

THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY

G. EDWARD YURCON
General Counsel

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Attorneys

June 8, 1983

SUITE 780, COMMERCE COURT
FOUR STATION SQUARE
PITTSBURGH, PA 15219-1199
PH (412) 261-3201

No. ~~164A089~~
JUN 13 1983

Date

Fee \$ 50.00

ICC Washington, D. C.

Ms. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
12th and Constitution Ave.,
Washington, D. C. 20423

RECORDATION NO. 14039 Filed 1426

JUN 13 1983 - 1 05 PM

INTERSTATE COMMERCE COMMISSION

Dear Ms. Mergenovich:

Enclosed for filing with the Commission pursuant to Section 11303 of the Interstate Commerce Act are duplicate originals and three additional copies of Railroad Equipment Lease, dated as of February 17, 1983, covering certain 55-ton rebuilt box cars. The names and addresses of the parties to the transaction are as follows:

OWNER: The Pittsburgh and Lake Erie Railroad Company
Suite 780, Commerce Court
Four Station Square
Pittsburgh, PA 15219-1199

LESSEE: Montour Railroad Company
Suite 780, Commerce Court
Four Station Square
Pittsburgh, PA 15219-1199

A particular description of the leased equipment is contained in the agreement.

Also enclosed is P&LE Voucher No. 142077 payable to the Treasurer of the United States, in the amount of \$50.00, to cover the filing fee prescribed by the Commission in its rules and regulations.

Please acknowledge receipt at your earliest convenience by stamping and returning to me a duplicate original and two copies of this document.

Very truly yours,

G. Edward Yurcon

encs.

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INTERSTATE COMMERCE COMMISSION

RAILROAD EQUIPMENT LEASE

THIS AGREEMENT AND LEASE, dated as of the 17th day of February, 1983, by and between THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY, hereinafter called "P&LE", and the MONTOUR RAILROAD COMPANY, hereinafter called "Montour".

W I T N E S S E T H:

WHEREAS, P&LE is the owner of all of the capital stock of Montour; and

WHEREAS, Montour desires to obtain certain box cars in order that traffic over its line may be properly transported; and

WHEREAS P&LE is the owner of certain box cars, more particularly described in Exhibit A, attached hereto and made a part hereof; and

WHEREAS, P&LE proposes to lease the said box cars to its wholly owned affiliate, Montour, at the rental, for the term and upon the conditions hereinafter stated.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the parties hereto covenant and agree as follows:

1. Lease of Cars. P&LE shall lease to Montour and Montour shall and does hereby lease from P&LE all those box cars (any one of said cars hereinafter referred to as "Car", and more than one or all of which are hereinafter referred to as "Cars"), bearing numbers as set forth in Exhibit A. The lease shall become effective as to any Car immediately upon its acceptance by Montour at a point on its line.

2. Additional or Substitute Cars. In the event that P&LE shall furnish to Montour for lease other box cars in addition to or in substitution for any of the Cars described in Exhibit A hereto, such other cars, upon acceptance by Montour, shall be included as Cars under this Agreement and Lease and shall be subject to all of the terms and conditions hereof in all respects as though they had been part of the Cars initially described herein.

3. Possession and Use. During the term of this lease, so long as Montour is not in default of the provisions hereunder, Montour shall be entitled to possession of each Car and the same may be used upon the lines of any other railroad in normal interchange service for the uses for which they are designed. All per diem time and mileage charges payable for the use of the Cars by other parties shall be accounted for by P&LE and paid over to Montour.

4. Term. This Agreement and Lease shall continue in effect for an initial term of one (1) year which shall commence on the date hereinabove written. If Montour has fully performed all of its obligations under this Agreement and Lease, the lease of the Cars shall continue under all the provisions herein contained for additional periods of one (1) year each until this Agreement and Lease shall be terminated upon six (6) months' written notice given by either party to the other, or at such earlier date as may be mutually agreed to by the parties.

5. Rental. As rental for the use of each Car, Montour shall pay P&LE for such use from the date of this Agreement and Lease at the rate of \$375.00 per year. Montour shall make annual payments of the aforesaid rental to P&LE within fifteen (15) days from the end of each year.

6. Title. Montour shall not by reason of this Agreement and Lease or any action taken hereunder acquire or have any right or title in and to the Cars except as to the rights herein expressly granted to it as lessee.

7. Maintenance. From the time of delivery of the Cars by P&LE to Montour until the Cars have been accepted by P&LE from Montour at the termination of the lease, maintenance of the Cars shall be provided in accordance with the following:

- (a) At times when Cars are on the lines of Montour, Montour will make routine inspection and make such minor repairs as may be required at its sole cost and expense;
- (b) Cars returned to Montour with defect cards or otherwise requiring other than minor repairs will be directed by Montour to P&LE via Montour Junction and P&LE will make such repairs as are necessary at no cost to Montour. All payments made under applicable Association of American Railroads Interchange Rules for defect card repairs made by P&LE shall be retained by P&LE. Montour will confer with P&LE Equipment Department regarding disposition of any Car received by Montour in damaged condition without a defect card affixed thereto; and
- (c) The cost of all repairs made upon Cars by railroads other than the parties hereto and billable to the owning railroad under applicable Association of American Railroads Interchange Rules shall be borne and paid by Montour.

