

EVANS PRODUCTS COMPANY

TRANSPORTATION SYSTEMS & INDUSTRIAL GROUP

THE EAST TOWER, 2550 GOLF ROAD, ROLLING MEADOWS, ILLINOIS 60008 (312) 640-7000

RICHARD E. DESSIMOZ
Group Attorney

11922
RECORDATION NO. Filed 1425

JUN 23 1980 - 1 25 PM

June 20, 1980

INTERSTATE COMMERCE COMMISSION

CE-111-087
No. 111-1380
Date JUN 23 1980
Fee \$52.00
Washington, D.C.

Mrs. Mildred Lee
Secretary
Interstate Commerce Commission
Office of the Secretary
Washington, D.C. 20423

RE: Recordation of Lease between Texas, Oklahoma and Eastern Railroad Company and United States Railway Leasing Company dated March 18, 1980

Dear Mrs. Lee:

We are enclosing for filing and recording three fully executed Counterparts of the above mentioned lease.

Lessor

United States Railway Leasing Company
2550 Golf Road
Rolling Meadows, Illinois 60008

Lessee

Texas, Oklahoma and Eastern Railroad Company

Also enclosed is the Lessor's check in the amount of \$50, representing the recordation fee. Upon recordation, kindly return the originals to the undersigned at the letterhead address.

Very truly yours,

Richard C Dessimoz

Richard E. Dessimoz

RED:rk
enclosures

RECEIVED
JUN 23 1 20 PM '80
I.C.C.
FEE OPERATION BR.

Interstate Commerce Commission
Washington, D.C. 20423

6/26/30

OFFICE OF THE SECRETARY

Richard E. Dessinoz, Group Atty.
Evans Products Company
The East Tower, 2550 Golf Road
Rolling Meadows, Illinois 60008

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 6,23,30 at 1:25pm , and assigned re-
recording number(s). 11922

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

#1846

L E A S E

AGREEMENT made and entered into this 18th day of March, 1980, between

UNITED STATES RAILWAY LEASING COMPANY
an Illinois corporation (hereinafter called "United")

and
Texas Oklahoma and Eastern Railroad Company
(hereinafter called "Lessee")

RECORDATION NO. 11922 Filed 1425

JUN 23 1980-1 25 PM

INTERSTATE COMMERCE COMMISSION

RECITALS

Lessee desires to lease from United as Lessor certain railroad cars, hereinafter specifically designated or to be specifically designated, all upon the rentals, terms and conditions as set forth in this Lease.

AGREEMENT

It is agreed:

1. Lease of Cars. United agrees to lease to Lessee and Lessee agrees to and does hereby lease from United that number of railroad cars, of the type, construction and such other description (hereinafter referred to as the "Cars") as is set forth in Schedule 1 of this Lease and as is set forth in Schedules which may from time to time be added to this Lease. The Cars covered by this Lease are those which shall be delivered to and accepted by or on behalf of Lessee pursuant to the terms hereof. This Lease shall become effective with respect to any Car as of the date of its delivery and acceptance hereunder and shall continue with respect to such Car for the term provided in the Schedule covering such Car unless sooner terminated as hereinafter provided. United shall deliver Cars f.o.t. at the delivery point specified in the Schedule covering such Cars and from and after such delivery, Lessee shall pay all costs and expenses on account of transportation or movement of the Cars to and from any place and for any reason whatsoever. The cost of moving the Cars to the delivery point shall be for United's account and such costs shall be capitalized as part of the cost of the Cars.
2. Rental. When Car Usage is equal to or less than 80% in any calendar month, the rental per Car shall be all payments including but not limited to mileage

