

DEC 29 1980
Date.....
Fee \$.....
ICC Washington, D. C.

P. E. MYERS & ASSOCIATES
Practice Before The Interstate Commerce Commission
SUITE 348. PENNSYLVANIA BUILDING
PENNSYLVANIA AVENUE AT THIRTEENTH STREET N. W.
WASHINGTON, D. C. 20004

(202) 737-2188

December 29, 1980

Registered Practitioners
PAULINE E. MYERS
MARK D. RUSSELL

0-364A117

RECORDATION NO. 12649 Filed 1425

DEC 29 1980-3 22 PM

Mrs. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
Washington, DC 20423

INTERSTATE COMMERCE COMMISSION

Attention: Recordation Office

In Re: Sublease Agreement Between GWI Rail
Management Corporation And Genesee
And Wyoming Railroad Company

Dear Mrs. Mergenovich:

Attached hereto for recordation is an original and duplicate
copy of the above noted Sublease Agreement between:

GWI Rail Management Corporation
3846 Retsof Road
Retsof, New York 14539

And

Genesee And Wyoming Railroad Company
3846 Retsof Road
Retsof, New York 14539

A check, No. 2774, in the amount of \$50.00 payable to the
Interstate Commerce Commission is hereby enclosed covering the
filing fee. Your cooperation in this matter is greatly appreciated.

Yours very truly

Pauline E. Myers
Pauline E. Myers

DEC 29 3 09 PM '80
DOCKET FILE
BRAND

Checked report - Mark D. Russell

PEM/slt

Enclosures

SUBLEASE AGREEMENT

12646
RECORDATION NO. Filed 1425

DEC 29 1980-3 20 PM

INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT, made as of this 1st day of May, 1980, between GWI RAIL MANAGEMENT CORPORATION, a Delaware corporation, with offices at 3846 Retsof Road, Retsof, New York ("GWIRM") and GENESEE AND WYOMING RAILROAD COMPANY, a New York corporation ("GWRR"), with offices at 3846 Retsof Road, Retsof, New York 14539.

1. Scope of Agreement.

A. GWIRM has entered, or is about to enter, into a Lease Agreement with C.K. Industries, Inc., a Florida corporation, ("Owner") pursuant to which GWIRM shall lease from Owner 50 covered hopper railroad cars described by the specifications as set forth in Schedule I attached hereto and made a part hereof. GWIRM and GWRR agree that GWIRM shall deliver such cars to GWRR for GWRR's use pursuant to the terms of this Sublease Agreement. From time to time Schedule II shall be executed by the parties and shall at all times describe each car by appropriate serial number. Such cars are hereinafter called collectively the "Cars."

B. GWIRM and GWRR agree that, as between themselves, GWRR shall not be entitled to claim the benefits of any available Investment Tax Credit for Federal income tax purposes.

C. It is the intent of the parties that GWIRM shall receive an amount equal to all the per diem payments, mileage payments and any other payments however designated earned by the Cars (all of which are hereinafter collectively referred to as "payments" or "car hire payments") and GWRR shall have the availability and use of the Cars in its present transportation operation and in any expansion of such service without payment of any other charge to GWIRM.

2. Term.

This Agreement shall remain in full force until it shall have been terminated as to all of the Cars as provided herein. Subject to any termination rights hereinafter contained, this Agreement shall commence upon the delivery of the first Car to GWRR as set forth in Section 3A hereof and shall terminate as to all Cars seven (7) years and six (6) months thereafter.

3. Supply Provisions.

A. GWIRM, on behalf of Owner, will inspect on a preliminary basis each of the Cars tendered by the manufacturer for delivery and confirm to GWRR in writing that such inspection has been made and, if such is the case, that the Cars conform to the specifications agreed to by GWRR as described in the attached Schedule I. GWRR shall inspect the sample car and, if such is the case, confirm in writing to GWIRM that it conforms to the specifications set forth in Schedule I. Upon such approval by GWRR and GWIRM's subsequent determination that each Car conforms to the specifications agreed to by GWIRM and to all applicable governmental regulatory specifications, GWIRM will accept delivery thereof as agent of Owner at the manufacturer's facility and shall notify GWRR in writing of such acceptance. GWIRM, as agent for Owner, shall then arrange for the Cars to be delivered to the car lining shop where a lining shall be applied to each Car according to arrangements made by Owner. GWRR shall inspect the sample Car and, if such is the case, confirm in writing to GWIRM that it conforms to the lining specifications agreed to by GWRR as described in the Schedule I. Upon such approval of the sample Car by GWRR and GWIRM's subsequent determination that each Car conforms to the lining specifications, GWIRM will accept delivery of each such Car hereunder at the car liner's facility and notify GWRR in writing of such acceptance. Each of the Cars shall be deemed delivered to GWRR upon such acceptance and notification by GWIRM and control of the Cars shall immediately pass from Owner to GWRR at such time.

