

RECORDATION NO. 8457-K Filed & Recorded

APR 11 1977 - 11 30 AM

INTERSTATE COMMERCE COMMISSION



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ICC Washington, D.C.

RECEIVED

April 7, 1977

RECORDATION NO. 8457-K Filed & Recorded

APR 11 1977 - 11 30 AM

INTERSTATE COMMERCE COMMISSION

Hon. Robert L. Oswald
Secretary
Interstate Commerce Commission
Washington, D. C. 20423

RE: Assignment of Lease and Agreement dated as of August 24, 1976, filed with the ICC on August 27, 1976, at 1:30 p.m. and assigned recordation number 8457B.

Dear Sir:

Enclosed for filing with and recording by the Interstate Commerce Commission are three copies of an Agreement and Assignment made as of December 1, 1976, between the St. Johnsbury & Lamoille County Railroad ("SJ&L") and the Vermont Northern Railroad Company, assigning to Vermont Northern Railroad Company all of the right, title and interest of the SJ&L to that certain Lease Agreement made as of December 30, 1975 between SJ&L and SSI Rail Corp. (the "Lease Agreement") and three counterparts of Amendment Number 1 dated January 1, 1977 to the Lease Agreement between SSI Rail Corp., Lessor, and Vermont Northern Railroad Company, Lessee, covering the following railroad equipment:

100 50'6", 70-ton capacity, general service, single-sheath boxcars with 10' doors, numbered SJL 8000 through 8049, inclusive, and VNOR 7700 through 7749, inclusive.

SSI's interest in its lease of railroad equipment with the Vermont Northern Railroad Company, as successor in interest to the SJ&L, has been previously assigned to First Security Bank of Utah, N.A. as Trustee under an Equipment Trust Agreement dated as of July 15, 1976, as and only to the extent that such Agreement relates to equipment numbered SJL 8000 - SJL 8049.

David M. Schwartz
David M. Schwartz

Hon. Robert L. Oswald
April 7, 1977
Page 2.

Please file and record the Agreement and Assignment and the Amendment Number 1 referred to in this letter and cross-index the document under (i) the Assignment of Lease and Agreement dated as of August 24, 1976 by and between SSI Rail Corp. and First Security Bank of Utah, N.A. as Trustee under an Equipment Trust Agreement dated as of July 15, 1976--the Assignment of Lease and Agreement was filed with the ICC on August 27, 1976 at 1:30 p.m. and assigned recordation number 8457B, the Equipment Trust Agreement was filed with the ICC on August 27, 1976 at 1:30 p.m. and assigned recordation number 8457; and (ii) under the names SSI Rail Corp., First Security Bank of Utah, N.A. as Trustee under an Equipment Trust Agreement dated as of July 15, 1976, St. Johnsbury & Lamoille County Railroad and Vermont Northern Railroad Company.

Also enclosed is this Company's check in the sum of \$20.00, payable to the Interstate Commerce Commission, being the prescribed fee for filing and recording the foregoing documents.

Please return all copies of the enclosed counterparts with recordation data stamped thereon to the representative of the office of Sullivan and Worcester, Attorneys at Law, Washington, D. C., who will be delivering this letter on our behalf.

Very truly yours,



Martin D. Goodman
Secretary

MDG:md
Enc.

Interstate Commerce Commission
Washington, D.C. 20423

4/11/77

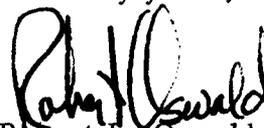
OFFICE OF THE SECRETARY

Martin D. Goodman
SSI Rail Corp.
Two Embarcadero Center
San Francisco, Calif. 94111

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 4/11/77 at 11:30am , and assigned recordation number(s) 8457-J & 8457-K

Sincerely yours,


Robert L. Oswald
Secretary

Enclosure(s)

SE-30
(5/76)

AGREEMENT AND ASSIGNMENT ("this Assignment") made as of this first day of December, 1976, between St. Johnsbury & Lamoille County Railroad, a Vermont corporation (hereinafter called "St. J&LC"), and Vermont Northern Railway Co., a Nevada corporation (hereinafter called "Assignee")

REGISTRATION NO. 8457-8

W I T N E S S E T H:

APR 11 1977 - 11 30

Whereas, St. J&LC and SSI Rail Corp., a Delaware corporation (hereinafter called "SSI,") heretofore entered into a Lease agreement made as of December 30, 1975 (hereinafter called "the Agreement,") providing for the leasing by SSI to St. J&LC of 100 50' 6" 70-ton capacity, general service, single sheath boxcars of which 50 boxcars numbered SJL 8000 through SJL 8049 inclusive have been delivered (such 50 boxcars are hereinafter called "the Equipment");

WHEREAS, SSI has delivered and St. J&LC has accepted the Equipment; and

WHEREAS, the 96.1 miles of railroad track operated by the St. J&LC as of the date of the execution of the Agreement (hereinafter called the "railroad tracks") were leased by St. J&LC from the State of Vermont and said lease has not been renewed by the State of Vermont, but instead the State of Vermont has filed for abandonment of the operating rights of St. J & LC and proposes to contract with Assignee to provide rail service; and

WHEREAS, although St. J&LC is currently protesting such action by the State of Vermont, St. J&LC desires that the Equipment remain in continuous use and that it be relieved of responsibility for such Equipment pending resolution of its dispute with the State of Vermont;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and of the covenants herein set forth, the parties agree as follows:

1. Effective upon the date of execution of this Assignment by both parties thereto, St. J&LC hereby sells, assigns, transfers and sets over to Assignee, its successors and assigns, the following:

- (a) All the right, title and interest of St. J&LC in and to the Agreement and the Equipment subject to the Agreement, and all rents, issues, profits and proceeds thereof including, without limitation, (i) all monies ~~XXXXXX~~ to become due *to St. J&LC under or in connection with the Lease, whether as rent, indemnities, claims for damages or otherwise, and (ii) all rights and powers of St. J&LC under the Lease to exercise any option, to consent or make any waiver or agreement or to take any other action.

date of the Assignment - 1-14-77

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(b) All right, title, interest, powers, privileges and remedies of St. J&LC in, to and under the Agreement including all amounts which may be or become due or owing under the Agreement;

without any recourse, however, against St. J&LC for or on account of the failure of SSI to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Agreement. In furtherance of the foregoing assignment and transfer, St. J&LC hereby authorizes and empowers Assignee in the Assignee's own name, or in the name of and as attorney for St. J&LC, to ask, demand, sue for, collect, receive and enforce any and all sums to which Assignee is or may be entitled under this Assignment and compliance by SSI with the terms and agreements on its part to be performed under the Agreement, but at the expense and liability and for the sole benefit of Assignee.

2. Assignee covenants that as soon as practicable it shall, in accordance with all applicable requirements of the Interstate Commerce Commission and the Association of American Railroads, cause the reporting marks of the Equipment to be changed and will execute and file such documents as may be necessary in connection therewith.

~~Assignee agrees that if prior to November 1, 1977, St. J&LC is successful in its dispute with the State of Vermont and obtains the lease for the railroad tracks, Assignee will immediately reassign the Agreement to St. J&LC, and in such event, Assignee shall be fully discharged from performing or assuming further obligations or liabilities under the assignment and St. J&LC agrees to defend, indemnify and hold Assignee, Morrison Knudsen Company, Inc. and directors, officers and employees of each of them harmless for all liability, loss or damage each may suffer as a result of claims, demands, costs and judgments against it which arise or occur after the date of said reassignment to St. J&LC.~~

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4. St. J&LC hereby represents and warrants to Assignee that (i) the Agreement is in full force and effect and enforceable in accordance with its terms, and neither St. J&LC nor SSI is in default thereunder; and (ii) St. J&LC has not heretofore assigned or otherwise disposed of or encumbered any of its right, title or interest in, to or under the Agreement or any monies due or to become due thereunder or by reason thereof and St. J&LC has full right, power and authority, subject to the Consent of SSI, to transfer to Assignee absolute title to St. J&LC's right, title and interest in, to and under the Agreement and the Equipment and in and to all such monies.

5. St J&LC hereby represents and warrants to Assignee that the Agreement was duly authorized and lawfully executed and delivered by it and insofar as St. J&LC is concerned is a legal, valid and existing agreement binding upon St. J&LC in accordance with its terms and is now in full force without further amendment or modification thereto.