charges, straight car hire and incentive car hire (if any) payable to Lessee on account of such Car. In the event Car Usage exceeds 80% percent in any calendar month, United shall receive as rental an amount equal to the total of the payments described in the previous sentence for Car Usage up to 80% and Lessee shall be entitled to any excess payments. Daily Car Usage of each Car shall be deemed to be the average Car Usage as finally determined for all Cars covered by this Lease as of the end of each calendar month or other applicable period during the term of this Lease. Lessee shall pay to United within seven (7) days after the end of each month during the term hereof at the address specified in Paragraph 14 the rental specified above with respect to any Car covered by this Lease. In the event that Car Usage in any month falls below 80%, Lessee agrees to pay to United all amounts due in respect of such shortfall prior to retaining any amounts in subsequent months. United will within sixty (60) days after the end of each calendar year during the term hereof compute the Car Usage for such year and the amount so determined to be due United or to Lessee shall be promptly paid. Lessee may, on 30 days advance notice in writing to United, assume responsibility for accounting for the Cars. Rental on each Car shall accrue from and after the date of delivery and acceptance of each Car; provided, however, that rental shall be payable by Lessee only for amounts actually received by or credited to it. In no event shall Lessee be required to pay rent to United in an amount in excess of the total revenues earned by the Cars.

3. Acceptance of Cars. United shall inspect each of the Cars tendered by the manufacturer for delivery to Lessee. Prior to such inspection, however, Lessee shall confirm in writing to United that the sample Car which will be made available for Lessee's inspection prior to the commencement of deliveries conforms to the specifications of the equipment agreed to by Lessee. Upon such approval by Lessee and United's determination that the Cars conform to the specifications ordered by United and to all applicable governmental regulatory specifications, United shall accept delivery thereof at the manufacturer's facility and shall notify Lessee in writing of such acceptance.
4. Records. Lessee shall keep records of and monitor the use and movements of all Cars and shall upon written request of United promptly furnish United with all information and copies of all records and reports, pertaining to the Cars received by Lessee or available to it. United shall have the right at any time and from time to time to audit and verify any such information, records and reports and other data pertinent hereto and Lessee shall cooperate with and

assist United in any such audit or verification.

5. Use - Lettering. Lessee shall use the Cars in a careful and prudent manner in compliance with all Interchange Rules and solely for the uses for which they were designed. From and after the delivery of a Car to Lessee, so long as Lessee shall not be in default hereunder, Lessee shall be entitled to the use of the Car for the full term of this Lease. Except for the lettering to be placed on the Cars by United prior to delivery indicating the interest of Lessee, United and any assignee or mortgagee of United as permitted in Paragraph 10 hereof, no lettering or marking shall be placed upon any of the Cars by Lessee except upon the written direction or consent of United. If during any one calendar month the average utilization of all Cars falls below 80%, then United may by written notice to Lessee of such an event require Lessee to take action which Lessee deems appropriate to correct such utilization, which action may, at the election of Lessee, include the loading of such cars prior to the loading of substantially similar cars leased from other parties or purchased by Lessee subsequent to the date of this Agreement; provided, however, that Lessee shall in no event be required to take any action which would prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon request thereof to shippers on its railroad tracks. Any action taken by Lessee under this paragraph shall be commenced as soon as practicable after receipt of United's notice by Lessee and shall continue until such time as the average utilization of all Cars shall equal or exceed 80% for one calendar month.
6. Repair Work. Except as otherwise provided herein, United shall at its sole cost and expense perform all Repair Work or authorize or cause same to be done. Lessee shall be responsible for the Cars while on Lessee's track in the same manner that Lessee is responsible under Rule 7 of the AAR Car Service and Car Hire Agreement for freight cars not owned by Lessee on Lessee's railroad tracks. United shall have no responsibility for Repair Work until informed of the need therefor. United may require Lessee to return Cars for preventive maintenance or Repair Work and may withdraw from this Lease any Cars which it in its sole discretion deems uneconomical for Repair Work of any kind. *Nothing in this paragraph shall preclude performing normal running repairs at prescribed AAR billing rates.*
7. Casualty Cars. United shall bear the risk of any Car which is lost, stolen, destroyed or damaged beyond economical repair ("Casualty Car") other than on Lessee's lines. Lessee shall be responsible for the

Cars while on Lessee's track in the same manner that Lessee is responsible under Rule 7 of the AAR Car Service and Car Hire Agreement for freight cars not owned by Lessee on Lessee's railroad tracks. This Lease shall terminate as to any Casualty Car on the date on which the casualty occurred. All payments for Repair Work or in connection with the loss of any Casualty Car due from third parties shall be assigned to and belong to United and Lessee shall cooperate with United in the prosecution and collection of all claims therefor.

