

Northbrook Corporation

SUITE 370 • 2215 SANDERS RD. • NORTHBROOK, IL 60062 • (312) 272-8350

REGISTRATION NO. 14702 Filed 1/25

JUN 11 1985 10 02 PM

5-162A066

MOTOR OPERATING UNIT

JUN 11 11 51 AM '85

ICC OFFICE OF THE SECRETARY

June 6, 1985

INTERSTATE COMMERCE COMMISSION

JUN 11 1985

Del.

10.00

ICC Washington, D. C.

Mr. James H. Bayne
Secretary
Interstate Commerce Commission
Washington, DC 20423

Dear Sir:

Enclosed for recordation pursuant to the provisions of Section 11303 of Title 49 of the United States Code and the regulations thereunder are the original and one copy of Management Contract, a primary document, dated June 1, 1985.

The names and addresses of the parties to the enclosed documents are:

Manager: Northbrook Corporation
2215 Sanders Road
Suite 370
Northbrook, IL 60062
Attn: President

Owner: Refco Management Services, Inc.
222 West Adams Street
Suite 999
Chicago, IL 60606
Attn: President

A general description of the railroad equipment covered by the enclosed documents is as follows:

Forty eight (48) gondola railcars bearing the identification marks DRGW

Ten (10) gondola railcars bearing the identification marks TSBY

Forty (40) gondola railcars bearing the identification marks WSOR

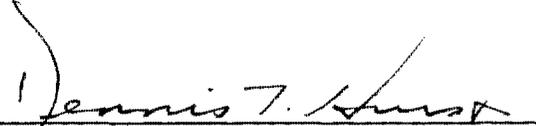
The original and all extra copies of the enclosed documents should be returned to Ms. Sharon Schumacher of Northbrook Corporation, 2215 Sanders Road, Suite 370, Northbrook, IL 60062.

Also enclosed is a remittance in the amount of \$10.00 for payment of recordation fees.

Mr. James H. Bayne
Interstate Commerce Commission
June 6, 1985
Page 2

I am an officer of Northbrook Corporation and have knowledge of the matters set forth herein.

Very truly yours,

By 
Dennis T. Hurst

DTH/pb
encl.

SENT VIA: CERTIFIED MAIL

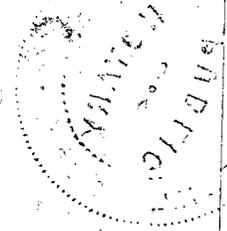
80711

1954

1954

... and ...
...
...
...

...
...
...



... 1954

MANAGEMENT CONTRACT

DATED AS OF JUNE 1, 1985

Between

REFCO MANAGEMENT SERVICES, INC. (Owner)

and

NORTHBROOK CORPORATION (Manager)

MANAGEMENT CONTRACT

This Agreement made this 1st day of June, 1985 by and between Northbrook Corporation ("Manager"), and Refco Management Services, Inc. ("Owner"):

WHEREAS, Manager is engaged in the business of managing and leasing railcars for the Manager and other railcar owners, the Owner desires to retain Manager as agent for the purpose of managing the railroad gondolas identified within Exhibit A ("Cars") attached hereto, on Owner's behalf on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises made herein, Owner and Manager, intending to be legally bound, hereby agree as follows:

1. Engagement of Manager

Subject to all of the terms and conditions set forth herein, Owner hereby engages Manager to manage the Cars, and Manager accepts such engagement and agrees to perform such duties in accordance with the terms and conditions hereof. Nothing in this Agreement precludes Manager from engaging in additional management contracts for rail equipment other than the Cars.

