Street property. T.I.144-45; Ex. 178 at 197.
188. In sum, if the title and deed for 312 N. Eutaw Street had been directly in NTS' name, the Longos would have not have received \$99,347 in net income, and \$39,319 in depreciation deductions, that they did receive or take for the approximate 16 months that they owed the property. Correspondingly, if NTS had directly made all of the loan payments and the few expenses paid by the Longos for that property, it would have paid \$94,456 less than the rent it actually did pay to the Longos, and its cash flow would have further benefited from the \$39,319 in depreciation deductions.

4. The Laurel Property: 7140 Virginia Manor Court

189. Charles and Linda Longo took title to real property known as Lot 5 and Outlot A in the Virginia Manor Park subdivision, also known as 7140 Virginia Manor Court, Laurel, Maryland, (the "Laurel Property") on or about December 28, 1979. Ex. 44.
190. The Laurel Property was purchased as vacant land in an undeveloped subdivision, and the sellers/developers had to install a road (Virginia Manor Court) and some stormwater management drains in order for the property to be fully useful. Ex. 178 at 167, 169-72.
191. NTS agreed in September of 1980 to pay the sellers/developers for installation of two concrete

- drainage pipes. Ex. 46. That obligation was ultimately settled in November of 1983 (after litigation) in the form of a promissory note from NTS and Charles R. Longo to pay the sellers/developers \$9,536.44. Ex. 47. That amount was paid by NTS, because Mr. Longo characterized it as a "leasehold improvement." Ex. 178 at 172-77.
192. The Longos had one main building, parking areas and other improvements constructed at the Laurel Property. After 1979, these buildings and parking lots on the Laurel Property became the headquarters of National Training Systems, Inc. and were used for tractor-trailer truck driving and diesel mechanics courses.
193. At all times from 1979 to 1990, the Laurel Property was leased to NTS by the Longos, and Mr. Longo controlled the terms of the leases between NTS and the Longos for the Laurel Property. T.II.78. In addition, at all times the rental income from NTS to the Longos was more than sufficient to cover the debt service on the Laurel Property. Ex. 178 at 79.
194. NTS paid for all of the "leasehold improvements" at the Laurel Property, including paving the front parking and driving lot in 1987. Ex. 178 at 177-78. Paragraph 7 of the latest lease provides that upon "termination of this lease, whether by expiration of the term thereof, or earlier termination hereunder, any improvements constructed by the Tenant on the land or the Premises hereby leased shall become the property of the Landlord, without compensation or payment of any kind therefor." Ex. 45 at 2.
195. NTS made at least two payments on the Longos' second mortgage for the Laurel Property, which payments were in the amount of \$6,378.19 to AEC & Associates on 9/9/86 and 5/87, and which were ultimately classified on its books as "accounts receivable-officers". Ex. 78 at 2, 3.
196. On May 4, 1989, NTS and the Longos executed a renewal lease for the Laurel Property for a ten-year period from December 12, 1989 through December 27, 1999. Among other things, that lease provided for base monthly rental payments from NTS to the Longos of \$18,868.26. Ex. 45.
197. For at least the years 1989 and 1990, the Longos leased a portion of the Laurel Property known as Outlot A in the rear of NTS' headquarters to a company known as the Brickman Group, Ltd. See Ex. 178 at 87-88, 182; Ex. 48.
198. The Longos received rental income of \$4,400 in 1989 and \$4,800 in 1990 from the Brickman Group. Ex. 4 at 12; Ex. 6

at 19; Ex. 7 at 13.

199. Before 1989, the land leased to the Brickman Group had already been leased to NTS as part of the Laurel Property, pursuant to a lease that was still in effect and that was renewed and remained in effect throughout 1989 and 1990. Ex. 178 at 88, 178; Ex. 45.
200. Mr. Longo believed that he could lease Outlot A to the Brickman Group because it was not being used by NTS. Ex. 178 at 88.
201. Mr. Longo has no documents relating to the Brickman Group transaction, although he believes there was a letter agreement.
202. The Longos re-leasing of Outlot A to the Brickman Group and keeping the income personally represents a diversion of a corporate opportunity and profits from NTS to themselves.
203. Since NTS had already leased Outlot A from the Longos, two proper methods of structuring the transaction could have been for NTS to sublease the lot and receive the income, or for NTS' lease with the Longos to be amended and the rent reduced. However, because the Longos had little or no regard for the corporate separateness of NTS, they simply achieved the result they wanted by personally usurping a property interest of NTS.
204. The Longos' transactions regarding Outlot A and the Brickman Group provide further evidence of the Longos' own disregard of corporate formalities for NTS and the intermingling of personal and alleged corporate affairs, to the benefit of the Longos personally.
205. For 1987, the Longos reported \$219,744 in rental income, \$153,415 in deductible expenses (including \$20,369 in depreciation and amortization), and net income for tax purposes of \$66,329 for the Laurel Property. Ex. 2 at 12.
206. For 1988, the Longos reported \$217,551 in rental income, \$140,429 in deductible expenses (including \$19,161 in depreciation and amortization), and net income for tax purposes of \$77,122 for the Laurel Property. Ex. 3 at 10.
207. For 1989, the Longos reported rental payments of \$226,219, deductible expenses of \$139,791 (including \$18,044 in depreciation and amortization), and net income for tax purposes of \$86,428 for the Laurel Property. Ex. 4 at 9.
208. For 1990, even though NTS was suffering from severe cash flow problems and closed and declared bankruptcy in

September, the Longos reported rental payments of \$174,641, deductible expenses of \$98,588 (including \$17,010 in depreciation and amortization), and net income for tax purposes of \$76,053 for the Laurel Property. Ex. 6 at 16; Ex. 7 at 10.

209. During the several months just before the filing of its bankruptcy petition, NTS continued to make rental payments to the Longos for the Laurel Property, including the following:

<u>Date</u>	<u>Amount</u>	<u>Exhibit</u>
6/11/90	\$ 15,000	Ex. 9 at 36
7/6/90	42,000	Ex. 9 at 37
7/6/90	37,736.52	Ex. 9 at 37
8/6/90	4,000	Ex. 9 at 38
8/14/90	2,000	Ex. 9 at 39
8/16/90	2,000	Ex. 9 at 39
9/5/90	3,500	Ex. 9 at 39
9/13/90	5,000	Ex. 9 at 40

210. Each of the above payments was a preferential transfer voidable under 11 U.S.C. § 547, because each was to an insider creditor on account of an antecedent debt made while NTS was insolvent, and, since the NTS estate was administratively insolvent and did not pay any unsecured claims, each rental payment listed above enabled the Longos to receive more than they would have received if the NTS case had been a case under Chapter 7, if the payment had not been made, and if the Longos had received payment of the rent debt to the extent provided by Title 11 of the U.S. Code.

211. Mr. Longo had exclusive control over when and how much postpetition rent was paid from NTS to the Longos. Ex. 176 at 72.

212. After the filing of NTS' bankruptcy petition on September 21, 1990, NTS made the following rental payments to the Longos:

<u>Date</u>	<u>Check No.</u>	<u>Amount</u>	<u>Exhibit</u>
9/25/90		\$ 1,000	Ex. 9 at 40
9/28/90		7,000	Ex. 9 at 40
9/28/90		1,000	Ex. 9 at 40
10/9/90		1,000	Ex. 9 at 40
10/24/90	117	3,000	Ex. 9 at 41; Ex. 28 at 2
10/31/90		4,500	Ex. 9 at 41
11/1/90	123	4,000	Ex. 28 at 8

11/9/90	130	5,800	Ex. 28 at 8
11/16/90	133	2,500	Ex. 28 at 8
12/7/90	143	1,000	Ex. 28 at 10
12/17/90	147	3,000	Ex. 28 at 10
12/31/90	151	4,000	Ex. 28 at 10
1990	Subtotal	37,800	
1/17/91	156	4,000	Ex. 28 at 15
2/20/91	166	8,700	Ex. 28 at 20
April, 1991		10,400	Ex. 181
5/10/91		10,000	Ex. 28 at 33
6/12/91		5,000	Ex. 181
1991	Subtotal	38,100	
Total		\$75,900	

213. The postpetition payments listed above were not expressly designated by NTS for the Eutaw Street property or for the Laurel property also owned by the Longos. Ex. 176 at 71-72; Ex. 178 at 196-97. However, the total rental payments for the Eutaw Street property reported on the Longos' 1990 tax returns does not include any of these payments, so they must have been allocated by the accountants to the Laurel property. See Ex.6.
214. The Longos were responsible for, but did not pay, the 1990-91 real property taxes for the Laurel Property, either before or after the filing of their own bankruptcy petition on November 13, 1990. Ex. 176 at 79.
215. The Longos did not make any payments to Chrysler First Business Credit Corp., which held the first mortgage on the Laurel Property, after September 21, 1990, which was the date NTS filed its bankruptcy petition. Exs. 8, 28.
216. After the filing of NTS' bankruptcy petition, Mr. Longo decided to consolidate all of NTS' personal property at the two locations owned by him, the Eutaw Street and Laurel properties, while cancelling or abandoning all other leases. T.I.149-50. This strategy allowed Mr. Longo to continue to claim, and to pay himself, substantial amounts of postpetition administrative rent, while virtually no other creditors received payments from NTS. In addition, although NTS had ceased operating before it filed its bankruptcy petition and always stated its intention to file a liquidating plan, Mr. Longo did not promptly sell off NTS' personal property in a proper manner, but waited until March 18, 1991 in Baltimore and April 29, 1991 in Laurel (approximately six and seven months after it filed its Chapter 11 petition) to conduct the two major sales of its assets. T.I.149-50. This delay also had the effect of unnecessarily increasing the Longos' payments and claim for

administrative rent.

B. Personal Property

1. Lamborghini

217. On June 25, 1988 Charles R. Longo negotiated for the purchase of a red 1988 Lamborghini Countach 2-door sports coupe, at a total purchase price of \$138,650.00. A \$20,000.00 deposit submitted with that order and a further \$18,650.00 downpayment were paid by NTS. Ex. 179 at 271-72; T.III.71-72.
218. On July 8, 1988 Equitable Bank issued a Closed End Contract and Security Agreement in the principal amount of \$100,000.00 to finance the balance of the purchase price of the Lamborghini. That contract was signed by "Charles R. Longo, President" and was cosigned by "Charles R. Longo". Ex. 179 at 268, 269-70.
219. The original title to the Lamborghini was taken in the name of NTS, but at Mr. Longo's home address in Annapolis. Ex. 60 (page 4); See also Ex. 60A; Ex. 66 (pages 2, 3 and 5); T.III.70 (lines 10-11, 16).
220. The Lamborghini was driven exclusively by Charles R. Longo from the time of purchase at least through January 20, 1992. Ex. 178 at 137 (lines 14-15). Mr. Longo used the Lamborghini at all times, including evenings and weekends, for business or personal purposes as he wished. T.III.27-28. Mr. Boardwine, the controller of NTS, confirmed that Mr. Longo drove the Lamborghini from the time it was purchased, and Mr. Boardwine never saw any other NTS employee use it for business purposes. T.IV.71.
221. The Lamborghini was listed as an asset of NTS and depreciated on NTS' financial statements and tax returns. Ex. 179 at 272-73; Exs. 62, 64.
222. From August of 1988 through September of 1990, NTS made all the monthly payments to Equitable Bank (later Maryland National Bank) that were made for the Lamborghini loan, in the amount of \$2,112.42 per month, some of which were personally signed by Gary D. Boardwine. Ex. 67; Ex. 64; Ex. 179 at 269-71, 274; T.III.72 (lines 2-3), .73 (lines 2-3).
223. At the time of the filing of NTS' bankruptcy petition, the Lamborghini was still owned by NTS. T.IV.13 (lines 17-22).
224. From the time it was purchased, the Lamborghini was insured in the name of NTS, at a cost of approximately \$3,283 per

year. Not until February 27, 1991, at an annualized cost of \$5,360, did Mr. Longo personally obtain any insurance for the Lamborghini. Exs. 68, 65, 59; Ex. 179 at 276.

- 225. NTS also paid substantial repair bills on the Lamborghini from 1988 through 1990, which amounted to at least \$11,575.66 for the first seven months of 1990 and \$17,050.79 for 1989. Ex. 63; Ex. 179 at 276-77; T.III.72 (lines 5-6).
- 226. NTS also paid for Mr. Longo's car phone service in the Lamborghini and some of his gasoline expenses for that vehicle. T.III.72 (lines 7-10); Ex. 179 at 276-77.
- 227. None of the above expenditures by NTS for the Lamborghini were reported by NTS to taxing authorities as compensation, income or dividends to Mr. Longo, nor did he declare them as such on his personal tax returns. Ex. 179 at 277-79.
- 228. On NTS' Statement of Financial Affairs filed in case no. 90-5-4018-SD, NTS did not list the Lamborghini as a corporate asset on Schedule B(2)(f) or anywhere else in the schedules. Ex. 27 at 50. Mr. Longo did list the Lamborghini as an asset in his personal bankruptcy schedules, and listed the loan to Maryland National Bank as a personal liability. Ex. 1 at 10, 8.
- 229. Mrs. Longo's recollection of the purchase of the Lamborghini was that Mr. Longo just announced his intentions of buying this new car, and then proceeded with the purchase. This behavior was consistent with his general pattern of just buying whatever he wanted. T.III.25-26, 31-32.
- 230. Mr. Longo's transactions regarding the Lamborghini indicate fraud at every step and an inability or refusal to separate corporate from personal financial affairs.

2. Nissan 300ZX

- 231. Charles R. Longo, Jr. ("Charlie"), is the son of Charles R. Longo, owner of NTS. T.III.29, 63-65.
- 232. On or about August 30, 1989, at the direction of Mr. Longo, NTS purchased a new 1990 Nissan 300ZX for \$28,873 for the exclusive use by Charlie. Ex. 53; Ex. 178 at 200.
- 233. The 1990 Nissan 300ZX was not listed or scheduled by NTS in its Schedule B(2)(f), or anywhere else in its schedules, filed with the Bankruptcy Court, nor was it listed as an asset in Mr. Longo's personal bankruptcy schedules. See

Exs. 27 at 50; Ex. 1 at 10.

234. On Mr. Longo's 1990 tax returns, which were filed in approximately August of 1991, T.IV.13; Ex. 6 (pages 2, 3), he reported \$28,873 in miscellaneous income from NTS for the Nissan 300ZX. Ex. 6 (page 6, line 22, and page 16, Statement 3); Ex. 179 at 249-50.
235. As part of his Statement of financial Affairs signed under oath on December 14, 1990, Mr. Longo stated that he had not "made any gifts, other than ordinary and usual presents to family members and charitable donations, during tye year immediately preceding" November 13, 1990. Ex. 1. If in fact the value of the Nissan was intended to be income to Mr. Longo in 1990, then this statement may be incorrect or materially misleading.
236. NTS never declared, and Charlie never reported or claimed, any of NTS' payments for or in connection with the 1990 Nissan 300ZX as income to Charlie. Ex. 178 at 248-49.
237. NTS' purchase of the 1990 Nissan 300ZX was purely for personal purposes of Mr. Longo and Charlie and was not intended to, nor did it in fact, have any business purpose for NTS. T.III.66; Ex. 179 at 246-47. On the contrary, one of the purposes was to have NTS pay for the insurance on the car, which it did. Ex. 179 at 248; T.III.64-65.
238. On or about January 4, 1991, Mr. Longo, as president of NTS, transferred title to the 1990 Nissan 300ZX to Charlie individually. Ex. 54; T.III.66. No money or other consideration was paid by Charlie to NTS for this transfer. Ex. 54 at 4 (top line-blank); Ex. 179 at 248-49.
239. In connection with the above transfer, Mr. Longo signed as president of NTS, and Gary Boardwine attested as secretary of NTS, a Verified Statement for the purpose of obtaining an exemption from Maryland's motor vehicle excise tax. Ex. 54 at 7 (purpose explained in upper right box of form); Ex. 179 at 252-53. That Verified Statement was incorrect and untrue, because the transfer was not "a result of a reorganization of" NTS as claimed, but the exemption was successfully obtained. Ex. 54 at 3 (showing no transfer tax paid); T.III.69.
240. Also in connection with the above transfer, Mr. Longo completed an Application for Title and Registration, which included a certification of insurance. Ex. 54 at 4; T.III.67-68. He falsely listed his son's insurance as Travelers Insurance, policy no. UJ660265J2817, obtained through Insurance, Incorporated. Id. In fact, his son was never listed individually as a named insured on that

policy, which was NTS' former policy that had been cancelled in approximately August of 1990 for nonpayment of premiums. Exs. 68, 69. In addition, Mr. Longo forged his son's signature on this form. Ex. 179 at 257; T.III.67.