B. If there is a surplus of Cars available for salt service, GWRR intends to the extent practicable to load the Cars prior to loading substantially similar covered hopper railroad cars which, subsequent to the date of this Agreement, have been deployed to, leased to or purchased by GWRR provided, however, that this shall in no event prevent or prohibit GWRR from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks. However, it is expressly understood and acknowledged by the parties hereto that (i) pursuant to a similar agreement dated as of November 7, 1978 between GWRR and States Marine Corporation (whose interest has since been assigned to BRAE Corporation) GWRR is obligated to give loading preference in a surplus situation to 425 covered hopper railroad cars which are managed under a 1978-1983 Covered Hopper Management Program and (ii) pursuant to a similar agreement dated as of December 10, 1979 between GWIRM and GWRR, GWRR is obligated to give loading preference in a surplus situation to 10 covered hopper railroad

cars which are managed under a 1979-1984 Covered Hopper Management Program. In addition, it is expressly understood that GWRR may, because of practical operating considerations, give loading preference to cars now owned or leased by it (or to any substitutes for such cars). It is further understood that shipper cars at all times have loading priorities at the shipper's option.

It is understood that the Cars shall have a loading preference to substantially similar covered hopper cars owned by GWIRM or its affiliates which are placed in salt service with GWRR. The number of covered hopper cars owned by GWIRM or its affiliates is, or shall be within a year after the commencement of the term hereof, a minimum of 50; provided, however, such minimum number assumes the purchase by GWIRM or its affiliate of 50 covered hopper cars from Pullman generally contemporaneously with the purchase of the Cars by Owner, which purchase by GWIRM or its affiliate is contingent upon obtaining satisfactory financing.

4. Railroad Markings and Record Keeping.

A. GWIRM and GWRR agree that on or before delivery of any Cars to GWRR, said Cars will be lettered with the railroad markings of GWRR and may also be marked with the name and/or other insignia used by GWRR, all at no cost to GWRR. GWIRM will insure that such name and/or insignia comply with all applicable regulations.

B. At no cost to GWRR, GWIRM shall during the term of this Agreement prepare for GWRR's signature and filing all documents relating to the registration, maintenance and record keeping functions involving the Cars. Such documents shall include but are not limited to the following: (i) appropriate Association of American Railroads ("AAR") documents (ii) registration in the Official Railway Equipment Register and the Universal Machine Language Equipment Register (UMLER); and (iii) such reports as may be required from time to time by the Interstate Commerce Commission ("ICC") and/or other regulatory agencies.

5. Maintenance, Taxes and Insurance.

A. Except as otherwise provided herein and excluding the operating costs of GWRR as would be incurred whether or not this Agreement were in effect, GWIRM will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each of the Cars during the term of this Agreement, including but not limited to repairs, maintenance and servicing, unless the same was occasioned by the negligence or willful misconduct of GWRR while a Car was in the physical possession of GWRR. GWRR hereby transfers and assigns to GWIRM for and during the term hereof all of its right, title and interest in any warranty in respect to the Cars. All claims or actions on any warranty so assigned shall be made and prosecuted by GWIRM at its sole expense and GWRR shall have no obligation or right to make any claim on such warranty. Any recovery under such warranty shall be payable solely to GWIRM.

B. Except as provided above, GWIRM shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as may be required. At GWIRM's expense, GWRR shall perform any necessary maintenance and repairs to Cars on GWRR's railroad tracks as may be reasonably requested by GWIRM. GWIRM shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition throughout the term hereof. GWRR may make running repairs to facilitate continued immediate use of a Car and bill GWIRM for such repairs. All bills for repairs by GWRR are payable upon receipt by GWIRM of an invoice.

C. GWIRM agrees to reimburse GWRR upon demand for all taxes (including but not limited to sale or use taxes imposed on the mileage charges, payments hereunder and/or car hire revenues), assessments and other governmental charges of whatsoever kind or character paid by GWRR relating to each Car and on the deployment, lease, delivery or operation thereof of which may remain unpaid as of the date of delivery of such Car to GWRR or which may be accrued, levied, assessed or imposed during the term hereof, except taxes, however designated, imposed on income of GWRR. Moreover, GWIRM agrees to indemnify and hold harmless GWRR from any and all such tax, assessment or charge liability and from any costs, penalties or expenses, including legal fees, relating thereto. GWIRM and GWRR will comply with all state and local laws requiring the filing of ad valorem tax returns on the cars.

