

THE WESTERN PACIFIC RAILROAD COMPANY

WESTERN PACIFIC BUILDING, 526 MISSION STREET
SAN FRANCISCO, CALIFORNIA 94105
TELEPHONE: (415) 982-2100

WALTER G. TREANOR
VICE PRESIDENT-LAW

KATHERINE M. GRIFFIN
GENERAL ATTORNEY
MICHAEL P. HEARNEY
EUGENE J. TOLER
ATTORNEYS

RECORDATION NO. *7856-A* Filed 1425

File: 6116-60

AUG 13 1979 - 11 40 AM

August 6, 1979

DELIVER TO: INTERSTATE COMMERCE COMMISSION

Honorable A. L. Mergenovich
Secretary
Interstate Commerce Commission
Washington, DC 20423

No. 9-225A041
Date AUG 13 1979
Fee \$10.00
ICC Washington, D. C

Dear Secretary Mergenovich:

Enclosed for recording with the Interstate Commerce Commission are the original and two (2) certified true copies of an Assignment and Assumption Agreement dated April 4, 1979 between The Western Pacific Railroad Company, a California corporation, 526 Mission Street, San Francisco, California 94105 as Assignor and The Western Pacific Railroad Company, a Delaware corporation (formerly Newrail Company, Inc.) as Assignee, 526 Mission Street, San Francisco, California 94105 wherein the Assignor assigned and the Assignee assumed that certain Conditional Sale Agreement dated as of February 1, 1975 between PACCAR, Inc., 1400 North Fourth Street, Renton, Washington 98055, Whitehead & Kales Company, 58 Haltiner, River Rouge, Michigan 48218, ACF Industries, Incorporated, 750 Third Avenue, New York, NY 10017, Midwest Freight Car Company, 213 West Adams, Clinton, Illinois 61717 as Vendors and Assignor as Vendee. The Vendor's interest in such Conditional Sale Agreement was assigned to Manufacturers Hanover Trust Company, 40 Wall Street, New York, New York 10005. Prior recording data:

<u>Document</u>	<u>Date</u>	<u>Recordation No.</u>
Conditional Sale Agreement	February 1, 1975	7856

The document relates to the following railroad equipment:

- 200 50' 70-ton insulated box cars with air bags manufactured by PACCAR Inc.; AAR mechanical designation XLI; Road numbers WP 65401 - 65600, both inclusive.
- 60 100-ton box cars with cushioning manufactured by PACCAR Inc.; AAR mechanical designation XL; Road numbers WP 3151 - 3167, both inclusive.

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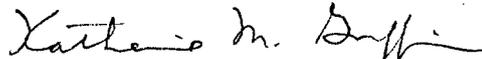
- 10 89' 4" tri-level auto rack "snap-pak" cars manufactured by Whitehead & Kales; AAR mechanical designation FA; Road numbers WP 89001 - 89010, both inclusive.
- 35 100-ton 4,600 cu. ft. center flow hopper cars manufactured by ACF Industries, Incorporated; AAR mechanical designation LO; Road numbers WP 11966 - 12000, both inclusive.
- 65 100-ton 2,800 cu. ft. open top hopper cars manufactured by Midwest Freight Car Company; AAR mechanical designation HT; Road numbers WP 10231 - 10295, both inclusive.

Identifying marks on all of the above equipment:
The words "Manufacturers Hanover Trust Company, Agent, Owner" printed on each side of each unit.

Also enclosed is this Company's voucher in the sum of \$10.00 payable to the Interstate Commerce Commission being the prescribed fee for filing and recording the foregoing document.

Please return the original and counterpart with recordation data stamped thereon to the representative of the office of Kunkel Transportation Services, Inc., 425 - 13th Street, N.W., Suite 523, Washington, D.C. 20004, who will be delivering this letter on our behalf.

Yours very truly,



Katherine M. Griffin

KMG:jc

Attachments

RECORDATION NO. 7856-14 Filed 1425

AUG 13 1979 - 11 40 AM

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT AND ASSUMPTION AGREEMENT

1. PARTIES

This Assignment and Assumption Agreement is made this fourth day of April, 1979, between THE WESTERN PACIFIC RAILROAD COMPANY, a California corporation (Assignor), and THE WESTERN PACIFIC RAILROAD COMPANY, a Delaware corporation, formerly named Newrail Company, Inc. (Assignee).

