

United States
Rail Services, Inc.



A U.S. Leasing Company

330 Jackson Street
P. O. Box 3985
San Francisco, California 94119
(415) 445-7690

RECORDATION NO. 14622 FINE 1425

APR 12 1985 - 12 10 PM

INTERSTATE COMMERCE COMMISSION

April 2, 1985

Mr. John Bayne
Secretary
Interstate Commerce Commission
Washington, D. C. 20423

Date 4/12/85
Fee \$ 10.00

ICC Washington, D. C.

Dear Secretary:

On behalf of United States Rail Services, Inc., I submit two originals for filing and recording under 49 U.S.C. Sec. 111303(a), a Railroad Car Lease #1037 and Schedule #1 and dated December 21, 1978, between United States Rail Services, Inc. and Tuscola and Saginaw Bay Railway Company, Inc. duly executed.

The addresses of the parties to this transaction are:

United States Rail Services, Inc., as Lessor
P. O. Box 3985
San Francisco, CA 94111

Tuscola and Saginaw Bay Railway Company, Inc. as Lessee
538 E. Huron Avenue
Vassar, Michigan 48768

This agreement covers the following equipment:

Fifty 100 ton, 4650 cu. ft. covered hopper cars, equipped with continuous hatches and gravity gates.

Enclosed is a check in the amount of \$50.00 in payment for the recording fee. Please return the original not needed by the Commission for recordation to the undersigned.

Sincerely,

Carol J. Kane
Executive Secretary

Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

4/12/85

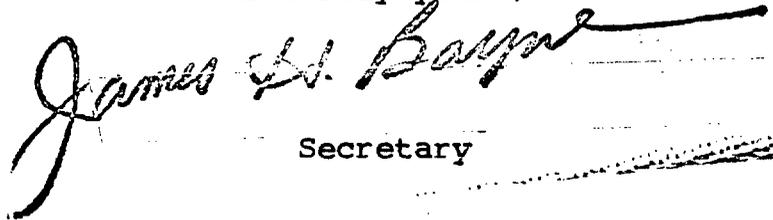
OFFICE OF THE SECRETARY

Carol J. Kane
Executive Secretary
U.S. Rail Services, Inc.
330 Jackson Street , P.O. Box 3985
San Francisco, Calif. 94119

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 4/12/85 at 12:10pm and assigned recordation number(s). 14622 & 14623

Sincerely yours,


Secretary

Enclosure(s)

RECEIVED

FEB - 5 1979

U. S. RAIL SERVICES

United States Rail Services, Inc.
633 Battery Street
San Francisco, California 94111
(415) 445-7690

RECORDATION NO. **14622** Filed 1425

APR 12 1985 - 12 10 PM

INTERSTATE COMMERCE COMMISSION

CAR LEASE

Date: December 21, 1978

Lease No: 1037

In accordance with your request, U.S. Rail Services, Inc., ("Lessor") is placing in your service railroad Car(s) (hereinafter referred to as the "Cars"; if only one Car is covered by this Car Lease, all plural references to Cars shall mean one Car) described in Schedule(s) attached to and made part of this Lease.

Lessor leases to Tuscola and Saginaw Bay Railway Company, Inc. ("Lessee") and Lessee leases from Lessor, the Cars under the following terms and conditions:

1. **WHEN LEASE BECOMES EFFECTIVE:** The Lease Term for each Car commences on the date of arrival of that Car at the delivering railroad yard at the initial loading point designated by Lessee (the Effective Date), and continues in effect until the Expiration Date of the Lease or earlier termination of the Lease, as defined herein, with respect to that Car. The Lessor's obligation to deliver the Cars freight collect to Lessee is subject to all delays and contingencies beyond the control of the Lessor.

2. **RENT:** The Lessee's obligation to pay Rent commences on the Effective Date. Lessee shall pay Rent in advance on the 1st day of each month during the Lease Term, except that, Lessee shall pay a pro rata amount of Rent for any period less than a full month.

Lessee shall pay the Rent to Lessor in U.S. currency, at its principal office without deduction or offset of any kind. If Lessor is billed directly for any duty, switching, demurrage, storage or tariff charges, tax (other than property), or charges of any kind as a result of this Lease or the use of the cars under this Lease, or any amendment thereto, Lessee shall forthwith reimburse Lessor therefore.