- 241. NTS was insolvent on August 30, 1989 and at all times thereafter.
- 242. NTS received no value from Mr. Longo or Charlie in return for the Nissan 300ZX. T.III.67.
- 243. NTS did not declare or report the \$28,873 in miscellaneous income reported by Mr. Longo on Exhibit 6 on a form W-2 or a form 1099 as income to Mr. Longo for the calendar years 1989 or 1990.
- 244. The purchase by NTS and the free permissive use of that vehicle by Charlie constituted a fraudulent transfer of NTS' property to Mr. Longo and/or Charlie.
- 245. At all times from August 30, 1989 to January 4, 1991, specifically including on and after September 21, 1990, NTS was the legal and equitable owner of the Nissan 300ZX.
- 246. There is no legally recognized titling of vehicles names other than the owner "for insurance purposes". The only purpose and effect of such an alleged transaction was to have NTS' creditors defrauded further by payment of such insurance expenses for the benefit of Mr. Longo and/or his son.
- 247. Mr. Longo's actions regarding the Nissan 300ZX were secretive, and the post-petition transfer was made intentionally for the purpose of defrauding at least the creditors of NTS and possibly his own creditors also. See Ex. 179 at 253-54, 257.

3. 1988 Cougar

- 248. As of September 21, 1990, NTS owned a 1988 Cougar, VIN 1NEBM6041JH659970, Ex. 56, which had formerly been driven by Terry Thistlethwaite, the director of the Baltimore school. T.IV.68-69. This vehicle was listed on Schedule B-2(f) of NTS' Statement of Financial Affairs with a book value of \$9,260.00. Ex. 27 at 50.
- 249. On December 7, 1990, Charles R. Longo sold the 1988 Cougar to Judith Ringgold, the former director of NTS' Glen Burnie location, for \$7,000.00, and signed over the title to her. Ex. 58; T.I.102-03; Ex. 176 at 53-54.

250. Ms. Ringgold's consideration paid for the 1988 Cougar consisted of two parts: (a) a \$1,377.00 personal check payable to Charles R. Longo and deposited into his individual account at Citizens Bank; and (b) a \$5,623.00 insurance claim settlement check payable to Judy M. Ringgold, which she endorsed and which was then deposited by Charles R. Longo into an account at Citizens Bank maintained by Shipper's Choice, Inc., a new company owned and controlled by Mr. Longo. Ex. 58; T.I.104-05.
251. NTS never transferred ownership of the 1988 Cougar to Mr. Longo. It also did not report the above sale on its December, 1990, or any other, monthly financial report filed in its bankruptcy case nor in its Application to Sell Personal Property Nunc Pro Tunc filed on May 9, 1991. Ex. 28.
252. Mr. Longo included the \$1,377.00 deposit on his December monthly financial statement merely as one of several "miscellaneous deposits" without further explanation, and did not report the \$5,623.00 payment at all. Ex. 8 at 7-8.
253. Mr. Gary Boardwine, former Comptroller of NTS, testified at a deposition on February 11, 1991 that NTS had not sold any vehicles since the filing of its bankruptcy petition except a 1988 Lincoln sedan. Ex. 176 at 28. In addition, he testified that NTS had never owned a 1988 Cougar and that the schedules must have been in error. Id. at 25-26.
254. Mr. Terry Thistlethwaite was known personally to both Charles R. Longo and Gary Boardwine, both of whom were also familiar with the 1988 Cougar that Mr. Thistlethwaite had driven.
255. Mr. Longo's diversion of the proceeds from the "sale" of the 1988 Cougar to Ms. Ringgold constitutes bankruptcy fraud and theft from NTS' estate. It also constitutes a voidable transfer to Mr. Longo under 11 U.S.C. § 549 and an unauthorized use of property of the estate under 11 U.S.C. § 363(b).
256. Mr. Longo's theft of the proceeds from the 1988 Cougar is consistent with a pattern and practice by him of ignoring the supposed separateness of the affairs of NTS and himself, to his own personal benefit.

4. Other Vehicles

257. Although at trial Mr. Boardwine initially couldn't "think of" Mr. Longo having any company cars provided by NTS, T.IV.69, upon prompting he recalled that Mr. Longo did have a 1979 Lincoln Mark X[V], a Lincoln Limousine, and a 1980 Mercedes 450, that Mr. Longo did drive a 1988 Lincoln Town

Car "some", and that Mr. Longo did drive the 1988 Lamborghini exclusively from the time it was purchased. T.IV.70-71.

258. Mr. Longo had also used a 1988 Lincoln Town Car for personal transportation for several months before September 21, 1990 and for several months thereafter, which he then sold privately without court approval. Ex. 176 at 28-31. That car had been purchased by NTS on or about March 31, 1989 for \$19,345. Ex. 53 (page 1, asset no. 312).
259. The 1979 Lincoln Mark V was purchased by NTS on or about November 1, 1978 at a cost of \$18,341 and was still owned by NTS on January 31, 1990. Ex. 53 (page 1, asset no. 131). It was also still owned by NTS on September 21, 1990, although it was omitted from NTS' schedule of vehicles owned then, Ex. 27 at 50, and it was still owned by NTS through at least January 25, 1991, with an appraised value of \$1,500, although it was not available for inspection by NTS' appraiser then. Ex. 183 at 13.
260. The 1979 Mark V was unavailable for inspection by NTS' appraiser because it was located at Mr. Longo's personal residence. Ex. 178 at 200-01. That vehicle had been used by Mr. Longo for any purposes that he wished, and had not been seen at NTS by Gary Boardwine, Comptroller of NTS, since at least February of 1990. Ex. 176 at 34-35.
261. The Lincoln Limousine was owned by NTS and driven by a chauffeur for Mr. Longo. T.III.23. On at least two occasions he and Linda Longo used that car for personal trips. T.III.23-24.
262. The Lincoln Limousine was purchased by NTS on or about August 31, 1985 at a cost of \$46,558 and was still owned by NTS on January 31, 1990. Ex. 53 (page 1, asset no. 151).
263. The 1980 Mercedes was purchased by NTS on or about May 31, 1989 at a cost of \$22,554 and was still owned by NTS on January 31, 1990. Ex. 53 (page 2, asset no. 313). The 1980 Mercedes was still owned by NTS through at least January 25, 1991, with an appraised value of \$15,000. Ex. 182 at 13. The 1980 Mercedes was also not listed on NTS' bankruptcy schedules. Ex. 27 at 50.
264. The 1980 Mercedes was initially purchased by Mr. Longo with NTS funds as a present to his wife. T.III.29. Her children rejected the car on her behalf, and she did not use the car. Id. [Ms. Longo did not know at the time or subsequently with what funds that car was purchased or in whose name it was titled.] Mr. Longo then used the car himself for at least three or four months. Ex. 176 at 34-35.

265. During 1989 NTS paid at least \$2,167.13 in repair bills for the 1980 Mercedes, and it paid at least another \$428.90 in repair costs in May of 1990. Ex. 55.
266. From June of 1988 through some time in 1990, NTS had at least the Lincoln Mark V, the Lincoln Limousine and the Lamborghini available at the same time for Mr. Longo's use, and from mid-1989 onward also had the 1980 available for his use. Not more than one of these cars was necessary at any one time for the corporate purposes of NTS, and NTS was not obligated, nor was it necessary for NTS, to supply Mr. Longo with a car at all. The excess number of cars purchased by NTS for use by Mr. Longo demonstrates an intermingling of corporate and personal purposes and finances, with the effect that NTS resources were invaded by Mr. Longo to provide himself with a convenient and pleasing array of vehicles to use.
267. None of the vehicles primarily used by Mr. Longo -- the 1979 Lincoln Mark V, the 1980 Mercedes, the 1988 Lamborghini, and the 1988 Lincoln Town Car and the 1986 Cougar that he also used in 1990 and 1991 -- was listed on the NTS bankruptcy schedules signed by Mr. Longo on October 30, 1990. Ex. 27 at 9, 50.
268. From approximately November of 1990 to at least February of 1991, Charles R. Longo also used a 1986 Cougar owned by NTS for personal transportation without the payment of any rent to NTS. Ex. 176 at 10, 12-13, 15.
269. From approximately November, 1990 to at least February, 1991, Lauren P. Derdock used a 1988 Topaz owned by NTS for personal transportation with the permission of Charles R. Longo and without the payment of any rent to NTS. Ex. 176 at 10-13, 15. This vehicle was not available for inspection and appraisal by NTS' auctioneer in advance of the public sale. Ex. 182 at 13.
270. The postpetition use by Mr. Longo and his future wife, Lauren Derdock, of the 1988 Lincoln Town Car, the 1986 Cougar and the 1988 Topaz without the payment of any rent to NTS constituted a fraudulent transfer of NTS' property to or for the benefit of Mr. Longo, voidable under state law and 11 U.S.C. § 548 and § 549, and an unauthorized use of property of the estate under 11 U.S.C § 363.

5. Yacht

271. In approximately November of 1983 through August of 1984, the Longos and/or NTS purchased a new 1984 46-foot Uniflite yacht (the "yacht"). Exs. 70-75.
272. The purchase price for the yacht was approximately \$369,135.00, Ex. 71, or perhaps "a little less." Ex. 178

- at 16-18. The majority of the purchase price for the yacht was provided by a \$300,000 loan from Maryland National Bank to the Longos. Exs. 70, 73, 75. The monthly payments for that loan were \$4,454.00. E.g., Ex. 9 at 1 (1/18/88).
273. The portion of the purchase price for the yacht over \$300,000 was paid in part by an in-kind exchange of the Longos' previously owned cabin cruiser to the seller of the yacht, which Mr. Longo considered as his capital contribution to the start-up of a new company that would be involved with the yacht. Ex. 178 at 27-28. That cabin cruiser was valued by the Longos on October 14, 1983 at \$29,500.00, Ex. 11, and it was encumbered by a loan to Maryland National Bank in the approximate amount of \$6,266.92. Exs. 11, 70.
274. NTS paid the remainder of the purchase price for the yacht, and at least \$15,750 in taxes for the yacht. Ex. 72; Ex. 178 at 20-21, 26-27.
275. NTS' tax return for the fiscal year ended 1/31/84 indicates that Maryland Sport Divers, Inc. ("Divers") was a wholly-owned subsidiary of NTS, and that no capitalization or other activity had taken place for Divers. Ex. 18 at 7, 9, 13, 18-21. However, that same return or associated financial statements indicate that as of 1/31/84 NTS had invested \$8,016 in Divers. Ex. 18 at 11.
276. Mr. Longo stated that in October of 1983 the yacht was being purchased for business purposes in the business name, and that he was not personally buying the yacht. Ex. 178 at 25-26.
277. Mr. Longo testified at deposition that the purchase price of the yacht was paid by a combination of funds from the Longos personally and from NTS, and that Divers was going to own the yacht. Ex. 178 at 19-20. However, when Divers "didn't materialize," he "had to pick up the loan" and "got stuck with the boat." Ex. 178 at 21, 23. He also stated the the yacht was only titled in the Longos' names at the request of the bank. Ex. 178 at 21.
278. In March of 1984 Mr. Longo requested that the yacht be titled in the name of National Training Systems. Ex. 72.
279. In connection with the purchase and financing of the yacht, Maryland National Bank prepared an Assignment of Title form and a Discharge of Security Interest form that listed NTS as the owner of the yacht and indicated that on July 9, 1984 a lien in the amount of \$300,000 had been created in favor of the bank. Ex. 73 at 1-3.
280. Also in connection with the purchase and financing of the yacht, Maryland National Bank prepared two unconditional

guaranties of payment that indicated that the Longos were the primary obligors on the yacht loan. One guaranty was signed on behalf of NTS by Mr. Longo as president, and the other was also signed by Mr. Longo as president of Maryland Sport Divers, Inc. Ex. 73 at 4-7.

281. Also in connection with the purchase and financing of the yacht, the Longos executed a lease for the yacht from themselves to Maryland Sport Divers, Inc. for a 10-year term at the rate of \$5,500 per month, which was signed at least by Mr. Longo as president of Maryland Sport Divers, Inc. Ex. 74.
282. On August 20, 1984, the Longos executed a first preferred ship mortgage on the yacht in favor of Maryland National Bank that indicated that the Longos were the sole owners of the yacht.
283. As of December 4, 1986, the Longos did not list the yacht as a personal asset, although they did list the yacht loan as a personal liability in the amount of \$252,145. Ex. 12 at 2.
284. As of 1/31/85, NTS' tax return still indicated that Divers had not been capitalized and that no activity had taken place in that name. Ex. 19 at 7, 29. That return also indicated that the \$8,016 "investment in subsidiary" listed the previous year was actually scuba equipment, and that the cost of such equipment had increased to \$9,801 by 1/31/85. Ex. 19 at 14.
285. NTS' tax returns for the year ended 1/31/86 do not expressly mention Divers or the scuba equipment. However, that return does claim a \$9,801 loss for property acquired on 1/1/83 and disposed of on 1/1/85 for a gross sales price of zero dollars, Ex. 20 at 10, and it is a reasonable inference that this property is the same scuba equipment listed the year before.
286. NTS' financial statements for the year ended 1/31/86 indicate that Divers was discontinued during that year and that its assets were disposed of and no liabilities existed. Debtors' Exhibit 1 at 10 (note 9).
287. NTS' purchase of scuba equipment was not for any legitimate business purpose of NTS related to the operation of a private career school. Instead, that purchase and ultimate loss was solely for the personal investment and pleasure purposes of Charles R. Longo for an unrelated venture that was designed to allow him to deduct, or have NTS or Divers pay, certain expenses associated with his yacht.
288. Mr. Longo's testimony regarding the yacht is vague and confusing. Thus, it is difficult to ascertain from the

available documentation and Mr. Longo's testimony precisely what happened and was intended to happen with respect to purchase and financing of the yacht.

289. Although NTS paid at least part of the purchase price of the yacht and purchased related scuba equipment, the Longos did not reimburse NTS or make any payments to it in connection with the yacht.
290. The transactions concerning the purchase of the yacht indicate that the personal and corporate financial affairs of the Longos and NTS were inextricably intertwined by Mr. Longo, that NTS made payments for the personal benefit of the Longos that were not reimbursed, that those payments were fraudulent transfers with respect to the creditors of NTS at the time, and that in his own mind and in actual practice Mr. Longo did not or was unable to distinguish and maintain the alleged corporate separateness of NTS that he now asserts as a defense to the Commission's claim.

C. Other Methods to Transfer Value from NTS to Mr. Longo

1. 1989 Dividend

291. On March 10, 1989, NTS paid Charles Longo \$600,000.00, which was deposited in his joint personal bank account. Ex. 9 at 17. This amount was originally recorded by the Longos as a dividend, and Mrs. Longo recalls it as a dividend. Id.; Ex. 179 at 289-90; Ex. 185 at 4.
292. The Longos used the \$600,000 primarily for the following purposes: (Ex. 9 at 17-21; Ex. 10):
- | | | |
|---------|---------------------|---|
| 4/18/89 | \$408,445.83 | Pay off personal loan from Commercial Credit |
| 4/15/89 | 31,499.00 | Estimated income tax payments |
| 4/15/89 | 31,460.00 | Purchase condominium in Netherlands Antilles |
| 6/12/89 | 58,120.25 | Purchase Mercedes 560SL for Linda Longo |
| 6/15/89 | 40,055.00 | Income tax payments |
| | <u>\$569,580.09</u> | |
| | 30,419.92 | Balance for other gifts, expenses and debt service payments |
293. Only \$300,000 of the \$600,000 payment was reported as a dividend on the tax return of the Longos for calendar year 1989 and on the tax return of NTS for the fiscal year ended 1/31/90. Ex. 4 at 1 (line 9), 4 (Schedule B, Part II); Ex. 25 at 5 (Schedule M-2, line 5).

294. When questioned at trial, the accountant for Mr. Longo and NTS was completely unable to explain what happened to the other \$300,000 of the March 1989 payment, or how it was accounted for, even upon reviewing the relevant documents and upon questioning from Mr. Longo's counsel. T.IV.25-35, 52-55, 59-61. The only aspects of the transaction that are clear are that Mr. Longo received the full \$600,000 and that he only declared \$300,000 of it as income.
295. Regardless of how it was accounted for, the \$600,000 dividend was a transfer of NTS' property to Mr. Longo for less than a reasonably equivalent value, while NTS was insolvent and/or that rendered NTS insolvent, and that contributed substantially to NTS' inability to pay its debts as they became due, particularly including student refund debts.

