

?????????? ??? ??????? ????????????

JAN MAZÁK

??? 26?? ???????? 2010 (1)

?????? C?103/09

**The Commissioners for Her Majesty's Revenue & Customs**

????

**Weald Leasing Limited**

[?????? ??? Court of Appeal (England and Wales) ??? ??? ?????? ?????????????? ???????????]

«?????? ?????????????? ??? (???) – ??? ?????? 77/388/?? –?????? ??? ???  
“????????????? ??????” ??? “????????? ?????????? ??????????” – ??????? ?? ??????  
????? ??? ??????? ?????????? ?????????? – ?????????? ?????????? ???  
????????????? ?? ?????? ??? ?????? ?????????? ??? – ?????????????? ??? ??????????  
“????????????? ??????”»

I – ????????

1. ? ??? ?????? ?????? ??? ??? ?????? ?????????????? ?????????? ????, ?????? ????,  
??? ??????? ??? ?????? «????????????? ??????» ??? ?????? ?? ??? ?????? Halifax ??.?  
(2), ??? ??? ??????? ??? ?? ??? ?????? Part Service (3) ??? Ampliscientifica and Amplifin  
(4). ? ?????? ??? ?????????? ??? ?????? ?????? ??? Commissioners for Her  
Majesty's Revenue and Customs (??? ????: Commissioners) ??? ??? Weald Leasing Limited  
(??? ????: Weald Leasing) ?? ?????????? ?? ?????????? ?????????? ??????????????  
????????? ??? ?????? ? ??????.

II – ? ??????? ??? ?????? ?????? ??? ?? ?????????????? ???????????

2. ? ?????? ?????????? Churchill Group of Companies (??? ????: ?????? Churchill) ???????  
????? ??? ?????? ??? ?????????????? ??? ?????? ?????????????? ?????? (???) ??????????????  
????????? (5). ? Churchill Management Limited (??? ????: CML) ??? ?? ?????????? ???  
Churchill Accident Repair Centre (??? ????: CARC) ??? Weald Leasing (6) ?????? ????  
?????? Churchill. ?? ?????? ??? ?????? ?????? ??? ?????????????? ??? ?????????? CML ???  
CARC ??? ?????? 1 %, ???, ?? ?? ??????, ??? ?????????? ??? ?????????? ??????????  
?????????/?????????, ??????? ?? ?????????? ?????? 1 % ??? ??? ??? ?????? ??? ?????? ??? ?? ?  
???? ??????????/????????? (7). ? ?????? ?????? ?????????? ?????????? ??????????/?????????  
Weald Leasing ?????????? ??? ?????? ??? ?????? ?????????? ??????????/?????????  
??? ?? ?????????? ?????????? ??? Suas Limited (??? ????: Suas). ? Weald Leasing  
????? ?????????? ?????????? ??? ??? ?????? ??? ???.

3. ? ??????? Suas ?????? ?? ?????????? ?? ?????????? ??? ????? Churchill ??? ?????  
??? ??? ??? ?????? ???, ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????  
????????????? ??? ??? ?????????? ??? ??? . ? ??? ?????????? ?????????? ??? ?????????????? ???  
Suas ??? ? ?????? ?????????? ?????????? ??? ??? Weald Leasing ??? ? ??????????  
????????? ??? ??? CML ??? CARC.

4. ????? ? CML ? ? CARC ?????????? ??? ??????????, ? Weald Leasing ?????? ??? ??  
???? ?????????? ??? ??? ?????????? ??? ?????????? ??? Suas, ? ?????? ?????????? ?? ??  
????? ??? ? ?????????? ??? CML ??? CARC. ?????????? ??? ?? ??  
????????? ???, ? CML ??? ? CARC ?????????? ??? ?????????? ??? ?????? ??? ??????????  
??? ?????????? ??? ??? ?????????? ??? ?????? ??? ?????????? ??? ??? ?? ?????????? ??? ??  
??? ?? ??? ?????? . ?????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?? ?????????? ???  
????? ??? ?????????? ??? ?????? ?????? ?????? ?????? ??? ?????????? ??? ?????????? ??? ??  
??? ??? ?????? ??? ?????? Churchill. ? CML ??? ? CARC ??? ?????? ?? ?????????? ???  
??? ?? ?????? ??? ??? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ???, ??? ??  
??? ?????????? ??? ?????????? ??? ?? ??? ?????? ?????????? ??? ?????? ?? ??? ?????? ??????????  
????????? ??? ?? ?????????? ??? ?????? ?????????? ??? ?????????? ???.

5. ?? Commissioners ??????? ??? Weald Leasing ???, ?????????????? ?? ?????? ??? ??  
??? ?????????? ? ??? ?????? ?????? ??? ??? ?????????? ??? ?????????? ??? ?????? ???  
????????? ??? ??? ?????????? ??? 2000 ??? ??? ?????????? ??? 2004, ?? ?? ?????????? ??? ??  
????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??? ??? ??  
????????? . ? Weald Leasing ?????? ?????????? ??? ?????? ??? ?? ?????? ??? ??????????  
?????, ?????????? ??? ?? ?? ??? ?????? ??? ?????? ??? ?????? ?????????? ??? ?? ??????????  
????? ??? ?????????? ?????????? ??? ?????????? ??? ?? ??? ?????????? ??? ??????????  
?? ??? ?????????? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ??  
??????. ??? ??? ?????? ??? ?????????? Halifax (8), ?? Commissioners ?????????? ??  
????????? ??? ?? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?? ??? ??????????  
????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?? ??? ?????? ??? ??????????  
????????? ??? ?????????? ???.

6. ?? ?????? ??? 7?? ?????????? 2007, ?? VAT and Duties Tribunal ?????????? ???  
?????? ?????? ??? ?? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ???????????????.  
??????, ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
????????? ??? ?????? ?? ?? ?????????? ??? ?????? 75 ??? ?????????? ??? ?????????? ??? ??  
????????? Halifax. ??????????, ?? Tribunal ?????????? ??? ??? ?????????? «?? ??? ??? ?? ???'  
????????? ?????????? ??? ?????????? ??? ?????????? ??? ?????? ??? Churchill ??? ?? ?? ??  
????????? ??? ?????? ?????????? ?????????? ??? ?????????? ». ?? VAT and Duties Tribunal  
?????? ??? ? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ??  
????????? ?????? ??? ?????? ??? ?????? ??? ??, ??? ?????? ???, ??? ?????? ??? ? ??? ?????????? ? ???  
????????? ??? ?????? ??? ?????? ??? ?????? 74 ??? ?????????? Halifax. ??? ?? Tribunal, ???  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??  
????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ??? ??  
CML ??? ??? CARC. ?? VAT and Duties Tribunal ??????, ??????, ??? ? ?????? ??????????  
????????? ?? ?????????? ??? ??? ?????? ??? ?????????? ?????????? ??? ?????? ??? ??????  
????? ??? ??? ??? ?? ??? ?????? ??? ?????????? ??? ??? ?????????? ??? ??? ?????? ??? ??????  
??? ??? ?????? ??? ?????? ??? ?????? ??? ?????? 6 ??? VAT Act 1994 (??? ????: ??? ?? 1994  
???? ??) (9).