6. St. J & LC agrees to indemnify and hold ASSIGNEE, Morrison-Knudsen Company, Inc., and directors, officers and employees of each of them, harmless from any and all liability, loss or damage each may suffer as a result of claims, demands, costs and judgments against any of them, which arise or occur as a result of the actions or failure to act under the Agreement of the St. Johnsbury & Lamoille County Railroad prior to October 5, 1976 which arise or occur prior to the date of this Assignment.

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7. St. J&LC and Assignee hereby agree that they will from time to time at the request of SSI or Assignee, as the case may be, make, execute and deliver all such future instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate to give effect to the provisions set forth herein and more perfectly confirm the right, title and interest hereby assigned and transferred to Assignee or intended so to be.

8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of California, provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act.

9. This Assignment may be executed in any number of counterparts, but the counterpart delivered to Assignee shall be deemed to be the original counterpart.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this Assignment to be executed in their respective corporate names by their duly authorized officers, and their respective corporate seals to be hereunto affixed and attested, all as of the date first above written.

ST JOHNSBURY & LAMOILLE COUNTY RAILROAD

By Bruce G. Leach
Its Treasurer

ATTEST:

Roger Gilman
Its President
[CORPORATE SEAL]

VERMONT NORTHERN RAILWAY CO.

By [Signature]
Its _____

ATTEST:

Ronald R. Leaven

STATE OF IDAHO)

) SS:

County of Ada

On this 21st day of December, 1976, before me personally appeared Leon D. Stoddard, to me personally known, who, being by me duly sworn, says that he is Vice President of Vermont Northern 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.

Phillip J. Zear
Notary Public

[Notarial Seal]

My Commission Expires: 1-26-80

STATE OF CALIFORNIA)

) SS:

CITY AND COUNTY)
OF SAN FRANCISCO)

On this _____ day of _____, 1976, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is _____ of SSI Rail Corp., 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.

Notary Public

[Notarial Seal]

My Commission Expires: _____

STATE OF VERMONT)
LAMOILLE COUNTY)

) SS:

On this 14 day of JAN., 1976, before me personally appeared BRUNO A. LOATI, to me personally known, who, being by me duly sworn, says that he is PRESIDENT of ST. JOHNSBURY, LAMOILLE COUNTY RAILROAD, 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.

Merwyn W. White
Notary Public

[Notarial Seal]

My Commission Expires: 2/10/79



CONTRACTORS
ENGINEERS
DEVELOPERS

MORRISON-KNUDSEN COMPANY, INC.

EXECUTIVE OFFICE
ONE MORRISON-KNUDSEN PLAZA / P.O. BOX 7808 / BOISE, IDAHO 83729 / U.S.A
TELEX 368439
PHONE (208) 345-5000

January 31, 1977

Mr. William Texido, President
SSI Rail Corp.
Two Embarcadero Center
San Francisco, California 94111

Dear Mr. Texido:

This letter shall modify the terms of that certain Assignment Agreement dated December 1, 1976 between Vermont Northern Railroad Company, SSI Rail Corp. and St. Johnsbury and Lamoille County Railroad and shall supplement that certain Letter of Understanding, dated December 21, 1976 between Vermont Northern Railroad Company and SSI Rail Corp.

SSI Rail Corp agrees to defend, indemnify and hold Vermont Northern Railroad Company, Morrison-Knudsen Company, Inc. and directors, officers and employees of each of them, harmless from any and all liability, loss or damage each may suffer as a result of claims, demands, costs and judgments against any of them, which arise or occur as a result of the actions or failure to act under the Lease Agreement between October 5, 1976 and the effective date of the Assignment.

Except as modified herein, the terms and conditions of the Agreement, the Assignment and the December 21, 1976 Letter of Understanding, remain unchanged.

ATTEST:
COMPANY

VERMONT NORTHERN RAILROAD COMPANY

Ronald R. Leaven
Assistant Secretary

By: Leon D. Stoddard
Leon D. Stoddard, Vice President

ATTEST:

SSI RAIL CORP.