2. Vending Machines

296. At NTS' Laurel location, there were several large snack and soda vending machines and a change machine adjacent to a student lounge area. Ex. 180 at 76; T.II.55, 58.
297. NTS paid the purchase price for those vending and change machines, and it owned them; they were not leased from any entity. Ex. 180 at 79, 77; T.II.56.
298. The vending machines were installed shortly after NTS occupied the Laurel Property, and at all times thereafter (through at least September 21, 1990) NTS purchased and paid for the supplies to stock the vending machines. T.II.56-57; Ex. 179 at 238, 236-37; Ex. 180 at 77.
299. The vending machines at the Laurel Property were purchased by NTS and, as of September 21, 1990, were still owned by it. E.g. Ex. 27 at 53 (listing one vending machine as fully depreciated), 56 (another one valued at \$3,777).
300. The vending machines were not listed as an asset in Mr. Longo's personal bankruptcy case, on his original or amended schedules, see Ex. 1 at 10-17; Debtor's Ex. 6 at 10 (item B.27), although Mr. Longo claimed that he had purchased them originally and that he owned them as of April 2, 1992. Ex. 179 at 238; T.II.67.
301. So far as Mr. Boardwine, who has been the comptroller of NTS since 1980, was aware, NTS "never booked any income from" the vending machines, because it "never received any income from them." Ex. 180 at 78.
302. Mr. Boardwine also did not know what happened to the proceeds of the change machine, and stated that only Mr. Longo would know. Ex. 180 at 78.

303. NTS itself did not keep accurate or contemporaneous records of the vending expenses and income, but its accountants did originally estimate these items and deduct the purchases of vending machine supplies as business expenses and report the vending income as taxable corporate income. See T.II.65-66 (accountants would project income based on mark-up ratios); Ex. 17 at 5; Ex. 18 at 1 (line 10). However, after approximately 1984, NTS did not receive, keep an account of, or report the income from the vending and change machines. See Exs. 20-25; Debtors' Exs. 1-4.
304. For the fiscal years ending 1/31/88 and 1/31/89, NTS' accountants attempted to account for some of the vending machine supplies used for the benefit of Mr. Longo by reclassifying them from expense to officer's loan, Ex. 78 at 4, 5. However, those adjustments were made many a year or more after the underlying transactions, and only accounted for the supplies, not the income also, see Ex. 179 at 241, and did not include any interest payable to NTS. Moreover, there is no similar entry for the years ended 1/31/87 or 1/31/90, or for the rest of 1990. See Ex. 78 at 2, 7.
305. At the express direction of Mr. Longo, the vending machines were not sold as part of NTS' auction of its personal property in connection with its bankruptcy liquidation. T.II.57-58; Ex. 180 at 79.
306. After Mr. Boardwine testified at deposition in Mr. Longo's presence regarding the vending machines, Ex. 180 at 78-79, Mr. Longo admitted that NTS purchased all of the supplies for the vending machines, and that NTS "may have purchased those machines originally." Ex. 179 at 236-37. However, Mr. Longo then claimed that he owned the vending machines, and "that the purchase price of the machines was eventually put on my return just as the food items were," or that he may have actually purchased the vending machines as leasehold improvements or fixtures when the building was constructed. Ex. 179 at 236-37, 238-39. At trial, however, Mr. Longo apparently admitted that he never paid NTS for the vending machines themselves, and he did not know whether the purchase price of the vending machines was ever put on his tax return or his officer's loan account. T.II.67-68.
307. In explanation for the vending machine transactions, Mr. Longo stated at deposition several times that "the vending machine income's on my [tax] return", and that everything was reconciled properly by journal entry. Ex. 179 at 236-37. When the subject came up at trial, Mr. Longo retreated slightly by saying, "I don't know how he [Mr. Fagan] accounted for it," T.II.53, and that "it's either on my tax return or in my officer's loan, you'd have to ask the accountants, but it is accounted for." T.II.66. However,

Mr. Longo had earlier claimed that not all of the proceeds went into his pocket, that "the money was used to offset some of the costs, et cetera on the vending machines. It was used to buy additional supplies, et cetera." T.II.59-60. Since there would be no reason to charge his tax return or officer's loan account with such purchases for NTS, he then had to back off of the earlier statement and admit that "not all of that money was used for those purposes" and that (at least) the balance was "income to me." T.II.66-67.

308. In fact, neither the purchase of supplies by NTS nor the income itself from the vending machines has been reported as income on Mr. Longo's personal tax returns, at least since 1987. See Exs. 2-4, 6.
309. As a matter of actual practice, the income from the vending machines was simply taken out of the machines by Mr. Longo (or by others who would give it to Mr. Longo), and then used by Mr. Longo for his miscellaneous expenses. T.II.59, 67; Ex. 179 at 239-40. In other words, the money literally went from NTS' vending machines directly into Mr. Longo's pocket.
310. Mr. Longo admitted that he had "taken some money out of the vending machines", and that he did not keep track of the money he took from the vending machines and could give no accounting of this income. T.II.56, 68; Ex. 179 at 240.
311. Mr. Longo's testimony regarding his purchase or ownership of the vending machines is not credible. That testimony is not supported by the available documentation and is at odds with Mr. Boardwine's testimony, with the Longos' bankruptcy schedules, and with Mr. Longo's own prior testimony that NTS was financially responsible for all leasehold improvements at the Laurel Property. Ex. 178 at 177-78.
312. Mr. Longo excluded the vending machines from NTS' bankruptcy auction and retained them for his own use. They have remained exactly where they were before at the Laurel Property, and Mr. Longo and/or Shippers' Choice have continued to take the receipts from them as they are used by students of Shipper's Choice and others. T.II.56.
313. Since neither NTS nor Mr. Longo kept track of the actual receipts from the vending machines, any attempt to account for them would of necessity be an estimate at best. In addition, any ratio of expected profit would not apply to the change machine, whose receipts were pocketed and spent by Mr. Longo.
314. Mr. Longo's transactions regarding the vending machines indicate a usurpation of NTS' corporate opportunity, a disregard for the alleged corporate separateness of NTS,

and an inextricable intermingling of corporate and personal financial affairs and purposes, to his personal benefit.

3. Employee "Gifts"

315. Mr. Longo stated that he and other employees of NTS often exchanged Christmas gifts, and Mr. Longo would decide what bonuses or gifts to give from NTS to the employees. Ex. 178 at 53-57. If an employee was "good, ... [or] if [Mr. Longo] liked them," "sometimes people got two" gifts. Ex. 178 at 56-57, 55. Mr. Longo admitted that sometimes NTS would also pay for the second gift purportedly from Mr. Longo, although he claimed that sometimes he would pay for it personally. Ex. 178 at 57.
316. In addition to the Christmas gifts allegedly from Mr. Longo that were purchased by NTS, NTS employees would regularly "give" gifts to Mr. Longo that were actually paid for by NTS. Ex. 180 at 69; Ex. 76 (line 39). The gifts "given" by NTS employees to Mr. Longo included TV's, a custom bar for his office, a car telephone for the Lamborghini, a sailboard, and a Marcey gym. Ex. 179 at 236; Ex. 180 at 70. Those items were all treated by Mr. Longo as his personal property and retained by him. E.g. Ex. 180 at 71-72.
317. As an accounting practice, the value of these gifts to Mr. Longo were sometimes listed as accounts receivable from employees. Ex. 180 at 69. NTS did not keep a detailed listing of the amounts or reasons for such balances. Id. There was no reasonable expectation for at least the majority of these "gifts" that they would actually be repaid by employees, and as of January 31, 1989, NTS wrote off \$8,633.78 in "employees' unpaid part of shareholder's Christmas gifts." T.IV.22; Ex. 76. The net effect of these transactions was to transfer at least \$8,633.78 in money or property from NTS to Mr. Longo as an alleged gift without reporting that amount as income to Mr. Longo.
318. After January 31, 1989, some of NTS' employees gave Mr. Longo other gifts also, that were actually paid for in the first instance by NTS. Ex. 180 at 69. For example, on January 10, 1990, while NTS was insolvent, NTS paid \$2,010.00 directly to Mr. Longo as an alleged Christmas gift of a cellular car phone. Ex. 77 (page 2); T.IV.68. There was no evidence that this amount was ever repaid by any employees, or that NTS ever sought repayment of this alleged gift from any employees. Instead, it appears that the employees were used as a cover in name only (or by subsequent explanation) for a direct transfer of NTS' assets to Charles R. Longo personally.
319. Neither NTS nor Mr. Longo reported any of the gifts from employees that ~~some~~ actually paid for in the first instance

by NTS as income to Mr. Longo.

- 320. Mr. Longo's practice of buying employees one or more gifts indifferently from NTS and/or himself is a further indication of his lack of distinction between his personal and NTS' financial affairs and his own disregard of the alleged corporate separateness of NTS.
- 321. All gifts given to Mr. Longo that were paid for by NTS were transfers for less than a reasonably equivalent value and were fraudulent transfers with respect to the creditors of NTS.
- 322. The transactions between NTS and Mr. Longo regarding "employee gifts" are further evidence of Mr. Longo's own blurring of the alleged lines between himself and NTS, to his own personal benefit.

4. Profit Sharing Plan

- 323. During 1988, NTS voluntarily made a \$100,000 contribution to an employee profit sharing plan, in the amount and as directed by Mr. Longo. Debtors' Exhibit 4 at 10 (Note 9); Ex. 24 at 1 (line 24); Ex. 180 at 55. This amount was paid solely by NTS, and was not deducted from the wages of, or otherwise payable by, the employees of NTS. See generally T.III.40-44.
- 324. In order to be eligible for participation in the profit sharing plan, an employee had to have a minimum of 12 months of service or employment with NTS, and thereafter would vest in the plan at a rate of 20% for each year of total service. Ex. 80 at 2-3.
- 325. The allocations among employees were based on annual salaries, and of the initial \$100,000 contribution, \$30,000 was allocated to Mr. Longo, who was fully vested at that time. Ex. 80.
- 326. NTS made no further contributions to the plan, and by January 16, 1991 the plan's value had increased by almost 12% to a total of \$111,975.85. Ex. 81; Ex. 178 at 124-25.
- 327. The profit sharing plan was not listed as an asset, and its existence was not disclosed in any other way, on NTS' statement of financial affairs, which was signed by Mr. Longo on October 30, 1990. Ex. 27.
- 328. Mr. Longo's interest in NTS' profit sharing plan was initially listed as an exempt asset in the Longos' personal bankruptcy case, valued at \$30,000. Ex. 1 at 16, 17.
- 329. After the filing of NTS' and the Longos' bankruptcy

petitions, Mr. Longo as trustee requested that the plan manager, New York Life Insurance Company, liquidate the plan and return all funds to him as one of the trustees for the plan. That was done on January 16, 1991 by New York Life Insurance Co. mailing a check to Mr. Longo in the amount of \$111,975.85, payable to "Trustees of the National Training Systems, Inc.". Ex. 81.

330. The check from New York Life Insurance Co. was received by Mr. Longo and deposited by him into a prepetition trust account maintained at Annapolis Federal Savings Bank. Ex. 83.
331. The existence of the Annapolis Federal Savings Bank trust account and the profit sharing plan were not disclosed on NTS' Statement of Financial Affairs, although it should have been listed in response to items 7, 8, or 11. See Ex. 27 at 3. That account was also not disclosed on the Longos' personal bankruptcy schedules, although it should have been listed in response to items 6 or 9. See Ex. 1 at 1-2.
332. Neither the receipt by Mr. Longo as trustee of the NTS profit sharing plan of the \$111,975.85, nor the distributions made later, were reported on NTS' monthly financial statements required to be filed in connection with its Chapter 11 case. See Ex. 28.
333. After receipt of the funds from New York Life Insurance Co., Mr. Longo as trustee prepared a schedule of distributions totaling \$102,248.07 and obtained cashier's checks from Annapolis Federal Savings Bank to make many of those distributions. Exs. 82, 83.
334. Mr. Longo was solely responsible for making distributions from NTS' profit sharing plan, some of which were made at the request of the beneficiaries. Ex. 180 at 56.
335. Mr. Longo did offset a total of \$6,126.63 from the scheduled distributions for Dominick Grossi, Judith Ringgold, Robert Schoener and Charles Schoppert for prepetition employee loans owed to NTS, and that amount was paid into NTS' debtor in possession account and listed on its February 1991 monthly financial statement in a vague manner simply as "loan payments." Ex. 28 at 19.^{6/} In

^{6/} When questioned at a deposition in May of 1991, Mr. Boardwine stated that he did not know which employees were involved with the \$6,126.63 deposit and whether their loans had been paid off or not. Ex. 177 at 205. The existence of the profit sharing plan had not been disclosed to the Commission as of that date, and Mr. Boardwine did not mention it then. Id. At his deposition on January 22, 1992, however, Mr. Boardwine stated (Continued)

other words, Mr. Longo treated the profit-sharing distributions for these employees as debts owing from NTS to them, which he offset against debts owing from them to NTS, rather than as their vested personal property.

336. Despite the above offsets for other employees, and the facts that Mr. Longo owed NTS unpaid postpetition rent for use of the Mayfair Road townhouse and that Shipper's Choice owed NTS unpaid postpetition rent for use of NTS' vehicles and other property, Mr. Longo made substantial payments to himself and Shipper's Choice from NTS' profit sharing plan without any offset. Ex. 83.
337. As of January of 1991, Mr. Longo's interest in NTS' profit sharing plan was no more than \$34,820.42. Ex. 82; T.III.45, 51-52. Nevertheless, Mr. Longo withdrew at least \$48,184.58 from that plan for himself and Shippers' Choice. Ex. 83; T.III.51.
338. Mr. Longo personally withdrew and received \$15,184.58 from the NTS profit sharing plan in 1991, as follows:

<u>Date</u>	<u>Amount</u>	<u>Reference</u>
01/29/91	5,000.00	Check No. 09-19001
03/28/91	3,000.00	Check No. 09-19208
04/23/91	6,000.00	Check No. 02-42011
06/14/91	1,184.58	Cash Withdrawal
	<u>15,184.58</u>	

Ex. 83, at 1-2, 15-16, 17, 18-19; Ex. 179 at 260, 265-66; T.III.46, 49-51.

339. The \$5,000 payment listed in the preceding paragraph apparently is reflected in Mr. Longo's debtor in possession bank account for January 1991, Ex. 8 at 14, and is possibly counted as "interest, dividends or investment income," id. at 13, but Mr. Longo did not file the required detailed statement of cash receipts or any other description from which the nature of this deposit and income could be ascertained. The other amounts listed in the preceding paragraph that Mr. Longo received from NTS' profit sharing plan were not listed or disclosed at all in his monthly financial reports. See Ex. 8 at 27-40, 48-54.
340. In addition to the \$15,184.58 received directly by Mr. Longo, he requested that Annapolis Federal Savings Bank issue two checks totalling \$33,000 from NTS' profit sharing plan account payable to Shipper's Choice, Inc., and he

that he was familiar with exactly how much had been distributed from the plan and what for, and he recalled that there had been an offset for at least Dominick Grossi. Ex. 180 at 56, 63-64.

endorsed and deposited those checks as president of Shipper's Choice. Ex. 83 at 7-8, 15-16; Ex. 179 at 261-62, 265; T.III.47-49.

341. Shipper's Choice never had any interest in, or claim against, any funds in NTS' profit sharing plan. Ex. 180 at 57.
342. The \$33,000 payments to Shipper's Choice, which allegedly passed in some metaphysical sense through Mr. Longo's personal accounts, were not reflected in Mr. Longo's monthly financial statements. See Ex. 8.
343. Mr. Longo testified at deposition on January 22, 1992 that his interest in the NTS profit sharing plan was \$38,000. Ex. 179 at 262. That statement was incorrect and contradicts his own bankruptcy statement of financial affairs, Ex. 1 at 16, and his own schedule of the profit-sharing distributions. Ex. 82; T.III.47, 51-52.
344. Mr. Longo also testified at deposition and at trial that he took the money out of his 401(K) profit sharing account and gave it to Shipper's Choice, which would be reconciled later by journal entry. Ex. 179 at 262; T.III.47-48. He further stated that he could "do whatever I pleased with" the withdrawals to Shipper's Choice, including loaning or giving them away. Ex. 179 at 265; T.III.55-56.
345. Mr. Longo's actions regarding the NTS profit sharing plan indicate a flagrant disregard for his fiduciary duties as a trustee of that plan and as a fiduciary debtor in possession for his own and NTS' estate and creditors.
346. Mr. Longo's actions regarding the NTS profit sharing plan indicate secretiveness, deceit and fraud.
347. At least until the details of the profit sharing plan distribution became known to the Commission to Mr. Longo's knowledge, he had no intention of repaying any amounts into that plan either personally or from Shipper's Choice. In addition, his statements that he could do whatever he wanted with that money indicate a continuing intention not to repay any withdrawals and to disregard his fiduciary duties.
348. Even if the distributions from the NTS profit sharing plan to Mr. Longo and Shipper's Choice were "loans" as he alleged, for which there is no credible evidence, such transactions would at a minimum violate 11 U.S.C. § 363(b) because they were made while NTS and Mr. Longo were Chapter 11 debtors without notice to creditors and an opportunity for a hearing.
349. The distributions from the NTS profit sharing plan to Mr.

