

STATE OF ILLINOIS )  
 )  
COUNTY OF COOK ) ss.

RECORDATION NO. 10830-D Filed 7425

JUN 24 1987 - 11 50 AM

INTERSTATE COMMERCE COMMISSION

AFFIDAVIT

I, Matthew J. Botica, being first duly sworn, depose and say:

1. I am an attorney, licensed to practice in the State of Illinois.

2. I have reviewed the attached copy of the transcript of sale dated December 1, 1983, pursuant to Section 9-504 of the Illinois Commercial Code in the case of In re Funding Systems Railcars, Inc., Debtor in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, Chapter 11, No. 81B11964 and compared said copy with the original document and found the copy to be complete and indetical in all respects to the original document.

Matthew J. Botica  
Matthew J. Botica

Subscribed and sworn to before me this 22nd day of June, 1987 at Chicago, Illinois.

Jane A. Schutte  
Notary Public

[SEAL]



1 MR. BOTICA: It is now 10:05.

2 This is a sale pursuant to Bankruptcy  
3 Court Order by the Bank of New England of all of  
4 Funding Systems Railcars' interests in one hundred  
5 100-ton open top railcars. And this is a UCC Sale  
6 pursuant to 9-504 of the Illinois Commercial Code.

7 All right. Each of the parties who is  
8 here this morning has signed a sheet identifying  
9 themselves. I will give the reporter a copy of  
10 that sheet and she can list for the record who was  
11 here.

12 I am Matthew Botica of Hopkins & Sutter.  
13 I am attorney for the Bank of New England.

14 The Bank of New England is a secured  
15 party under a security agreement dated September 18,  
16 1979, between Funding Systems Railcars, Inc., and  
17 American National Bank and Trust Company of Chicago,  
18 which security agreement was assigned to the Bank  
19 of New England pursuant to an assignment and an  
20 assumption agreement dated December 14, 1979,  
21 between American National Bank and the Bank of  
22 New England.

23 The security agreement was recorded with  
24 the Interstate Commerce Commission on September 19,

1 1979, and assigned Recordation No. 10830. The  
2 assignment was recorded on December 14, 1979, and  
3 was assigned Recordation No. 10830-B.

4 As I have said, this is a Public Sale  
5 pursuant to Section 9-504 of the Illinois Uniform  
6 Commercial Code and is being conducted in accordance  
7 with an Agreed Order Approving the Application For  
8 Authority to Compromise and Settle Claims, To Abandon  
9 and Consent to the Foreclosure of Property of the  
10 Estate and to Reject Executory Contracts and Unexpired  
11 Leases, And for Other Relief, which Order was entered  
12 on September 28, 1983, as of May 25, 1983, by the  
13 United States Bankruptcy Court for the Northern  
14 District of Illinois, Eastern Division, in the case  
15 entitled In re Funding Systems Railcars, Inc., and  
16 that is Case No. 81 B 11964. A notice of this sale  
17 was sent on November 1, 1983, to the debtor, Funding  
18 Systems Railcars, Inc., to Refco Transport Equipment,  
19 Inc., Comet Leasing Corporation, and various  
20 railroads and railroad lessors.

21 I have and I will give to the court  
22 reporter a Certificate of Mailing with respect to the  
23 Notice, which I would like you to incorporate in the  
24 record.

1           The purpose of the sale today is that the  
 2 Bank of New England is selling, as Secured Party,  
 3 all right, title and interest of Funding Systems  
 4 Railcars, Inc., Comet Leasing Corporation and Refco  
 5 Transport Equipment Company, in and to one hundred  
 6 100-ton open top hopper railroad cars. These cars  
 7 are Chessie System designed, Specification  
 8 No. HT 8978, dated August 8, 1978; Specifications  
 9 Supplement No. 1, dated March 13, 1979, in accordance  
 10 with General Outline Drawing No. 139-11-832,  
 11 Revision C.

12           I have a copy of the agreement between  
 13 Chessie Corporation and Funding Systems Railcars,  
 14 Inc., with me; if anyone is interested, I would be  
 15 happy to provide it for them.