2. Term

- (a) The term of this Agreement shall commence upon the date hereof and shall continue for a period of two years through the second anniversary date hereof, subject to extension at the option of the Owner as set forth in Section 2(b) and subject to earlier termination as set forth in Section 2(c).
- (b) Owner shall have the right, at its option, to extend the term of this Agreement for up to four additional periods of three years each, which right may be exercised separately as to each three-year period by written notice from Owner to Manager received not later than 90 days prior to the then pending termination date of this Agreement.
- (c) This Agreement shall terminate (i) with respect to any Car which is lost or totally destroyed, as of the date of such loss or destruction; and (ii) with respect to all Cars, as of the effective date of any termination pursuant to Section 2(d) or Section 9 hereof, provided, however, that notwithstanding any termination of this Agreement with respect to any Car, Manager shall be obligated to collect all rental payments, mileage allowances and other sums (including insurance benefits, and lessee or railroad indemnity payments payable in connection with any damage to or loss or total destruction of Cars), and to

arrange for payment of all expenses, taxes and other charges with respect to any Car, due or with respect to periods prior to such termination of this Agreement. (Such expenses and charges to be reimbursed by Owner.) Termination of this contract shall be subject to the provisions of paragraph 11(a).

(d) Owner shall have the right, at its option, to terminate this Agreement as to all of the Cars, and only as to all of the Cars, effective upon not less than 60 days' prior written notice to Manager, if any one or more of the following conditions is met:

- (1) An event of default described in paragraph 9 occurs; or
- (2) For any calendar quarter commencing on April 1, 1985, the Net Revenues which were earned (or which but for Owner's lack of consent might have been earned incrementally, above and beyond actual revenues) by the Cars are less than the total number of Cars then subject to this Agreement times the sum of \$450 (or, as to any Car, any lower Net Revenue expressly approved in writing by Owner); and for this purpose "Net Revenues" shall mean all per diem, mileage, rent, lease payments and other income earned by or attributable to the Cars ("Gross Revenues") less all per diem reclaims and all operating expenses and other amounts (except Management Fees) payable by Owner pursuant to this Agreement, it being understood that revenues paid by users of Cars to the Manager's railroad subsidiaries in the ordinary course of their business for goods transported or services rendered shall not be included as Gross Revenues.

3. Procurement of Assignments and Operating Leases

Manager will use its best efforts to seek to procure short term assignments and operating leases for each Car. No fixed term and fixed payment assignment in excess of the term of this Agreement may be entered into by Manager unless such is preapproved in writing by Owner. (Free running service is not considered fixed term or fixed payment.) In the event this Agreement terminates with respect to any Car subject to an assignment or operating lease, Manager shall have the sole right to replace that Car in that same service with any similar railroad car under its management if such replacement is allowed under the terms of the assignment or operating lease. The transactions listed in Exhibit B in which Owner's Cars are currently used are considered preapproved by Owner.

4. Duties of Manager

In consideration of the compensation to be paid to Manager pursuant to this Agreement, Manager shall provide and perform on behalf of Owner the services set forth below, which services shall be provided and performed during the term of this Agreement at a level or standard of care no less than Manager would use with respect to cars it owns or leases or manages for others. The Manager will:

- (a) Pay or arrange for payment, for account of Owner, for the maintenance, repair and remarking of each Car, as required.

Manager shall review, approve, or, if invoice is not both reasonable and proper, reject, and audit each and every such invoice. All such repair and maintenance shall be accomplished promptly and shall be inspected by Manager in accordance with its regular and customary business practice so as to determine the necessity and quality of such repair and maintenance. Manager shall keep each Car in customary order and repair and shall comply with each required safety appliance and construction obligation specified by the Association of American Railroads and the Interstate Commerce Commission. The Manager shall maintain each Car in a condition that is satisfactory for interchange in accordance with the Association of American Railroads rules, all at Owner's cost and expense unless a lessee is held responsible for same. All maintenance and repair shall be accomplished in accordance with the Association of American Railroads, Interstate Commerce Commission and Federal Railway Association rules and regulations.