8. Additions to Cars. Any parts, replacements or additions made to any Car shall be accessions to such Car and title thereto shall be immediately vested in P&LE without cost or expense to P&LE.

9. Taxes. Montour 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 Montour therein whether or not upon the use or operation thereof or the earnings derived therefrom. If any levy or assessment is made against P&LE 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 P&LE therefrom, Montour will promptly pay or reimburse P&LE for the same except that Montour shall not be required to pay the same so long as it shall in good faith and by appropriate legal or administrative proceedings protect the validity or amount of such levy or assessment.

10. Prohibition Against Liens. Montour shall pay or set aside and discharge any and all sums claimed by any party by, through or under Montour and its successors and assigns which, if unpaid, might become a lien or a charge upon the Cars. Montour shall not be required, however, to pay or discharge any such claim as long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner which will not affect the title in and to the Cars.

11. Identification of Cars. At all times during the continuance of this lease, Montour will cause each Car to bear

only the initials of Montour and the number assigned to it and appearing thereon as of the date of its delivery by P&LE. Montour shall further cause each side of such Cars to bear, in letters not less than one inch (1") in height, the following legend:

"LEASED BY MONTOUR RAILROAD COMPANY FROM THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY, OWNER, UNDER LEASE FILED WITH THE INTERSTATE COMMERCE COMMISSION PURSUANT TO SECTION 11303(a) OF THE INTERSTATE COMMERCE ACT."

In the event that any of such markings or legends shall at any time prior to the termination of the lease be removed, defaced or destroyed, Montour shall immediately cause the same to be restored or replaced.

12. Indemnity. Montour agrees to indemnify, defend and save P&LE, its officers and employees, harmless from and against all expenses, damages, claims, actions or liabilities based upon personal injuries, death or property damage arising out of or in connection with the condition, operation or use of any of the Cars upon the line of Montour. Whenever Cars are operated on lines of railroads other than Montour, P&LE will indemnify, defend and save Montour, its officers and employees, harmless from and against all expenses (including litigation and counsel fees), damages, claims, actions or liabilities based upon personal injuries, death or property damage arising out of or in connection with the condition, operation or use of the Cars upon such railroad lines.

13. Loss or Destruction of Cars. Montour shall forthwith advise P&LE of all occurrences in which any Car shall be lost, destroyed or irreparably damaged beyond economic repair from any cause whatsoever at any time during the term of this lease, and all sums due or payments made in accordance with the prevailing rules applicable thereto in the Field Manual of the Interchange Rules prescribed by the Association of American Railroads, shall be paid over to P&LE. Upon payment of such settlement this Agreement and Lease shall terminate as to such Car as of said date and Montour shall be entitled to salvage, if any.

14. Redelivery of Cars. Upon termination of this lease with respect to any Car (other than pursuant to paragraph 13 hereinabove), Montour shall at its sole cost and expense immediately surrender possession of such Car by causing delivery of the same to be made to P&LE at Montour Junction, Pa. Montour shall return all Cars to P&LE in as good condition (ordinary wear and tear excepted) as when the same were delivered to Montour. Until such time as each Car has been redelivered to P&LE, Montour shall make all payments and perform all obligations and requirements of Montour under all other provisions of this lease as though such termination had not occurred.

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

- (a) Montour shall default or fail for a period of thirty (30) days in the observance or performance of any agreement required to be observed or performed on its part under this Agreement and Lease, and said default or failure shall continue for a period of thirty (30) days after the giving of written notice thereof by P&LE;
- (b) A decree or order shall be entered by a court having jurisdiction in the premises adjudging Montour a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization under the Federal Bankruptcy Act or any other applicable Federal or State law;
- (c) The institution by Montour of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of any proceeding or to any action taken or proposed to be taken in any proceeding described hereinabove in clause (b), or the making by Montour of a general assignment for the benefit of creditors.

16. Remedies. P&LE shall have the right in the event of default by Montour to terminate this Agreement and Lease immediately by giving notice to Montour, and P&LE may, without any notice of demand, take or cause to be taken

immediate possession of the Cars and sell or otherwise dispose of the same, provided, however, that such retaking shall not be deemed a waiver of P&LE's right to receive payment of all sums payable by Montour to P&LE under this Agreement and Lease or any other rights or remedies conferred upon P&LE under applicable laws.