8. Taxes. Lessee shall pay all property taxes assessed or levied against the Cars. United and Lessee shall divide all other taxes and assessments levied on the Cars (other than income taxes of United and Lessee) in proportion to the car hire revenues received by them under the terms of this Lease. Lessee will file all property or ad valorem tax returns and will provide an annual statement to United confirming all applicable taxes have been paid and that there are no tax liens on the Cars. United and Lessee agree that, as between themselves, Lessee shall be entitled to claim the benefits of any available Investment Tax Credit for Federal income tax purposes. United and Lessee agree that Lessee shall be entitled as between United and Lessee to claim the investment tax credit for Federal Income Tax purposes. United represents and warrants that the Cars at the time of delivery to Lessee will be "new section 38 property", within the meaning of the Internal Revenue Code; that United has, or will, take all steps required by Lessee including the making of any election which may be required by the Internal Revenue Code or regulations thereunder that may be necessary to evidence assignment of the Investment Tax Credit to Lessee; and that United has not taken, and will not take, any actions which will make the Cars ineligible for the Investment Tax Credit, other than the exercise of any right or remedy which United may take in the event of a default by Lessee hereunder.
9. Termination. This Lease shall terminate upon expiration of its term, at election of either party hereto by reason of the default or breach of the other party in the terms hereof, or upon the election of United as hereinafter provided. If at any time during a calendar quarter, the number of days that the Cars have not earned car hire payments is such as to make it mathematically certain that the utilization in such calendar quarter cannot be equal to or greater than

80%, United may, at its option and upon not less than 30 days prior written notice to Lessee, terminate this Lease in its entirety, or terminate the Lease as to any or all of the Cars subject to this Lease or any schedule hereto; provided, however, that prior to such termination Lessee shall have the option of paying United an amount equal to the difference between the amount United actually received during said calendar quarter and the amount United would have received had a utilization rate for the Cars of 80% been achieved. Lessee shall at the termination of the Lease with respect to any Cars return such Cars to United in the same condition (except as to Casualty Cars) in which the Cars were furnished and maintained by United during the term hereof, ordinary wear and tear excepted. Upon the termination of this Lease with respect to any or all Cars, Lessee shall at its sole cost and expense forthwith surrender possession of such Cars to United at a point to be designated by United. If requested by United, Lessee shall provide free storage for a period of up to 20 days for Cars as to which the Lease is terminated, provided that risk of loss during such storage shall be United's. This Lease may be terminated as to all Cars or as to any group of Cars covered by a Schedule without termination of the Lease as to Cars covered by any other Schedule. From and after termination of this Lease with respect to any Car and until its return to United, all amounts earned by such Car shall be paid to United as additional rental for use of the Cars during the term hereof.

10. Sublease and Assignment. The right to assign this Lease by either party and the Lessee's right to sublease shall exist only as follows:
- (a) Lessee shall have no right to assign this Lease or sublease or loan any of the Cars without the written consent of United; provided, however, that Lessee shall not be prohibited from placing all, or any, of the Cars in assigned service at another majority-owned common carrier railroad subsidiary of Weyerhaeuser.
 - (b) All rights of United hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part with or without notice to Lessee. This Lease and Lessee's rights hereunder are and shall be subject and subordinate to any chattel mortgage, security agreement or equipment trust covering the cars heretofore or hereafter created by United. If United shall have given written notice to Lessee stating the identity and post office address of any assignee entitled to

receive future rentals and any other sums payable by Lessee hereunder, Lessee shall thereafter make such payments to the designated assignee.

The making of an assignment or sublease by Lessee or an assignment by United shall not serve to relieve such party of any liability or undertaking hereunder nor to impose any liability or undertaking hereunder upon any such assignee or sublessee except as otherwise provided herein or unless expressly assumed in writing by such sublessee or assignee.