Longo and Shipper's Choice were made while NTS was insolvent, with the actual intent to hinder, delay and defraud creditors of NTS, were in exchange for less than a reasonably equivalent value, and were at least in part fraudulent transfers under state law and voidable under 11 U.S.C. § 549.

350. Mr. Longo's actions regarding the distributions from the NTS profit sharing plan indicate his disregard for the corporate separateness of NTS and an intermingling of personal and NTS financial affairs and purposes, to his personal benefit, and are consistent with similar practices and attitudes both pre- and post-petition.

D. Corporate Payment of Personal Expenses and Personal Use of NTS Funds

1. Credit Card Payments

351. NTS owned and regularly used a check-signing machine. Stip. 6; Ex. 84.
352. NTS' usual practice for the signature of accounts payable checks was to have them automatically imprinted with a signature by the check-signing machine. Alternatively, some checks would be manually signed by Gary D. Boardwine, Comptroller, and even fewer would be manually signed by Charles R. Longo, President. Stip. 7; Ex. 84.
353. During at least 1988 to 1990, Charles R. Longo held a credit card account with Amoco Oil Co., account no. 464-111-103-6, in his personal name and with a listed mailing address of 624 Harbor Drive, Annapolis, Maryland. Ex. 84; Ex. 85; Ex. 170 at 140-41. Since December 29, 1988, NTS made payments totalling at least \$3,724 on Mr. Longo's Amoco account. Id.
354. At least two Amoco payment checks were manually prepared and signed by Charles R. Longo. Ex. 84; Ex. 85 at 36, 43.
355. In September and November of 1990, Mr. Longo paid his Amoco credit card bills from personal checking accounts, and thereafter such bills have been paid by Shipper's Choice, Inc., a company wholly owned and controlled by Charles R. Longo. Ex. 85 at 45-47.
356. During 1989 and 1990, Charles R. Longo held a credit card account with Mobil Oil Co., account no. 827-901-827-21, in his personal name, with a mailing address of 624 Harbor Drive, Annapolis, Maryland. Ex. 86
357. On July 12, 1990, Charles R. Longo manually prepared and signed NTS check no. 37909 in the amount of \$30.00 in

payment of his personal Mobil Oil Co. account balance. Ex. 87.

358. During 1989 and 1990, Charles R. and Linda A. Longo held a credit card account with Shell Oil Co., account no. 113-184-279, in their personal names, with a mailing address of 624 Harbor Drive, Annapolis, Maryland. Ex. 89
359. On or about December 28, 1989, NTS paid \$20.00 on the Longos' personal Shell Oil Co. account balance. Ex. 88.
360. On February 2, 1990, NTS paid \$25.54 on Mr. Longo's personal Shell Oil Co. account balance by check no. 34351. Ex. 88.
361. During 1989 and 1990, Charles R. Longo held a personal credit card (Mastercard) account with Key Federal Savings & Loan, account no. 5414-5010-0001-3173. Ex. 90 at 6-26.
362. On February 2, 1990, NTS paid \$1,921.20 by check number 34350 on Mr. Longo's Key Federal credit balance, which was received and credited by Key Federal on February 5, 1990. Ex. 90 at 1, 12.
363. On March 22, 1990, NTS paid \$76.83 by check number 35856 on Mr. Longo's Key Federal credit balance, which was received and credited by Key Federal on March 26, 1990. Ex. 90 at 1, 10.
364. Mr. Longo's Key Federal Mastercard account also reflects the payments totaling \$12,249.99 during the time period from December 5, 1988 through October 3, 1990. Ex. 90; Summary S-90. None of these payments was made from the Longos' primary personal checking account at Signet Bank. See Ex. 9. Therefore, in light of Mr. Longo's practice of paying personal credit card expenses with NTS funds, specifically including some payments on this account, I conclude that all or some of the payments listed on S-90 were also made by NTS.
365. Neither Mr. Longo nor NTS has any records of the purposes for which his Amoco, Mobil, Shell or Key Federal purchases were made, or of an allocation of such expenses between personal use and any alleged business use.
366. Each of the above credit card payments was a fraudulent transfer of NTS' property for the benefit of Mr. Longo.

2. Payments for Lauren Derdock (Longo)

367. Ms. Lauren P. Derdock was an employee of NTS during 1989 and 1990 and was a close personal friend of Charles R. Longo. After his divorce from Linda A. Longo, Charles R. Longo married a Lauren Derdock, whose name is now Lauren P.

Longo. Stip. 8.

368. Shell Oil Co. credit card account no. 130-908-080 was and is held in the name of Lauren P. Derdock. Ex. 93
369. In April of 1990, NTS paid \$219.31 by check no. 18672 to Shell Oil Co. on Ms. Derdock's personal account balance. Ex. 88; Ex. 93 at 3; Ex. 94.
370. On May 18, 1990, NTS paid \$225.49 on Ms. Derdock's personal Shell Oil Co. account balance by check no. 37125. Ex. 93 at 3.
371. On July 12, 1990, Charles R. Longo manually prepared and signed NTS check no. 37893 in the amount of \$89.00 in payment of Ms. Derdock's personal Shell Oil Co. account balance. Ex. 95; Ex. 93 at 3.
372. During 1990 Ms. Derdock maintained a personal automobile insurance policy through Allstate Insurance Co., policy no. 052825352-02/08. Ex. 96.
373. On July 12, 1990, Charles R. Longo manually prepared and signed NTS check no. 37908 in the amount of \$422.00 payable to Allstate Insurance Co. for Ms. Derdock's automobile policy. Ex. 97.
374. Ms. Derdock worked approximately three days a week for NTS, and her vehicle was not used exclusively or even primarily for business purposes of NTS. Ex. 178 at 146.
375. The above payments for the benefit of Ms. Derdock were constructively fraudulent transfers of NTS' property to Mr. Longo, and then gifts by him to or for the benefit of Ms. Derdock, that were not properly accounted for on NTS' financial records. The payments were not for valid or necessary business purposes of NTS, but were made for the personal convenience of Mr. Longo out of his friendship and affection for Ms. Derdock.

3. Personal Life Insurance

376. From December of 1984 through some time in 1990, NTS made the payments on a life insurance policy insuring the life of Charles R. Longo. The policy was obtained through Allstate Life Insurance Company, policy no. 777-711-325, in the face amount of \$1 million. Ex. 91; Stip. 9.
377. The owner and primary beneficiary of the policy during at least the above time period was always Linda A. Longo, and the policy mailing address was 624 Harbor Road, Annapolis, Maryland 21403, which was the Longos' home address. Ex. 91; Ex. 1.

378. From February of 1988 through 1990, NTS issued approximately 18 checks of \$600.00 each, for a total of \$10,800.00, as payments on the above life insurance policy for Mr. Longo. Ex. 91. Mr. Boardwine knew nothing about this policy, except that he had been instructed by Mr. Longo to have NTS pay the premiums, which it did. Ex. 180 at 52-55.
379. At least one of those checks, no. 37911 issued on July 12, 1990, was manually prepared and signed by Charles R. Longo. Ex. 92.
380. On personal financial statements dated March 15 and August 15, 1990, the Longos listed the Allstate life insurance policy as a personal asset with cash value. Ex. 14; Ex. 15.
381. As of December 14, 1990, Charles and Linda Longo listed the Allstate Life insurance policy as an asset in their personal bankruptcy case, valued at \$4,769.00 in cash value on Schedule B(2)(r). Ex. 1 at 16; Stip. 10. [This statement, and the statement from Allstate in Ex. 91, contradict Mr. Longo's deposition testimony that there was no cash value of the policy. See Ex. 178 at 140.]
382. From October 2, 1990, through January 27, 1992, the Longos made no payments on the Allstate Life insurance policy, and the cash value had declined to \$1,276.09 as of January 27, 1992. Ex. 91 at 1; Stip. 11.
383. None of the above life insurance payments by NTS was recorded on its books as a loan or income to Charles R. or Linda A. Longo, nor did the Longos report any of such payments as income on their personal tax returns. Stip. 12.
384. NTS regularly recorded the above life insurance payments on its books as a business expense, although in at least one year it separately reported such amounts as a nondeductible expense on its tax returns. Ex. 25 (Statement 10); Stip. 13.
385. Mr. Longo's justification for the life insurance payments that this policy was "to wind down the company if ever something did happen to me," Ex. 179 at 140, is not persuasive. Even if that was the Longos' unexpressed intent, the policy was not structured directly to achieve such a purpose, because Linda Longo (who held no stock in NTS) was the policy owner, rather than NTS, and because the Longos claimed the policy and its cash value as a personal asset in their bankruptcy case. Instead, in accordance with the non-deductibility of these payments for tax purposes, I find that these payments by NTS were fraudulent transfers of NTS' property and a waste of corporate funds

for the personal convenience and benefit of the Longos.

4. Personal Professional Services

a. Accountants

386. For many years, including at least 1987-1990, the accounting firm of Pear, Fagan & Bormel ("PF&B") prepared the tax returns for both NTS and the Longos personally, see Exs. 2, 3, 4, 6, 7, 21, 22, 24 and 25, and served as Mr. Longo's personal accountants. T.II.27-28; T.IV.7-8.
387. During at least 1988-1990, NTS made substantial payments to PF&B for preparation of tax returns and other services, but the Longos did not make any personal payments to PF&B. T.II.28.
388. After the filing of NTS' bankruptcy petition, PF&B was retained with Court approval in the NTS case "for the special purpose of prosecuting and/or protecting an income tax appeal if beneficial to the estate." Order, Jan. 25, 1991.
389. During 1991, PF&B prepared tax returns for NTS for its fiscal year ended January 31, 1990, and amended returns for fiscal years 1989 and 1988, and began work on the next year's tax returns for NTS. See Exs. 25 and 26. In addition, during 1991 PF&B prepared separate tax returns for both Charles and Linda Longo personally for 1990, see Exs. 6 and 7, and amended joint returns for the Longos for 1988 and 1987, without application to or approval from the Bankruptcy Court in the Longo case.
390. After the filing of their bankruptcy petition, the Longos did not make or agree to make any payments to PF&B, despite the receipt of substantial professional services from PF&B. T.II.28. To the extent PF&B has been or expects to be compensated for its services, that compensation has been or is expected to be from NTS rather than the Longos. Also, for at least 1987-1990, NTS paid PF&B for its services rendered on behalf of the Longos personally.^{7/}

^{7/} Mr. Longo's testimony that this service was provided "gratis" is difficult to find persuasive. Mr. Longo was not a credible witness generally, and Mr. Fagan did not corroborate this claim. At most, there may not have been any separate charge to NTS or the Longos for these services, but the services were of substantial personal benefit to the Longos and were probably paid for by NTS on an average or imputed basis. Particularly after the filing of both bankruptcy petitions, and in light of Mr. Fagan's limited-purpose retention in the NTS case, it is not (Continued)

b. Attorneys

391. John J. Sellinger has been Mr. Longo's friend, personal attorney, and NTS' corporate attorney for fifteen years. T.II.29; Ex. 178 at 43.
392. During NTS' fiscal year ended 1/31/89, NTS advanced or loaned \$25,000 to John J. Sellinger. Ex. 105; Ex. 178 at 42-44. The \$25,000 payment to Mr. Sellinger was initially classified on NTS' books as a loan ("Account Receivable- Others"), but at deposition Mr. Longo described it as more of an advance or retainer for legal services to be rendered. Id.
393. Neither Mr. Longo nor his wife ever made or agreed to make any personal payments to John J. Sellinger for professional legal services. T.II.33, 40-41; Ex. 178 at 153.
394. Mr. Longo testified at his deposition that Mr. Sellinger had not been "involved in anything I did personally". Ex. 178 at 153. That statement directly conflicts with Mr. Longo's other testimony that Mr. Sellinger had been his personal attorney for fifteen years, and it is factually incorrect. See T.II.30-31; Ex. 178 at 43. Mr. Sellinger represented the Longos personally at least in connection with a 1987 loan and a 1988 lawsuit against the Wangs, see Ex. 101; T.II.39-40, as trustee under a deed of trust for a personal loan in 1988, Ex. 103 at 4; T.II.41, and in connection with some of their 1990 dealings with Citizens Bank. See Ex. 175: T.II.33-37.
395. Mr. Longo improperly failed to disclose in answer to item 15(a) of their Statement of Financial Affairs that Mr. Sellinger had represented him in the year preceding the filing of his bankruptcy petition. See Ex. 1 at 2.
396. Mr. Longo testified that Mr. Sellinger was "my attorney" and "continually did legal work for me" and that when Mr. Sellinger needed money Mr. Longo suggested "why don't I go ahead and pay your legal fees". Ex. 178 at 43 (emphasis added). This testimony, especially when combined with the

reasonably credible that Mr. Fagan would prepare the Longos' personal tax returns "gratis" because of the limited NTS business. See also Ex. 27 at 39 (NTS owed PF&B \$9,850 for prepetition services). The only way Mr. Longo's testimony could be somewhat credible for earlier years is if doing the NTS statements and tax returns was essentially the same as doing the Longos' returns, since the finances were so intertwined as to be almost identical, and in that light Mr. Longo's testimony would support the Commission's claim.

above facts that Mr. Sellinger represented both the Longos and NTS but payments were made only by NTS, shows Mr. Longo's inability to distinguish between himself and NTS, and a disregard for the alleged corporate separateness of NTS.

397. Any payment that NTS made to Mr. Sellinger for legal representation of the Longos was a fraudulent transfer as to NTS' creditors, because NTS received no value from the Longos for such transfer of NTS' property.
398. On October 16, 1990, the Commonwealth of Virginia indicated Charles R. Longo personally for 46 counts of felony theft concerning student loan checks related to NTS. That indictment was later dismissed and expunged from Mr. Longo's record in Virginia. Ex. 178 at 154; T.II.42.
399. In connection with the above indictment, Mr. Longo retained Joseph Kaestner, Esquire, to represent him personally in the criminal proceeding in Virginia. Ex. 178 at 154; T.II.42.
400. NTS was not indicted and was not a defendant in that criminal proceeding. Ex. 178 at 155; T.II.42.
401. Mr. Longo has not made any personal payments to Joseph Kaestner in connection with the above representation. Ex. 178 at 155.^{8/}
402. On November 5, 1990, Mr. Longo personally prepared and signed a \$5,000.00 check to Joseph Kaestner from NTS' postpetition debtor-in-possession account in partial payment for Mr. Kaestner's representation of Mr. Longo. Ex. 102; Ex. 178 at 156-57; T.II.43-44.
403. As of November 5, 1990, Joseph Kaestner had not applied for or received Court approval to represent NTS or to have NTS make any payments to him. T.II.44-45. He was later retained with Court approval pursuant to an application dated April 9, 1991 and an Order dated April 25, 1991 as special counsel to NTS on a contingent fee basis to pursue a claim of the estate against the Virginia Educational Loan Authority, but the \$5,000 payment in November of 1990 was totally unrelated to the later special counsel arrangement.

^{8/} Mr. Longo readily admitted this fact at his deposition, and claimed that he "didn't have to" make any such payments. Ex. 178 at 155. At trial, however, Mr. Longo contradicted himself and claimed that he did make a personal payment to Mr. Kaestner, although he could not recall the amount, T.II.42-43, and there is no reliable evidence in the record to support this claim.

404. The \$5,000 payment from NTS to Mr. Kaestner is a fraudulent transfer under at least 11 U.S.C. § 549 that was made for the benefit of Mr. Longo.

5. Loan to Friends of Mr. Longo

405. On March 17, 1988 Charles Longo purportedly lent \$15,000 to Penelope and Paul Alexiou secured by a deed of trust on their home. Ex. 103. In fact, because Mr. Longo cannot remember whether he personally advanced the \$15,000, Ex. 178 at 35, because there is no such payment from the Longos' main joint checking account, see Ex. 9 at 3, and because the loan is entered on NTS' books dated 3/16/88 (i.e. the day before the note and deed of trust to Mr. Longo were executed), Exs. 103 and 104, it appears, and I so find, that NTS actually advanced the \$15,000 to the Alexious, despite the recitation in the note that Charles R. Longo was the lender.
406. The Alexious owned a gyro store and this loan was for the purchase of equipment. Ex. 178 at 34-35. Thus, the loan was not made for any business purpose of NTS but as a personal investment by Mr. Longo.
407. NTS received no payments on the Alexiou note from 3/16/88 to 1/31/90, and the note did not accrue any interest in fiscal 1990. Exs. 104 and 105 at 2 (line 5).
408. Mr. Longo claims that the Alexious may have made some payments on the note after 1/31/90, but Mr. Longo does not recall whether such payments were made to himself personally or to NTS, Ex. 178 at 36, and NTS has no documents relating to such payments.
409. The Alexiou transaction is further evidence of the merging of the identities of NTS and Mr. Longo, and of Mr. Longo using NTS funds as if they were his own.
410. The Alexiou transaction was made while NTS was insolvent; it was a bad investment with no apparent return of principal or interest to NTS; and it contributed to the ongoing insolvency of NTS.
411. During 1988, NTS made four loans to a jet ski and watercraft business known as Fiber Technology. Ex. 104; Ex. 178 at 30. The principal in Fiber Technology, Mr. Bruff Proctor, was a friend of Mr. Longo, and Mr. Longo was the person who decided whether and how much money to lend to that company. Ex. 178 at 32-33.
412. As of 1/31/89 the balance of all the loans to Fiber Technology was \$53,399.93, and NTS received no payments and accrued no interest on those loans through 1/3/90. Ex.