6. Consideration.

A. In consideration for its performance of its obligations hereunder, GWIRM shall be entitled for the account of the owners to a sum equal to all car hire payments made to GWRR on account of the Cars. In addition, GWIRM shall be entitled to a sum equal to all monies, if any, earned by the Cars prior to their initial loading.

B. GWRR shall pay or cause to be paid to GWIRM, or its designee or agent, a sum equal to all revenues received with regard to the Cars, including but not limited to payments described in Section 6A, 6C and 7B, as soon as possible after such payments are actually received by GWRR.

C. In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 7 of the AAR Car Service and Car Hire Agreement, Code of Car Hire Rules and Interpretations - Freight and the appropriate amount due as a result thereof is received by GWIRM, said damaged or destroyed Car will be removed from the coverage of this Agreement as of the date that payment of car hire payments as to such Car ceased.

D. GWIRM may, at its option and upon written notice to GWRR, terminate this Agreement in the event that the utilization after December 31, 1980 of the Cars taken as a group is less than 85 percent during each of any two consecutive quarters. For the purposes of this Agreement, utilization shall be determined by a fraction, the numerator of which is the sum of the aggregate number of days of each calendar quarter that car hire payments are earned by GWRR on each car, commencing from the initial loading, and the denominator of which is the sum of the aggregate number of days in each calendar quarter that each car is subject to this Agreement, commencing from the initial loading (such term referred to as "utilization").

E. Upon mutual written consent of GWIRM and GWRR, this Agreement may be terminated as to any Car at any time.

F. If at any time during the term of this Agreement, the Lease Agreement (referenced in Section 1 above) between GWIRM and Owner is terminated as to any Car or Cars, then this Agreement shall be deemed to be terminated as to any such Car or Cars as of date of termination of such Lease Agreement.

G. In the event that GWRR shall give written notice to GWIRM, or its designee or agent, that any alterations, modifications, improvements or additions to the Cars, estimated to cost \$200 or more per Car, or any one of them, are required by AAR, the Department of Transportation or any other regulatory agency or are otherwise required to comply with applicable laws, regulations or requirements, then GWIRM shall have thirty (30) days from the receipt of said notice to terminate this Agreement as to one or more of the Cars. Such termination shall be made by written notice to GWRR within said thirty (30) day period. If GWIRM does not so terminate, then GWIRM shall promptly commence and diligently complete such alteration, modification, improvement or addition or GWRR may immediately terminate this Agreement as to such Cars.

7. Possession and Use.

A. So long as GWRR shall not be in default under this Agreement, GWRR shall be entitled to the possession and use of the Cars in accordance with and subject to the terms of this Agreement and in the manner and to the extent Cars are customarily used in the railroad freight business.

B. If, in the opinion of GWIRM and GWRR, it may be possible to achieve a higher utilization of the cars without seriously impeding the ability of the GWRR to perform its carrier functions, then GWIRM may direct GWRR to assign that number of Cars designated by GWIRM to other railroads subject to recall. In this event, an amount equal to all car hire payments earned with regard to the assigned cars shall be paid to GWIRM.

C. GWRR will not directly or indirectly create, incur, or cause to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Cars or any interest therein or in this Agreement or any Schedule thereto. GWRR will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrances, security interest or claim if the same shall arise at any time.

D. Unless otherwise directed by GWIRM in writing, GWRR shall use its best efforts to provide that the Cars will not be used predominantly outside the United States during 1980 or any subsequent calendar year within the meaning of Section 48(a)(2)(A) of the Internal Revenue Code, as amended, or any successor provision thereof, and the regulations thereunder. It

is expressly understood that GWRR shall have no other obligation in this regard.

8. Default of GWRR

A. The occurrence of any of the following events shall be an event of default of GWRR:

(i) The nonpayment by GWRR of any sum required herein to be paid by GWRR within twenty (20) days after the date any such payment is due.

(ii) The breach by GWRR of any other term, covenant, or condition of this Agreement, which is not cured within twenty (20) days after receipt of written notice thereof.

(iii) Any act of insolvency by GWRR, or the filing by GWRR of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other similar law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against GWRR that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of GWRR, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(v) The subjection of any material portion of GWRR's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency which is not discharged within sixty (60) days.