11. Default. If Lessee shall fail to make any payment required hereunder within five (5) working days after same shall have become due or shall breach any representation or warranty contained herein or shall default or fail for a period of ten (10) working days in the due observance or performance of any covenant, condition or agreement required to be observed or performed on its part hereunder, or a proceeding shall have been commenced by or against Lessee under any bankruptcy laws, Federal or State, or other laws for the appointment of a receiver, assignee or trustee of Lessee or its property, or Lessee shall make a general assignment for the benefit of creditors, then and in any of said events United may in addition to all other rights and remedies provided in law of equity, upon written notice to such effect, terminate this Lease in its entirety or with respect to any group of Cars with respect to which said default has occurred and retake the Cars and thereafter recover any and all damages sustained by reason of Lessee's default in addition to all rental then or thereafter due. The obligation to pay rental then or thereafter due or any other sum or sums due and unpaid or any damages suffered by reason of Lessee's default hereunder shall survive the termination of the Lease and the retaking of the Cars.

12. Definitions. For all purposes of this Lease the following terms shall have the following meaning:

"Repair Work" - all repairs, maintenance, modifications, additions or replacements required to keep Cars in good working order and condition and in compliance with all Interchange Rules.

"Interchange Rules" - all codes, rules, decisions, interpretations, laws and orders governing hire, use, condition, repair and all other matters pertaining to the interchange of freight traffic reasonably interpreted as being applicable to the Cars, adopted and in effect from time to time during the term of this Lease

by the Association of American Railroads and any other organization, agency or governmental authority, such as but not limited to the Interstate Commerce Commission and the United States Department of Transportation, which may from time to time be responsible for or have authority to impose such codes, rules, decisions, interpretations, laws or orders.

"Car Usage" - a percentage equal to the quotient obtained by dividing the aggregate number of hours in a calendar year in which straight car hire is earned on a Car by the Lessee commencing with its date of delivery, by the aggregate number of hours in such year in which the Car is under lease to Lessee commencing with its date of delivery.

13. Representations. Lessee covenants, warrants and represents that:
- (a) Lessee is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation and has the corporate power, authority and is duly authorized and qualified to do business wherever it transacts business and such qualification is required, and has corporate power to and has taken all corporate action necessary to enter into this Lease and carry out its obligations hereunder;
 - (b) This Lease has been duly executed on behalf of Lessee and constitutes the legal, valid and binding obligation of Lessee enforceable in accordance with its terms.
 - (c) No governmental, administrative or judicial authorization, permission, consent or approval is necessary on the part of Lessee in connection with this Lease or any action contemplated on its part hereunder, nor will the execution or performance of this Lease violate any law, judgement order or regulation, or any indenture or agreement binding upon Lessee; and
 - (d) Neither Lessee nor its counsel know of any requirements for recording, filing or depositing this Lease other than pursuant to Section 20c of the Interstate Commerce Act, which is necessary to preserve or protect the title of United or its

assignee or mortgagee in the United States of America.

Upon request of United or its assignee or mortgagee at any time or times, Lessee shall deliver to United an opinion of its counsel addressed to United or its assignee or mortgagee, in form and substance satisfactory to United or its assignee or mortgagee, which opinion shall confirm the matters set forth in this Paragraph 13 (a) through (d).

14. United represents and warrants that:

- (a) United is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation and has the corporate power, authority and is duly authorized and qualified to do business wherever it transacts business and such qualification is required, and has corporate power to and has taken all corporate action necessary to enter into this Lease and carry out its obligations hereunder;
- (b) This Lease has been duly executed on behalf of United and constitutes the legal, valid and binding obligation of United enforceable in accordance with its terms.
- (c) United will perform all of its duties hereunder as Lessor as if United has no affiliation with the manufacturer of the Cars and in particular will so perform its duties relating to acceptance of the Cars and the handling of warranty claims, matters involving the manufacturer's liability relating to the construction, operation, or design of the Cars.