- (b) Register the Cars and file or have filed all required initial and ongoing reports with the Association of American Railroads ("AAR"), Interstate Commerce Commission ("ICC"), Department of Transportation ("DOT"), Universal Machine Language Equipment Register ("UMLER"), and each other regulatory authority having jurisdiction over the Cars in order to insure that the Cars will at all times be entitled to generate maximum revenues under the circumstances, with all registration and filing fees payable to any such regulatory authority to be advanced by Manager for account of Owner.
- (c) Use its best efforts to collect from any user, assignee and/or lessees all payments, mileage allowances and any other revenue due and which are not duly and promptly paid to the Manager or the Owner with respect to the Cars and any other sums due to Owner with respect to the Cars, identifying itself as agent for that purpose, and account for and remit those sums due to Owner as hereinafter provided.

- (d) Maintain the Cars at Owner's expense in a condition which shall be equal to or greater than the higher of (i) any standard required or set forth for the Cars or cars of a similar class by the AAR, ICC or DOT, or any other regulatory authority having jurisdiction over the Cars, (ii) any standard set by the terms of any operating leases and (iii) any standard set by an insurance policy known to Manager, under which the Cars or any of them shall from time to time be insured. Manager will, at Owner's expense, arrange for all alterations, modifications, improvements or additions to the Cars to comply with all applicable laws or regulations. For any non-running repairs under Sections 107 or 108 of the AAR rules, or for any alterations required by the AAR, Owner has right of preapproval if the anticipated cost is greater than \$500 per car for any car. Owner will have five (5) business days after written notification to make this election if Manager has been given the right to make said election. If Owner makes no election within this time, Manager will use its best judgment.
- (e) Use its best efforts to cause each car in need of repair to be transported to the repair facility by Manager at minimum cost to Owner. Manager will rely on its review of the overall costs of movement and repair to minimize the total costs.
- (f) Pay on behalf of Owner all taxes, charges, assessments, or levies imposed upon or against the Cars other than taxes, charges, assessments or levies payable by and chargeable to any lessee, or which are measured by Owner's income, of whatever kind or nature.
- (g) Maintain or have maintained separate, complete and accurate books and records of transactions of maintenance, mileage and movement relating to the Cars in the same form and to the same extent as customary in the Manager's railcar leasing and management business, and retain such books and records for a period of no less than three (3) years.
- (h) Upon termination of this Agreement, promptly cause those Cars which are the subject of such termination to be returned to a location designated by Owner, all at Owner's expense. Manager shall use its best efforts to accomplish any such return to be accomplished on an income generating basis and as promptly as requested by Owner. However, if Manager is not reasonably able to accomplish such a return within the time period specified by Owner on an income generating basis, that return shall be accomplished with Manager using its best efforts to minimize transportation costs for Owner.

- (i) Collect and hold in trust for Owner, or have lessees or users collect, all sums due Owner, including, without limitation, insurance benefits or railroad indemnity payments, in the event of damage to, or loss or total destruction of, a Car during the term of this Agreement and account for and promptly remit those sums. No legal counsel or other experts shall be retained in order to collect sums due Owner, except upon prior written consent by Owner, and Owner shall pay all fees and disbursements of any counsel or experts so retained.
- (j) Not place any of the Cars in service outside the United States of America for more than 45% of any one year period.
- (k) Promptly notify Owner in writing of any legal action arising out of or relating to the Cars.
- (l) Request Owner's consent prior to amending or exercising any right to terminate any lease for a term in excess of the term of this Agreement.
- (m) Store at no cost to Owner any Car which is unused and stored on the tracks of a railroad owned by the Manager or any subsidiary or affiliate. Owner will pay the movement and storage costs payable to anyone other than the Manager or its affiliates if Owner wants the Cars stored other than where Manager has them stored.
- (n) The Cars will be insured under Manager's insurance policies at coverage equal to cars of similar type managed or leased by Manager. Manager shall maintain public liability insurance against bodily injury and third party property damage with regard to the Cars and its use and operation. The cost of such insurance will be paid by Owner as requested by Manager.