B. Upon the occurrence of any event of default, GWIRM at its option, may

(i) Proceed by any lawful means to enforce performance by GWRR of this Agreement or to recover damages for a breach thereof (and GWRR agrees to bear GWIRM's costs and expenses, including reasonable attorneys' fees, in securing such enforcement), or

(ii) By notice in writing to GWRR, terminate GWRR's right of possession and use of the Cars, whereupon all right and interest of GWRR in the Cars shall terminate; and thereupon GWIRM may enter upon any premises where the Cars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of GWRR. GWIRM shall nevertheless have the right to recover from GWRR any and all rental and any other amounts which under the terms of this Agreement may then be due or which may have accrued to that date.

9. Default of GWIRM

A. The occurrence of any of the following events shall be an event of default of GWIRM:

(i) The nonpayment by GWIRM of any sum required herein to be paid by GWIRM within twenty (20) days after the date any such payment is due.

(ii) The breach by GWIRM of any other term, covenant, or condition of this Agreement, which is not cured within twenty (20) days of receipt of written notice thereof.

(iii) Any act of insolvency by GWIRM or the filing by GWIRM of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other similar law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against GWIRM that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of GWIRM, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(v) The subject of any material portion of GWIRM's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency which is not discharged within sixty (60) days.

(and shall be deemed to be a default of GWIRM, or

B. Upon the occurrence of any event of default, GWRR, at its option, may

(i) Proceed by any lawful means to enforce performance of GWIRM of this Agreement and to recover damages for a breach hereof (and GWIRM agrees to bear GWRR's costs and expenses, including reasonable attorneys' fees, in securing such enforcement); or

(ii) Terminate this Agreement, proceed by any lawful means to recover damages for a breach hereof, and, by notice to GWIRM, require GWIRM to take possession of any Cars situated on GWRR's line.

C. The termination for any reason of the Lease Agreement (referenced in Section 1 above) between GWIRM and Owner as to any Car or Cars shall be an event of default of GWIRM. In such event, GWRR may (i) terminate this Agreement as to any such Car or Cars and (ii) by notice to GWIRM or Owner, require GWIRM or Owner to take possession of any such Car or Cars situated on GWRR's line, and (iii), in the case of terminations of the Lease Agreement caused by Lessor's breach, proceed by any lawful means to recover damages for breach.

10. Rights of Termination

At the expiration or termination of this Agreement as to any Car or Cars, GWRR shall deliver the Cars to GWIRM at the GWRR tracks in Retsof, New York (or to such other place designated by GWIRM). GWRR shall bear the cost of returning the Cars to Retsof, New York. If the Cars are sent to some other place designated by GWIRM, then GWIRM shall bear the incremental cost above the cost to GWRR of returning the Cars to Retsof, New York. Upon termination, GWRR's railroad markings shall be removed from the Cars and there shall be placed thereon such markings as may be designated by GWIRM at the option of GWIRM and at GWIRM's cost, either (1) by GWRR upon return of such Cars to GWRR's railroad line or (2) by another railroad line which has physical possession of the Car at the time of or subsequent to termination as to such Car. GWIRM shall take control of the Cars and arrange for removal of the Cars from the GWRR tracks, and (subject to the following provisions of this Section 10) assume responsibility for any and all storage and transportation charges with regard to the Cars. GWRR will use its best efforts to load the Cars at Retsof, New York in a direction designated by GWIRM and to provide free storage for the Cars at Retsof, New York for a period of ninety (90) days following termination of this

Agreement. After the date of termination, GWRR shall continue to pay to GWIRM all revenues received with regard to the Cars attributable to the period prior to the termination date.

11. Indemnities

GWIRM will defend, indemnify and hold GWRR harmless from and against (1) any and all liability, including attorney's fees, to Owner or any third party for loss or damage of or to the Cars, usual wear and tear excepted, unless occurring while GWRR has physical possession of Cars and (2) any claim, cause of action, damage, liability, cost or expense, including attorney's fees, which may be asserted against GWRR with respect to the Cars (other than loss or damage to the Cars as in (1)), including without limitation that arising out of the construction, purchase and delivery of the Cars to GWRR's railroad line, ownership, leasing or return of the Cars, or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects, if any, are latent or are discoverable by GWIRM or GWRR); provided, however, that GWIRM shall not defend, indemnify or hold GWRR harmless from and against, and GWRR shall not be exculpated from any claim, action, judgment, settlement, damage, expense, loss or liability caused by or arising from negligence or willful misconduct of GWRR, but in such case GWRR shall defend, indemnify and hold GWIRM and Owner harmless from any such claim, action, judgment, settlement, damage, expense, loss or liability, including attorney's fees.