8.      ??? ?? ?????????? ??????, ?? Court of Appeal of England & Wales (Civil Division)  
?????????? ?? ?????????? ?? ?????????? ?? ??????? ?? ?????????? ?? ?????????? ?? ??????????  
????????????? ?? ??????????:

«1) ??? ??????????? ????, ?? ???????, ???? ??? ?????? ??? ?????? ?????? ?????? ?????? ???????????????  
??? ?????? ??????????? ??????? ?????? ??????????????? ?????????? ?????????? ??????????????  
??????????, ??? ?????? ??????? ??????????? ???????, ???? ?? ??????? ?????? ?????? ?? ?? ???  
?????????? ???????, ??????????? ?? ?? ??? ?????? ?????? ? ?????????? ?????????? ??????  
?????????? ??????????? ??????? ?? ??????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ????  
??? ?????? ??? ??????? 74 ??? ??????? [...] Halifax;

2) ?????????????? ????? ???? ? ??? ????? ?????? ??? ?????????????? ??? ??????????????  
????????????? ?????? ?????????? ?????????????? ?????? ??? ???? ? ?? ??????  
????????????? ??? ????? ??????????????, ??? ?????????????? ?????? ??? ?????????? ???  
????????????? ??? «????????? ?????????? ??????????», ??? ??????? 69 ??? 80 ???  
????????? Halifax ??? ???? ??? ???? 27 ??? ?????????? [...] Ampliscientifica [??? Amplifin],  
????? ??? ??? ??? ??? ?????????? ?????? ?????? ?????? ?????? [...] Part Service, ??????  
?? ?????? ?????? ?????????? ?????????????? ?????????? ?????????????? ?????????? ?? ?????? ???  
??? ? ?? ?????? ?????????????? ??? ?????? ??????????????, ?????????? ??? ??? ?????????? ???  
????????? ?????? ?????? ??? ?????? ??? ?????? ?????? ?????????? ?????????????? ?????? ???;

3)    ?? ?????????? ?? ?????????? ?? ?????????? ?? ?????????? 2:

?) ?????? ?????? ? ?????? ??? ? ?????????? ??? ??????? “????????? ?????????? ??????????”  
??? ??????? ??? ??????? 74 ??? 75 ??? ??????? Halifax: ?????? ??????? ??? ?? ?????? 74 ?  
??? ?? ?????? 75 ? ??? ????????:

?) ?????????? ?? ??? ???? “????????? ?????????? ?????????? ??????????”;

1) ??????? ???. ?????? ???????????, ????. ??????, ? ???????????, ????. ????,

2) ??????? ?? ?????? ?????????????????? ?? ? ?????????????? ?????????????? ?? ???  
????????? ????, ??? ??????,

3) ??????? ?? ??????????????,

4) ??????? ?? ?????? ?????????????? ?????????? ??? ?????????? ??? ????????????,  
????? ??????, ?? ?? ?????? ?????????? ????????,

5) ??????? ?? ?? ?? ?? ?? ???????????, ?? ?? ?? ?????? ?? ?? ?? ?????? ???????, ???????,

6) ??????? ?????????????? ?????? ?????? ? ??????????;  
4) ?????? ?????? ??? ?? ?????????????? ?????? ?????????? ?????????????? ?????????? ??????????  
????????? ?? ??? ? ?? ?????? ?????????????? ??????????, ??? ?????? ?? ?????????? ??????????????????  
????? ?? ??????? ???????; ??????????, ?????? ?? ?????? ?????????? ? ? ??????  
????????? ????:

?) ?? ??????? ?? ????. ?? ?????? ?? ??????????? ?? ??????? ?? ??????????????? ?? ??  
?????????? ?? ????? ?

? ) ?? ?????????????????? ?? ??????? ?????? ?? ?????????????????? ?????? ?????? ??????  
?????????? ?? ??????????? ? ? ??????????? ?????? ??? ?????? ??????????? ??? ??????????? ???  
?????????? ??? ?? ?????????? ?? ??? ?????? ?????? ?????????? ? ?????????????????? ??????????;»

III – ? ?????????????? ?????????? ??? ??????????????

9. ??????? ?????????? ?????? ? Weald Leasing, ? ??????? ????????, ?  
???????, ? ?????? ????????, ? ??????? ?? ??????? ??????? ??????? ?????. ???  
?? ????????, ??? ????????, ??? ?? ??????? ????????, ??? ??????? ????????  
?? ????????, ??? ?? ??????? ????????, ???' ??????? ??????? ??????? ??? 3?? ??????? 2010.

IV – ?????????????????? ??????????????

10. ?? ??? ?????? Halifax ??????????? ?????? ??? ? ???? ??? ?????????????? ???  
????????????? ????????????, ???? ??????????? ?????? ?? ???? ?????????? ??? ????????????, ? ????  
?????????? ?? ??????????? ??????????? ??? ??????? ??? ??????????? ?????? (??? ????: ??)  
?????????????? ? ???? ??????????????? ???, ??????????? ??? ?????? ??????????? ??  
?????????? ??? ????. ??????????, ? ??????? ??? ?????????? ??? ?????? ?????? ??? ?????? ????  
??? ??? ??? ?????? ?? ???? ??? ?????? ??? ?????? ?????????? ?????? ? ??? ?????????? ???  
????????????? ?? ?????????? ??? ?????????????? ??? ?????????????? ??? ? ?? ?????????? ??????  
????????????? ??? ?????????? ??? ?????????? ??? (11).