2. FACTS

2.1 Assignor is party to a Conditional Sale Agreement with Paccar, Inc., Whitehead and Kales Company, ACF Industries, Inc. and Midwest Freight Car Company, wherein Paccar, Whitehead and Kales, ACF, and Midwest Freight Car Company assigned their respective interests therein to Manufacturers Hanover Trust Company, effective February 1, 1975, recorded with the Interstate Commerce Commission on March 7, 1975, Recordation No. 7856, hereinafter referred to as the "Agreement."

2.2 By a Purchase and Sale Agreement dated February 16, 1978, Assignor has agreed to sell substantially all of its assets, properties and rights of every kind and description, and business as a going concern to Assignee, and Assignee has agreed to assume, with certain exceptions, all of the duties, liabilities and obligations of Assignor.

2.3 Pursuant to the Agreement described in Paragraph 2.2, Assignor desires to assign its interest in the Agreement, and Assignee desires to assume the obligations of Assignor thereunder.

3. ASSIGNMENT AND ASSUMPTION

3.1 Assignment. Assignor hereby sells, assigns and transfers to Assignee, its successors and assigns, all of its right, title and interest under the Agreement.

3.2 Assumption. Assignee hereby assumes and agrees to perform, fulfill and discharge in accordance with the terms of the Agreement, at the sole cost of Assignee, each and all of the obligations, covenants, terms and conditions to be kept or performed by Assignor under the Agreement, including, but not limited to (if applicable), Basic Rent, all Supplemental Rent and Casualty Value. Assignee will, at its sole cost and expense, appear in and defend every action or proceeding arising under, growing out of, or in any way resulting from, the Agreement, or the duties, obligations or covenants of Assignor thereunder, and to pay any and all amounts for which Assignor or Assignee may be held liable in respect thereof, including the payment of all reasonable attorneys' fees incurred by Assignor in any such action or proceeding.

4. APPOINTMENT OF ATTORNEY IN FACT

Assignor hereby irrevocably appoints Assignee as its true and lawful attorney, irrevocably, with full power to ask for, and receive, any property, or refund monies to which Assignor is entitled under the Agreement, or to enforce any and all other rights or privileges of Assignor under the Agreement.

5. MISCELLANEOUS

5.1 Assignee shall notify all other parties to the Agreement of this Assignment and Assumption Agreement, and shall cause this Assignment and Assumption Agreement to be recorded with the Interstate Commerce Commission promptly after the execution and delivery hereof.

5.2 Any provision of this Assignment and Assumption Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, Assignor hereby waives any provision of law

which renders any provision hereof prohibited or unenforceable in any respect.

ASSIGNOR:

THE WESTERN PACIFIC RAILROAD COMPANY, a California corporation

By *[Signature]*
Its Sr. Vice President - Finance

Attest *[Signature]*
Its SECRETARY

ASSIGNEE:

THE WESTERN PACIFIC RAILROAD COMPANY, a Delaware corporation (formerly named Newrail Company, Inc.)

By *[Signature]*
Its Sr. Vice President - Finance

Attest *[Signature]*
Its SECRETARY

STATE OF CALIFORNIA)
)
) SS
CITY AND COUNTY OF SAN FRANCISCO)

ON April 2, 1979, before me, the undersigned, a Notary Public in and for the said State, personally appeared R. W. STUMBO, JR. and W. D. BREW, known to me to be the persons who executed the within Instrument, on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within Instrument pursuant to its bylaws or a resolution of its Board of Directors.

WITNESS my hand and official seal.



Diane Lorette Fafoutis
Notary Public in and for said State

STATE OF CALIFORNIA)
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) SS
CITY AND COUNTY OF SAN FRANCISCO)

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WITNESS my hand and official seal.



Diane Lorette Fafoutis
Notary Public in and for said State

I, DIANE LORETTE FAFOUTIS, a Notary Public in and
for the City and County of San Francisco, State of California,
do hereby certify that I have compared the foregoing document
with the original and that it is a true and correct copy
in all respects.

Diane Lorette Fafoutis
Notary Public