17. Recording. Immediately upon execution, P&LE shall cause this lease to be filed with the Interstate Commerce Commission for recordation under Section 11303(a) of the Interstate Commerce Act.

18. Sublease and Assignment. Montour shall not assign or sublease this lease or any of the Cars without the prior written consent of P&LE. P&LE may assign and reassign all or part of its rights under this lease without the consent of Montour if said assignment or reassignment does not diminish, interfere or prejudice the right of Montour with this lease, and P&LE shall give to Montour notice of any such assignment or reassignment.

19. Successors and Assigns. The covenants, conditions and agreements contained in this Agreement and Lease shall bind and inure to the benefit of the parties, their successors and assigns (to the extent permitted in paragraph 18 hereof).

20. Governing Laws - Amendments. The terms of

this Agreement and Lease and all rights and obligations here-
under shall be governed by the laws of the Commonwealth of
Pennsylvania. The terms of this Agreement and Lease and the
rights and obligations of the parties hereto may not be
amended or terminated orally, but only by agreement in writing
by the party against whom the enforcement of such amendment
or termination is sought.

IN WITNESS WHEREOF, the parties hereto have caused
this Agreement and Lease to be executed by their duly authorized
officers as of the day and year first above written.

THE PITTSBURGH AND LAKE ERIE
RAILROAD COMPANY

By *R. Thompson*
President

WITNESS:

L. F. Lutrak

MONTOUR RAILROAD COMPANY

By *C. R. Halley*
President

WITNESS:

J. R. Holloway

EXHIBIT A

No. of Cars:

118

Description
of Cars:

50' 55-ton Rebuilt Box Cars - XP

Identifying Nos.

<u>P&LE</u>	<u>Montour</u>	<u>P&LE</u>	<u>Montour</u>	<u>P&LE</u>	<u>Montour</u>
220800	800	200821	821	200843	843
200801	801	200822	822	200844	844
200802	802	200823	823	200845	845
200803	803	200824	824	200846	846
200804	804	200825	825	200847	847
200805	805	200826	826	200848	848
200806	806	200827	827	200849	849
200807	807	200828	828	200850	850
200808	808	200829	829	200851	851
200809	809	200830	830	200852	852
200810	810	200831	831	200853	853
200811	811	200832	832	200854	854
200812	812	200833	833	200855	855
200813	813	200834	834	200856	856
200814	814	200836	836	200857	857
200815	815	200837	837	200858	858
200816	816	200838	838	200859	859
200817	817	200839	839	200860	860
200818	818	200840	840	200861	861
200819	819	200841	841	200862	862
200820	820	200842	842	200863	863

EXHIBIT A

page 2

Identifying Nos.

<u>P&LE</u>	<u>Montour</u>	<u>P&LE</u>	<u>Montour</u>	<u>P&LE</u>	<u>Montour</u>
200864	864	220890	890	220912	912
200865	865	220891	891	220913	913
200866	866	220892	892	220914	914
200867	867	220893	893	220915	915
200868	868	220894	894	220916	916
200871	871	220895	895	220917	917
200872	872	220896	896	220918	918
200873	873	220898	898	220919	919
200874	874	220899	899	220920	920
200875	875	220900	900	220921	921
200876	876	220901	901	220922	922
200877	877	220902	902	220923	923
200878	878	220903	903	220924	924
200879	879	220904	904		
200880	880	220905	905		
200881	881	220906	906		
200882	882	220907	907		
200883	883	220908	908		
200885	885	220909	909		
200886	886	220910	910		
200887	887	220911	911		

COMMONWEALTH OF PENNSYLVANIA))
) SS:
COUNTY OF ALLEGHENY))

On this 2nd day of June, 1983,
before me, the undersigned Notary Public, personally appeared
R. E. THOMPSON, who, being duly sworn, acknowledged that he
is President of The Pittsburgh and Lake Erie Railroad Company,
that he executed the foregoing instrument for and on behalf
of said corporation, and that the execution of the foregoing
instrument was the free act and deed of said corporation.

Michelle P. Sullivan
Notary Public

MICHELLE P. SULLIVAN, NOTARY PUBLIC
PITTSBURGH, ALLEGHENY COUNTY
MY COMMISSION EXPIRES DEC. 23, 1985
Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA))
) SS:
COUNTY OF ALLEGHENY))

On this 2nd day of June, 1983,
before me, the undersigned Notary Public, personally appeared
C.R. Holley, who, being duly sworn, acknowledged
that he is PRESIDENT of the Montour Railroad
Company, that he executed the foregoing instrument for and on
behalf of said corporation, and that the execution of the
foregoing instrument was the free act and deed of said corporation.

Michelle P. Sullivan
Notary Public

MICHELLE P. SULLIVAN, NOTARY PUBLIC
PITTSBURGH, ALLEGHENY COUNTY
MY COMMISSION EXPIRES DEC. 23, 1985
Member, Pennsylvania Association of Notaries