104; Ex. 105 at 2 (line 3).

413. Although Mr. Longo claimed during his deposition that payments were being made on this loan, Ex. 178 at 33, he did not identify any such alleged payments at trial, and there are no apparent NTS records of receiving payments on the Fiber Technology loan during 1990.
414. NTS has no written note or security agreement for the Fiber Technology loan. Ex. 178 at 31, 33.
415. The Fiber Technology loan was not listed as an asset of NTS on its bankruptcy schedules, see Ex. 27 at 51 (Schedule B(2)(p)), although its existence was discovered by creditors in that case, and Fiber Technology did make some modest postpetition payments in 1991. See Ex. 28 at 14, 23.
416. The Fiber Technology loans were made while NTS was insolvent and contributed to NTS' ongoing insolvency. Those loans were a bad investment for NTS, resulting in a substantial loss of principal and no appreciable income.
417. During the year ended 1/31/90, Mr. Longo approved a \$12,000 loan to Janet Frazier, who was the mother of an NTS employee, for some business venture of an associate of hers. Ex. 105 at 2; Ex. 178 at 37-42.
418. Mr. Longo does not recall "how that loan was structured" or whether he or NTS made the loan. Ex. 178 at 38, 40. He also does not recall when it was paid back; NTS has no documents relating to that loan; and no one else at NTS has any knowledge of this loan. Ex. 178 at 39-40.
419. The Alexiou, Fiber Technology and Frazier loans from NTS were made by Charles Longo to friends or "business associates" of his for personal purposes unrelated to the proper business purposes of NTS.
420. The Alexiou transaction in particular, and also the Fiber Technology and Frazier loans, demonstrate an intermingling of the corporate affairs of NTS and the personal affairs or desires of Mr. Longo, with no regard for their alleged separateness, and also a wasteful and sloppy use of NTS' assets by Mr. Longo for personal purposes. These transactions appear to be more in the nature of gifts from Mr. Longo to friends of his, using NTS' funds while it was insolvent. As constructive transfers from NTS to Mr. Longo, they were made without equivalent consideration and were fraudulent as to the creditors of NTS.

E. "Loans" Between NTS and Mr. Longo

1. History of Free Borrowings from NTS

421. Mr. Longo frequently took money from NTS to make personal purchases. He did not keep track of such details himself, and such withdrawals would only be classified later by NTS' accountants to "officer loans" or "account receivable--officer" or "stockholder loan". See Ex. 78.
422. Although NTS' accountants generally tried to catch up with Mr. Longo's intermingled transactions many months after the fact by reclassifying certain items as loans, they were unable to properly account for all such items on a regular or current basis. See Ex. 78; T.IV.17-18.
423. A true loan is not considered taxable income to the borrower because there is a corresponding obligation to repay. In contrast, a dividend, distribution or wages are generally treated as taxable income to the recipient. T.IV.17-18.
424. Mr. Longo used NTS as his personal bank or alternate personal checking account whenever he wished. Whether he used a personal check or a company check was of no consequence to him--he would just use whatever source was closest at hand or most convenient at the moment he wanted something. See generally T.II.46-53.
425. For example, for the NTS fiscal year ended 1/31/87, Mr. Longo withdrew \$800 cash from NTS and withdrew another \$20,000 by check for an unknown purpose; he used NTS funds to purchase an overhead projection television (\$3,598.70) and an organ (\$12,005) for his personal residence; he had NTS make mortgage payments (\$6,378.18 and \$8,574.65) for his personal debts on the Laurel property and on his home in Annapolis; and he used NTS funds to pay for a repair (\$4,023) on his personal yacht. Ex. 78 at 2; T.II.46-50.
426. In the following several months, Mr. Longo used NTS funds, among other things, to place a \$200 deposit on a new personal car, to purchase or repair a personal ATV motorcycle, to make another personal mortgage payment for the Laurel property, and to pay some personal interest (\$3,557). See Ex. 78 at 3; T.II.50-53.
427. Mr. Longo admitted that he did not prepare a note or any written evidence of the alleged "loan" nature of the above withdrawals, T.II.50, and his explanations for why he used NTS funds were that "probably because at that particular instance I didn't have the \$12,000 on me", T.II.48, "if I didn't have the personal check to give him ... I let the school write a check", T.II.49, or that "probably because I might not have had a check with me of my own." T.II.51.
428. Although Mr. Longo stated that he "subsequently reimbursed

the company" or "subsequently should have reimbursed the school for that money", T.II.48-49, (emphasis added), it is clear that he did not actually reimburse the company specifically for any of these withdrawals, but that it was up to the accountants who reviewed the bills or accounts much later to catch these items as personal expenses and to reclassify them to his officer's loan account. T.II.50, 48.

429. Mr. Longo also attempted to explain away these transactions by stating that he did not typically carry personal checks with him (as if that habit would then justify using NTS funds instead). T.II.51. But when challenged he admitted that he did not typically carry NTS checks with him either, id., which confirmed that the source of funds for any personal purchase was at best a matter of indifference to him, or more likely that he preferred to use NTS funds when he could.
430. As of February 1, 1983, Mr. Longo owed NTS \$174,000 for personal borrowings from the company. Ex. 18 at 4 (line 6).
431. During the year after 2/1/83 Mr. Longo did not loan the company any money and his borrowings increased as high as \$301,000. Ex. 18 at 3 (line I(2)(d), (e)). As of January 31, 1984 Mr. Longo owed NTS \$162,984 for personal borrowings from the company. Ex. 18 at 4 (line 6).
432. For the fiscal year ended 1/31/84, NTS did not receive or report any interest income. See Ex. 18 at 1 (line 5). Therefore, Mr. Longo did not pay NTS any interest on his substantial borrowings for that year.
433. On a personal financial statement dated October 14, 1983, the Longos did not list any liability owing to NTS (although they did list and value Mr. Longo's NTS stock at \$139,862, even though NTS was insolvent then). Ex. 11. Therefore, I infer that at that time Mr. Longo had no intent to repay NTS for his substantial borrowings from the company, or at best that he considered it an "intra-personal" liability from himself to himself.
434. During the year after 1/31/84, Mr. Longo did not loan NTS any money, and his borrowings from NTS increased as high as \$392,188, which is the amount he still owed NTS as of 1/31/85. Ex. 19 at 5 (I(2)(d), (e)); id. at 6 (line 6).
435. For the fiscal year ended 1/31/85, NTS reported only \$4,682 in interest income. Ex. 19 at 1 (line 5). The evidence of record does not reflect the source of that interest income. Even if all of it was from Mr. Longo, that income would represent an annual rate of only 2.9% on his beginning balance of \$162,984, or only 1.2% on his ending

balance of \$392,188. Therefore, I find that Mr. Longo did not pay any interest, or at most paid a small amount of interest at a grossly unreasonable rate, to NTS that year.

436. During the year following 1/31/85, Mr. Longo withdrew funds from NTS and/or had NTS pay his personal expenses such that his debt to the company as of approximately January 14, 1986 had increased to \$480,000. See Debtors' Exhibit 1 at 10 (Note 7). Mr. Longo's debt to NTS was then reduced to zero on the financial records of NTS through the sham transaction with the Giblin Property discussed elsewhere.
437. For the fiscal year ended 1/31/86, NTS reported that it owed Mr. Longo \$8,590 and that he owed the company nothing. Ex. 20 at 4 (lines 6 and 18).
438. For the fiscal year ended 1/31/86, NTS reported \$4,250 in interest income. Ex. 20 at 1 (line 5). The evidence of record does not reflect the source of that income. Even if all of it was from Mr. Longo, that income would represent an annual rate of only 1.1% interest on his beginning balance of \$392,188, or only 0.9% interest on his near-ending balance of \$480,000. Therefore, I find that Mr. Longo did not pay any interest, or at most paid only a small amount of interest at a grossly unreasonable rate, to NTS that year.
439. For the fiscal year ended 1/31/87, NTS repaid the \$8,590 reported previously as owing to Mr. Longo and advanced additional funds to or for Mr. Longo such that at the end of the year he owed the company \$35,916. Ex. 21 at 4 (lines 6 and 18); Ex. 78 at 2.
440. On a personal financial statement dated December 4, 1986, the Longos did not report any liability to NTS, despite the fact that NTS' records reflected such a liability. See Ex. 12 at 2. Therefore, I infer that Mr. Longo did not consider his debt to NTS as a real liability at that time, had no intention to repay that amount, and at a minimum was unconcerned with the details or balance of any transactions between himself and NTS.
441. For the fiscal year ended 1/31/87, NTS did not receive or report any interest income. See Ex. 21 at 1 (line 5). See also Ex. 23 at 8-9. Therefore, Mr. Longo did not pay any interest to NTS for his borrowings that year.
442. For the fiscal year ended 1/31/88, NTS reported loans to stockholders of \$71,020 and loans from stockholders of \$143,234, for a net balance reportedly owing from NTS to Mr. Longo of \$72,214. Ex. 22 at 4 (lines 6 and 18); Ex. 78 at 1, 3-4.

443. For the fiscal year ended 1/31/88, NTS did not receive or report any interest income. Ex. 22 at 1 (line 5).
444. For calendar year 1987, the Longos did not pay any interest to NTS, or receive any interest from NTS. Ex. 2 at 3 (line 12a), 4 (Schedule B, Part I), and 18 (Statement 7).
445. For the fiscal year ended 1/31/89, NTS reported loans to stockholders of \$70,298, and loans from stockholders of \$25,147, for a net balance owing from Mr. Longo to NTS of \$45,151. Ex. 24 at 4 (lines 6 and 18).
446. For calendar year 1988, the Longos did not pay any interest to, or receive any interest from, NTS. Ex. 3 at 4 (line 12a), 5 (Schedule B, Part I) and 13 (Statement 5).
447. On or about September 19, 1989, the accountants for Mr. Longo and NTS reconciled the officer loan account for NTS' fiscal year ended 1/31/89, and calculated that as of January 31, 1989 Mr. Longo owed NTS \$11,389.28 in interest for his borrowings from the company that year. Ex. 78 at 6.
448. Mr. Longo deducted the \$11,389.28 as "personal interest [he] paid" on his 1989 income tax return. See Ex. 4 at 3 (line 12a) and 15 (Statement 5). However, the \$11,389.28 in imputed interest for Mr. Longo's borrowings from NTS was not paid by the Longos in 1989 from their primary joint personal check account in 1989. See Ex. 9 at 14-29.
449. There is no record evidence of NTS receiving the \$11,389.28 alleged interest payment from Mr. Longo for NTS' fiscal year ended 1/31/90. [Since the amount owing was not even calculated until September of 1989, it was certainly not paid in the prior fiscal year ending on 1/31/89.] NTS shows no such interest income on its tax return, see Ex. 25 at 1 (line 5), or on its internal general ledger listing for that year. See Ex. 29 at 7-8; Ex. 30 at 2 (accounts 401-413).
450. Mr. Longo did not actually pay the \$11,389.28 in imputed interest to NTS on 1/31/89, or by 9/19/89, or at any time in 1989 or thereafter.
451. For the fiscal year ended 1/31/90, NTS reported loans to stockholders of \$423,389 and loans from stockholders of only \$17,647, for a net balance owing from Mr. Longo to NTS of \$405,742. Ex. 25 at 5 (lines 7 and 19).
452. On a personal financial statement dated March 15, 1990 (i.e., before any of the alleged cash infusions for which Mr. Longo claimed credit in 1990), the Longos did not list any liability to NTS for a stockholders loan, although they did claim a "business equity" interest in NTS valued at

\$2,020,800.00.^{9/} Ex. 14. Again, I conclude that Mr. Longo had no intention to repay his substantial debt to NTS at that time, and that at a minimum he did was not concerned with such "borrowings" because he did not consider them to be real debts.

- 453. Mr. Longo deducted the exact same amount of \$11,389 in alleged interest paid to NTS again on his 1990 income tax return as "[p]ersonal interest [he] paid". See Ex. 6 at 8 (line 12a), and 22 (Statement 9).
- 454. Mr. Longo did not pay NTS the \$11,389 (or any amount) in alleged interest in 1990 from the Longos' primary joint personal checking account, or from his post-petition debtor-in-possession account. See Ex. 9 at 29-41; Ex. 8 at 1-12.
- 455. There is no record evidence to support Mr. Longo's claimed payment to NTS of \$11,389 in interest for 1990, or to explain how that amount was calculated.
- 456. Mr. Longo did not actually pay \$11,389 (or any amount) in interest to NTS in 1990.
- 457. Mr. Longo, NTS and their accountants did not introduce any general ledger, reconciliation, or other listing of what transactions occurred in the officer loan account for NTS after January 31, 1990. In fact, even for the prior year, the accountant admitted that "we do not have a lot of detail in our files for the year ended January 31, 1990 because Gary has the general ledgers there in your office." Ex. 78 at 1. Again, in this case where financial dealings between Mr. Longo and NTS were the central focus, I draw a negative inference from their failure to introduce that general ledger or any other reliable or more recent documents that such documents do not in fact exist, and that NTS and Mr. Longo did not keep accurate, complete or contemporaneous records of his "borrowings" from NTS.
- 458. The "loans" to Mr. Longo from NTS were in fact interest-free, were made without substantial expectation of repayment, and were only "repaid" to the extent he had to make emergency cash infusions into NTS to keep it operating on an unreasonably small capital.

^{9/} It is not clear where this exorbitant figure came from, because NTS' own financial statements never reported more than \$993,780 in claimed stockholder's equity and retained earnings. Debtor's Ex. 4. Moreover, Mr. Longo continued to claim over \$2 million in value for NTS on August 15, 1990, Ex. 15, which was only about a month before he closed all locations and filed a Chapter 11 petition. See Ex. 27 at 65.

2. Alleged 1990 Loans from Mr. Longo to NTS^{10/}

459. If Mr. Longo had to or decided to lend money from himself to NTS, when NTS was experiencing severe cash flow problems in 1990 or previously, that decision was largely attributable to the facts that NTS was at all times grossly undercapitalized and deprived of many major assets and credit transactions through his personal dealings and draining of funds from the company.
460. Mr. Longo's claims of over \$700,000 owing from NTS to himself in 1990 are not credible and are contradicted in part by his own sworn statements. For example, on the NTS schedules that he executed under oath on October 30, 1990, he only claimed that NTS owed him a total of \$255,081.83. Ex. 27 at 26. Even if all of this amount was for alleged loans, it would be far shy of what he now claims. Moreover, considering his testimony that he was owed about \$81,000 in unpaid salary, T.IV.157, or from \$83,000 to perhaps \$130,000 in unpaid salary, T.IV.179-80, (of which only \$2,000 was listed as a priority claim--Ex. 27 at 14), and the fact that he had not been paid the full rent stated in the leases for the Eutaw Street and Laurel properties, hardly any of this claim could be for the alleged loans to NTS. Furthermore, on his personal bankruptcy schedules executed under oath on December 14, 1990, Mr. Longo did not claim any debt owing from NTS to himself. Ex. 1 at 16.
461. A very important point regarding Mr. Longo's alleged 1990 loans to NTS is that his accounting of these loans completely disregards what he already owed NTS before these loans were made. He stated that he had "no idea" what the balance in his officer's loan account was before the Maryland Permanent loan (which was not from him to NTS anyway), and that he would have to "refer to the work papers or general ledger or whatever" in order to find out that information. T.IV.177. However, his accountant had already testified that the last financial statement the accountant had prepared for NTS was for the period ended on 1/31/89, that the last tax return was for the period ended 1/31/90, and that he had never even had a general ledger for the year ended 1/31/90. T.IV.7, 20. Thus, it is clear that there are no (and never were any) such "work papers or general ledger or whatever" for the following time period, after 1/31/90 when NTS was in financial disarray. The latest financial information comes from the 1/31/90 tax return, which shows Mr. Longo owing NTS a net of \$405,742, and that is presumably without regard to the Giblin Property transaction, the lack of interest for years on Mr.

^{10/} The following findings are not necessary to consideration of the Commission's claim, but they are presented to address in part a claim or defense that was advanced by Mr. Longo at trial.