[Signature]

By: William Texido
William Texido, President

STATE OF Idaho }
COUNTY OF Ada }

On this 31st day of January, 1977, before me personally appeared Leon D. Stoddard to me personally known, who being by me duly sworn says that such person is V. Pres. of Vermont Northern Railroad Company, that the foregoing Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Phyllis Zuer

Notary Public

STATE OF CALIFORNIA }
COUNTY OF SAN FRANCISCO }

On this 4th day of February, before me personally appeared William Texido, to me personally known, who being by me duly sworn says that such person is PRESIDENT of SSI Rail Corp., that the foregoing Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

Terry L. Russell

Notary Public

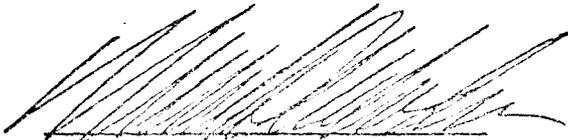


SSI hereby consents to the foregoing Assignment and agrees that it shall hold Assignee solely responsible for fulfillment of the terms and conditions of the Agreement without any recourse to St. J & LC. SSI hereby acknowledges that, with respect to rental payments under Article 6 of the Agreement, Assignee's only obligation is to pay SSI all monies collected, subject to the right of Assignee to retain monies as calculated in Section 6A of the modified Agreement. Further, in the event Assignee loses its operating rights or its operating agreement with the State of Vermont, Assignee may terminate the Agreement in accordance with Section 9 of the Agreement. Upon such termination, Assignee shall be fully discharged from performing or assuming further obligations or liabilities and SSI agrees to defend, indemnify and hold Assignee, Morrison-Knudsen Company, Inc. and directors, officers and employees of each of them, harmless for all liability, loss or damage it may suffer* as a result of claims, demands, costs, judgments and attorney fees which may arise or occur either before the effective date of said Assignment or after termination of the Agreement due to the loss of operating rights or operating agreement.

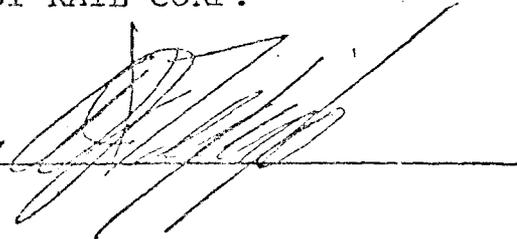
In the event the Agreement is terminated, Assignee agrees to cooperate with SSI in the assignment of this Agreement on the same nonrecourse basis as the Assignment between St. J & LC and Assignee.

ATTEST:

SSI RAIL CORP.



By



ATTEST:

VERMONT NORTHERN RAILROAD COMPANY

Ronald R. Leach

By



*relating to the foregoing Assignment and the Agreement



STATE OF VERMONT
COUNTY OF FRANKLIN

On this 7th day of January 1900 before me personally appeared Leon D. Stoddard to me personally known, who being by me duly sworn says that such person is Vice Pres. of Vermont Northern Railroad Company, that the foregoing Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Signature]
Notary Public

STATE OF *California*
COUNTY OF *San Francisco*

On this 4th day of February, before me personally appeared *William T. Tipton* to me personally known, who being by me duly sworn says that such person is *President* of SSI Rail Corp., that the foregoing Lease Agreement was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.



Terry L. Russell
Notary Public

December 21, 1976

Mr. William Texido, President
SSI Rail Corp.
Two Embarcadero Center
San Francisco, California 94111

Dear Mr. Texido:

This letter shall modify the terms of that certain Assignment Agreement dated December 1, 1976 between Vermont Northern Railroad Company, SSI Rail Corp. and St. Johnsbury and Lamoille County Railroad.

- 1) Vermont Northern Railroad Company hereby agrees to paint for SSI Rail Corp, fifty (50) box cars currently numbered SJL 8000 through SJL 8049 inclusive at its cost;
- 2) In the event the utilization exceeds ninety percent (90%) in any calendar year, SSI shall receive an amount equal to the SSI Base Rental plus an amount equal to forty percent (40%) of the revenues earned in excess of the SSI Base Rental and the Lessee shall receive the remaining sixty percent (60%) of these excess revenues earned. This will change the first sentence of Section 6A (ii) of the Lease Agreement.

ATTEST:

VERMONT NORTHERN RAILROAD COMPANY

Ronald T. Leaden
Assistant Secretary

By Leon D. Stoddard
Leon D. Stoddard, Vice President

ATTEST:

SSI RAIL CORP.

[Signature]

By William Texido
William Texido, President