

Michael C. Bynane
Assistant General Attorney



11708
RECORDATION NO. Filed 1425

Law Department
Terminal Tower
P. O. Box 6419
Cleveland, Ohio 44101
216 623 2472

April 18, 1980

APR 22 1980 -9 50 AM

INTERSTATE COMMERCE COMMISSION

0-113A030

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

APR 22 1980
Date
Fee \$ 50.00
ICG Washington, D.C.

Attention: Mrs. M. R. Lee, Room 2303
Recordation Unit

Dear Mrs. Mergenovich:

Enclosed are executed counterparts Nos. 2, 3 and 4 (of 4) of Agreement dated as of April 15, 1980, between The Chessie Corporation, P. O. Box 6419, Cleveland, Ohio 44101 (Bailor) and Western Maryland Railway Company, 100 N. Charles Street, Baltimore, Maryland 21201 (Bailee).

The equipment covered by the enclosed document consists of 500 100-ton open top hopper cars, to bear "Bailee's road numbers 189412-189911, inclusive, AAR mechanical designation H.T. The equipment will be lettered "Chessie System", "WM" 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 Western Maryland Railway Company in the amount of \$50 representing the required recording fee.

Pursuant to the Commission's rules and regulations for the recordation of certain documents under 59 USC §11303 (Section 20c of the former Interstate Commerce Act), as currently administered, you are hereby requested to file one of the enclosed counterparts for record in your office and return the remaining one to me at my above address.

Very truly yours,

Michael C. Bynane

RECEIVED
APR 22 9 47 AM '80
I.C.C.
FEE OPERATION BR.

MCB/mw

Enclosures



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.

[Handwritten notes and signatures on the left margin]

Interstate Commerce Commission
Washington, D.C. 20423

4/22/80

OFFICE OF THE SECRETARY

Michael C. Bynane
Assist. Gen. Atty.
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 4/22/80 at 9:50am , and assigned re-
recording number(s). 11708

Sincerely yours,


Agatha L. Mergenovich
Secretary

Enclosure(s)

EXECUTED IN 4 COUNTERPARTS

OF WHICH THIS IS NO. 2

RECORDATION NO. **11708** Filed 1425

~~APR 22 1980 9 50 AM~~

INTERSTATE COMMERCE COMMISSION

AGREEMENT

Dated as of April 15, 1980

between

THE CHESSIE CORPORATION

and

WESTERN MARYLAND RAILWAY COMPANY

Covering

500 100-ton Open Top Hopper Cars

THIS AGREEMENT, dated as of April 15, 1980, by and between THE CHESSIE CORPORATION, a Delaware corporation ("Manufacturer"), and WESTERN MARYLAND RAILWAY COMPANY, a Maryland and Pennsylvania corporation ("WM"):

W I T N E S S E T H :

The Manufacturer and WM heretofore entered into an Agreement dated as of April 15, 1980 ("Manufacturing Agreement") a copy of which Agreement is made a part hereof by reference, whereunder the Manufacturer agreed to construct and deliver to WM, and WM agreed to accept and pay for, the following railroad equipment (Cars):

500 100-ton open top hopper cars,
to bear WM's road numbers
189412-189911, inclusive.

Delivery of the Cars by the Manufacturer to WM is scheduled to begin in April, 1980. However, inasmuch as WM 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. WM represents that such financing arrangements will be consummated, however, on or before July 15, 1980. WM (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 WM and WM hereby accepts from the Manufacturer the Cars as of the date each of them is delivered to WM at Russell, Kentucky, or such other place as may be specified by WM, for the period ending on the earlier of July 15, 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 WM'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. WM, without expense to the Manufacturer, will promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation pursuant to 49 USC §11303. In addition, WM 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.

WM 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 WM during the term of this Agreement.

WM's obligations contained in this paragraph shall survive the termination by mutual agreement or otherwise of this Agreement.

WM 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 WM 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.

WM 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, WM 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 WM 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 WM under this Agreement shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to WM.

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, counter-claim, or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to WM by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by WM, 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).

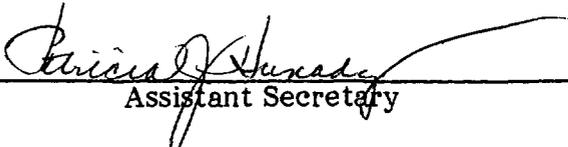
WM agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to WM of the cars, as contemplated by this Agreement, shall not relieve WM of its obligations to accept, take, and pay for the Cars in accordance with the terms of the Manufacturing Agreement, or impair any of the Manufacturer's rights under the Manufacturing Agreement.

THE CHESSIE CORPORATION

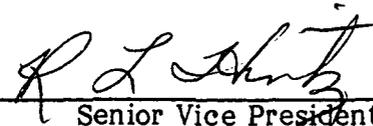
By 
Senior Vice President

[Corporate Seal]

Attest:

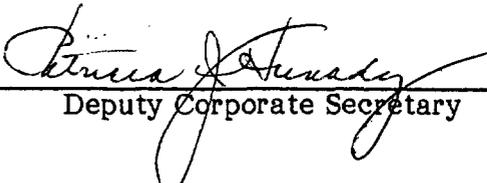

Assistant Secretary

WESTERN MARYLAND RAILWAY COMPANY

By 
Senior Vice President

[Corporate Seal]

Attest:

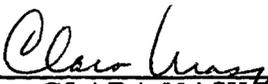

Deputy Corporate Secretary

APPROVED AS TO FORM


ASSISTANT GENERAL ATTORNEY

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

On this 18TH day of April, 1980, before me personally appeared R. L. Hintz to me personally known, who, being by me duly sworn, says that he is Senior Vice President of THE CHESSIE CORPORATION, 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
Notary Public, State of Ohio, Cuyahoga County
My Commission Expires April 21, 1984

[Notarial Seal]

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

On this 18TH day of April, 1980, before me personally appeared R. L. Hintz, to me personally known, who, being by me duly sworn says that he is Senior Vice President of WESTERN MARYLAND RAILWAY 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
Notary Public, State of Ohio, Cuyahoga County
My Commission Expires April 21, 1984

[Notarial Seal]