Longo's prior borrowings, and other matters that were not properly accounted for by Mr. Longo and NTS.

Mervin J. Hirsch

- 462. On or about February 23, 1990 Mr. and Mrs. Longo borrowed \$75,000 in their own names through Guardian Mortgage Co. from Mervin J. Hirsch and his wife, payable in thirty days and secured by a mortgage on the Longos' home at 624 Harbor Drive, Annapolis, Maryland. Ex. 98; Ex. 179 at 244-45.
- 463. NTS made the first interest payment on the Longos' Hirsch note, in the amount of \$1,079.29 on April 9, 1990 by check number 18755. Ex. 98 at 3. NTS also made the second interest payment on the Longos' Hirsch note, in the amount of \$875.10 on May 7, 1990, by check number 103, which was manually prepared and signed by Charles R. Longo. Ex. 98 at 4. In fact, NTS paid all of the interest on the Longos' Hirsch note. Ex. 179 at 246.
- 464. Mr. Longo also personally prepared and signed a check from NTS to Guardian Mortgage on August 8, 1990 in the amount of \$340, which was related to the earlier Hirsch borrowing by the Longos and/or some new proposed borrowing by them. Ex. 99; Ex. 179 at 245.
- 465. There is no evidence of record to indicate that the proceeds of the Hirsch loan were advanced to or used by NTS. Thus, the only conclusion supported by the record is that Mr. Longo had NTS pay personal interest for himself and his wife.

Maryland Permanent Bank & Trust

- 466. On April 19, 1990, Maryland Permanent Bank & Trust Company loaned \$200,000 to NTS, which was guaranteed by the Longos. Ex. 170.

Citizens Bank

- 467. On or about May 7, 1990 the Longos executed an unsecured note in their personal names payable to Citizens Bank of Maryland on demand in the amount of \$100,000. Ex. 174 at 6.

468. Mr. Longo stated that he personally was the only person who ever paid any interest on that loan. Ex. 178 at 97-98. That testimony was false and incorrect. In fact, Charles R. Longo personally prepared and signed at least three checks from NTS in payment of the interest on the Citizens Bank loan, as follows (Ex. 100):

07/12/90	916.67
08/01/90	916.67
08/06/90	<u>1,441.00</u>
Total	3,274.34

469. In October of 1990, Mr. Longo wrote to the counsel for Citizens Bank on NTS letterhead that he intended "to assume the responsibility of repaying this obligation as agreed." Ex. 175 at 2. However, "as partial payment of the arrearage on my account," id., Mr. Longo enclosed a check from Shippers' Choice. Id. at 3. These actions again demonstrate a confusion and intermingling by Mr. Longo of personal and corporate financial affairs.
470. There is no reliable record evidence to support Mr. Longo's claim that the proceeds of the Citizens Bank loan were re-lent by him to NTS.

Commercial Credit

471. On June 29, 1990, the Longos executed a personal note payable to Commercial Credit Corporation in the amount of \$362,076.17. Debtor's Ex. 5 at 7.
472. There is no reliable record evidence to support Mr. Longo's claim that the proceeds of the Commercial Credit loan were re-lent by him to NTS.

VII. Discussion of Alter Ego Testimony and Credibility

This claim objection proceeding is not the type of veil-piercing case where one party to a transaction claims to have been deceived as to the existence or not of a corporation. Instead, because of its regulatory and consumer protection role, the Commission was forced to come to this situation after NTS' collapse and to prove its case almost entirely from the documents and testimony of NTS and Mr. Longo himself. Presenting facts one by one in logical order deprives that testimony of its context, so some further discussion is necessary to provide more concrete examples of Mr. Longo's actions and testimony.

A. Mr. Longo's Identification of Himself and NTS as One Entity

Mr. Longo's own testimony revealed numerous times his co-identification of NTS and himself as a single personal or unitary entity. This testimony occurred in many different contexts, and, taken as a whole, it provides an explanation for all of his many real and tangible actions that intermingled the two and siphoned funds from the insolvent NTS to Charles Longo personally.

His testimony regarding the Lamborghini provides a clear example of the unity he perceived, and acted upon, between Mr. Longo and NTS. In his deposition, he started with clear answers that he acquired ownership from Maryland National Bank when NTS could no longer make payments on the loan and that NTS owned the car before that. Ex. 179 at 268. But then, when his explanation that the bank could transfer ownership of a car owned by NTS was questioned, Mr. Longo replied as follows:

Well, basically, it was the -- the car was owned by National Training Systems, Charles R. Longo, President. So, it was actually owned by both of us. The title was put -- and if you look at the documents, and it will clearly say on the loan documents and the bill of sale that the car was, in essence, sold to me, President of National Training Systems. When the school defaulted on the loan, I exercised my interest in the car in exchange for the debt service.

Ex. 179 at 268-69. Further questioning attempted to determine which entity was the primary obligor on the note, which Mr. Longo could not answer clearly. Then he testified:

- A. The situation was the loan was made by me.
- Q. The loan was made to you from Equitable Bank?
- A. That's correct.

. . . What I do know is how the paperwork is, and the actual bill of sale is to me.

- Q. To you personally or as president?

A. Personally, and, also, the note is Charles R. Longo, President, and it was sent to my home, not my school, for payment.

Q. Well, did your home pay it?

A. No.

Q. The school paid it, didn't it?

A. Well, because it was Charles R. Longo, President, that's correct.

Q. Then, there was a \$100,000 note from Equitable Bank for the balance, correct?

A. Made payable to me, yes. I was the person who had to make the payments on it.

Q. You were the person who had to make payments[?].

A. The note was in my name.

Q. But you weren't the person who actually did make payments on it, were you?

A. No.

Q. Why not?

A. Because the car originally was titled in National Training Systems name.

Ex. 179 at 270-73.

As usual, this testimony is not only confusing but is also factually inaccurate. The title to the Lamborghini was in the name of National Training Systems, Inc. alone, with Mr. Longo's name nowhere on that document, Ex. 60 at 4, and Mr. Longo did not introduce the bill of sale or loan documents to which he refers above to support his other claims. This confusing account also reveals starkly that Mr. Longo simply could not, and did not, distinguish between himself and his alter ego, NTS, when it came to certain self-benefitting financial transactions. He viewed himself as having two halves or two names for his one unified personality -- Charles R. Longo the individual, and Charles R. Longo the school president. And this was not just a confusion in terminology, but an outlook that he acted upon, in intermingling corporate and personal financial affairs to his personal benefit.

Mr. Longo revealed a similar confusion or merging of identities regarding the Giblin Property. He testified at his deposition (Ex. 178) as follows with respect to the Giblin Property:

"Originally, it was sold to Linda and me." P. 183.

"Originally it was not purchased for me. It was purchased for the school." P. 184.

"See, once National Training Systems didn't want the Giblin property, okay, Linda and I continued to make payments on it. Like I was telling you before, what had happened was, we

couldn't get the zoning on it, so it was either let it go or hold it for some future investment. We decided to hold it. So we even -- it's listed here as National Training Systems, but Linda and I, as you know, are the creditors on it.

Q. Well, can you explain why it's listed here?

A. No. It shouldn't have been.

Q. It was never owned by NTS, was it?

A. Well, just like everything else, when it is a closely held corporation, you're always doing things -- you know, you have to sign for things yourself personally and the corporation. Originally, it was sold to Linda and me. Naturally, the corporation -- and then be it to the corporation. The corporation couldn't use it, so we just continued to pay for it. I don't know if any -- could have gotten that." P. 183.

Q. So was that a "yes" or a "no" answer, that this was transferred to the company in payment of an officer loan?

A. "This is a 'no.' Not to my knowledge. Pp. 184-85.

"It was supposed to be transferred over to NTS. ... Because at that point it [NTS] was buying it [the Giblin Property], okay, to go ahead and develop it. P. 186.

The Giblin Property was "not formally" leased to NTS, but "it was kind of bought for National Training Systems." P. 191.

It is impossible to make sense of this testimony by trying to separate NTS and Mr. Longo personally; only if they are considered as one entity do these explanations approach rationality.

Another example emerges in Mr. Longo's testimony regarding the illegal sale of the 1988 Cougar. He admitted that vehicle "was a National Training Systems car", that the purchaser "had gone ahead and given us -- she gave me a check made payable to me [and] she had this check that she signed over [that he deposited first to Shippers' Choice and then to his own account.]" T.I.105 (emphasis added). But there was no "us" -- all of the money was owed to NTS, and all of the money ended up in his personal bank account, so he apparently treated the two as one.

Similarly, with respect to the vending machines, Mr. Longo claimed that sometimes supplies were "paid for out of my pocket and sometimes the company paid for it", and he admitted that he "personally did not keep track of it." T.II.68. Apart from the fact that the money in his pocket may have been the NTS vending

machine income in the first place, or an "officer's loan" withdrawal of NTS funds, this testimony also reveals his cavalier attitude toward the alleged separateness of NTS upon which he now wishes to rely. This testimony corroborates his other admissions and the documentary evidence showing that he considered, and acted upon, the finances of NTS and himself personally as indistinguishable.

When Mr. Longo was asked where he would keep records of any real estate taxes paid on the Giblin property, he answered, "It would either be in my personal records or it would be in the school's records." T.II.24. Similarly, he could not distinguish himself from NTS when asked questions about an item on his personal bankruptcy schedules concerning attorneys consulted within the last year. He was asked, "So ... Mr. Sellinger hadn't provided you with any legal service or acted as your attorney for at least a year before this date?" Mr. Longo responded that that was incorrect, "because he has been the company attorney for years and my attorney and friend for years". T.II.30. In an attempt to clarify this answer, Mr. Longo was asked, "was Mr. Sellinger still representing you in December of 1990 in any capacity?", and after hesitation, Mr. Longo answered "yes", "he was a friend. He represented National Training Systems and he represents me personally." T.II.30-31. In this testimony, although Mr. Longo uses the names of both himself and NTS, he is in fact unable to distinguish between the two and states that Mr. Sellinger was his attorney in part because Mr. Sellinger also represented NTS. See also Ex. 178 at 31-34 (the Fiber Technology loan "was the accumulation of several -- amounts that I had -- that the company lent. . . . I don't believe we ever lent them that much money at all. . . . They had paid some back and we re-lent some And if I felt it was okay, I'd say, 'Okay. We would lend you the money.' . . . In the corporate charter, it allows the company to do anything it wants to. So if it chooses to lend somebody money as we did in both of these listed, it could, and it chose to.") (emphasis added).

Because Mr. Longo himself could not, and did not, distinguish between his own personal affairs and those of NTS, there effectively was no separate corporation in actual practice. The former students of NTS should merely be placed in the same position as Mr. Longo himself was with respect to NTS, i.e., with full and unrestricted access to the assets of the joint entity or both entities. To allow him to have ignored the corporate entity in a unilateral or one-way fashion for years and to hide behind it now would be a great injustice and would promote form over substance to perpetuate fraud and inequity.

B. Much of Mr. Longo's Testimony Lacked Credibility

Because of the nature of the Commission's only available evidence, it had to rely heavily on NTS' and Mr. Longo's evidence, but it does not have to accept that evidence without question. Mr. Longo frequently did not testify in a credible manner, and that fact should also be considered when measuring fraud and paramount equity. When it was convenient his memory would be lacking, and other times he was quick with explanations that may have sounded good at first, but upon examination they usually contradicted his own other statements and the available documentation.^{11/}

Eutaw Street

At his deposition Mr. Longo testified that the \$103,887.02 in downpayment and closing costs paid by NTS for the Eutaw Street property were treated by him as an advance payment of rent and resulted in a discount in the rent he charged to NTS for that property. Ex. 178 at 192-93. [Since the monthly rent was already almost double the debt service on that property, one wonders what "full" rent he might have charged in the absence of

^{11/} Mr. Longo's lack of credibility was also expressly noted in the administrative decision for which the stay was lifted to liquidate part of the Commission's claim. At that hearing, it became apparent that Mr. Longo would say (under oath) whatever suited his purposes at that time. For example, regarding the financial viability of NTS, which was the central issue at that hearing, the ALJ made the following observations and conclusion:

Mr. Longo, President of NTS, had testified at length, at the hearing, as to the ability of NTS to turn itself around. He predicted that within 90 days the school would resolve its financial problems. In support of this opinion, he cited a number of changes that he had made or was going to make. These included the closing of the Glen Burnie branch, tightening of entrance requirements, cutting of staff payroll and working out a repayment schedule with both the State and Federal tax authorities. However, the subsequent filing of bankruptcy by NTS, on September 21, 1990, less than a week after this testimony was offered, belies credibility. I take judicial notice of the filing of NTS for bankruptcy protection as of September 21, 1990.

Ex. 107 at 34. See also Ex. 107 at 21 (Mr. Longo's "testimony is found not to be credible."). These examples of express statements by the ALJ of a lack of credibility are in addition to the many times that Mr. Longo testified to one thing during that hearing, and the ALJ found the facts to be to the contrary.

this "discount".]

Then, on the first day of the claim objection hearing, Mr. Longo testified repeatedly that "it was adjusted out on a personal return as income to us", and that "National Training Systems may have put the money up front, however, it was accounted for in my income and I pay the tax on that money, all right, and I believe that's the case." T.I.128 (lines 20-21), .134 (lines 13-15); T.I.137 (lines 6-10).

However, neither of these very different explanations is correct. NTS did not report the \$103,887.02 as rental income to the Longos, and the Longos did not report or claim such income in 1989 or 1990. See Exhibits 4, 6 and 25. In addition, when NTS' income tax returns for the year ended 1/31/90 were eventually prepared in mid to late 1991, the \$25,000 deposit was reclassified and treated by NTS' outside accountants as an account receivable due from Mr. Longo to NTS. Ex. 78 at 7. It is not clear what ever happened to the \$78,887.02 in closing costs from an accounting perspective, but it is clear that both amounts were simply paid by NTS for the personal benefit of the Longos, contrary to the two different explanations offered under oath by Mr. Longo.

In light of the known debt service and the substantial profits that Mr. Longo made on that property for both 1989 and 1990, his explanation that he merely went over the figures and set the rent for Eutaw Street at "what it would cost me to operate that building and break even" is also not believable. T.I.131, 136. He repeated this claim again in a confused manner, that "the costs of operating a building is not only the rent, okay, there's a lot of things that we have to pay, okay, and when we computed it and we figured it out, it came to \$21,000." T.I.134. The costs to NTS were certainly more than the rent, but rent is not a cost to a landlord, and the Longos' costs as owners was nowhere near \$21,000 a month. In any event, Mr. Longo then stated:

I told you, I did not work through what the costs were. When we determined what the rent was, okay, we did work through the costs, so whether that -- we try not to make a profit on the buildings, so there's a lot of cost associated with having a building, but whether I did make a profit on it or not, I don't understand. [T.I.135.]

Did he or didn't he work through the costs? And, his alleged attempt to break even or not make a profit lacks any foundation: Almost half of every rent check on the Eutaw Street property was pure personal profit, and he and Linda Longo consistently made a substantial profit on both the Eutaw Street and Laurel properties.

On the second day of trial, Mr. Longo eagerly volunteered that the costs paid by NTS for the Eutaw Street property were placed on his officer's loan account, for the year ended January 31, 1989. T.II.53-54. Even after he was reminded that the building was not purchased until May of 1989, and after he admitted that "I'm not sure because this is the accountant's work papers and I can't basically testify," Mr. Longo nevertheless stuck to his story, in a confused and incomprehensible manner. T.II.54-55.

Later in the trial, Mr. Longo also attempted to pass off this whole transaction as just done by a poor maleable businessman at the direction of his accountants. He stated, "Well, I had never done anything like this before during my business career here and generally our accountants had recommended that that's the way it's done for tax purposes." T.IV.154. But he certainly had done something like this before in his business career: he had been leasing the Laurel Property to NTS at a substantial profit for about seven years when he decided to buy and expand the same scheme to the Eutaw Street property. Moreover, the accountant's own testimony revealed that the supposed tax justification for this structure only existed "back prior to '86", T.IV.58, and the Eutaw Street property was not purchased until May of 1989. Moreover, the accountant revealed that an additional reason for this structure was for the individual owners to have "an asset to dispose of if the corporation was liquidated and the real estate was still owned." T.IV.58. In other words, one of the express purposes of this arrangement was to deprive an insolvent corporation of the asset for which it was paying, and to have the potential benefit^{12/} of that asset transferred to the individual owners directly.