11. ?????????? ??? ? ?????????? ?????????????? ??? ?????? ??? ??? ??????????????  
????????????? ??? ?????? ?????????????? ??? ?????????????? ??? ?????? ??? ?????? ??? ??????????????  
???? ???, ????, ??? ? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ?? ??????????????  
?????????????, ??? ???? ?????? ?????????? ?????????? ?????????? ?????????? ??? ?????? ?????????? ??? ????  
?? ?????? ?? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ??? ??? ??????????????  
?? ?????????? ??????????. ?? ?????????? ?????? ?? ??? ?????? Halifax ??? ? ??????????  
?? ?????????? ?????????????? ?????????? ??? ?????? ?? ?????????? ??? ?????????? ??? ?????????? ??? ????  
????????? ??? ?? ?????????? ?????? ?????? (12). ??????????, ?? ?????? ???  
????????? ??? ?????? ?????????????? ?????? ??? ?????? ?? ?????????????????? ??? ??????????  
?? ?????????????? ?? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ?? ??? ?????? ?? ??? ??? ????  
????????? ?? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ?????????? (13).

12. ?? ??? ?????? Halifax, ?? ??????????? ?????? ??? ??????????????, ?? ?????? ?????? ??  
?????????? ??????????? ?? ??????????? ? ?????? ?????????????? ??????????. ??????, ??  
????????? ???????, ??????????? ?? ?????? ?????????? ?? ?????????? ?? ?????????? ??  
?? ??????? ?????????? ?? ?????? ?????? ??????? ?? ?????? ?????? ?????????? ?? ?????????? ??  
????? ?? ?????? ?? ?????????? ??????, ?????? ?? ?????? ?? ?????? ?????????? ?? ??????????

????????????? ?????????????? ??? ?????? ? ?????????? ?? ?????????? ?????? ?????????????? ???  
??? ?????????? ????. ??????, ??????, ??????, ?? ?????????? ???? ??? ??????  
????????????? ????. ?????????? ??? ?????? ?????? ??? ?????????? ?????? ???? ??? ??????  
????????? ????. (14).

13. ?? ?? ??? ?????? ??? ?????????????? ????, ??? ?????????? ? ?????????? ???????????, ?? ??  
?????? ????. ??????????. ?????????? ?? ?????????? ? ?????? ?????????? ?????????? ??????????  
??? ????. ?????? ??? ?? ??? ??????, ??????, ?? ?????????? ??? ?????????? ??? ??????  
????????? ????. ?????? ?????? ?????????? ?????????? ?????? ??? ? ?? ??? ?????? ???? ??  
????? ????. ??? ?? ??? ?????? ?????? ? ?????? ??? ?????????? ??? ?????????? ????.  
????????? ?? ?????????? ?? ?????????? ??? ? ??? ?????? ??? ?????????? ?????????? ????  
????????? ?? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ????  
????????? ?? ?????? ?????????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ???.

14. ??? ?? ?????? ??? ?????????? ????, ??? ?????? ??? ???????, ?? ?? ??????? VAT and Duties  
Tribunal ????. ??? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????????? ??? ??????????  
??? ? ?????? ?????? ?????????? ???????????. ??? ?? ?????? ??? ?????? ?????? ?????? ????  
????????? ????. ?????? ???, ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????????? ????  
??? ?? CARC ??? CML.

15. ? ?????? ??? ?????? ?????? ?????????? ????, ????, ??? ?? ?????????? ???  
????????? ????. ??? ?????? ??? ?????? ?????? ?????????? ?????? ??? ?????????? ??? ?????????? ???  
????? ????, ????, ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???  
????? ?? ?????????? ??? ?????? ??? CML ??? ?? CARC. ?????????? ???, ??? ?? ??????  
????? ?????????? ???, ??? ?????? ??? ?????? ?????? ?????????? ?????? ??? ?????????? ????  
??? Weald Leasing ??? Suas, ?? ?????????? ??? ?????? ??? ?? ?????????? ??? ?????????? ????  
????????? ?????????? ??? ?????? ??? ?????? ?????? ?????? Weald Leasing ?? 100 % ??  
????????? ??? ?????? ???, ??? ?????????? ??? ?????? ?????? ?????? ??? ?????? ??? ??????  
????????? ??? ??????/?????????.

V – ?? ?????? ??? ?? ?????? ?????????? ??????

16. ?? ?? ?????? ?????????? ????, ?? ?????? ?????????? ????, ???' ????, ??  
????????? ????. ?? ?? ?????????? ??? ?????????? ?????? ??? ?????? ????  
????????? ????. ?? ?? ?????? ?????? ?????? ?????? ???, ??? ?????? ? ?????? ????  
????????? ????. ?? ?? ?????? ?????? ?????? ??? ?????? ?????? ?????? ????  
????????? ????. ?? ?? ?????? ?????? ??? ?????? ?????? ?????? ??? ?????? ???.

17. ? Weald Leasing ?????????? ???, ??? ?????? ??? ??, ??? ?? ??????????  
????????? ????. ?? ?? ?????????? ??? ?? ?????????? ??? ?????? ??? ?????????? ??? ??  
????? ?????????? ????. ?? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ??  
????????? ????. ?? ?? ?????? ??? ?????? ???, ??? ?????? ??? ?????? ??? ?????? ??? ??  
??? ?????????? ????. ???????, ??? ?? ?????? ??? ?????? ??? ?????? ??? ??  
????? ?????? ??? ?? ?????????? ??? ?? ?????? ??? ?????? ?????????? ???, ??? ?????? ????  
????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?? ?????? ??? ??????  
????. ??? ?????? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
CARC ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ??????  
??? ???????. ?????? ? Weald Leasing ?????? ?????? ?????? ?????? ??? ??????  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? Weald Leasing,  
????? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???

C?223/03 (16), ??????? ?? ??? ??????????? ?? ?????????????? ?? ?????????????? ?? ???? ?? ?????????? ??  
????????? ?????????????? ?????????????? ?????? ?? ??? ?????? ?? ??????????????. ? Weald Leasing  
????????????? ?? ???? ?? ????? ?????????? ?????? ?? ?????? ?? ?????????? ?? ?????????? ?? ???? ??  
????????????? ?? ?????? ?? ?????? 6, ?????????? 1, ??? ?????? ?? 1994 ????, ?, ??  
????????? ?????? ?????????? ?? ?????? ?????????? ?????? ?? ?????? ?????? ?????? ?? ?????? ?????? ??????.  
?????????, ?????????, ??? ?????????? ?? ?????? ?????? ?????? ??? ?????????????? ?? ?????? ??????  
11, A, ?????????? 1, ??? ?????? ??????, ??????? ?? ??? ?????????? ?? ?????? ?????? ??  
????? 27, ?????????? 2, ??? ?????? ?????? ?? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????????????? ?? ?????????????? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
(?? ?? ?????? ??) (17). ?? ?? ??????, ? ??? ?????? ?? ?????? ?? ?????? ?? ?? ??  
????????????? ?? ?????????????? ?????????????? ?? ?????? ?????????????? ?? ?????? ?????????? ??????????  
?? ?????? 6, ?????????? 1, ? ??? ?????? ?????? ?????? ?????????????? ?? ?????? ?????????? ??????????

