

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

LAW DEPARTMENT
701 COMMERCE STREET
DALLAS, TEXAS 75202

214-651-6736

13449

JAN 26 1982 -2 10 PM

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General Attorney
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Commerce Counsel
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General Attorney

January 22, 1982

JAN 26 1982 -2 10 PM

IN REPLY REFER TO: 410.043-79

2-026A089

INTERSTATE COMMERCE COMMISSION

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

RECORDED
DATE JAN 26 1982
FEE \$ 50.00

Washington, D. C.

Dear Mrs. Mergenovich:

I have enclosed an original and two (2) counterparts of the documents described below, to be recorded pursuant to Section 11303 of Title 49 of the US Code. The first document is a Car Lease Agreement, a primary document, dated as of the first day of September, 1981

The second document is an Assignment of Funds under Car Lease Agreement, a secondary document, dated the 22nd day of January, 1982.

The names and address of the parties to the documents are as follows:

The lessor under the Car Lease Agreement is Southwestern States Management Co., 701 Commerce Street, Dallas, TX 75202;

The lessee under the Car Lease Agreement is the Missouri-Kansas-Texas Railroad Company, 701 Commerce Street, Dallas, TX 75202;

The assignor under the Assignment of Funds under Car Lease Agreement is Southwestern States Management Co., 701 Commerce Street, Dallas, TX 75202;

The assignee under the Assignment of Funds under Car Lease Agreement is First City Bank of Dallas, P. O. Box 88000, Dallas, TX 75388.

Handwritten signatures and initials on the left margin.

Page Two
Mrs. Agatha L. Mergenovich

January 22, 1982

A description of the equipment covered by the documents follows:

Five (5) rebuilt wide vision cupola type cabooses bearing Missouri-Kansas-Texas Railroad Company recording marks and numbers MKT 211 to MKT 215, both inclusive.

A fee of \$50.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to the undersigned or the bearer of this letter if hand delivered.

A short summary of the documents to appear in the Index follows:

The primary document is a Car Lease Agreement between Southwestern States Management Co., 701 Commerce Street, Dallas, TX 75202, lessor, and the lessee is Missouri-Kansas-Texas Railroad Company, 701 Commerce Street, Dallas, TX 75202, and covers five (5) rebuilt wide-vision cupola type cabooses bearing Missouri-Kansas-Texas Railroad Company recording marks and numbers MKT 211 to MKT 215, both inclusive.

The secondary document is an Assignment of Funds under Car Lease Agreement between Southwestern States Management Co., 701 Commerce Street, Dallas, TX 75202, assignor, and First City Bank of Dallas, P. O. Box 88000, Dallas, TX 75388, assignee, dated January 22, 1982, and covers five (5) rebuilt wide-vision cupola type cabooses bearing Missouri-Kansas-Texas Railroad Company recording marks and numbers MKT 211 to MKT 215, both inclusive.

I certify that I have knowledge of the foregoing.

Yours very truly,



Arthur M. Albin

AMA/bmw

Enclosures

13449

REGISTRATION NO. Filed 1425

JAN 26 1982 - 2 10 PM

C A R L E A S E A G R E E M E N T

INTERSTATE COMMERCE COMMISSION

AGREEMENT made and entered into as of the 1st day of September, 1981, between SOUTHWESTERN STATES MANAGEMENT CO., hereinafter referred to as "Lessor," and MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, hereinafter referred to as "Lessee."

R E C I T A L S

Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, five (5) rebuilt wide-vision cupola type cabooses bearing Missouri-Kansas-Texas Railroad Company recording marks and numbers MKT 211 to MKT 215, inclusive.

A G R E E M E N T

NOW, THEREFORE, IT IS COVENANTED AND AGREED BY THE PARTIES AS FOLLOWS:

