

JAN 8 1973

AGREEMENT AND ASSIGNMENT

Dated as of December 1, 1972

6851-B

RECORDATION NO. _____ Filed & Recorded

Among

JAN 17 1973 - 10 05 AM

GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION)

INTERSTATE COMMERCE COMMISSION

AND

ORTNER FREIGHT CAR COMPANY

Manufacturers

and

CHEMICAL BANK

Assignee

(1972 Weyerhaeuser Trust)

TABLE OF CONTENTS

	Page
Parties	1
Recitals	1
Section 1. Assignment	2
Section 2. Covenants and Agreements of Manufacturers	3
Section 3. Marking of Equipment	5
Section 4. Execution of Documents	5
Section 5. Conditions Precedent to Payment by Assignee	5
Section 6. Subsequent Assignments	9
Section 7. Additional Agreements of Manufacturers	9
Section 8. Governing Law	9
Section 9. Execution	10

AGREEMENT AND ASSIGNMENT dated as of December 1, 1972, among GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), and ORTNER FREIGHT CAR COMPANY (collectively the "Manufacturers" and individually "Manufacturer") and CHEMICAL BANK, a New York banking corporation (the "Assignee").

WHEREAS, GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION) and ORTNER FREIGHT CAR COMPANY (collectively the "Manufacturers" and individually the "Manufacturer") and THE LIBERTY NATIONAL BANK AND TRUST COMPANY OF OKLAHOMA CITY, not in its individual capacity but solely as Trustee (the "Trustee-Vendee") under a Trust Agreement dated as of December 1, 1972, as heretofore or hereafter restated and amended (the "Trust Agreement") have entered into a Conditional Sale Agreement dated as of December 1, 1972 (the "Conditional Sale Agreement"), covering the construction, sale and delivery on the conditions therein set forth, by the Manufacturers and the purchase by the Trustee-Vendee of the railroad equipment described in Schedules A-1 and A-2 to the Conditional Sale Agreement (collectively the "Equipment" and individually "Items of Equipment"); and

WHEREAS, the Trustee-Vendee is leasing the Items of Equipment described in said Schedule A-1 under an Equipment Lease, as amended and restated by First Amendment and Restatement thereof, each dated as of the date hereof to WEYERHAEUSER COMPANY, a Washington corporation ("Weyerhaeuser"); and

WHEREAS, the Trustee-Vendee is leasing the Items of Equipment described in said Schedule A-2 under an Equipment Lease as amended and restated by First Amendment and Restatement thereof, each dated as of the date hereto to TEXAS, OKLAHOMA & EASTERN RAILROAD COMPANY, an Oklahoma corporation ("Texas Railroad"); and

WHEREAS, the obligations of Texas Railroad under said Equipment Lease are guaranteed under a Guaranty Agreement (the "Guaranty Agreement") dated as of the date hereof by Weyerhaeuser; and

WHEREAS, said Equipment Leases, as heretofore or hereafter supplemented or amended, are herein sometimes collectively called the "Leases", and Weyerhaeuser and Texas Railroad are herein sometimes collectively called the "Lessees";

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (the "Assignment"),

W I T N E S S E T H:

That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to each Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

Section 1. Assignment. Each of the Manufacturers hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) All the right, title and interest of such Manufacturer in and to each Item of Equipment to be built by it when and as delivered and accepted and upon payment by the Assignee to such Manufacturer of the amount required to be paid under Section 5 hereof with respect thereto;

(b) All the right, title and interest of such Manufacturer in and to the Conditional Sale Agreement and in and to any and all amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Trustee-Vendee under the Conditional Sale Agreement, other than the following rights which are hereby expressly reserved and excluded from the foregoing assignment namely:

(i) the right to construct and deliver the Items of Equipment to be built by it and to receive the payments specified in Section 3.3(a) or arising under Section 12.7 of the Conditional Sale Agreement;

(ii) the right to reimbursement for taxes paid or incurred by the Manufacturer; and

(iii) the right to indemnity for claims arising against the respective Manufacturers in their individual capacities as provided in Sections 10.1 and 12 of the Conditional Sales Agreement and Section 6 of the Leases; and