16           The cars originally had Road Nos. UMP 7100  
 17 through 7199. Subsequently, the prefix of 26 cars  
 18 was changed to TWRY. It is our understanding that  
 19 the prefix is being changed or has been or will be  
 20 changed to WNS, keeping the same number, changing  
 21 only the prefix.

22           In accordance with the Court Order, the  
 23 cars are being sold as is; whereas, they have not  
 24 been assembled or removed from service. The Bank of

1 New England makes no representations or warranties  
2 of any kind, either expressed or implied, including  
3 the warranty of merchantability or fitness for a  
4 particular purpose.

5 The terms of any sale today are all cash  
6 and immediately available funds or by certified  
7 check, or alternatively, 20 percent down, the balance  
8 to be paid within ten calendar days after today's  
9 date. The failure of any successful bidder to pay  
10 the balance within said ten-day period will result  
11 in a forfeiture of the deposit and any other damages  
12 suffered by the Bank of New England.

13 The Bank of New England reserves the  
14 right to accept or reject any or all bids made today,  
15 to adjourn the sale at any time, and to continue it  
16 to a date subsequent. The Bank of New England also  
17 reserves the right to bid its debt at this sale.

18 I would ask anyone bidding to identify  
19 themselves and to identify their principal.

20 In accordance with the Notice, we will bid  
21 both in lots and in bulk. The lots will be  
22 comprised as follows: It will be one lot of 26  
23 cars, which cars are the cars which were previously  
24 marked TWRY. A list of those cars is available for

1 anyone's inspection. Subsequent to that, we will  
2 offer three other lots; one lot will be 24 cars,  
3 beginning with UMP No. 7100 and continuing in  
4 sequence, subject to a break in sequence with respect  
5 to any cars which are marked TWRY. Thereafter, we  
6 will follow with the two sales of lots of 25 cars,  
7 with the UMP numbers continuing in sequence from  
8 the previous last car.

9 The bidding is now open. I would like  
10 to know if there are any bids with respect to the  
11 first lot of 26 cars.

12 (No comment.)

13 MR. BOTICA: Hearing no bids, we will go on  
14 to the second lot, 24 cars. Are there any bids?

15 (No comment.)

16 MR. BOTICA: Hearing no bids, we will go on  
17 to the third lot of 25 cars. Are there any bids?

18 (No comment.)

19 MR. BOTICA: Hearing no bids, we will move on  
20 to the fourth lot of 25 cars. Are there any bids?

21 (No comment.)

22 MR. BOTICA: Hearing no bids, we will now  
23 proceed to offer the cars for open bidding in bulk.  
24 This will be a bulk bid on 100 cars. Are there any  
bids?

1 MR. WALSH: I, David Walsh, have a power of  
 2 authority -- power of attorney for BBC Investment  
 3 Services, Inc., a Massachusetts corporation, bid  
 4 \$1.8 million for the entirety.

5 MR. BOTICA: This is a bid of \$18,000 per car?

6 MR. WALSH: Per car.

7 MR. BOTICA: Are there any other bids?

8 (No comment.)

9 MR. BOTICA: Hearing no other bids, the bid  
 10 is \$1.8 million or \$18,000 per car. This bid is  
 11 going once, the bid is going twice, it is going  
 12 three times. The cars are sold to the successful  
 13 bidder.

14 The sale is now concluded. I would like  
 15 to thank everyone for attending today.

16 (Which were all the pro-  
 17 ceedings had at this time.)

18  
 19  
 20  
 21  
 22  
 23  
 24



NOTICE OF SALE  
OF COLLATERAL BY ORDER  
OF BANKRUPTCY COURT

NOTICE IS HEREBY GIVEN that on December 1, 1983, at 10:00 A.M. in Suite 4100, Three First National Plaza, Chicago, Illinois 60602, the Bank of New England, N.A. (the "Secured Party") will offer to sell all of its right, title and interest, without representation or warranty of any kind, in and to, one hundred (100) one hundred ton open top hopper railroad cars (the "Railcars") pursuant to, and in accordance with, the Agreed Order Approving Application For Authority to Compromise and Settle Claims, To Abandon and Consent To the Foreclosure of Property of the Estate and to Reject Executory Contracts and Unexpired Leases, And For Other Relief entered on September 28, 1983, nunc pro tunc May 25, 1983 (the "Order") by the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, in In re Funding Systems Railcars, Inc., Case No. 81 B 11964. Except as provided in the Order, the sale of the Railcars shall be made subject to any lease, sublease or other agreement relating to the present use of the Railcars.