~~3. **MILEAGE ALLOWANCES:** Lessor shall collect all mileage earned by the Cars during the Lease Term, and remit to Lessee the amount of mileage received from railroads according to the rules and tariffs of the railroads then in effect. Provided, however, that Lessor will retain, as additional rent, such mileage received in any Accounting Period (as defined below) which is in excess of the aggregate Rent paid by Lessee in that period.~~

~~The first Accounting Period begins on the Effective Date and ends on the Expiration Date, or the last day of the twelfth month following the Effective Date, whichever first occurs. Subsequent Accounting Periods begin on the day following the end of the prior period, and end on the last day of the twelfth month following, except that the last Accounting Period ends on the expiration of the Lease Term.~~

4. **INSPECTION OF CARS:** Lessee shall inspect the Cars promptly after they are delivered, and, if substitutions or repairs are necessary, notify the Lessor thereof within one week following the Effective Date. The loading of any Car will constitute conclusive evidence that such car is fit and in suitable condition for transporting the commodities then and thereafter loaded in that Car, and that the Car meets all of Lessee's requirements and those of other users of the Car.

5. **USE AND OPERATION:**

A. Lessee will:

- (1) Preserve the Cars in good condition;
- (2) Use the Cars solely for the purposes for which the Cars are intended;
- (3) Advise Lessor promptly when any Car is in need of repair;

B. Lessee will not:

- (1) Encumber or dispose of this Lease or of any of the Cars or any part of a Car or permit any encumbrance or lien to be entered or levied upon any of the Cars;
- (2) Change or permit to be changed, altered or obscured the identification marks, lettering, and/or numbering on the Cars;
- (3) Alter in any way the physical structure of the Cars;
- (4) Allow its name or the name of any other person, or entity, to be placed on any of the Cars;

C. Lessee will not without first obtaining Lessor's written consent:

- (1) Transfer or assign this Lease, or any of the Cars;
- (2) Sublet the Cars or allow any other person or entity to use the Cars;
- (3) Repair the Cars;
- (4) Place lettering or markings of any kind upon the Cars;
- (5) Use the Cars outside of the boundaries of the contiguous United States, or the Dominion of Canada.
- (6) Use any of the Cars in unit train service.

D. In the event any Cars are used outside of the area as specified in Subparagraph C(5) above, for any reason whatsoever, Lessee shall bear full responsibility for and assume any and all costs, duties and taxes assessed or incidental to their use in or exportation of Cars to the prohibited areas.

E. Lessee shall have the right to place on each of the Cars a small, removable placard to the effect that such Car is leased to it, provided that the affixation of such placard in no way damages the Car, or obscures any Car marking, and that such placard is removed prior to redelivery of such Car to Lessor.

~~F. Lessee will furnish Lessor monthly with complete reports of the movements of the Cars, including dates loaded and shipped, commodity, destination, and full junction routing.~~

G. Should approval for the use of the cars or any of them obtained pursuant to AAR Circular OT-5, or similar regulation, as now or hereafter in effect is withdrawn or modified, this contract shall remain in full force and effect notwithstanding such withdrawal or modification.

H. Interior protective coatings (if any) are applied, maintained and removed by the Lessee. Damage, by lading or mechanical means, to the lining shall be repaired for the account of the Lessee.

6. EMPTY MILEAGE: Lessee, to the best of its ability, shall maintain the aggregate mileage under load for all Cars equal to or exceeding the aggregate mileage empty for the Cars. Following (i) the end of each calendar year

determined by Lessor, then the rental charges covering such Car shall abate on the date of arrival at repair shop and will begin on date car is reported ready to leave such shop for Lessee's specified loading point. If any Car is completely destroyed, or if Lessor determines that it cannot be operated in railroad service, Lessor may terminate this Lease as to such Car as of the date on which the Car was damaged or destroyed, provided however, that if any repairs are required as a result of the Lessee's breach of this Lease or the misuse of any of the Cars or the negligence of Lessee, its consignee or consignor or agent, Lessee will be responsible for all repairs, and the rental charges shall continue during the period of repair. Lessee shall on demand reimburse Lessor for all costs of repair incurred by Lessor for which Lessee is responsible under this Lease.

No repairs to any of the Cars shall be made by Lessee for Lessor's account without Lessor's prior written consent.

11. LEASE PERIOD, RELEASE OF THE CARS FROM SERVICE: Upon the expiration of the Lease Period, Lessee shall, at its expense, return the Cars to Lessor ~~at the location~~ and to the agent selected by Lessor, in the same good order and condition as the Cars were at the Effective Date, empty, clean, and free from residue and suitable for loading the commodity indicated in the Schedule(s). When the Cars have been so returned, they shall be deemed to have been released from service.

OS
at *and*
***mutually
agreed
location**
of

The Expiration Date of a Car under this Lease will be the Expiration of the Lease Period.