(c) Except as limited above in subparagraph (b) hereof, all of such Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against such Manufacturer for or on account of the failure of the Trustee-Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of such Manufacturer to deliver the various Items of Equipment to be built by it in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained in Sections 10.3 and 11 of the Conditional Sale Agreement or relieve the Trustee-Vendee from its obligations to such Manufacturer under Sections 10 and 12 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Section 12.4 of the Conditional Sale Agreement, all obligations of such Manufacturer to the Trustee-Vendee shall be and remain enforceable by the Trustee-Vendee, its successors and assigns, against and only against such Manufacturer. In furtherance of the foregoing assignment and transfer, such Manufacturer hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for such Manufacturer to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Trustee-Vendee with the terms and agreements on their parts to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

Section 2. Covenants and Agreements of Manufacturers.

Each of the Manufacturers covenants and agrees that it will construct and deliver the various Items of Equipment to be built by it to the Trustee-Vendee, in accordance with the provisions of the Conditional Sale Agreement, and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by such Manufacturer. Each Manufacturer further covenants and agrees that it will warrant to the Assignee and the Trustee-Vendee that at the time of delivery of each Item of Equipment to be built by it to the Trustee-Vendee under the Conditional Sale Agreement it had legal title to such Item and good and lawful right to sell such Item and the title to such Item was free of all claims, liens and encumbrances of any nature except only the rights of the Trustee-Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease; and each Manufacturer further covenants and agrees that it will defend the title to such Item built by it against the demands of all persons

whomsoever based on claims originating prior to said delivery of such Item by such Manufacturer to the Trustee-Vendee; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Trustee-Vendee thereunder and the Lessees under the Leases.

Each of the Manufacturers covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, such Manufacturer will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever of the Trustee-Vendee arising out of a breach by such Manufacturer of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or under Sections 10 and 11 of the Conditional Sale Agreement, or by reason of any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Trustee-Vendee by such Manufacturer. Any and all such obligations shall be and remain enforceable by the Trustee-Vendee against and only against such Manufacturer and shall not be enforceable against the Assignee or any party or parties in whom title to the Equipment or any Item thereof or any of the rights of such Manufacturer under the Conditional Sale Agreement shall vest by reason of this Assignment or of successive assignments. The Assignee will give notice to such Manufacturer of any suit, proceeding or action by the Assignee herein described.

Except in cases of designs specified by the Lessee and not developed or purported to be developed by such Manufacturer, and articles and materials specified by the Lessee and not manufactured by such Manufacturer, each Manufacturer agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including reasonable royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the Equipment, or any Item thereof, of any design, article or material infringing or claimed to infringe on any patent or other right.

Each of the Manufacturers agrees that any amount payable to it by the Trustee-Vendee or the Lessees, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien or charge on any Items of the Equipment.

Section 3. Marking of Equipment. Each of the Manufacturers will cause to be plainly, distinctly, permanently and conspicuously marked by a plate or stencil in contrasting color on each side of each Item of Equipment, at the time of delivery thereof to the Trustee-Vendee, in letters not less than one inch in height the following legend:

"Leased by The Liberty National Bank and Trust Company of Oklahoma City, as Trustee and subject to a Security Interest recorded with I.C.C."

Section 4. Execution of Documents. Upon request of the Assignee, its successors and assigns, each of the Manufacturers will execute all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of such Manufacturer therein or in the Equipment.

Section 5. Conditions Precedent to Payment by Assignee. The Assignee, on or before noon on each Closing Date fixed as provided in Section 3.5 of the Conditional Sale Agreement with respect to a Group (as defined in Section 3.2 of said Agreement) of equipment, shall pay in immediately available funds to such Manufacturer of such Group at the principal office of the Assignee in New York, New York an amount equal to that portion of the Purchase Price (as defined in Section 3.1 of said Agreement) of such Group required to be paid on such Closing Date pursuant to Section 3.3(b) of said Agreement, provided that there shall have been delivered to the Assignee the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to its special counsel hereinafter mentioned:

(a) Bill or Bills of Sale from such Manufacturer to the Assignee, transferring to the Assignee title to the Items of Equipment in the Group and warranting to the Assignee and to the Trustee-Vendee that at the time of delivery to the Trustee-Vendee under the Conditional Sale Agreement the Manufacturer had legal title to such Items and good and lawful right to sell such Items and title to such Items was free of all claims, liens and encumbrances of any nature except only the rights of the Trustee-Vendee under the Conditional Sale Agreement and the rights of the Lessee thereof under the Lease relating thereto;