19. ?????????? ?????? ??? ? ?????????????? ?????? ?????????????? ?????? ?????????????? ?????? ?????? ???  
????????? ?????? ?????? ?????????? ?????? ?????? ??? ? ?????? ?????? ?????? ?????? ?????? ???  
????????? ????. ??? ?????????? ?????? ?????? ?????? ??? ?????????? ?????? ?????? ??? ??  
??????, ???? ?????????? ??? ?????? ?????? ?????? ?????????? ??? ?????? ?????????? ?????????? ???????.  
????????? ? ?????? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?? ?????????? ??? ??  
????????? ??? ?????? ??? ?????? ?????? ?????????? , ?? ?????????? ??? ?????? ??? ?????? ?????????? ???  
?? ?????? ????. ? ?????? ?????? ??????, ??????, ??? ? ?????????? ??? ?????? ??????????  
????????? ?????????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????????? ?????????? ???????.  
? ?????????? ?????? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????

???? ?????????? ? ??????????? ????? ?? ?????????? ?? ?????? ??? ???????????  
?????????? ?? ??????? ?? ??? ?????? ??? ?????????????? ??? . ? ?????????? ?????????? ??? ?????  
????????? ??? ?????????? ?????? ??? ?????????? ??? Suas ???? ?? ?????????? ? ?? ??????  
??? ?????????? ??? ?????? ?????????? ??? ? ??????? ??? ?????? ?????????? ???  
?????????? ????. ??????, ? ?? ??? ?????? ?????? ?????? ?????????? ??? ?????? ?????????? ???  
????? ? ?????? Halifax. ?????? ??? ?????? ?? ?????? ?? ?????????????? ???  
????????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????????? ??? ?????????? ???  
????? ??? ?????????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ??  
????? ?????.

20. ????? ?? ?????? ???, ??? ????? ??????????? ? ?????????? ?? ??? ??????????????? ???, ??  
????????????? ??????, ???' ?????, ?????????? ?? ?????????? ?????? ??? ?????? ? ???  
????????? ??????????/????????? (18) ??? ?????????? ?? ?????????????? ???  
???? ??? ?????? ??? ?????????????? ????. ??????????????, ?? ?????? ??? ??  
????????????? ?????????? ?? ?????????? ??? ?????? ?????? ?????????????? ??????????  
????????????? ??????????/?????????, ??? ?? ?????????? ??? ?????????? ??? ??????????  
?? ?????????? ??? ?? ?????? ?????????? ??? ?????????? ??? ?????????? ??? ??,  
????????? (19) ?? ?????????? ??? ?????? ??? ?? ?????? ??? ?????? ??? ??  
????????? ?????????? ????. ?????? ??? ??????????  
?????? ?? ???????, ?????????? ?????????? ??? ?????????? ??? ?? ??? ?????????? ???  
?????? ?? ?? ??????? ??? ?????????? ?????????? ???, ??? ?? ?????? ??? ?????????? ???  
???? ?? ?????? ??? ?? ?????????? ??? ?????????? ????. ?????? ??? ?????????? ???  
?????? ?? ?????? ??? ?? ?????????? ??? ?????????? ??? ?? ?????????? ??? ??  
?????? ?? ?????? ??? ?? ?????? ??????. ?????? ?? ?????? ???, ? ?????? ??? ?????? ??? ??????????  
????????? ??? ?? ?????? ?????????? ????. ??? ?????????? ? Weald Leasing  
?? ? ???????, ? ?????? ??? ?????? ?????? ?????????? ??? ?????????? ??? ?????????? ???  
?? ?????? ??? ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???  
?? ?????? ??? ?????????? ??? ?????? ??? ?????????? ???, ??? ?????? ??? ?????? ??? ??????????  
????????? ?????????? ??? ?????? ??? ?????????? ???, ? ?????????? ??? ?????? ??? ??????????

21. ?????? ??? ? ??????? ?? ???? ? ?????????????????? ??? «?????????????» ? ?? ??????????  
????????????? ??????????, ?? ?????????? ??? Weald Leasing, ? ?????? ?????????????? ?? ???  
????????? ? ?????????? (20), ?? ??????? ?????? ??? ?????????? ??????????????  
????????????? ?? ?? ?????? ??? ?????????? ?????????????? ??? ?????? ?????????? ?? ?? ??? ??  
????? ??? ?????? ??????????????, ?????????? ?? ?? ?????? ?????????? ?????????????? ?????? ??  
????????? ?? ?? ?????? ?????????? ?????????????? ?????????? ?? ?? ?????? ??????????  
????? ??? ?????? ?????? (21). ?? ?? ??????, ? ?? ?????? ??? ?? ?????? ?????? ???  
????? ??? ?????????????? ?????????????? ?????????? ??? ?????????? ?????????????? ??????????????  
????????? ?????????????? ?????????? ?? ?? ?????????? ?????? ?????????????? ?????????? ?  
????? ?????????? ??????, ?????????? ?????????????? ?????????? ?? ?? ?????????? ??? ?? ???  
?? ?????????? ?????? ?????????????? ??????????, ?????????? ?? ?? ?????????? ?????????? ?????????? ?  
????????? ?? ?? ?????????? ??????, ??? ?????????? ?????? ?????? ?????? ?????? ??????????  
????????? ?? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????????,  
?????????, ?? ?? ?????????? ?????? ??? ?????? ?????????????? ?????????? ?????????? ??????????  
????????? ?? ??????? ??????, ?? ?????? ??? ?????????????? ??? ?????? ?????? ??? ??????????  
?????, ?? ?????????? ?? ?????????? ?????? ?????? ?????? ?????? ?????? ??? ?????????? ???, ??  
????? ?? ?????? ??? ?????? ?? ?????? ??? ?????? ?????????? ??? ??? ? ?????? ??? ??????????  
?????????, ??? ?? ?????? ???, ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ??????????  
????????? ?? ?????????? ??? ?????????? ?????? ?????? ?????? ??? ?????? ??? ?????????? ??????????

22. ???? ?????? ??? ??????? ?? ??? Suas ???????????, ? ??????? ??? ???????????