5. Payments

Within 10 business days after the end of each calendar month, Manager shall remit to Owner all Gross Revenues of the Cars it received in the immediately preceding month with only an amount sufficient to pay or reimburse Manager for the costs and expenses which this Agreement expressly provides are for account of Owner or are to be paid by the Owner and the Management Fee prescribed in Section 6 having been subtracted from same. Until so remitted to Owner all such Revenues received by Manager will be held as trustee for Owner, until final payment thereof is made to Owner in accordance with this Management Agreement. If such Revenues are not sufficient to pay such costs, expenses and Management Fees in full, Owner will pay the deficiency within 5 days after receipt of Manager's invoice therefor.

6. Fee to Manager

The Manager shall be entitled to the following fee ("Management Fee") for each month during the term of this Agreement:

- (a) Manager shall receive a Management Fee based on Gross Revenues net of all per diem reclaims and net of all legal and expert fees

and expenses incurred to collect Gross Revenue ("Revenue Net of Reclaims and Collection Costs") received for utilization of the Cars during the term of this Agreement.

- (b) On that portion of Revenue Net of Reclaims and Collection Costs for any one month which is less than \$500 multiplied by the total number of Cars subject to this Agreement during that month, the Management Fee will be 20% of Revenue Net of Reclaims and Collection Costs.
- (c) On that portion of the Revenue Net of Reclaims and Collection Costs which exceeds \$500 multiplied by the total number of Cars subject to this Agreement during that month, Manager shall receive 40% of Revenue Net of Reclaims and Collection Costs.
- (d) Manager will subtract the Management Fee from Revenue Net of Reclaims and Collection Costs before remitting any funds to Owner.
- (e) Manager will submit to Owner each month the calculations upon which the Management Fee was determined, including details of (i) amounts earned and the amounts paid for the use of the Cars; (ii) the nature of the amounts earned and the amounts paid for the use of the Cars, i.e., whether such amounts represent mileage charges, per diem charges or some other source of revenue; (iii) amounts outstanding from prior months; (iv) operating expenses; (v) management fee; and (vi) amount remitted to Owner or payable to Manager pursuant to this Agreement.

7. Parity and Priority

Manager agrees that:

- (a) For each half-year commencing on January 1, 1984 or any July 1 or January 1 thereafter, the average Gross Revenues which were earned (or which but for Owner's lack of consent might have been earned incrementally, above and beyond actual revenues) by the Cars then subject to this Agreement will be at least equal to 90% of average Gross Revenues earned for that half-year by all gondola cars competitive to the Cars; and
- (b) Manager will lease and load the Cars in priority over any gondola cars competitive to the Cars, which may be owned by Manager or its subsidiaries or affiliates.

8. Reports; Audit Rights

Manager shall monitor and record fleet allocation of the Cars under Manager's normal procedures.

Manager shall, within 90 days following the end of each calendar quarter during the term of this Agreement, submit to Owner:

- (a) A written report setting forth the total number of gondola cars competitive to the Cars managed by Manager for others or owned or leased by Manager or any affiliate and the aggregate capacity, utilization and Gross Revenues for all such cars during such service quarter; and
- (b) A balance sheet and operating statement setting forth in accordance with accepted accounting practice Manager's assets and liabilities as at the end of such service quarter and the results of operations for such service quarter.

Manager shall within 90 days following the end of each calendar year during the term of this Agreement, submit a statement to Owner signed by an executive officer of Manager (i) setting forth as of that calendar year end the amount, description and numbers of all Cars then subject to this Agreement; the amount, description and numbers of all Cars that have suffered a casualty occurrence during the preceding calendar year and are then undergoing major repairs (other than running repairs); (ii) stating that in the case of all Cars repaired or repainted during the period covered by such statement, and to the best of Manager's knowledge, the proper number and markings have been preserved or replaced (iii) certifying that all amounts to be remitted hereunder by Manager to Owner through the preceding December 31 have been remitted, or if any have not been remitted, identifying such unremitted amounts and the reason for their nonremittance; (iv) stating that to the best of Manager's knowledge after reasonable inquiry, Owner is in compliance with all of the provisions of this Agreement and that all amounts required to be paid by Owner have been paid, or if any have not been paid, identifying such unpaid amounts and the reason for their nonpayment; and (v) stating that to the best of Manager's knowledge the Cars have been operated in compliance with the requirements of all regulatory authorities having jurisdiction over the Cars.