(b) Certificate or Certificates of Acceptance signed by an inspector or other authorized representative of the Lessee thereof and Trustee-Vendee stating that the Items of Equipment in the Group have been inspected and accepted by him on behalf of said Lessee and the Trustee-Vendee and further stating that there was plainly, distinctly, permanently and conspicuously marked by a plate or stencil in contrasting color on each side of each of such Items at the time of its acceptance, in letters not less than one inch in height, the following legend:

"Leased by The Liberty National Bank and Trust Company of Oklahoma City, as Trustee and subject to a Security Interest recorded with the I.C.C."

(c) Invoices for the Items of Equipment in the Group accompanied by or having endorsed thereon a certification by the Lessee thereof as to the correctness of the prices of such Items as set forth in said invoices;

(d) Opinion of Messrs. Chapman and Cutler, who are acting as special counsel for the Assignee dated as of such Closing Date and stating that (i) the Trustee-Vendee is a duly organized and existing corporation in good standing under the laws of the state of its incorporation, (ii) the Trust Agreement has been duly authorized, executed and delivered by the Trustee-Vendee and constitutes a valid, binding and effective agreement and acceptance of trust by the Trustee-Vendee in accordance with the terms thereof, (iii) the trust created and provided for by the Trust Agreement is not taxable as an association under existing statutes, regulations and decisions relating to Federal Income Taxes, (iv) the separate Acquisition Agreements (the "Acquisition Agreements") dated as of December 1, 1972 entered into by the Lessee of Items of Equipment referred to therein, and the Trustee-Vendee with each Manufacturer, the Conditional Sale Agreement and the Lease have been duly authorized, executed and delivered by the respective parties thereto and are valid and binding instruments enforceable in accordance with their respective terms, (v) this Assignment has been duly authorized, executed and delivered by the respective parties hereto and is a valid and binding instrument, (vi) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, (vii) title to each Item of Equipment in the Group is validly vested in the Assignee and such Item, at the time of delivery thereof

to the Trustee-Vendee under the Conditional Sale Agreement, was free of all claims, liens and encumbrances except only the rights of the Trustee-Vendee under the Conditional Sale Agreement and the rights of the Lessee thereof under the Lease relating thereto, (viii) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or this Assignment or the Lease relating thereto, and (ix) the Conditional Sale Agreement, this Assignment and the Leases have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any State of the United States of America;

(e) Opinion of counsel for the Lessees, dated as of such Closing Date, to the effect set forth in clauses (vii), (viii) and (ix) of subparagraph (d) above, and stating that (i) each Lessee is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation, and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the separate Acquisition Agreements and Leases have each been duly authorized, executed and delivered on behalf of the Lessee thereunder and are valid and binding instruments enforceable against such Lessee, in accordance with their respective terms;

(f) Opinion of counsel for each Manufacturer, dated as of such Closing Date, to the effect set forth in clauses (vi) and (vii) of subparagraph (d) above and stating that (i) such Manufacturer is a duly organized and existing corporation in good standing under the laws of the state of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Conditional Sale Agreement, this Assignment and the separate Acquisition Agreement with such Manufacturer have each been duly authorized, executed and delivered by such Manufacturer and are valid instruments binding upon such Manufacturer and enforceable against such Manufacturer in accordance with their terms;

(g) An opinion of counsel for the Trustee-Vendee addressed to the Trustor under the Trust Agreement, the Assignee and Messrs. Chapman and Cutler, to the effect that (i) the Trustee-Vendee is a duly organized and existing corporation in good standing under the laws of the state of

its incorporation, (ii) the Trust Agreement has been duly authorized, executed and delivered by the Trustee-Vendee, (iii) the Trustee-Vendee has full right, power and authority under the Trust Agreement to enter into, execute and deliver the Acquisition Agreements, the Conditional Sale Agreement and the Lease and to perform each and all of the matters and things provided for in said instruments and (iv) the Acquisition Agreements, the Conditional Sale Agreement and the Leases have been duly executed and delivered by the Trustee-Vendee; and

(h) An opinion of counsel for Weyerhaeuser stating that the said Guaranty Agreement has been duly authorized, executed and delivered by Weyerhaeuser and constitutes the legal, valid and binding agreement of Weyerhaeuser enforceable in accordance with its terms;

(i) Unless payment of the amount, payable on such Closing Date pursuant to Section 3.3(a) of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Trustee-Vendee, the receipt from the Manufacturer for such payment.