????????? ??? ? ??????????? ??? ?????????? ?????? ?????? ??? Weald Leasing ??? ??? CARC ???  
CML ??? ???? ?????????? ?? ??? ??????? ?? Commissioners ?? ?????????? ?????? ??? ?????? 6  
(??? ?????? ??? 1994 ????. ??? ??????????, ??? ??? ?????????? ?????????????? ??  
?????? ??? ?????????? ???????????, ??????????? ?? ?????????? ?????? ??? ?????? 6, ???  
?????? ??? ?????? ? ??? ????? ?????????? ?????????????? ?????? ??? ?????? ??? ??????  
???? ??????? ????, ?? Commissioners ?????? ?? ??????????, ?????? ???, ??? ??  
?????? ??? ?????????? ??? ????? ??????? ??? ? ?????????? ??? ?????????? ?????? ??? (22)  
??? ??? ? ??? ????? ?????????? ??? ????? ??????? ??? ??? ?????? ??? ?????? ??? ??????????  
?????.

23. ??? ?? ??????? ????? ?????????????? ?????????? ??? ? ??? ? Weald Leasing ??????????  
????????? ??? ?????????? ?????????????? ??? «[?] ? ?????????? ?????????? ?????????? ???  
????????? ?????????? ?????????? ??? ??? ?????????? ??? Suas, ??? ??? ?????? ?????? ??????????  
? ?????? ?????? ??? ?????? 6». ?? ??? ?????????????? ??? ?????????? ??? ??????????, ?  
Weald Leasing ?????????? ??? ? ??? ??? ?????????? ??? ?????????? ??? ?????????? ???  
????????? ??? ? ??? ??? ???? ?????????? ?????????? ??? ?????????? ??? ???? ?????????? ???  
????????? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ???  
??? ?????? ???.

24. ?????? ??? ??? ?????? ??????? ?? ?????? ?????????? ? ?? ?????? ?????????????? ??? Weald Leasing. ???  
?? ?????????? ??? ?????????? ??? ??????????, ??? ?? ?????? ?????????? ?????????????? ??  
?????? ??? ?????????? ????????????, ?????????? ??? ?? ?????? 6, ?????????? 1, ??? ??  
??? 1994 ??? ??? ?????????? ??? ?????? ??? ?????????? ??? ?????? 27 ??? ?????? ??????  
(23). ??? ??? ?????? ???, ?????????? ??? ?????????? ?????????? ??? ?????????? ??? ?????? ???  
????????????? ??? ?????? 27 ??? ?????? ?????????? ?????????? ?????????????? ??? ?????? ??? ??????  
????????? ???, ?????????? ??? ?????????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? (24) ???  
????????? ?? ?????????? ??? ?????????????? ??? ?????? ?????? ?????? ?????? ?????? ???  
????????? ?????????? ??? ?????? ?????????? ??? (25). ??? ??? ?? ?????? ??? ??????  
????????? ?????????? ??? ?????? ??? ?????????? ??? ?????????????? ??? ?????????????? ???,  
??? ?????????? ??? ?????? Halifax, ?????????? ?????????? ?????? ??? ?????????? ?????? ???  
??? ?????????? ??? ?????????? ??? ?????? ?????? ?????? ??? ?????????? ??? ?????? ???  
????????? ??? ?????? ?????????? ??? ?????? ?? ??? ?????????????? ??? ??? ?????? ???  
????????? ???, ??? ?? ?????? ???, ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????????? ???  
????????? ?????? ??? ?????? ???.

25.    ?? ?? ???????, ?????? ??? ? ???? ??? ?????????????? ??? ?????????????? ??????????????,  
????? ?????????? ??? ?????? Halifax (26), ?????????????? ??? ?????????????? ??? ??????  
????????? ??????????, ?? ?????? ??? ?????? ?????????? ?????? ?? ??? ?????? ??? ?????? 27 ???  
????? ??????. ???? ???? ??? ?????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ??? ?????? ???,  
? ???? ??????????? ??? ?????? ??????????, ?????? ??? ?????? ?????? ?????????????? ?????????? ???  
????????????? ??? ?????? ?????? ?????????? ??????????, ?? ?????? ?????????? ???' ????, ??  
????? ??? ?????? ?????????? ??????????????, ??? ??? ?????????? ???  
????????? ??? ?????? ??????, ?????? ?????????? ??? ?????? ?????????? ??? ?????????? ???  
????? ?? ??? ??? ??????, ??? ?? ??? ??? ?????? ?????????? ?????????????? ??? ?????????? ???  
????????? ??? ?????? ?????????? ?????? ??? ?????? ??? ?????? ???  
????????? ???.

26. ?????????????????????????????????, ?? ??????? ????????????????? ?????? ??  
???????????????????? ?????? ?????? ? ?????? ????????????????????? ?????? ?????? ??????, ??????  
?????? ?????? ?? ??????? ??????? ?????????? ?????????? ?????????????? ?????????? ?????? ?? ???  
????? ?????????????? ??????????.

27. ?? ?? ?????? 94 ??? ?????????? Halifax, ?? ?????????? ??????? ?? ?? ?????????? ??  
????????? ?????? ?????????????? ?????????? ??????? ?? ?????????? ?? ?? ?????????????? ??  
????????????? ?? ?????????? ?????? ?????????? ??????? ?? ?????????? ?? ?? ?????????? ??  
????????? ?? ?????????? ?? ?????? ?????? ?????? ?????? ?????? ?????????? ?? ?? ?????????? ??  
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????????? ?????? ?????????? ??  
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? Suas  
???? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????? ? ?????? ?????? ??? ?????? 6, ?????????? 1 (??? ?????? ??? 1994 ??? ???) ??? ??  
?????????, ?? ?? ??????, ?????? ?????? ?????????? ???????????, ?? ?????????? ?????? ??  
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??, ??  
????????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????????? ?? ?????? Weald Leasing ??? ?????????? ??? CML ??? CARC,  
????????????? ???' ?????? ??? ?????? ??? ?????? ?????? ??? ??? ?? ??? ?????? ?????? ?????? ???  
??? ?????? ??? ?????? ?????? ?????? (27).

28. ?? ?? ??????, ??? ?????????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????????????? ?????? ?????? ?? ?????? ?? ?????????? ?? ?????????? ?? ?? ?????????? ??  
?? ??????, ??? ?????? ?????? ?? ?????? ?????? ?????? ?????? ?? ?????? ?????????? ??  
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????? ?? ?? ??? ??????.