The terms of the sale shall be all cash or a twenty per cent (20%) deposit with bid, and the balance to be paid within ten (10) calendar days after the acceptance of any bid. All payments shall be made by certified or cashier's check.

The Secured Party reserves the right to sell the Railcars in a single lot or in separate lots.

The Secured Party reserves the right to reject any bid or bids, and to adjourn the sale to a future date by giving notice thereof at the sale. The Secured Party reserves the right to bid at said sale and to become the purchaser thereat.

For further information, contact either David G. Walsh, Bank of New England, N.A., 28 State Street, Boston, Massachusetts 02108, (617) 973-6088, or Matthew J. Botica, Hopkins & Sutter, Suite 4100, Three First National Plaza, Chicago, Illinois 60602, (312) 558-6695.

Dated: November 1, 1983

CERTIFICATE OF SERVICE

I, Kathryn H. Kontos, hereby certify that I caused a true and correct copy of the Notice of Sale of Collateral by Order of Bankruptcy Court, which is attached hereto as Exhibit 1 to be sent on November 1, 1983 by certified mail, return receipt requested, to each of the parties set forth on Exhibit 2.

*Kathryn H. Kontos*  
Kathryn H. Kontos

Subscribed and sworn to  
before me this 11 day  
of November, 1980.

*Mary A. [Signature]*  
Notary Public

My Commission Expires:

MARY A. [Signature]  
My Commission Expires: NOV 23, 1987

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Dated: November 1, 1983

RAILROAD LESSORS

ACF Industries, Inc.  
620 North Second Street  
St. Charles, Missouri 63301

Chicago Freight Car Leasing Co.  
205 West Touhy Avenue  
Park Ridge, Illinois 60068

North American Car Corp.  
33 West Monroe Street  
Chicago, Illinois 60603

PLM, Inc.  
50 California Street  
San Francisco, California 94111

CFBX, Inc.  
372 South LaSalle Street  
Chicago, Illinois 60604

Erman Corp.  
2333 Waukegan Road  
Bannockburn, Illinois 60015

Pullman Leasing Co.  
200 South Michigan Avenue  
Chicago, Illinois 60604

Sheldon Lande  
Railpool  
208 South LaSalle Street  
Chicago, Illinois 60604

Thrall Car Mfg. Co.  
P.O. Box 218  
Chicago Heights, Illinois 60411

RAILROADS

Santa Fe Railroad Company  
80 East Jackson Boulevard  
Chicago, Illinois 60604

Chessie System  
Two North Charles  
Baltimore, Maryland 21201

Burlington Northern Railroad  
176 East Fifth Street  
St. Paul, Minnesota 55101

Attention: Mr. John Tierney  
Assistant Vice President-Purchasing

Canadian National Railways  
935 De La Gauchetiere Street West  
Montreal, Quebec, Canada H3C-3N4

Canadian Pacific Railways  
P. O. Box 6042  
Station "A"  
Montreal, Quebec, Canada H3C-3E4

Chicago & Northwestern  
Transportation Company  
One Northwestern Center  
Chicago, Illinois 60606

Elgin, Joliet & Eastern Railway  
1141 Maple Road  
Joliet, Illinois 60434

Southern Pacific  
Transportation Company  
One Market Plaza  
San Francisco, California 94105

Denver & Rio Grande R.R.  
P. O. Box 5482  
Denver, Colorado 80217

Florida East Coast Railway Co.  
One Malaga Street  
St. Augustine, Florida 32084

Grand Trunk Western R.R. Co.  
131 West Lafayette  
Detroit, Michigan 48226

Illinois Central Railroad  
233 North Michigan Avenue  
Chicago, Illinois 60601

Seaboard Systems R.R. Co.  
Louisville & Nashville R.R. Co.  
500 Water Street  
Jacksonville, Florida 32202

Missouri, Kansas, Texas R.R. Co.  
Katy Building  
701 Commerce  
Dallas, Texas 75202