In giving the opinions specified in the preceding subparagraphs (d), (e), (f), (g) and (h), counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinions specified in the preceding subparagraphs (d) and (e), counsel may in fact rely as to the title to the Items of Equipment upon the opinion of counsel for the Manufacturer of such Items. In the opinion required under subparagraph (d) above, counsel shall state that in their opinion the Assignee is justified in relying on the opinion required under subparagraphs (e), (f), (g) and (h).

The Assignee shall not be obligated to make any of the above mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall be subsisting under the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the relevant Manufacturer, without recourse to the Assignee, all right, title and interest assigned hereunder to the Assignee in and to the Items of Equipment with respect to which payment has not been made by the Assignee.

It is understood and agreed that the Assignee shall not be required to make any payment with respect to any Items of Equipment excluded from the Conditional Sale Agreement pursuant to Section 2.3 thereof.

Section 6. Subsequent Assignments. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Trustee-Vendee thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

Section 7. Additional Agreements of Manufacturers. Each of the Manufacturers hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the other parties thereto) it is a valid and existing agreement binding upon such Manufacturer and the other parties thereto, and that it is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be.

Section 8. Governing Law. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited.

Section 9. Execution. This Assignment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. The Assignee agrees to deliver one of such counterparts, or a certified copy thereof, to the Trustor under the Trust Agreement, the Trustee-Vendee and each Lessee. Although this Assignment is dated for convenience as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

It shall not be necessary that any counterpart be signed by all of the Manufacturers so long as each counterpart shall be signed by the Assignee and by one or more of the Manufacturers.

IN WITNESS WHEREOF, each of the Manufacturers and the Assignee have caused these presents to be executed in their respective corporate names by officers or representatives duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the day, month and year first above written.

GENERAL MOTORS CORPORATION
(ELECTRO-MOTIVE DIVISION)

Attest:

W. A. Thomas
Assistant Secretary

By

Harold J. Smith
Its Vice President

ORTNER FREIGHT CAR COMPANY

Attest:

F. Lumber
Assistant Secretary

By

E. C. Otter
Its ~~Vice~~ President

CHEMICAL BANK, as Assignee

Attest:

[Signature]
Assistant Secretary

By

W. A. Delaport
Its Vice President

STATE OF Illinois)
COUNTY OF Cook) SS

On this 8 day of January, 1973, before me personally appeared HAROLD F. SMITH, to me personally known, who, being by me duly sworn, says that he is the Vice President of GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Signature]
Notary Public

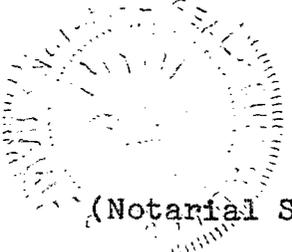
(Notarial Seal)

My commission expires: October 28, 1973

STATE OF Ohio)
COUNTY OF Hamilton) SS

On this 10th day of January, 1973, before me personally appeared R. C. Oster, to me personally known, who, being by me duly sworn, says that he is the ~~Vice~~ President of ORTNER FREIGHT CAR COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Signature]
Notary Public

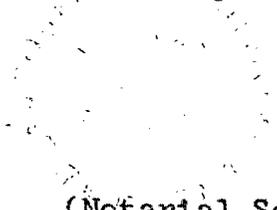


(Notarial Seal)

My commission expires: Notary Public, Hamilton County, Ohio
My Commission Expires August 19, 1973

STATE OF NY)
COUNTY OF NY) SS

On this 16 day of January, 1973, before me personally appeared Donald H. Delaport to me personally known, who, being by me duly sworn, says that he is a Vice Pres. of CHEMICAL BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said national association, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.





Notary Public

(Notarial Seal)

My commission expires:

EUGENE J. VENIER
NOTARY PUBLIC, State of New York
No. 41-9457335
Qualified in Queens County
Commission Expires March 30, 1974