## VI – ?? ?????? ??? ?? ?????? ?????????? ??????

29. ?? ?? ?????? ?????????? ??????, ?? ?????? ?????? ?????? ?????? ??  
????????? ?? ?????? ?????? ?????? ?????? ?????? ?? ?? ?????? ?????????? ?? ?? ??  
?? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??  
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??  
«????? ?????? ?????? ??????» ????. ?? ?? ?????? ?????? ?????? ?????? ??, ?? ??????  
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??  
????? «????? ?????? ?????? ??????».

30. ?? ??? «????? ?????? ?????? ??????» ?????????????? ?? ?? ?? ?????? ??  
????????? Halifax. ?? ?? ??? 69 ?? ?????? Halifax, ?? ?????????? ?? ?? ??  
????? ?? ?????? ?????????? ?? ?????? ?? ?????? ?? ?????? ?????? ?????? ?? ?? ??????  
????????? ?????? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ?????? ?????? ?????? ??????  
?? ?????? ?? ?????? ?? ?????? ?? ?. ?? ?? ?????? 80 ?? ?????? ?????? ??, ?? ??????  
????????? ?? «[?] ?? ?????? ?????? ?????? ?????? ?????? ?????? ?? ?????? ?? ?????? ??  
????????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
?? ?????? ?????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?????? ?? ?????? ??????  
????? ?? ?????? ?? ?????? ?? ?????? ?? ?????? ?????? ?????? ?????? ?????? ??, ??????, ???  
????? ?? ?? ?????? ??????». ?? ?????? ?????? ?????? ?????? ?????? ??, ?? ?? ??? 81 ??  
????????? Halifax, ??? «[?] ??? ?????? ?? ?????? ?????? ?????? ??, ?? ?? ?????? ?? ??????  
????????? ?????? ?? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??????  
????????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??, ??????  
????????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??  
????????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??  
????????? ?????? ?? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ?????? ??

????????????????? ??? ?????????? ?????????? ??? ?????????????? ?????????????? »..

31. ?????????? Part Service (28) ??? ???????, ??????????, ??????? ?? «?????????  
????????? ??????????», ??????? ?? ?????????? ?????????? ????? ?? ?????????????? ??  
????????? ??? ?????? 74 ??? 75 ??? ???????? Halifax (29). ?? ??? ?????? 27 ??? 28 ???  
????????? Ampliscientifica ??? Amplifin (30), ?? ?????????? ?????????? ??? «[?]??? ???? ???  
???? ??? ?????????? ??? ?????????? ??????????, ?????????? ???, ????? ???  
???? ??? ???, ? ??????? ??? ?????????? ?????????? ?????????? ??? ??????? ??  
????????? ??? ??? ?? ?????????? ?????? ??? ?????????? ?????????? ?????????? ???, ??????  
??? ??????? ??? ??? ?????????????? ??? ??? ?????????? ?????????? ?????????? ???  
?????????, ??? ?? ?????????? ?????? ??? ?????? ?????????? ?????????? ??? ??????????????  
??? ?????????? ?? ?????????? ??????. ? ??? ?????? ?????????? ?????????? ??? ??????  
????????? ?????????? ??? ?????????? ?????????? ?????? ??? ?????? ?????????? ???  
????????? ?????????? ??? ??????????».

32. ?????? ??? ? ??????? «????????? ?????? ??????» ??? ??????????  
?? ???????? ? «??????» ??????? ?????????????? ?????????? ?????????? (31). ?? ??  
??????, ? ?????? ??? ??? «????????? ?????????? ??????????» ??? ??????? ?????????????? ???  
????? ??? ??? ??? ?????????? ?? ??? ?????? ??? ?????? ?????????? ?????????? ?  
?????????? ????. ????. ??? ?? ?????? ???, ? ?????????? ??? ?????? ? ?????? ??????????  
????????? ?????????? ?????????????? ?????????? ?????????? ?????????? ?????????? (32) ???  
?????, ?? ?? ??????, ?????????????? ?? ?????? ??? ?????????? ??????????, ???  
????????? ?????????? ???????.

VII – ???????

34. ??????? ?? ???????, ??????? ?? ??????????? ?? ?????? ?? ?????????????  
????????? ?? Court of Appeal (England and Wales) ??? ??????? ???????:

«1) ?????????? ?????? ?????? ?????? ?????????????????? ?????????????? ?????????????  
????????????? ?????????????? ?????????? ?????????? ?????????? ?????????? ?? ?? ?????????? ??????  
????????????? ?????????? ? ?????? ?????????? ?????????? ??????????, ?????????? ?????????????? ??  
?? ?????????? ??? ??? ??? ?????????? ?????? ?????????? ??????, ?????????? ??????, ?????????? ??  
????????? ?????????? ? ?????????? ?? ?????????? ??????, ??? ?????????? ?????, ??? ??????,  
????? ?????????? ?????????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? 77/388/???  
??? ??????????, ??? 17? ??? 1977, ??? ?????????? ??? ?????????? ??? ?????????? ??? ??????  
?????. ??? ?????????? ?? ??? ?????? ?????? ?????? ?????? – ??? ?????? ?????? ???

????????????? ????: ?????????? ?????????? ????.

2) ??????? ??????????? ??????? ? ?????????????? ???? ?????? ?????????? ??????????????  
??????????, ?? ????? ???????????, ???' ????, ?? ?????? ??? ?????????? ??????????????  
??????????????, ??? ??? ?????????????? ??? ?????????? ?????? ?? ???????, ????  
????????? ??? ?????? ?????????? ??? ?????????? ?????? ?? ??? ??? ?????? ??????, ??? ??  
???? ??? ?????? ?????????? ?????????? ??? ?????????? ?????? ?? ??? ??? ?????? ??????, ??? ??  
????????? ??? ?????? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????????? ??????.

3) ?????? ??????????? ? ?????? ?????????????? ???????????, ?? ??????? ??? ??????????  
????? ??? ?????????? ??? ?????? ??? ?????????????? ??????????? ??????????? ??  
????????????? ?? ?????????? ??? ?????????? ??? ?? ?????????? ?? ??? ??? ?????? ?????????? ??  
??????? ??? ?????????? ??? ?? ????? ?????????? ?????????? ?????????? ?? ?????? ?????????? ??  
????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ?? ??? ??? ??? ?? ??? ?????? ?????????? ??  
????????? ?????? ?????????? ?????? ??? ?????? ??? ?????? ??? ?? ??? ??? ?????? ?????? ??  
????????? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ???  
????????? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ?????? ??? ?????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
????????? ???, ?? ?????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
????? ?? ?? ??????.