At expiration, should car cleaning be required, the Lessee shall bear the full cost of cleaning and the Rent shall continue for that Car until it is clean—ready for service.

12. WARRANTIES: LESSOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, CONCERNING THE CARS, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND LESSEE LEASES THE CARS AS-IS.

13. DEFAULT, REMEDIES: If Lessee fails to pay when due any Rent of other amount required to be paid by this Lease or to perform any of its obligations under this Lease, or if a petition in bankruptcy or for reorganization is filed by or against Lessee, Lessor may exercise any one or more of the following remedies: (a) sue for and recover all Rent and other payments then due and as they become due; (b) take possession of any or all of the Cars, without demand or notice, without court order or other process of law and without liability for any damages occasioned by the taking of possession; (c) terminate this Lease as to any or all of the Cars; and (d) pursue any other remedy at law or in equity.

A termination under this Section will occur only after written notice to Lessee of Lessor's election to exercise that remedy, and only with respect to those Cars as Lessor specifies in its notice. The Lease will continue in full force and effect as to all other Cars, and Lessee shall be and remain liable for the full performance of its obligations under the Lease as to those other Cars. If Lessor gives such notice with respect to any Car, Lessee shall promptly return that Car to Lessor in the manner and condition specified in Section 11 of this Lease. Lessee's obligations as to that Car, including the obligation to pay Rent, continue until the Car has been so returned at which time the Lease will be deemed to be terminated with respect to that Car.

14. LEASE SUBORDINATE: This Lease is subject and subordinate to any chattel mortgage, conditional sales agreement or equipment trust covering the Cars or any of them heretofore or hereafter created.

Lessee shall pay Lessor all costs and expenses, including attorney's fees and court costs, incurred by Lessor in exercising any of its rights or remedies under this Lease or in enforcing any of the provisions of the Lease.

15. TIME OF ESSENCE: Time is of the essence of this Lease and to each of its provisions.

16. NOTICES: All notices given under this Lease shall be in writing and shall be deemed to have been duly given if delivered or mailed by certified mail, return receipt requested, postage prepaid to the parties, in care of the officers who executed this Lease, at their address set out in the following page.

17. PLACE OF EXECUTION: This Lease is deemed to have been entered into at San Francisco, California, and Lessee agrees to be subject to the jurisdiction of the courts therein located.

18. ASSIGNMENT: Lessee shall not assign, transfer, pledge or hypothecate the Lease, the Cars, or any interest in them. Lessee's interest in this Lease may not be assigned or transferred by operation of law.

Subject to the foregoing, this Lease insures to the benefit of and is binding upon the successors and assigns of the parties.

19. RIGHT TO PROPERTY: No right, title, or interest in or to the Cars, shall vest in the Lessee, or in the Lessee's successors or assigns, by reason of this Lease, or by reason of the delivery of the Cars to Lessee, except as expressly set out in this Lease.

20. RELIANCE ON LEASE: Lessor, in consideration of the Lessee's oral representations and agreement to observe and be bound by the terms and conditions of this Lease and because of the Lessee's immediate need of cars, may have shipped one or more of the Cars to Lessee prior to the execution of this Lease. This Lease, whether or not executed, shall be the agreement between the parties for such Cars and supercedes prior negotiations and correspondence.

21. COMPLETE AGREEMENT: This Lease is the complete agreement between the parties and may be amended or modified only in writing as executed by them. If any provision of this Lease is determined to be invalid, the remaining provisions will continue to be fully effective.

LESSEE:

Tuscola and Saginaw
Bay Railway Company, Inc.
538 East Huron Avenue
Vassar, Michigan 48768

By:

Charles French Fogg
Title: President

LESSOR:

U.S. RAIL SERVICES, INC.
633 Battery Street
San Francisco, California 94111

By:

[Signature]
Title: _____

Vice President & General mgr. *Red*

SCHEDULE

Lease No: 1037

Schedule No: 1

Attached to and made a part of the Car Lease made as of December 21, 1978, by and between U.S. Rail Services, Inc., and Tuscola & Saginaw Bay Railway Company, Inc.

1. RENT: Monthly Rental Charge Per Car \$ 395.00

2. QUANTITY AND
TYPE OF CAR

CAR NUMBER(S)

Fifty (50) new 100T,
4650 cu.ft. covered hopper
cars equipped with gravity
gate and elongated hatches.

TSBY 4901 through 4950 inclusive.

3. LADING:

The Lessee will use the Cars for loading Grain and Grain Products, a non-corrosive, non-placarded commodity. The Cars shall be returned clean, suitable for loading Grain and Grain Products.

4. TERM:

Seventy-one (71) mo. from the date of arrival at (to be advised)
the delivery point.