Manager shall notify Owner within 5 business days after becoming aware of the occurrence of any major casualty which would cause any Car to be taken out of service for over 90 days.

Owner shall have the right at any time to inspect, audit and copy Manager's books and records, to verify the revenues and expenses of the Cars, to inspect the Cars, and to consult with Manager's principal officers in regard to the management of the Cars, all upon at least 48 hours' written notice and as reasonable during business hours.

9. Events of Default

- (a) The occurrence of any of the following events shall be an event of default:

- (i) The non-payment or failure to remit, by Owner or Manager to the other of a total amount in excess of \$1,000 required herein to be paid or remitted, if such non-payment or failure is not waived in writing by the other party or cured within 10 days after written notice to the offending party that any such payment or remittance is due. Notwithstanding the foregoing, the non-payment or non-remittance of such sum shall not relieve either party of the obligation to pay or remit any amounts then accrued hereunder.
- (ii) The breach or non-fulfillment by Manager or Owner of any term, covenant or condition of this Agreement, if such breach or non-fulfillment is not waived in writing by the other party or cured within 10 days after written notice to the offending party of such breach or nonfulfillment.
- (b) Upon the occurrence of any event of default by a party hereunder, the other party may, at its option, terminate this Agreement by delivering to the defaulting party written notice of such termination and may, in addition, pursue any other remedy available at law or in equity.

10. Notices

Any notice required or permitted hereunder shall be in writing and shall be valid and sufficient if delivered personally or dispatched in any post office in the United States by registered mail or certified mail, postage prepaid addressed to the other party as follows:

If to Manager: Northbrook Corporation
 Suite 370
 2215 Sanders Road
 Northbrook, IL 60062

 Attention: President

If to Owner: Refco Management Services, Inc.
 Suite 999
 222 West Adams Street
 Chicago, IL 60606

 Attention: President

and any party may change such address by notice given to the other party in the manner set forth above.

11. Miscellaneous

- (a) **Governing Law.** This Agreement is made by Manager as debtor-in-possession under the United States Bankruptcy Code. All obligations of Manager hereunder shall constitute obligations of the debtor-in-possession and the estate and shall survive confirmation and consummation of any plan of reorganization in Manager's bankruptcy case. Any order confirming a plan shall specifically provide that Manager's obligations hereunder shall survive confirmation and consummation of the plan and that the Court retains non-exclusive jurisdiction with respect to such obligations of Manager for the purpose solely of enforcing the provisions of this Agreement (including without limitation Owner's termination rights and Manager's obligation to hold all funds in trust) in accordance with the terms hereof. Subject to the foregoing, this Agreement shall be governed by the laws of the State of Illinois.
- (b) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (c) **Headings.** Titles and headings of the Sections and Subsections of this Agreement are for convenience of reference only and do not form a part of this Agreement and shall not in any way affect the interpretation hereof.
- (d) **Amendment.** No modification or amendment to this Agreement shall be valid unless in writing and executed by both parties hereto.
- (e) **Force Majeure.** Neither party hereto shall be deemed to be in breach or in violation of this Agreement if either is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control including, without limitation, acts of God, riots, strikes, fires, storms or public disturbances.
- (f) **No Partnership or Implied Authority.** It is not the purpose or intention of this Agreement to create a joint venture or partnership relation between the parties and nothing herein shall create or be construed to create such a joint venture or partnership. Except as set forth herein, Manager shall have no authority to bind Owner or incur any liability for which Owner may be responsible without the prior written consent of Owner. Manager shall be and act solely as an independent contractor, and Owner shall have no liability for any act or omission of Manager, except as provided by law for acts within the scope of Manager's express and actual written authority.