1. Lease of Cars. Lessor, as owner, agrees to lease to Lessee, and Lessee agrees to and hereby does lease from Lessor, five (5) rebuilt wide-vision cupola type cabooses bearing Missouri-Kansas-Texas Railroad Company recording marks and numbers MKT 211 to MKT 215, inclusive, and hereinafter called "Cars."
2. Delivery and Acceptance of Cars. Lessor shall deliver the Cars to Lessee on or about the date first set forth above, and Lessee shall accept delivery of the Cars as of the date it is received. Lessee warrants and represents that it has inspected the Cars, is fully familiar with their physical condition, and accepts the Cars in their present condition.
3. Use and possession. Throughout the continuance of this lease and so long as Lessee is not in default hereunder, Lessee shall be entitled to possession of the Cars and may use such Cars either on its own property or upon the lines of any railroad in the usual interchange of traffic and to receive such compensation for the use of said Cars (i) as is provided for in the then-current Code of Rules Governing the Condition of, and Repairs to, Freight and Passenger Cars for the interchange of traffic adopted by the Association of American Railroads (hereinafter called the "Interchange Rules"), or (ii) such other compensation as Lessee and the user railroads may agree to, provided Lessee shall comply at all times with the requirements of Section 5, hereof, but any such uses of said Cars shall at all times be subject to the terms and conditions of this lease.
4. Term. This lease shall be for a term of seventy-six (76) months commencing as of the date said Cars are delivered to Lessee and terminating at the end of the seventy-sixth month, unless sooner terminated in accordance with the provisions hereof.

5. Rental. During the term of this lease, Lessee shall pay to Lessor, commencing as of the date each Car is delivered to Lessee, a rental of \$885.00 per month per car. Rental for the first partial month and the last partial month of this lease shall be prorated on the basis of \$29.00 per day. Rental shall be due and payable by Lessee to Lessor in arrears on or before the last day of each month during the term hereof.
6. Title. Lessor has title to the Cars, and Lessee shall not by reason of this lease or any action taken hereunder acquire or have any right or title in and to the Cars except the rights expressly granted to it as Lessee.
7. Maintenance. Lessee, during the continuance of this lease, shall perform or cause to be performed and shall pay all costs and expenses of all maintenance and repair work necessary to maintain the Cars in good working order and general condition as when delivered to Lessee, ordinary wear and tear excepted. Any parts, replacements, or additions made to the Cars shall be accessions to the Car, and title thereto shall immediately vest in Lessor without cost or expense to Lessor.
8. Taxes. Lessee shall promptly pay all taxes, assessments and other governmental charges, including sales, use or ad valorem taxes levied or assessed during the continuance of this lease upon the Cars or the interest of the Lessee or therein or any thereof, or upon the use or operation thereof or the earnings arising therefrom, and if any levy or assessment is made against Lessor on account of any of the foregoing matters or on account of its ownership of the Cars, exclusive, however, of any taxes on the rentals herein provided or the net income of Lessor therefrom (except any such tax on rentals which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as hereinbefore provided), Lessee will promptly pay or reimburse Lessor for same; but the Lessee shall not be required to pay the same so long as it shall in good faith and by appropriate legal or administrative proceedings contest the validity or amount thereof unless thereby, in the judgment of Lessor, the rights or interests of Lessor in and to the Cars will be materially endangered. In the event any tax reports are required to be made on the basis of the Cars, the Lessee will either make such reports in such manner as to show the ownership of such Cars by Lessor or will notify Lessor of such requirements and will make such report in such manner as shall be satisfactory to Lessor.
9. Liens. Lessee shall keep the Cars free from any encumbrances or liens which may be a cloud upon or otherwise affect Lessor's interest which arise out of any suit involving Lessee or any act, omission, or failure of Lessee or Lessee's failure to comply with the provisions of this lease and shall promptly discharge any such lien, encumbrances or legal process.
10. Warranty - Representations. Except as otherwise provided in Paragraph 6, Lessor makes no warranty or representation of any kind whatsoever, either express, or implied, as to any matter whatsoever, including specifically, but not exclusively, fitness, design, workmanship, condition, or quality, of the Cars, or parts thereof, which Cars

have been accepted by Lessee hereunder, and Lessor shall have no liability hereunder for damages of any kind, including specifically, but not exclusively, special, indirect, incidental, or consequential, on account of any matter, which would otherwise constitute a breach of warranty or representation.

11. Car Marking. Lessee shall cause such Cars to be stenciled:

SOUTHWESTERN STATES MANAGEMENT CO., OWNER

Lessee shall also cause said Cars to be stenciled in accordance with any instructions from Lessor resulting from Lessor's financing of the Car so that said Car will reflect the interest of any bank or corporation which may act as secured party, mortgagee or trustee or which may have a security interest in and to said Cars. Except as provided for herein, Lessee shall not permit any other marking or labeling or stenciling of said Cars.