Mayfair Road Townhouse

Mr. Longo's explanations about the Mayfair Road townhouse are also riddled with inconsistencies and examples of his lack of

^{12/} There is no merit to Mr. Longo's argument that this whole transaction and its plundering purposes should be ignored because the "property was auctioned off and I have a deficiency claim." T.IV.155; T.I.139-40. The original purpose of depriving NTS of this asset, even though it paid for all of the deposit, closing costs, substantial leasehold improvements, utilities, insurance and other operating costs, and made rent payments substantially in excess of the debt service and any other minor expenses paid by the Longos, does not vanish just because the rapid collapse of NTS and the downturn in the real estate market prevented that purpose from coming to fruition. Also, Mr. Longo's Chapter 11 plan proposes to pay little or nothing on the paper deficiency claim, and his argument does not address the \$99,347 in net profits that Mr. Longo had already made on this property in the brief period of time that he owned it.

credibility and veracity. As led by his counsel, Mr. Longo glibly testified that before he moved there in May of 1990 that townhouse was used occasionally by others. T.I.139. But upon cross examination, Mr. Longo admitted that he had given exactly the opposite testimony at his deposition, and he initially wanted to change his testimony, but then he said he was having problems trying to recall and he was not sure of any of his answers on this subject. T.I.141-44; see also Ex. 178 at 160-61.

Giblin Property

Mr. Longo's testimony about the Giblin property also contained many inconsistencies and sudden corrections at trial. He admitted at trial that his deposition testimony a few months earlier about the original purchase of this property was incorrect in at least four respects. T.II.6-8, 25-26. His new corrections allegedly resulted from a review of some unspecified documents after the deposition, and "just from my own recollection in thinking about it." T.II.9. However, in supposedly going over these records and thinking about the transaction to improve his memory, at the same time he forgot certain facts he had recalled before, such as NTS making payments on the Giblin property for about a year and a half, that NTS had not made such payments. T.II.9-10. Moreover, he could no longer remember who paid the real estate taxes on the Giblin property. T.II.23-24. This testimony presents obvious problems with recall or veracity or both, and appears intended to cover up, obfuscate or explain away any prior damaging admissions.

Mr. Longo's testimony about the substance of the Giblin transaction also reveals the fraud perpetrated on the creditors of NTS. He stated that when the re-zoning was denied, the school would not have benefited from the transfer, so he and his wife decided to just retain the property as an investment. T.II.11, .14. He stated, "So, basically the transfer never took place", and "I don't believe the accountants picked up the fact that we were not going to go ahead and transfer the property." T.II.14. This testimony reveals not only that Mr. Longo considered his and NTS' property as virtually indistinguishable, moving back and forth merely upon changes in his own mind about the property, but also that on the books of NTS the property already had been transferred, in exchange for eliminating a huge liability of Mr. Longo to NTS. His further testimony on this subject is even more amazing and revealing: "when the zoning didn't materialize, all right, rather than stick National Training Systems with the liability, myself and my wife decided to pick up the note and pay it." T.II.15. This attempted self-serving testimony ignores the facts that he and his wife were already responsible for the note, that NTS was not at all responsible on the note (although it had been making the payments for the Longos), and that he had in effect already stuck NTS with liability for more than the full stated purchase price by wiping out his stockholders loan.

Moreover, just moments after stating (twice) that the Giblin property was never transferred to NTS, T.II.15, Mr. Longo had no apparent trouble stating (twice) that his accountants' description that the property had been transferred to NTS in 1986 was correct, T.II.16-17 and then again moments later that "we hadn't transferred the property yet." T.II.19. The only way to reconcile these statements is to consider NTS and Mr. Longo as one financial entity (as he usually did): whether it was transferred from one name to the other or not becomes inconsequential, because the same combined entity always owned the property.

Perhaps the most egregious example of Mr. Longo's fraud concerning the Giblin property, was his shameless argument at trial that he did NTS a favor by not transferring the Giblin property, because the property was encumbered by a mortgage, did not have the proper zoning, and ultimately became worthless because a road was built through the property. T.II.71-72. However, the Giblin property never had the proper zoning to be of use to NTS, so the transaction was a sham and a fraud on NTS from the beginning. See T.II.26-27 (property was never rezoned); T.II.11 (after NTS was unable to obtain rezoning of the property it was determined that NTS couldn't use the property); T.II.14 (when the rezoning was denied the school would not have benefitted from the transfer). Moreover, the loan on the property was always a personal obligation of the Longos, so it was no favor for them not to transfer that obligation to NTS (which had already made payments for them for several years). Most importantly, the fact that he received a \$480,000 debt forgiveness for this sham mental transfer is totally missing from his account of the transaction. The only statement approaching the truth in all this is Mr. Longo's prompted remark that "as it wound up, it [the purported transfer] would hurt National Training Systems." T.II.72. The truth is, as it wound up, the purported transfer did hurt National Training Systems, and its largest creditors, the students.

Lamborghini

Mr. Longo testified that the \$138,650 Lamborghini was used "kind of like a company car", T.III.70, "basically as a car -- one of the company's cars, okay, that was used in the company", T.III.71, and as "one of the cars that the company had that was available for my use", id., and that "it was a business expense that I used in the company ... no more or less than any other car." T.III.73. He also testified that the Lamborghini "was used a tremendous amount in business", T.III.70, that "most of the time, I'd say, the car was basically used for business purposes," T.III.71, that he "intended to use it for business purposes [and he] personally drove it", id., and that it was used 100% for business purposes. Ex. 178 at 137 (lines 11-13). These statements conflict in part with his own other statements that "it was purchased by me", "that when I went in to purchase the

Lamborghini ... I had to get the car financed [and] I took out the financing in my own personal name, okay, with the understanding that National Training Systems would go ahead and reimburse it to me for my use", T.III.70-71, and that it was "titled in National Training Systems and my name." T.III.72. His claim that it was used 100% for business purposes conflicts in part with his own other statements above that were not that categorical, and with the testimony of his wife at the time, Linda Longo, which is more credible on this point.

On February 11, 1991, Mr. Gary D. Boardwine, Comptroller of NTS, testified on deposition as follows with regard to the Lamborghini:

The [Lamborghini] was listed in NTS' name for insurance purposes, for a lower rate. The car was bought personally, and the loan is also personally for Charles Longo. Ex. 176 (page 21, lines 3-6).

[By Mr. Grochal]... Who made the payments on that?

[The Witness]: Charles Longo made the payments. Id. (page 22, lines 15-17).

Q. Did National Training Systems pay any part of the purchase price or downpayment on that vehicle?

A. I don't remember on that; I'd have to look it up. Id. (page 23, lines 10-13).

Mr. Boardwine also testified at the trial of this case that, "I believe Charlie owned that car." T.IV.71 (line 9). Mr. Boardwine's statements above that "the car was bought personally" and that "Charlie owned that car" are incorrect. Although Mr. Boardwine should have known better from his handling of NTS' finances, these statements are consistent with Mr. Longo's probable statements and with his actual treatment of the car as his own personal property.

Mr. Longo's claims that the \$138,650 Lamborghini was purchased as a business car are also inconsistent with his actions after the filing of NTS' bankruptcy. Although Mr. Longo claims (sometimes) that the Lamborghini was merely another company car (of which he had access to several), and although he and Linda Longo owned two other cars at the time, Ex. 1 at 10, after NTS filed its bankruptcy petition and ceased operations, he transferred title of the Lamborghini into his personal name and continued to use that car as his own personal vehicle. He did not simply allow the car to be auctioned with NTS' other vehicles, or to be foreclosed upon by the lender, but went out of his way to ensure that he had uninterrupted personal use of the

Lamborghini. Thus, it is clear from the beginning that the whole purpose of the transaction was simply to have NTS purchase an expensive sports car for Mr. Longo's own personal use, and he was not deterred by the intervening bankruptcy of NTS in accomplishing this purpose.

Nissan 300ZX

Mr. Longo's explanations of the transfer of the title of the Nissan from NTS to his son reveal a specific fraudulent intent to deprive the NTS estate of this asset. At his deposition, he admitted that "at the time, I was kind of in a predicament because ... of course the car was titled to National Training Systems, and I needed to get it out ... being that the school was at that point going bankrupt, I didn't want the car to be included in that because it wasn't supposed to be in there in the first place." Ex. 179 at 253 (emphasis added); see also page 257 (lines 4-6). At trial, he gave a more vague and cautious answer, stating only that he was looking at a lot of options in the bankruptcy case and "for clarification sake" wanted to be "sure the title was correct." T.III.66. In reality, it was not a matter of getting the title correct, it was a matter of the bankruptcy having caught Mr. Longo in mid-action breaching the corporate shell again. The Nissan had been fully bought and paid for by NTS, had been insured by NTS, and was titled in the name of NTS. Therefore, it was clearly property of the NTS estate, that should have been reported and sold in the ordinary course of NTS' bankruptcy case, but in order to accomplish Mr. Longo's original purpose he "needed to get it out" of the NTS estate, which he did by not reporting it as an NTS asset and by transferring the title in a fraudulent manner to his son.

Mr. Longo's explanations of the Nissan transaction are also fraught with errors or intentional misstatements. At trial, he first claimed that "it was paid by me from a loan from National Training Systems" and that he "believed at the time, or considered it as a loan from the company to [him]." T.III.64 (lines 5-6 and 18-20). He then stated, however, that "subsequently I went ahead and put this on my income tax return as income to me" and that "I took this loan as income on my tax return." T.III.65 (lines 6-7 and 20). However, as his own accountant testified, a loan and income are conceptually very different: a loan does not have any present income tax consequences, but it must be repaid, with interest, while compensation must be declared and any income tax paid on it, but it does not have to be paid back. T.IV.17-18. In reality, what appears to have happened is that Mr. Longo simply used NTS' money to make a gift to his son, with no intention of taking it as income or even as a loan until he was questioned about it much later. The underlying gift occurred in August of 1989, but it was not reported as income to Mr. Longo in 1989 by NTS or by himself. Even in 1990, there is no document in evidence showing that NTS reported it as income to Mr. Longo, and there is no

document in evidence showing that NTS treated it as a loan to Mr. Longo in 1989 or 1990. (Mr. Longo admitted that there never was any documentation relating to the alleged nature of this transaction, because as the CEO of NTS and as Charles Longo, "I know what I'm doing." Ex. 179 at 251-52.) Only in mid-1991, after both NTS and the Longos had filed bankruptcy petitions and creditors (including the Commission) were asking about this questionable transaction and others, did the item belatedly appear on Mr. Longo's tax return, at his personal direction. T.IV.61-62.

Mr. Longo's explanations of the titling and insurance of the Nissan are also inconsistent and incredible. He admitted that the original purpose of titling the car in the name of NTS (other than the obvious reason that NTS bought and paid for the car) "was to get my son on the fleet insurance ... being that he was young, that it would give him an insurance break." T.III.65 (lines 2-5). "[O]riginally I wanted to have it insured through National Training Systems because it had fleet insurance ... [which] would be cheaper than having a 19 year-old driver with an expensive sports car on his own policy." *Id.* (lines 11-16). So far, this testimony is reasonable and is consistent with the insurance information listed on the December 1990 title application. See Ex. 68 at 2 (Travelers Insurance policy, No. UJ-660-265J281-7-TIL-90, including auto coverage); Ex. 54 at 2 and 4 (listing same company and policy number). And, at his deposition in January of 1992, Mr. Longo admitted "while it was on the fleet, NTS paid the insurance for that car." Ex. 179 at 248, and 247-48. However, at trial in June of 1992, Mr. Longo claimed that he "subsequently decided against that" and that his "son did get his own insurance, okay, that he paid for by himself." T.III.65 (lines 18-19). This testimony is at odds with Mr. Longo's stated intentions, and with Mr. Longo's own certification in January of 1991, and in direct conflict with his earlier deposition testimony. Moreover, despite having been questioned about this matter at his deposition and again at trial, Mr. Longo submitted no documentation at all to support his assertion that Mr. Longo's son obtained his own insurance and was never insured through NTS. Thus, the conclusion is inescapable that the Nissan was added to the NTS fleet insurance policy, for the purpose of having NTS pay the insurance (at a lower rate) for the car used by Mr. Longo's son, and that Mr. Longo's explanations of this transaction are deceitful and misleading.

1988 Cougar

Mr. Longo's explanation for his misappropriation of the proceeds of this transaction from the NTS estate is wholly incredible. At trial on March 12, 1992, he argued that he wanted the checks to clear before he reported it as a post-petition sale for NTS. T.I.103, 105-06, 108. However, he admitted that of course the checks would have cleared if they had been deposited to a NTS account, that the checks had long ago cleared, that even

the proceeds that had been initially deposited to the Shippers' Choice account had since been transferred to his personal account, and that (over a year later) he had still not put the money back into a NTS account. T.I.106, 108. In the face of these admissions, he then volunteered that, "what happened is I actually forgot about the transaction", T.I.107, and he claimed that he was waiting for it to be a "clean deal" before he transferred the money to NTS. T.I.108. There was conspicuously no examination of Mr. Longo by his own counsel on this subject, and there were no documents introduced by Mr. Longo in the two years since this questioning to show that he ever transferred the proceeds to NTS.

Other aspects of Mr. Longo's explanation for his misappropriation of the proceeds of the 1988 Cougar sale are also not believable. For example, he claimed that he had not put the money into the NTS account, even though the checks had cleared, because Ms. Ringgold supposedly had not finished paying for the car yet, over fifteen months later, and it would look like an incomplete transaction to deposit only part of the money. T.I.103-08. However, he could not state the amount of the supposed remaining balance due, T.I.104, he introduced no note or document of the alleged balance owing, he gave no explanation of any subsequent collection efforts, and he did not explain why he signed over a bill of sale and receipt for the full price if that amount had not actually been paid. See Ex. 58. Moreover, NTS had no trouble allowing Shippers' Choice and Mr. Longo to use NTS' property without the payment of rent, by at most accruing the unpaid rent as part of the "incomplete transaction." See, e.g., Ex. 28 at 7, 12. Thus, not one part of Mr. Longo's story on this transaction holds water,^{13/} other than the facts introduced by the Commission that he had to admit in the face of his own signatures on the key documents.

^{13/} Other aspects of Mr. Longo's testimony regarding the 1988 Cougar sale confirm his lack of candor or credibility. He volunteered that "I don't know why [Judy Ringgold] wrote [a personal check] to me", but this gratuitous defensive remark conflicts with his explanation that he did not want to put the checks into an NTS account until it was a "clean deal" and the checks had cleared. T.I.103. In order to be consistent, his explanation should have been that she wrote him a personal check because he told her to, but of course this explanation also would have coincided with the apparent true purpose of the transaction: to enrich Mr. Longo personally at the expense of the NTS estate. Also, Mr. Longo testified initially that he did not "know where the insurance check went", T.I.103, but only a moment later he remembered that it was deposited into a Shippers' Choice account and then allegedly transferred to a personal account. T.IV.106.

Dividend

Mr. Longo's explanation regarding the \$600,000 dividend is both revealing and puzzling. He testified as follows:

Q. Under the memo section for that entry it says, "DIV," D-I-V, what does that mean to you?

A. At the time we received it, and we personally put it in our account, we didn't know whether we would call it a dividend or take part of it as dividend, part of it as salary. We didn't know how to treat it tax-wise. We would leave that up to the accountants, and so, for just our reference, we call it DIV, as in dividend. But that may not necessarily -- because we call it that, as laymen, that would be the appropriate financial label for that when filing taxes or whatever.

Ex. 179 at 289. This part is puzzling, because both a dividend and salary must be reported as taxable income, but Mr. Longo reported only half of the payment as personal income, and we never were able to find what happened to the other half. His attitude, however, is revealed below:

Q. What did you need that \$600,000 for?

A. I didn't.

Q. Well, why was the transfer made?

A. As a shareholder and as the chief executive officer of the company, I'm entitled to make money.

Q. You're entitled to as much as the company can give you, right?

A. Within reason, and that, to me, was reasonable at the time.

Ex. 179 at 289-90. For an insolvent company already paying him a huge salary, profitable rents, and other payments, and providing him with several expensive cars, and to which he owed substantial "loans", another \$600,000 seemed entirely reasonable, probably because NTS happened to have that much money in its accounts, temporarily. Of course, as against the creditors of NTS, that payment for no consideration was entirely unreasonable and fraudulent, but that was not Mr. Longo's concern.

Vending Machines

Mr. Longo's testimony regarding the vending machines at the Laurel property and his use of the income from those machines is also riddled with gratuitous errors, inconsistencies and a

general lack of credibility. For example, he stated at trial that, "The accountants put [the vending machine income] on my personal income. And that's reflected right on the documents that you provided us here in the exhibit [78]." T.II.59. But then after a few questions on this subject, he stated that, "I didn't make the entry. I don't know what that means", and he stated that he did not have any understanding as to the meaning of the vending-related entries on Exhibit 78. T.II.64. Further questions on this subject yielded more inconsistencies and little enlightenment, other than Mr. Longo's admission that at least some of the vending machine proceeds were "income to me." See T.II.64-68.