12. Representations, Warranties and Covenants of GWRR

GWRR represents, warrants and covenants that GWRR is a corporation duly organized, validly existing and in good standing under the laws of the State of New York and has taken all of the corporate action necessary to enter into and perform its obligations under this Agreement.

13. Representations, Warranties and Covenants of GWIRM

GWIRM represents, warrants and covenants that GWIRM has received and reviewed the Lease Agreement signed by Owner; that to the best of its knowledge Owner had taken all of the action necessary to obtain and has obtained corporate authorization necessary to enter into the Lease Agreement, and that nothing has come to the attention of GWIRM which would indicate that Owner was not qualified to enter into such Lease Agreement.

14. Inspection

GWIRM or Owner shall at any time during normal business hours have the right to enter the premises where the Cars may be located for the purpose of inspecting and examining the Cars to insure GWRR's compliance with its obligations hereunder. GWRR shall immediately notify GWIRM of any accident connected with the malfunctioning or operation of the Cars, including in such report the time, place and nature of the accident and the damage caused, the names and addresses of any persons injured and of witnesses, and other information pertinent to GWRR's investigation of the accident. GWRR shall also notify GWIRM in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Car. GWRR will execute any authorization necessary for GWIRM or Owner to examine the Cars.

15. Miscellaneous

A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Except as provided in Section 7B. hereof, GWRR may not without the prior consent of GWIRM assign this Agreement or any of its rights and obligations hereunder and any purported assignment in violation hereof shall be void. GWIRM may not without the prior written consent of GWRR assign its agency rights and obligations under this Agreement to any party and any assignment in violation hereof shall be void.

B. It is expressly understood and agreed by GWRR, GWIRM, and the owners that this Agreement constitutes an agreement as to use of the Cars only and no joint venture or partnership is being created. Notwithstanding the calculation of car hire payments, nothing herein shall be construed as conveying to GWRR any right, title or interest in the Cars except as GWRR's rights are specifically provided herein.

C. No failure or delay by GWIRM shall constitute a waiver or otherwise affect or impair any right, power or remedy available to GWIRM nor shall any waiver or indulgence by GWIRM or any partial or single exercise of any right, power or remedy preclude any other or future exercise thereof or the exercise of any other right, power or remedy.

D. This Agreement shall be governed by and construed according to the laws of the State of New York.

E. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, addressed to the president of the other party at the address set forth above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

GENESEE AND WYOMING RAILROAD COMPANY

By: Gerald E. Johnson
Gerald E. Johnson, President

GWI RAIL MANAGEMENT CORPORATION

By: Mortimer E. Fuller, III
Mortimer E. Fuller, III
President

STATE OF *Connecticut*
COUNTY OF *Fairfield*) SS: *Greenwich*

On this *5* day of *May*, 1980, before me personally appeared Gerald E. Johnson, to me personally known, who being by me duly sworn, says that he is the President of GENESEE AND WYOMING RAILROAD COMPANY, that said instrument was signed 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.

Judean M. Andersen

JUDEAN M. ANDERSEN
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1984

STATE OF *Connecticut*
COUNTY OF *Fairfield*) SS: *Greenwich*

On this *5th* day of *May*, 1980, before me personally appeared Mortimer B. Fuller, III, to me personally known, who being be me duly sworn, says that he is the President of GWI RAIL MANAGEMENT CORPORATION, that said instrument was signed 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.

Judean M. Andersen

JUDEAN M. ANDERSEN
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1984

SCHEDULE II

<u>Quantity</u>	<u>Description</u>	<u>Car Numbers</u>
Fifty (50)	100-Ton, 4750 cfc. covered hoppers manufactured by Pullman Standard, a division of Pullman Incorporated, in accordance with Pullman Standard's Specification No. 1137-A and the "Buyer's" Letter Order dated May 8, 1980 and Pullman Standard's letters dated May 16, 1980 and June 27, 1980.	GNWR 410051 through 410100 inclusive

GWI RAIL MANAGEMENT CORPORATION

Dated: November 26 1980

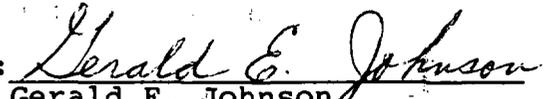
By:


Mortimer B. Fuller, III
President

GENESEE AND WYOMING RAILROAD COMPANY

Dated: ^{December} November 1, 1980

By:


Gerald E. Johnson
President