4) ? ?????? ??? ??? “????????? ?????????? ??????????” ??? ?????? ?????????? ???  
????? ??? ??? ??? ?????????? ?? ??? ?????? ??? ?????? ?????? ?????????? ?????? ??? ???  
????? ? ?????????? ??? ????. ?? ?????? ?? ?????? ?????? ?????? ?????????????? ???  
????? “????????? ?????????? ??????????” ?????? ??? ?????? ??? ?????? ?????? ?????? ???  
????????? ??? ?????????? ?? ?? ?????? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ???  
????? ?????????? ?? ?? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ?????? ???  
????????????? ??? ??? ??? ?????? ?????? ??????. ?????? ??? ?????? ?????? ??? ?????? ???  
????????????? ??? ??? ??? ?????? ?????? ??????, ?????????? ???/? ?????????? ??????  
????? ??? ?????????? ??? ?????? ??? ?????? ??????, ?????????? ??? ?????? ??? ?????? ???  
????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??? ?????? ??? ?????? ???  
??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???.

1 – ?????? ??? ??????????: ? ??????.

2 – ?????? ??? 21?? ?????????? 2006, C-255/02, Halifax ?.?. (?????? 2006, ?. I?1609)  
(???: ?????? Halifax).

3 – ?????? ??? 21?? ?????????? 2006, C-425/06, Part Service (?????? 2008, ?. I?897).

4 – ?????? ??? 21?? ?????????? 2008, C-162/07, Ampliscientifica ??? Amplifin (??????  
2008, ?. I?4019).

5 – ?. ????? 13? ??? ?????? ?????? 77/388/??? ??? ??????????, ??? 17?? ????? 1977, ???  
????????????? ??? ?????????? ??? ?????????? ??? ?????? ?????, ??? ?????????? ?? ??? ?????? ?????? ??????  
????????? – ??? ?????? ?????? ?????? ?????????? ?????: ?????????? ?????????? ?????? (??  
???. ???.. 09/001 ?. 49) (???: ?????? ?????), ? ?????? ??????????, ?????? ?????, ??? ??  
????? ??? ?????????? ??? ?????????? ??????. ?? . ?????? ?? ????? 135, ??????????  
1, ??? ?????? 2006/112/?? ??? ????????, ??? 28?? ?????? 2006 ?????? ?? ?? ???  
????????? ?????? ?????????? ?????? (?? 2006, L 347, ?. 1) (???: ?????? ?????? ???).

6 – ? Weald Leasing ?????? ?? ?????????? ?????????? ??? CML ??? ?????? ??????????  
????????????? ??? ??? ?????????? ??? ??? ???.

7 – ???. ?????? 17, ??????????? 2 ??? 5, ??? ?????? ????????, ???. ??? ?????? 168 ??? 173 ??? ??????? ???.

8 – ?????????????????? ??? ?????????????? 2.

9 - ?? ?????? 6, ??????????? 1, ??????? 1, ??? ?????? ??? 1994 ????.

«??????

(a) ? ????? ???? ?????????? ????? ???? ????? ?????????? ?????????? ?????? ???? ????? ?????????? ?????  
????????? ?????? ?? ?????? ????? (????? ??? ?????? ??????????) ?????????? ??? ??? ????? ???  
???? ?????? ?????? ????

(b) ?? ??????? ?? ?????????? ?? ?????????? ?? ?????? ?? ??????? ?? ?????? ?? ?????? ?? ?????? ?? ??????? ??  
?????????? ?? ?????? ?? ??,

(c) ?????? ? ??????? ?????????? ?? ????, ?? ??????? ??? ?????? ?????????? ??? ??  
????????? ??? ?? ????? 25 ??? 26 ??????? ?????????? ??? ?? ??? ?????? ??? ??  
?????????.

?? Commissioners ??????? ?? ??????? ??? ?? ??? ?? ??????????? ?? ??????? ?? ??????? ?? ???????

10 – ?? High Court ??????? ??? ?????????? ??? Commissioners ??? ?? ?????????? CML, CARC,  
Weald Leasing ??? Suas ??? ?????? ??? ?????????? ?????????????? ??? ?????????? ??  
????????? ???, ??? ??????, ?????????? ?? ?? ?????? ?????????? ?????????????? ??? ??????????  
??? ?? ?????????? ?????? «????????? ??????????» ??? ?????? ??? ??????  
????????????? ??? ??, ?? ?? ?????? ?????? ??? ?????????? ?? ?????????????? ?? ???????  
?? ?????? ?????? ??? ?????? ??? ?????? ??? ?????????? ?? ?????????????? ??? ??????? ??  
????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ?? ?????? ???, ?????????? ??  
????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ?? ?????? ??? ?????????? ???  
????????? ??? ?????? ?????????? ??? ?????? ??? ?????????? ?? ?????? ??? ?????????? ??? ??  
????? ???, ?? ?? ?????????? ??? ?????? ??? ?????????? ?????????? ?????????????? ???  
?? ?????? ?????????? ??? ?????? ??? ?????? ?????????? ?????????? ?? ??????, ?? High  
Court ??????? ??? ?? ?????? ??? ?????????? ??? ?????????? ?? ?????? ??? ?????????? ??????????  
?? ??????. ???????, ?????????? ??? ?????? ??? 69 ??? 80 ??? ?????????? ???  
????????? 2 ?????? Halifax, ?? ?????? ??? ?????? ??? ?????????? ??? ?????????? ???, ?? ??  
????????? ??? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?????????? ???, ??  
????????? ?? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?????????? ???, ??  
????????? ?????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?????????? ??? ??  
????????? ??? ?????? ??? ?????????? ??? ?????? ??? ?????????? ?????????? ???, ?? ?????? ??? ??  
«????????? ??????» ??? ?????? ??? 74 ??? ??? ?????? 86 ??? ?????????? ???,  
????????? ?? ?? ??????, ??? ?????????? ???, ?? ?? ?????????? ??? ?????????? ?????????? ???  
?? ?????? ??? ?????? ??? «????????? ??????» ??? ?????? ??? 69 ??? 80 ???  
????????? ??? Halifax. ?? ??? ?????? ?????? ??? ?????????? ??? ?????????? ?? ?????? ?? ??? ??

11 - ??, ??? ???????????????, ????, ???????????, 2 ??????? Halifax, ??????? 69 ??? 73.

12 - ??, ??? ??????????????? ??, ??? ??????????? 2 ?????? Halifax, ????, 93.

13 - ??, ??, ?????????????????? ??, ??, ?????????????? 2, ??, ??, Halifax, ??, ??, 94.