- (g) Waiver. The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.
- (h) Notwithstanding any termination provision herein, if with Owner's written consent any Cars are placed in service for a period to extend beyond the termination of this Agreement, at Manager's option those particular Cars shall remain under the terms of this Agreement until the earliest possible termination of such service period. The usage and service shown in Exhibit B are also deemed to be covered under this Agreement until the dates shown, unless the usage shown in Exhibit B is terminated by Manager.
- (i) Assignment. Owner's rights hereunder may be assigned and transferred only with the written consent of the Manager. Manager may not assign or delegate its duties hereunder, except that Manager may permit its obligations hereunder to be performed for it by any subsidiary but Manager shall remain fully liable and accountable with respect to all such obligations.
- (j) This Agreement shall be effective as of June 1, 1985 and Manager shall account for all Gross Revenues earned from and after that date in accordance with the provisions of this Agreement.

12. Indemnification

Owner shall defend (if such defense is tendered to Owner), indemnify and hold Manager and its railroad subsidiaries harmless from and against any and all claims, actions, damages, expenses (including reasonable attorneys' fees and reasonable cost of investigation) losses or liabilities incurred by or asserted against Manager or its railroad subsidiaries as a result of the use, operation, possession, control, maintenance, repair or storage of the Cars including, claims for injury to or death of persons, loss of or damage to property (including the Cars) and economic loss due to the unavailability for use of the Cars; provided, however, that Owner shall not defend, indemnify or hold Manager harmless from and against; and Manager or its railroad subsidiaries shall not be exculpated from, any claim, action, damage, expense, loss or liability caused by or arising from the negligence, bad faith, recklessness, or willful misconduct of Manager.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth above.

ATTEST:
By [Signature]
Title: V.P.

REFCO MANAGEMENT SERVICES, INC.
"Owner"
By [Signature]
President

(CORPORATE SEAL)

ATTEST:
By [Signature]
Title: SECRETARY

NORTHBROOK CORPORATION
"Manager"
By [Signature]
President

EXHIBIT A
RAILCARS SUBJECT TO MANAGEMENT CONTRACT
DATED JUNE 1, 1985

WSOR 5264 through WSOR 5273
WSOR 5284 through WSOR 5313

TSBY 5274 through TSBY 5283

DRGW 6000 through DRGW 6021
DRGW 6023 through DRGW 6047
DRGW 6049

EXHIBIT B

Selected current Operating Leases or Assignments of Gondolas

- . 48 cars marked DRGW (Denver & Rio Grande) on lease with Interpool, Ltd. - terminates April 30, 1988.
- . 10 cars marked TSBY (Tuscola & Saginaw Bay Railway Co.) under a lease terminating approximately December 31, 1987.
- . 4 cars marked WSOR in assignment with Delaware & Hudson Railway terminating October, 1985.
- . 34 cars marked WSOR in assignment with Southern Pacific Transportation Co. terminating January 31, 1986.
- . 2 cars free running.

NOTE: All agreements are between the user or lessee above and Northbrook Corporation, formerly known as Funding Systems Railcars, Inc. or its subsidiaries. Renewals are available in some cases, but require permission of Northbrook Corporation, formerly known as Funding Systems Railcars, Inc. or its subsidiaries.

STATE OF ILLINOIS)
)
COUNTY OF DU PAGE)

On this 5th day of JUNE, 19 85,
before me personally appeared WILLIAM F. COX, to me
personally known, who, being by me duly sworn, said that he/she is an
authorized officer of Refco Management Services, 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/she
acknowledged that the execution of the foregoing instrument was the free act
and deed of said corporation.

Sharon Schumacher
Notary Public

My commission expires:

My Commission Expires Jan. 27, 1989

STATE OF Illinois)
)
COUNTY OF Cook)

On this 23rd of May, 1985, before me personally appeared James B. Chen, to me personally known, who, being by me duly sworn, said that he/she is President of Northbrook Corporation, that the foregoing instrument was signed on behalf of said corporation by proper authority therefor, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Carmen Montenegro
Notary Public

My Commission Expires October 20, 1989