

Michael C. Bynane
Assistant General Attorney



8-199A019
No.

DATE JUL 18 1978
Fee \$ 5.00

Law Department
Terminal Tower
P. O. Box 6419
Cleveland, Ohio 44101
216 623 2472

REGISTERED MAIL
Return Receipt Requested

ICC Washington, D. C.

July 13, 1978

Mr. H. G. Homme, Jr., Acting Secretary
Interstate Commerce Commission
12th Street and Constitution Avenue, N.W.
Washington, D.C. 20423

RECORDATION NO. 9582 Filed & Recorded

JUL 18 1978 - 10 22 AM

FEE OPERATION
I.C.C. B&O

JUL 18 10 22 AM '78

RECEIVED

Dear Mr. Homme:

INTERSTATE COMMERCE COMMISSION

Pursuant to Section 20c of the Interstate Commerce Act and the Commission's rules and regulations, I enclose for filing and recording six counterparts of an Agreement dated as of July 15, 1978 between The Chessie Corporation and The Baltimore and Ohio Railroad Company. The Agreement is an interim user agreement allowing B&O to use the equipment described below pending completion of permanent financial arrangements.

Set out below are the names and addresses of the parties to the transaction:

Bailor: The Chessie Corporation
P. O. Box 6419
Cleveland, Ohio 44101

Bailee: The Baltimore and Ohio Railroad Company
2 North Charles Street
Baltimore, Maryland 21201

The equipment covered by the enclosed documents consists of 1,103 100-ton open top hopper cars, to bear Bailee's road numbers, inclusive, AAR mechanical designation HT. The above equipment will be lettered "Baltimore and Ohio", "B&O", "Chessie", "Chessie System", or in some other appropriate manner and will also be marked:

"OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 20C."

Also enclosed is this Company's draft in the amount of \$50 representing the required recordation fee. Please return four recorded counterparts to the undersigned.

I would be obliged if you would also telephone me collect at (216) 623-2472 promptly upon receipt of the enclosed documents.

Very truly yours,

Michael C. Bynane

MCB:eb
Encl.



The Chessie System railroads are the C&O, B&O, WM and affiliated lines. Chessie System, Inc. is the parent for the railroads, Chessie Resources, Inc., Western Pocahontas Corp. and The Greenbrier.

666181 - 268981

EXECUTED IN 6 COUNTERPARTS

OF WHICH THIS IS NO. 1

9582

RECORDATION NO. Filed & Recorded

JUL 18 1978 - 10 22 AM

INTERSTATE COMMERCE COMMISSION

AGREEMENT

Dated as of July 15, 1978

between

THE CHESSIE CORPORATION

and

THE BALTIMORE AND OHIO RAILROAD COMPANY

Covering

1,103 100-ton Open Top Hopper Cars

THIS AGREEMENT, dated as of July 15, 1978, by and between
THE CHESSSIE CORPORATION, a Delaware corporation ("Manufacturer"),
and THE BALTIMORE AND OHIO RAILROAD COMPANY, a Maryland corporation ("B&O"):

W I T N E S S E T H :

The Manufacturer and B&O heretofore entered into a letter Agreement dated July 15, 1978 (a copy of which letter Agreement is made a part hereof by reference), whereunder the Manufacturer agreed to construct and deliver to B&O, and B&O agreed to accept and pay for, the following railroad equipment (Cars):

1,103 100-ton open top hopper cars,
to bear B&O's road numbers
186897-187999, inclusive.

Delivery of the Cars by the Manufacturer to B&O is scheduled to begin in July, 1978. However, inasmuch as B&O has not as yet consummated financing arrangements (pursuant to a Conditional Sale Agreement, or otherwise), it is not in position to accept delivery of and pay for the Cars under the terms of the letter Agreement at this time. B&O represents that such financing arrangements will be consummated, however, on or before November 1, 1978. B&O (in order that it may use the Cars pending completion of the above financing arrangements) has arranged with the Manufacturer to give it temporary custody and possession of the Cars on their completion, solely as a bailee of the Cars, and the Manufacturer is willing to do so upon the terms and conditions hereinafter stated.

In consideration of the premises, the Manufacturer hereby delivers to B&O and B&O hereby accepts from the Manufacturer the Cars

as of the date each of them is delivered to B&O at Russell, Kentucky, or such other place as may be specified by B&O, for the period ending on the earlier of November 1, 1978, or the date of consummation of the above financing arrangements. At such time this Agreement shall automatically be cancelled and superseded without further action by or notice to any party concerned.