14 – ????. ????. ?????????????????? ?????? ?????????????? 2 ??????? Halifax, ??????? 74 ??? 75.

15 - ???. ??? ?????????????????? ????. ????? ??????????? 2 ??????? Halifax, ?????? 73.

16 – ??????? ?? 21?? ??????????? 2006, University of Huddersfield (?????? 2006, ?. I?1751).

17 – ??????? ??? 10?? ??????? 2008, C?309/06, Marks & Spencer (?????? 2008, ?. I?2283, ???? 28).

18 – ? ??????? ??????????? ???????, ???' ?????, ?????? ??????????, ???? ?? ???? 6,  
?????????? 1, ??? ????? ?????? ??? ?? ??? 24, ?????????? 1, ??? ?????? ????.

19 – ?? ??????, ??????????, ?? ??????????? ?? ? ?????????? ???????????, ?? ??? ??????  
????????????? ??, ??? ??? ??? ??? ??? ??? ?????????? ?????????????? ?????????? ??  
????? ??? ?????????? ?? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ?????? ???????????,  
????????? ?? ??? ?????????? ?????? ?????????? ??? ?????? ??? ?????? ??? ??? ?? ??? ?????  
????? ??? ?? ?????????? ?????? ???.

20 – ????? ?? ?????? 4 ??? ?????? ????????, ?? ?????????????? ????. ????. ????. ?????? ?????? ???????????????  
?????, ????. ?????? ?????? ?????????????? ????. ????. ?????????????? ????. ????. ?????????????? ???????????????,  
????????????? ????. ????. ?????????????? ????. ????. ????. ?????????????? ????. ????. ?????????????? ????.

22 – ??? ?? ?????????? ?????????? ??? ?? ? Suas, ? ?????? ??? ?????? ?????? ??? ??????  
Churchill ??? ?? ?????????? ?????????? ?? ??? Weald Leasing ? ??? CARC ? CML, ??? ???  
?????????? ??? ?? ?????????? ?????????? ??????????, ?? ??????? ?????????????? ??? ??  
????????? ?? ??????? ??? ?? ??? ?????? ?????? ?????????? ?????????? ??? ?? ?????????? ? ???  
??? ?????? ??? ?? ???????.

23 – ?? ?????? 27, ??????????? 1, ??? ?????? ??????? ?????? ??? «[?] ? ?????????? ???????  
?????? ?? ???? ???????, ?? ?????????? ???????, ?? ??? ?????? ?????? ?????? ??? ???????  
??????, ??? ??????????? ??? ??? ?????? ???????, ?? ?????? ??? ??????????? ???  
?????????? ??? ?????? ??? ?????? ?????? ??????? ??????????? ?????????????? ?  
?????????? [...]» ? ?????????? ??????? ??? ?? ??? ????? ?????????? ??????????????  
?????????? ??? ?????? 27, ?????????? 2 ??? 4, ??? ?????? ??????. ??? ?? ??? 27,  
????????? 5, «[?] ? ??? ??, ?? ?????? ???????, ?? ?????? ?????????? ??? 1?? ?????????? 1977 ??????  
????? , ??? ?? ??????????? ??????? ??? ?????????? 1, ?????????? ?? ?? ???????????, ???  
?? ?? ?? ?? ?? ?? ?????????????? ??? ?????? ?????? ??? ?? 1?? ?????????? 1978 ?? ?? ??  
????????? ???, ?????????? ??? ?????? ?????????????? ??? ??? ??????????? ??? ?? ??????????? ???  
????????? ??? ??????, ?? ?????? ??? ?????? ?????? ??? ?? ?????????? ?? ?????????? ??? ??  
????????? 1».

24 – ??., ???' ????????, ?????????????? ????. ?????????????? 17 ?????? Marks & Spencer,  
?????? 20 ??? 28. ??? ???? ???, ?? ??? ?????? ????. ?????????? ????. ?????????? ????. ?  
????????? ????. ?????? ????. ?????? ????. ?????? ????. ?????? ????. ?????? ????. ?????? ????.  
????????? ????. ?????? ????. ???? ???? ?????. ??., ????????, ??? ??????? ????. ?????? ????.  
Juliane Kokott  
???? ?????? ????. ?????. ???? ???? ?????????? ???'. ?????? ????. ???? ???? ?????? ????.  
????????? ????. ?????? ????. ??? ?????? ?????? ????. ????. ????. ????. ????. ????.  
?????. ??.. ?????? 43 ??? ????????. ???.

25 – ??., ???' ????????, ??????? ???. 13?? ??????????? 1985, 5/84, Direct Cosmetics (?????? 1985, ?. 617, ???? 37).

26 – ?????????????????? ????

27 – ?????????????????? ??? ?????????????? 2 ??????? Halifax. ? ?????????? ??? ?????? ???  
????????? ?????????? ??? ?????? ??? ?????? ??? ?????? ?????? ?????? ?????? ?????????? ???  
????????? ??? ?????????? ??? ?????????????? ?????? ?????? ??? ?????? ??? ?????? ??? ??????????  
????????????? ??????????/?????????????

28 - ?????????????????? ??? ???? ?????????????? 3.

29 - ?????????????????? ????

30 - ?????????????????? ????. ?????????????? 4.

31 – ??????? ?? ???? 80 ??? ?????????????????? ??? ?????????????? 2 ?????????? Halifax  
????????????? ?? ??? «??? ?????? ?????????? ?????????? ??????????» (? ?????????? ???  
???).

32 – ??? ?????? ?????? ?? ?????????? ?????????????????? ???? ?????????????? ???? ??  
????????????? ?? ?? ?????????? ?? ?? ??????? ?? ?? ??????.

33 – ??., ????????, ?????? 75 ??? ?????????????????????? ????? ?????????????? 2 ?????????? Halifax.

34 – ?? ??????? ??????????? ?????????????? ??? ?????????????? ???????? 3(2)(3) ??? ???.  
«????????? ??????» (commercially viable). ?? ??????? ?? ?????? ??? ??? ??????, ???????  
?????? ?? ??? ?????? ? ?????? ??? ?????? ?????? ??????????? ???????.

35 - ???. ??????????????? ???. ?????????????? 2 ??????? Halifax, ???? 81.

36 – ????. ?? ?????? ???, ?? ??????? ???????????? ??????? ?? ?????????? ??? ?? ?????????? ????.  
????? ?????????????? ?????????????? ?????? ??? ?? ?????????? ??????????????.

37 – ?. ????? 75 ??? ???????????????? ??? ?????????????? 2 ?????????? Halifax.