12. Loss, Theft, or Destruction of Cars. In the event a Car is lost, stolen, or is destroyed, or is damaged beyond economic repair from any cause whatsoever, Lessee shall promptly and fully inform Lessor of such occurrence and shall, at the time of the next monthly payment, or at such other date as may be mutually agreed upon, pay to Lessor, as liquidated damages, in lieu of any further claim of Lessor, hereunder, except for accrued rent and such claims as may have arisen under Paragraphs 8 and 9, an amount in cash equal to the applicable amount shown in Schedule A, attached hereto, and incorporated herein by reference. Upon demand by Lessee, Lessor will give to Lessee a Bill of Sale covering the Car lost, stolen, or destroyed, and paid for by Lessee in accordance with Schedule A.

13. Return of Cars. Upon the termination of this lease, as provided for herein, the Lessee agrees to return the Cars forthwith, in as good working order and general condition as when delivered to Lessee, ordinary wear and tear excepted.

14. Default. The term "event of default" for the purpose hereof shall mean any one or more of the following:

- (a) non-payment by Lessee within thirty (30) days after the same becomes due of any installment of rental or any other sum required to be paid hereunder by Lessee;
- (b) Lessee shall default or fail for a period of thirty (30) days in the due observance or performance of any covenant, condition or agreement required to be observed or performed on its part hereunder;
- (c) a decree or order shall be entered by a court having jurisdiction in the premises adjudging Lessee a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of Lessee under the Federal Bankruptcy Act or any

other applicable Federal or State law, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Lessee or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of thirty (30) days;

- (d) the institution by Lessee of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of any proceedings or to any action taken or proposed to be taken in any proceedings or action described in paragraph 14(c), or the making by Lessee of any assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by Lessee in furtherance of any such action.

15. Remedies. Upon the happening of an event of default, Lessor, at its option, may:

- (a) proceed by appropriate court action either at law or in equity for specific performance by the Lessee of the applicable covenants of this lease or to recover from Lessee all damages, including specifically but not exclusively, expenses and attorneys' fees which Lessor may sustain by reason of Lessee's default or on account of Lessor's enforcement of its remedies hereunder;
- (b) elect only to terminate the Lessee's right of possession (but not to terminate the lease) without releasing Lessee in whole or in part from its liabilities and obligations accrued hereunder or hereafter to accrue for the remaining term of the lease and thereupon require Lessee to deliver the Cars to Lessor at any point designated by it or to take possession itself of any or all of the Cars wherever same may be found. Lessor may, but need not, require delivery of the Cars to it or repossess the Cars but in the event the Cars are delivered to Lessor or are repossessed, Lessor shall use reasonable efforts to relet the same to others upon a reasonable rental and such other terms as it may see fit. The proceeds of any such reletting shall first be applied to the expenses (including reasonable attorneys' fees) of retaking and reletting of the Cars and delivery to the new lessee and then to the payment of rent due under this lease. Lessee shall pay any deficiency remaining due after so applying the proceeds as the same shall accrue. Lessor shall not be required to accept or receive any lessee offered by Lessee or do any act whatsoever or exercise any diligence whatsoever in or about the procuring of another lessee to mitigate the damages of the lessee or otherwise. The election by Lessor to relet the Cars and the acceptance of a new lessee shall not operate to release Lessee from liability for any existing or future default in any other covenant or promise herein contained;

- (c) declare this lease terminated and recover from Lessee all amounts then due and payable plus, as liquidated damages for loss of the bargain and not as penalty, a sum which represents the excess of the present worth, at the time of such termination, if any, of the aggregate rental which would have thereafter accrued from the date of such termination to the end of the original term over the then-present worth of the fair rental value of the Car for such period. Present worth is to be computed in each case on the basis of a five percent (5%) per annum discount, compounded annually from the respective dates upon which rental would have been payable hereunder had this lease not terminated. In addition to the foregoing, Lessor shall recover any damages sustained by reason of the breach of any covenant of the lease other than for the payment of rental;
- (d) recover or take possession of any or all of the Cars and hold, possess and enjoy the same, free from any right of the Lessee to use the Cars for any purposes whatsoever.

The remedies provided in this paragraph 15 in favor of Lessor shall not be deemed exclusive but shall, where not by rule of law inconsistent with each other, be cumulative and may be availed of singly, in combination, or all together and in any order, and shall be in addition to all other remedies, in Lessor's favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law now or hereafter in effect which might limit or modify any of the remedies herein provided to the extent that such waiver is permitted by law.

