

Alan A. Rudnick
Assistant General Solicitor



RECORDATION NO. **11869** Filed 1425

JUN 3 1980 - 10 35 AM

INTERSTATE COMMERCE COMMISSION

June 2, 1980

Law Department
Terminal Tower
P. O. Box 6419
Cleveland, Ohio 44101
216 623 2471

Ms. Agatha L. Mergenovich, Secretary
Interstate Commerce Commission
12th & Constitution Avenue, N.W.
Washington, D. C. 20423

No. **0-155A021**

Date **JUN 3 1980**

Fee \$ **50.00**

ICC Washington, D. C.

Dear Ms. Mergenovich:

Enclosed are four (of six) executed counterparts of an Agreement dated as of June 1, 1980, between ACF Industries, Inc., 750 Third Avenue, New York, New York 10017 (as Manufacturer) and the Baltimore and Ohio Railroad Company, 100 North Charles Street, Baltimore, Maryland 21201 (as Bailee).

The equipment covered by the enclosed Agreement consists of 300 100-ton 4600 cu. ft. covered top hopper cars to bear bailee's road numbers 606440 to 606739, inclusive, with AAR Mechanical designation LO.

doc says hoppers

The above caboozes will be lettered "B&O", "Chessie System" or in some other appropriate manner and will also be marked: —

"OWNERSHIP SUBJECT TO A SECURITY AGREEMENT
FILED WITH THE INTERSTATE COMMERCE COMMISSION"

Also enclosed is a draft of the Baltimore and Ohio Railroad Company in the amount of \$50 representing the required recording fee.

Pursuant to the conditions, rules and regulations for the recordation of certain documents under 49 U.S.C. Sec. 11303, as currently administered, you are hereby requested to file two of the enclosed counterparts for record in your office and to return the remaining copies to me at my above address.

Sincerely,

Alan A. Rudnick
Assistant General Solicitor

AAR:aj

RECEIVED
JUN 3 10 33 AM '80
I.C.C.
FEE OPERATION BR.

C. Quinlan - C. St. Kumbal



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.

Interstate Commerce Commission
Washington, D.C. 20423

6/3/80

OFFICE OF THE SECRETARY

Alan A. Rudnick
Chessie System
Terminal Tower
P.O.Box 6419
Cleveland, Ohio 44101

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **6/3/80** at **10:35am**, and assigned re-
recording number(s). **11869**

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

EXECUTED IN 6 COUNTERPARTS
OF WHICH THIS IS NO. 1

RECORDATION NO. **11869** Filed 1425

JUN 3 1980 -10 35 AM

INTERSTATE COMMERCE COMMISSION

AGREEMENT

Dated as of June 1, 1980

between

ACF INDUSTRIES, INC.

and

THE BALTIMORE AND OHIO RAILROAD COMPANY

Covering

300 100-Ton 4600 Cu. Ft. Open Top Covered Hopper Cars

THIS AGREEMENT, dated as of June 1, 1980, by and between ACF INDUSTRIES, INC., a New Jersey corporation ("Manufacturer"), and THE BALTIMORE AND OHIO RAILROAD COMPANY, a Maryland corporation ("B&O")

WITNESSETH:

The Manufacturer and B&O heretofore entered into an Agreement referred to in Exhibit A annexed hereto, ("Manufacturing Agreement") a copy of which 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):

300 100-ton 4600 cu. ft. covered top hopper cars,
to bear B&O's road numbers
606440 to 606739, inclusive.

Delivery of the Cars by the Manufacturer to B&O is scheduled to begin in June, 1980. However, inasmuch as B&O has not as yet consummated financing arrangements (pursuant to a Equipment Trust Agreement, or otherwise), it is not in position to accept delivery of and pay for the Cars under the terms of the Manufacturing Agreement at this time. B&O represents that such financing arrangements will be consummated, however, on or before September 1, 1980. 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 September 1, 1980, 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 part 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 pursuant to 49 USC Sec. 11303. 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 WITH THE INTERSTATE COMMERCE COMMISSION.

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 Manufacturing 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 Manufacturing 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 Manufacturing 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, counter-claim 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 Manufacturing Agreement, or impair any of the Manufacturer's rights under the Manufacturing Agreement.

ACF INDUSTRIES, INC.

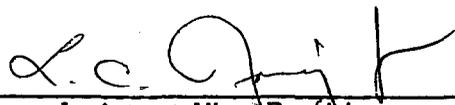
By 
H. A. BORST TREASURER

(Corporate Seal)

Attest:

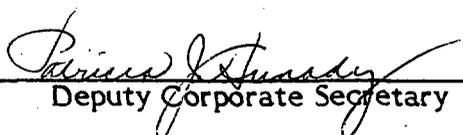

Assistant Secretary

THE BALTIMORE AND OHIO RAILROAD
COMPANY

By 
Assistant Vice President
and Treasurer

(Corporate Seal)

Attest:


Deputy Corporate Secretary

STATE OF *New York*)
COUNTY OF *New York*) SS:

On this *29th* day of May, 1980, before me personally appeared **H. A. BORST** to me personally known, who, being by me duly sworn, says that he is **TREASURER** of ACF INDUSTRIES, INC., 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.

Anthony M. Romanello

Notary Public
ANTHONY M. ROMANELLO
Notary Public, State of New York
No. 31-4703607
Qualified in New York County
Commission Expires March 30, 1981

(Notarial Seal)

STATE OF OHIO)
COUNTY OF CUYAHOGA) SS:

On this *17th* day of May, 1980, before me personally appeared L. C. Roig, Jr., to me personally known, who, being by me duly sworn says that he is 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

CLARA MASUGA
Notary Public, State of Ohio, Cuyahoga County
My Commission Expires April 21, 1984

(Notarial Seal)

Exhibit-A

ACF Proposal Dated February 14, 1979
ACF Letter Dated Maryc 15, 1979
ACF Letter Dated April 23, 1979
Chessie System Order Letter Dated May 10, 1979
ACF Letter Dated June 8, 1979