Mr. Longo also could not give a clear answer at trial to the question of whether the vending machines were owned by himself personally or by NTS at the time of bankruptcy. T.II.57, 60, 67. He did volunteer, however, that the vending machines had been fully depreciated by NTS for years, and that he considered them valueless, so he did not have to compensate NTS for them. T.II.61, 63-64. This argument is unpersuasive, and the factual predicate for this justification is simply incorrect. The vending machines had not been fully depreciated by NTS but in fact at least some of them were still scheduled by NTS (in a financial statement that Mr. Longo signed under oath) with residual values. See Ex. 27 at 53, 56; T.II.61-63. Moreover, although Mr. Longo allegedly considered the vending machines to be valueless "antiques", T.II.63, he had already admitted that his new company, Shippers' Choice, was still using them, T.II.56, 57, 58, so they must have had some current value.

Profit-Sharing Account

Mr. Longo's testimony regarding the profit-sharing account disbursements is also revealing of his attitudes towards corporate and personal property and the use of NTS funds. Despite the fact that the Commission presented two checks made payable directly to Shippers' Choice from the profit-sharing trust account, Ex. 83 at 7-8, 15-16, Mr. Longo steadfastly denied that there were any payments from that plan to Shippers' Choice. T.III.46-48. He stated that these payments were actually received by him and he decided to put the money into Shippers' Choice. T.III.47-48.

With respect to the NTS profit-sharing account, Mr. Longo testified that he had not withdrawn all of his funds from the NTS profit sharing account, and had not been fully paid, because he "chose not to withdraw the funds." Ex. 179 at 263; T.III.53. And again, he clung steadfastly to this story, despite the facts that at deposition he believed his share to be only \$38,000, and that he (and Shipper's Choice) had already received \$48,148.58 from that plan. Ex. 179 at 262-63; T.III.53-54. His rationale for this obvious inconsistency was that some of his withdrawals were allegedly "a loan with my 401(K) plan," but he was unable to

identify which payment or portion of his withdrawals was a loan. Ex. 179 at 267; T.III.54. Moreover, he admitted that over a year later he "didn't make a note yet", and that there were no documents other than the cancelled bank checks that even related to the alleged loans between the plan and himself, and himself and Shippers' Choice, much less that would describe the alleged nature of these transfers. Ex. 179 at 263; T.III.56.

Furthermore, at his deposition Mr. Longo did not "have any idea" how much he had left in the plan, Ex. 179 at 264, but by trial he claimed that his remaining balance in the plan was \$29,000, although there was still no documentation of this other than the deposits into and out of the trust checking account. T.III.55. At his deposition, Mr. Longo also could not explain the difference between his alleged share of \$38,000 and the \$48,184.58 in actual withdrawals by him. Ex. 179 at 267. But by trial, several months further from the events, he had an explanation that \$5,000 of this difference was an "administration fee", payable to him personally, T.III.52, 54, although no such income had been reported on his monthly financial reports. See Ex. 8.

Reasons for the Collapse of NTS

On the final day of trial Mr. Longo delivered a wonderful account of how the collapse of NTS was triggered suddenly by the mere issuance of the Commission's deficiency statement, and the surrounding Commission publicity campaign of allegations that "were just not true." T.IV.148. This tale of woe and injustice, however, has just a few flaws, such as the fact that the Commission prevailed on all of its "allegations" and "derogatory information" after a three-day hearing (at which Mr. Longo's testimony was found not to be credible), see Ex. 107; such as the extensive financial woes of NTS dating back to at least January of 1990 that were documented at that hearing and which are evident in this record also, e.g., Exs. 110, 111 (showing overdrawn bank balances and bounced checks in January and February of 1990); and such as Mr. Longo's own allegations in other litigation that the conduct of other entities dating back to 1989 caused the closure of NTS. E.g., Ex. 195 at 5. In reality, it appears that NTS was so undercapitalized and that Mr. Longo had drained so much money from NTS while pursuing rapid expansion, that NTS could not withstand any slight delay in its receipt of student financial assistance payments, and the pyramid just collapsed. Mr. Longo's own mismanagement, plundering and expensive lifestyle were to blame for the collapse of NTS, and he should be held personally accountable to the students he harmed in that process.

CONCLUSION

For all the reasons stated above, in the Commission's Closing

Argument, at trial and in prior pleadings, the Commission's claim should be allowed in full and judgment entered in favor of the Commission and against Charles R. Longo.

Respectfully submitted,

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April 11, 1994.

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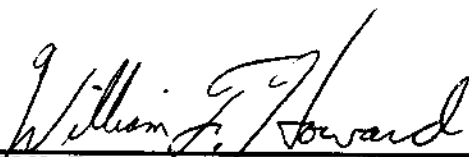
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of April, 1994, a copy of the foregoing Proposed Findings of Fact and Conclusions of Law was mailed, first-class postage prepaid, to:

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WILLIAM F. HOWARD
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In re: Charles R. Longo, Case No. 90-5-4907-SD-A

Summary S-1

Calculation of § 507(a)(6) Priority Portion of MHEC Claim

Formula: (No. Over \$900 x \$900) plus (amounts under \$900) = Total

Exhibit 186

						<u>Total</u>
Page	1	50 x \$900 = \$	45,000	(+)	\$ 25.00	\$ 45,025.00
	2	53 x 900 =	47,700	(+)	25.00	47,725.00
	3	46 x 900 =	41,400	(+)	968.17	42,368.17
	4	44 x 900 =	39,600	(+)	150.00	39,750.00
	5	48 x 900 =	43,200	(+)	1450.00	44,650.00
	6	45 x 900 =	40,500	(+)	1205.83	41,705.83
	7	46 x 900 =	41,400	(+)	1467.04	42,867.04
	8	54 x 900 =	48,600	(+)	25.00	48,625.00
	9	43 x 900 =	38,700	(+)	1581.18	40,281.18
	10	50 x 900 =	45,000	(+)	125.00	45,125.00
	11	45 x 900 =	40,500	(+)	400.00	40,900.00
	12	45 x 900 =	40,500	(+)	355.00	40,855.00
	13	42 x 900 =	37,800	(+)	1769.03	39,569.03
	14	46 x 900 =	41,400	(+)	1269.12	42,669.12
	15	47 x 900 =	42,300	(+)	1008.00	43,308.00
	16	42 x 900 =	37,800	(+)	625.00	38,425.00
	17	47 x 900 =	42,300	(+)	50.00	42,350.00
	18	43 x 900 =	38,700	(+)	25.00	38,725.00
	19	46 x 900 =	41,400	(+)	195.00	41,595.00
	20	49 x 900 =	44,100	(+)	0.00	44,100.00
	21	42 x 900 =	37,800	(+)	25.00	37,825.00
	22	42 x 900 =	37,800	(+)	75.00	37,875.00
	23	47 x 900 =	42,300	(+)	184.20	42,484.20
	24	43 x 900 =	38,700	(+)	1587.00	40,287.00
	25	49 x 900 =	44,100	(+)	25.00	44,125.00
	26	48 x 900 =	43,200	(+)	175.00	43,375.00
	27	46 x 900 =	41,400	(+)	50.00	41,450.00
	28	43 x 900 =	38,700	(+)	899.50	39,599.50
	29	45 x 900 =	40,500	(+)	572.97	41,072.97
	30	42 x 900 =	37,800	(+)	779.00	38,579.00
	31	51 x 900 =	45,900	(+)	50.00	45,950.00
	32	52 x 900 =	46,800	(+)	0.00	46,800.00
	33	42 x 900 =	<u>37,800</u>	(+)	<u>365.00</u>	<u>38,165.00</u>
Total	1523 x	900 =	1,370,700	+	17,506.04 =	\$1,388,206.04

Exhibit 187

							<u>Total</u>
page	1	39	x	900	=	35,100 (+) 725.00	35,825.00
	2	35	x	900	=	31,500 (+) 985.68	32,485.68
	3	19	x	900	=	17,100 (+) 1530.00	18,630.00
	4	33	x	900	=	29,700 (+) 160.00	29,860.00
	5	37	x	900	=	33,300 (+) 895.00	34,195.00
	6	18	x	900	=	<u>16,200 (+) 720.00</u>	<u>16,920.00</u>
Total	181	x	900	=	162,900	+ 5015.68 =	\$167,915.68

Exhibit 188

page	1	8	x	900	=	7,200 (+) 0.00	7,200.00
	2	9	x	900	=	8,100 (+) 0.00	8,100.00
	3	7	x	900	=	6,300 (+) 0.00	6,300.00
	4	8	x	900	=	7,200 (+) 0.00	7,200.00
	5	9	x	900	=	8,100 (+) 0.00	8,100.00
	6	7	x	900	=	6,300 (+) 0.00	6,300.00
	7	8	x	900	=	7,200 (+) 0.00	7,200.00
	8	7	x	900	=	6,300 (+) 919.36	7,219.36
	9	8	x	900	=	7,200 (+) 0.00	7,200.00
	10	5	x	900	=	<u>4,500 (+) 0.00</u>	<u>4,500.00</u>
Total	76	x	900	=	68,400	(+) 919.36 =	\$69,319.36

Exhibit 189

Total	16	x	900	=	14,400	(+) 205.00 =	\$14,605.00
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Grand Totals

1796	x	900	=	1,616,400	+ 23,646.08 =	\$1,640,046.08
Plus: Additional Students (Gange, Hryn)						<u>1,800.00</u>
						\$1,641,846.08

DELTA:dlc:WPH01

Summary of NTS Liabilities to Students

	<u>Advance Payments</u>	<u>Deferred Tuition</u>	<u>Refunds Payable</u>	<u>Total</u>
01/31/85 (Debtor's Ex. 1)	488,425	919,668	N/A ¹	1,408,093
01/31/86 (Debtor's Ex. 1)	1,133,292	1,503,704	N/A ¹	2,636,996
01/31/86 (Debtor's Ex. 2)	975,292	1,453,704	N/A ¹	2,428,996
01/31/87 (Debtor's Exs. 2,3)	588,159	1,058,356	N/A ¹	1,646,515
01/31/88 (Debtor's Exs. 3,4)	216,232	792,495	N/A ¹	1,008,727
01/31/89 (Debtor's Ex. 4)	1,297,390	1,490,474	N/A ¹	2,787,864
01/31/90 (Ex. 30)	522,632	1,390,880	1,571,648	3,485,160
09/21/90 (Ex. 27)	N/A	N/A	7,800,000	7,800,000

¹ This information is not separately available. On these financial statements, student refunds payable are included in the general numbers for accounts payable and accrued expenses.

Summary S-90

Summary of Payments on Mr. Longo's Key Federal Account
(none of which are documented as personal payments)

<u>Date</u>	<u>Amount</u>
12/5/88	\$ 503.89
1/3/89	418.26
1/30/89	68.30
3/2/89	2,165.63
4/6/89	334.62
5/18/89	163.71
6/29/89	3,215.97
8/22/89	131.93
10/5/89	921.90
10/5/89	700.66
11/1/89	1,184.80
12/1/89	249.57
3/16/90	30.00
3/26/90	523.75
5/10/90	100.00
5/21/90	200.00
7/9/90	500.00
8/20/90	200.00
9/7/90	208.00
9/26/90	400.00
10/3/90	<u>200.00</u>
Total	\$12,420.99

Abstracted from Exhibit 90.

LongoS-90:wfh

<u>Social Security Number</u>	<u>Name</u>	<u>Contract Amount</u>	<u>Student Paid To Date</u>	<u>Refund Owed</u>
216628190	Gregory, Lester	4,915.00	5,752.75	837.75
216783762	Moore, Rosalind	2,885.00	2,935.00	50.00
216787580	McCallum, Vanessa	2,885.00	3,595.00	710.00
216840385	Bracey, Angela	4,915.00	5,215.00	300.00
216846468	Dubose, Angela	4,915.00	4,917.00	2.00
216846545	Dubose, Marie	4,915.00	4,916.00	1.00
216847301	White, Stacey	4,855.00	5,105.00	250.00
216921650	Ferguson, Mary	4,855.00	5,671.65	816.65
217081487	Clark, Rhonda	4,915.00	5,209.75	294.75
217211560	Fisher, Aretha	4,915.00	4,971.45	56.45
217500732	Hicks, Clarence	3,695.00	3,755.00	60.00
217507074	Lashley, Andrew	3,695.00	3,755.00	60.00
217542205	Wesson, Laverne	2,935.00	3,166.01	208.01
217566867	Williams, Deborah	4,915.00	5,415.75	500.75
217584355	Daniels, Loretta	4,915.00	5,090.75	175.75
217645463	Powell, Debra	4,515.00	4,519.34	4.34
217666179	Lewis, April	3,695.00	3,696.25	1.25
217702362	Burke, Rose	3,695.00	3,755.00	60.00
217780854	Johnson, Stephan	3,695.00	3,755.00	60.00
217863021	Beatty, Tonya	4,915.00	4,987.09	72.09
218287619	Smith, Juanita	3,695.00	5,268.66	1,573.66
218427436	Drew, Percell	3,695.00	3,755.00	60.00
218448178	Proctor, Carole	3,695.00	3,755.00	60.00
218524918	Goldsboro, Trianda	3,695.00	3,762.00	67.00
218585381	Kempa, Ralph	3,695.00	3,755.00	60.00
218640852	Adams, Carla	4,855.00	5,155.00	300.00
218745222	Martin, Adrienne	4,855.00	4,984.52	129.52
218745483	Walker, Monica	4,915.00	5,287.48	372.48
218800282	Poole, Robert	3,695.00	5,375.00	1,680.00
218805878	Bush, Robert	2,885.00	3,100.00	215.00
218807216	Harrod, Charlene	4,915.00	4,965.00	50.00
218824339	Hill, Cheryl	2,958.00	3,087.00	129.00
218882036	White, Marie	4,915.00	4,964.85	49.85
218900681	Gill, James	3,695.00	3,755.40	60.40
219406439	Shelton, Timothy	3,695.00	3,755.00	60.00
219428040	Ennis, Carol	3,695.00	3,755.00	60.00
219449596	Stewart, John	3,695.00	3,715.25	20.25
219506183	West, Albert	3,695.00	3,750.97	55.97
219605806	Dechsler, John	3,695.00	3,730.00	35.00
219649738	Crawmer, Ann	4,915.00	4,967.25	52.25
219703105	Parks, Mary	3,095.00	3,759.25	664.25
219783141	Pearson, Tina	4,915.00	5,137.75	222.75
219784226	Shelton, Marie	4,915.00	4,979.36	24.36
219800843	Simmons, Kirk	4,915.00	6,361.25	1,446.25
219803961	Hopkins, Deborah	3,695.00	3,778.60	83.60
219805483	Davis, Margaret	4,855.00	4,955.00	100.00
219848703	Larkins, Deborah	4,915.00	5,175.79	260.79
219923444	Cromwell, Shonda	4,915.00	5,215.00	300.00
219926916	Ruzio, Grady	4,915.00	4,956.50	41.50
219985237	Ray, Dione	4,915.00	5,158.67	243.67

<u>Social Security Number</u>	<u>Name</u>	<u>Contract Amount</u>	<u>Student Paid To Date</u>	<u>Refund Owed</u>
220366314	McIntyre, Robert	3,695.00	4,124.50	429.50
220388378	Blackwell, Alice	3,695.00	3,755.00	60.00
220464804	Hicks, Bruce	3,695.00	3,734.51	39.51
220562010	Brown, John	3,695.00	3,825.00	130.00
220649844	Jones, JoAnn	3,695.00	5,220.68	1,525.68
220724986	Browne, Douglas	3,695.00	3,904.30	209.30
220729753	Tibbs, Antoinette	4,915.00	5,215.00	300.00
220766166	Blough, Colleen	4,915.00	5,215.00	300.00
227864215	Palmer, Frances	4,855.00	6,300.50	1,445.50
228928241	Stewart, Robin	3,695.00	3,755.00	60.00
233040916	McAfee, Carol	4,915.00	5,157.05	242.05
238982295	Locklear, Lindell	3,695.00	3,815.00	120.00
256297787	Rozier, Rhonda	4,915.00	4,918.00	3.00
256434925	Dalla Tezza, Robert	2,838.00	2,845.00	7.00
283448626	Rutemueller, Kathie	3,067.00	3,317.00	250.00
286548337	Leonard, Shirley	4,915.00	4,976.31	61.31
377587116	Lock, Randy	4,455.00	4,499.25	44.25
420608547	Washington, Michael	3,695.00	3,755.00	60.00
459020135	Gerlach, Raymond	3,695.00	3,755.00	60.00
530964017	McCullough, Steve	3,695.00	3,763.00	68.00
773634383	Fradkin, Gregory	3,695.00	3,845.00	150.00
776333982	Zurek, Jerome	3,695.00	3,755.00	60.00
778416803	Schneider, Craig	3,695.00	3,755.00	60.00
Total Refunds Owed				\$29,363.24

Longo100:jpy