16. Sublease and Assignment. Lessee shall have no right to sublease the Cars. Lessor shall have the right to assign the lease or its rights thereunder as follows: all rights of Lessor hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part with or without notice to Lessee, but subject to Lessee's rights under this lease. If Lessor shall have given written notice to Lessee stating the identity and post office address or any assignee entitled to receive future rentals and any other sums payable to Lessee hereunder, Lessee shall thereafter make such payments to the designated assignee. Lessee will not amend, alter or terminate this lease without the consent of the assignee while such assignment is in effect. The rights of any assignee or any party or parties on behalf of whom such assignee is acting shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever, whether arising out of any breach of any obligation of Lessor hereunder or by reason of any other indebtedness or liability at any time owing by Lessor to the Lessee.

17. Indemnification. Lessee hereby agrees to indemnify and save harmless the Lessor from and against any and all liability, demands, and causes of action, whether well-founded or otherwise, including the cost of defending same, for bodily injury to or death of any person or damage to the property of any person whatsoever, including the

parties hereto or the employees of either of them, arising out of or in connection with the use or operation of said Cars leased hereunder, whether said damage shall be the result of obvious defects, latent defects, or other causes, and shall not call upon the Lessor for contribution in any sum whatsoever by reason of the fact that Lessor is the owner of said Cars. Indemnity shall apply from the time the said Cars are accepted by the Lessee until they are returned to and accepted by the Lessor.

18. Notice. Any notice required or permitted to be given pursuant to the terms of this lease shall be properly given when forwarded registered United States mail, return receipt requested, postage prepaid, addressed to:

Southwestern States Management Co.
701 Commerce Street
Dallas, TX 75202

or at such other address as Lessor may from time to time designate by notice in writing, and to Lessee at:

Missouri-Kansas-Texas Railroad Company
701 Commerce Street
Dallas, TX 75202

or any such other place as Lessee may from time to time designate by notice in writing.

19. Recording of Lease. Lessee agrees to forthwith, following execution hereof, cause this lease to be recorded with the Interstate Commerce Commission in accordance with Section 11303 of the Interstate Commerce Act.

20. Counterparts. This agreement may be executed in multiple counterparts, each of which shall be deemed an original.

21. Law Governing. The terms of this agreement and all rights and obligations hereunder shall be governed by the laws of the State of Texas.

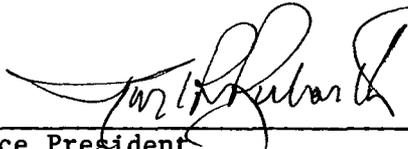
22. Purchase Option. Upon the termination of the full term of this Car Lease Agreement, Lessee shall have the option and right to purchase the Cars by giving Lessor at least thirty (30) days' written notice of Lessee's desire to purchase the Cars, tendering to Lessor on or before the expiration date of the full term hereof a sum of money equal to \$100.00, plus the difference between the total of the monthly payments made hereunder and the "total cost" of said Cars. The "total cost" as used herein shall mean the sum of \$300,000.00 plus the interest cost applicable to the Cars incurred by Lessor from the first day of the time hereof, until the expiration of the full term of this Car Lease Agreement. The "interest cost" for the Cars will be the total sum of the interest paid by Lessor to First City Bank of Dallas in

connection with the financing of the purchase of the Cars. Should the total of such interest cost and \$300,000.00 be less than the total of the rental payment made hereunder to Lessor as rental for the Cars, Lessor will refund the difference, less \$100.00 (the purchase price) to Lessee in the event Lessor exercises this purchase option.

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this lease as of the day and year first above written.

SOUTHWESTERN STATES MANAGEMENT CO.,
Lessor

By

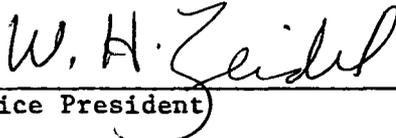

Vice President

ATTEST:


Assistant Secretary

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY,
Lessee

By


Vice President

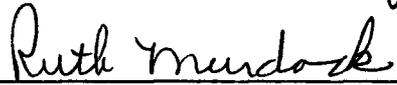
ATTEST:


Secretary

THE STATE OF TEXAS:

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared Karl R. Ziebarth, Vice President, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said SOUTHWESTERN STATES MANAGEMENT CO., a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 22nd day of January, 1982.


Notary Public
in and for the State of Texas.

My Commission expires: December 31, 1982.

THE STATE OF TEXAS:

BEFORE ME, the undersigned, a Notary Public in and for the State of Texas, on this day personally appeared W. A. Geidel, Vice President, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 22 day of January, 1982.


Teresa Ladner
Teresa Ladner Notary Public
in and for the State of Texas

My Commission expires: Nov. 30, 1984.