Title to the Cars shall remain in the Manufacturer and B&O's right and interest therein is and shall be solely that of possession, custody, and use as bailee under this Agreement. Transfer of title shall be effected only at the time of delivery of the bills of sale. B&O, without expense to the Manufacturer, will promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation under Section 20c of the Interstate Commerce Act. In addition, B&O shall do such other acts as may be required by law, or reasonably requested by the Manufacturer, for the protection of the Manufacturer's title to and interest in the Cars.

B&O agrees that it will permit no liens of any kind to attach to the Cars, and that it will

- (a) indemnify and save harmless the Manufacturer from any and all claims, expenses, or liabilities of whatsoever kind, and
- (b) Pay any and all taxes, fines, charges, and penalties that may accrue or be assessed or imposed upon the Cars or the Manufacturer because of its ownership or because of the use, operation, management, or handling of the Cars by B&O during the term of this Agreement.

B&O's obligations contained in this paragraph shall survive the termination by mutual agreement or otherwise of this Agreement.

B&O will, at its own expense, keep and maintain the Cars in good order and running condition and will, at its option, repair or replace or promptly pay to the Manufacturer the purchase price in cash of those Cars which may be damaged or destroyed by any cause during the term of this Agreement.

Prior to the delivery of each Car to B&O under this Agreement, it will be numbered with a road number as hereinbefore indicated, and there shall be plainly, distinctly, permanently, and conspicuously marked upon each side of each Car, in contemplation of the financing heretofore referred to, the following legend in letters not less than one inch in height:

OWNERSHIP SUBJECT TO A
SECURITY AGREEMENT
FILED UNDER THE
INTERSTATE COMMERCE
ACT, SECTION 20C.

B&O hereby agrees to indemnify the Manufacturer against any liability, loss, or expense incurred by it as a result of the placing of the aforementioned markings on the Cars.

In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced, or destroyed on any Car, B&O shall immediately cause the same to be restored or replaced.

All or any of the rights, benefits, or advantages of the Manufacturer, including the right to receive the purchase price of the Cars as provided in the letter Agreement, may be assigned by the Manufacturer and reassigned by any assignee at any time or from time to time,

provided, however, that no such assignment shall subject any such assignee to any of the Manufacturer's warranties, indemnities, or any other obligations contained in this Agreement or in the letter Agreement relating to the Cars. In the event the Manufacturer assigns its rights to receive the payments herein and/or under the letter Agreement, and B&O receives written notice thereof from the Manufacturer, together with a counterpart of such assignment stating the identity and the post office address of the assignee, all payments thereafter to be made by B&O under this Agreement shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to B&O.

In the event of any assignment by the Manufacturer of its rights to receive any payments under this Agreement or under the letter Agreement, the rights of such assignee to such payments as may be assigned, together with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, set-off, counterclaim, or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer in respect to the Cars, not subject to any defense, set-off, counterclaim, or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to B&O by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by B&O, its successors and assigns, only against the Manufacturer and its successors and assigns (other than assignees as such of rights, benefits, or advantages

assigned pursuant to this Agreement).

B&O agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to B&O of the Cars, as contemplated by this Agreement, shall not relieve B&O of its obligations to accept, take, and pay for the Cars in accordance with the terms of the letter Agreement, or impair any of the Manufacturer's rights under the letter Agreement.

THE CHESSIE CORPORATION

By *L.C. Foyh*
Assistant Vice-President
and Treasurer

[Corporate Seal]

Attest:

Patricia J. Hendry
Assistant Secretary

THE BALTIMORE AND OHIO RAILROAD COMPANY

By *L.C. Foyh*
Assistant Vice-President
and Treasurer

[Corporate Seal]

Attest:

Patricia J. Hendry
Assistant Secretary

APPROVED AS TO FORM
Y.C. Byrnes
ASSISTANT GENERAL ATTORNEY

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

On this /3TH day of July, 1978, before me personally appeared L. C. Roig, Jr., to me personally known, who, being by me duly sworn, says that he is the Assistant Vice-President and Treasurer of THE CHESSIE CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of 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.

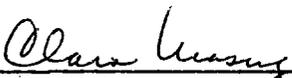


CLARA MASUGA
Notary Public, State of Ohio, Cuyahoga County
My Commission Expires April 21, 1979

[Notarial Seal]

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

On this /3TH day of July, 1978, before me personally appeared L. C. Roig, Jr., to me personally known, who, being by me duly sworn says that he is the Assistant Vice-President and Treasurer of THE BALTIMORE AND OHIO RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of 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.



CLARA MASUGA
Notary Public, State of Ohio, Cuyahoga County
My Commission Expires April 21, 1979

[Notarial Seal]