5. ESCALATION OF MONTHLY RENTAL CHARGE:

- a. Any changes in car design required by the AAR, DOT, FRA or any other governmental authority during the term of this Lease will cause the Rental Charge to increase by a monthly rate of \$1.40 per Car for each \$100.00 of Lessor's cost incurred in the course of complying with the foregoing design changes.
- b. In the event that a Car travels more than 30,000 miles in any calendar year, the Lessee shall pay the Lessor \$.015 per mile for each mile over 30,000 traveled by such Car. Any Cars covered by this Lease during only a portion of the calendar year shall be so measured on a pro-rate basis for the calculation of amounts (if any) due the Lessor.

6. OTHER PROVISIONS:

-See Addendum #1-

LESSEE:

Tuscola & Saginaw Bay
Railway Company, Inc.

By: Charles Joseph Fapp

Date: December 21, 1978

LESSOR:

U.S. RAIL SERVICES, INC.

By: W. L. Summer

Date: December 21, 1978

AMENDMENT

The agreement between United States Rail Services, Inc. (USRS) and Tuscola and Saginaw Bay Railway Company, Inc. (TSBY); Schedule 1 to Car Lease 1037, dated December 21, 1978 is amended as follows:

1. The rental rate shown in Paragraph 1, Schedule 1 is increased to \$430.00 per car per month effective upon receipt of equipment. This increase is authorized per Paragraph 4 in Addendum #1. (See Exhibit B attached.)
2. All other terms and conditions of the agreement noted above remain in force and unchanged.

Agreed this 13th day of June, 1979.

TUSCOLA AND SAGINAW BAY
RAILWAY COMPANY, INC.

UNITED STATES RAIL SERVICES, INC.

BY

Charles J. Lapp

BY

W. J. Summers

TITLE

President

TITLE Vice President & General Manager

Auto

EXHIBIT "B"
(Escalation Calculation)

Lessee: Tuscola and Saginaw Bay Railway Company, Inc.

Lease Number: 1037

Schedule Number: 1

Inquiry Number: 78-39

1.	107 Index Released	<u>June 7, 1979</u>	<u>246.8</u>
2.	107 Index per Inquiry	<u>November 2, 1978</u>	<u>226.0</u>
3.	Change (Line 1 - Line 2)		<u>20.8</u>
4.	% of Change (Line 3 ÷ Line 2)		<u>0.09</u>
5.	101 Index Released	<u>June 7, 1979</u>	<u>279.0</u>
6.	101 Index per Inquiry	<u>November 2, 1978</u>	<u>252.1</u>
7.	Change (Line 5 - Line 6)		<u>26.9</u>
8.	% of Change (Line 7 ÷ Line 6)		<u>0.11</u>
9.	50% of Line 4		<u>0.05</u>
10.	50% of Line 8		<u>0.06</u>
11.	Line 9 + Line 10		<u>0.11</u>
12.	80% of Line 11		<u>0.09</u>
	Base Rate	<u>\$395.00</u> x (1 + Line 12)	= <u>\$430.00</u>
	Adjusted Lease Rate		<u>\$430.00</u>

ADDENDUM 1

1. It is agreed that, at the termination of this lease and before the cars are returned, the lessee's reporting marks will be removed and appropriate U.S. Rail Services markings applied. All expenses for such activity will be for lessee's account.
2. The inspection and cleaning of the operating portion of the hatch covers and gravity gates are the lessee's responsibility. Repairs required, due to lessee's failure to perform such functions, will be for lessee's account.
3. Lessee will take appropriate action to have the cars registered in "The Official Railway Equipment Register" with notation that cars TSBY 4901 through 4950 inclusive are owned by U.S. Rail Services, Inc. and all reports of cars damaged or destroyed, bills for repairs or requests for materials needed for repair should be sent to the U.S. Rail Services representative as listed in "The Official Railway Equipment Register."
4. The lease rate noted in Paragraph 1, Schedule 1, dated December 21, 1978, is subject to escalation as outlined in proposal 78-39, dated November 2, 1978. Lessor reserves the right to invoice at base rental rate until final adjusted lease rate is computed. Lessor shall promptly advise lessee adjusted lease rate that will be in effect for the full term of this agreement, subject advise shall be contingent on the publication of the indices used in the escalation formula. Lessee shall not be charged for any escalated rental which exceeds the unadjusted rental by more than twenty per cent (20%).
5. Lessee shall supply lessor with monthly reports, by car number, showing the mileage for each car covered by the agreement.
6. If the cars are not delivered before September 30, 1979, lessee shall have option to terminate this agreement.

Red
[Signature]