15. Miscellaneous.

- (a) This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns to the extent permitted herein.
- (b) Any notice required or permitted to be given by one party to another hereunder shall be properly given when made in writing, deposited in the United States mail, registered or certified, postage prepaid, addressed to:

United at: East Tower
2550 Golf Road
Rolling Meadows, Illinois
60008

Lessee at: 810 Whittington Avenue
Hot Springs, ~~Arizona~~ ^{Arkansas} 71901
or such other address as either party may from time to time designate by such notice in writing to the other.

- (c) Lessee shall keep the Cars free from any encumbrances or liens, which may be a cloud upon or otherwise affect United's title, 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, encumbrance or legal process. Lessee shall take all action requested by United to confirm United's interest in the Cars as Lessor and that Lessee has no interest in the Cars other than as Lessee hereunder.
- (d) During the continuance of this Lease, United shall have the right, at its own cost and expense, to inspect the Cars at any reasonable time or time wherever the Cars may be. Lessee shall, upon request of United, but no more than once every year, furnish to United two (2) copies of an accurate inventory of all Cars in service.

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

UNITED STATES RAILWAY LEASING
COMPANY

an Illinois corporation

By *Paul C. Talbot* *John J. Talbot*
Senior Vice President

ATTEST:

Lawrence B. Prange
Assistant Secretary

Texas Oklahoma and Eastern Railroad Company

By *W. H. Brown*
President

ATTEST:

Ernest A. Cook
N.S.S. Secretary

Lease dated March 18 1980, by and between United States Railway Leasing Company ("United") and Texas Oklahoma and Eastern Railway Company ("Lessee")

CERTIFICATE OF INSPECTION AND ACCEPTANCE

_____, 19__

United States Railway Leasing Company
2550 Golf Road, The East Tower
Rolling Meadows, Illinois 60008

Gentlemen:

The undersigned, being a duly authorized inspector for Lessee, hereby certifies that he has made an inspection of _____ (___) Cars bearing numbers as follows:

or has, on behalf of Lessee, elected to forego such inspection all as provided in the Lease, and hereby accepts such Cars for the Lessee pursuant to the Lease; that each of said Cars is plainly marked in stencil on both sides of each Car with the words:

UNITED STATES RAILWAY LEASING COMPANY
OWNER AND LESSOR

Title to this Car subject to documents recorded
with the Interstate Commerce Commission

in readily visible letters not less than three-quarters inch (3/4") in height; and that each of said Cars conforms to, and fully complies with the terms of said Lease and is in condition satisfactory to the Lessee.

Lessee

STATE OF Illinois
COUNTY OF Cook

On this 28th day of May, 1980, before me personally appeared Curtis C Tatham to me personally known, who being by me duly sworn says that he is Sr. Vice President of the United States Railway Leasing Company and Lawrence P Prange, to me personally known to be the Asst Secretary of said corporation, that the seal 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 they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Rita M Kute
Notary Public

My Commission Expires June 13, 1983

STATE OF
COUNTY OF

On this _____ day of _____, 19__, before me personally appeared _____, to me personally known, who being by me duly sworn, says that he is _____ President of _____, and _____, to me personally known to be the _____ Secretary of said corporation, that the seal 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 they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

Lease dated March 18, 1980, by and between United States Railway Leasing Company ("United") and Texas Oklahoma and Eastern Railroad Company ("Lessee").

DESCRIPTION OF CAR: New 60' 100-Ton Bulkhead Flat

NUMBER OF CARS: 225 TOE 5000-5224 8/6/80
correct numbers

REPORTING NUMBERS AND MARKS:

PLACE OF DELIVERY: Broken Bow, Oklahoma *J/S*
~~Blue Island, Illinois~~ *du*

TERM: Fifteen (15) years from the average date of delivery and acceptance of each Car covered by this Schedule. Average date of delivery is that date which is determined by (i) multiplying the number of Cars delivered by United on each day by the number of days elapsed between such day and the date of delivery of the first Car hereunder, and (ii) adding all of the products so obtained and dividing that sum by the total number of Cars delivered and (iii) adding such quotient rounded out to the nearest whole number to the date of delivery of the first Car. The date on which delivery of a Car shall be deemed to have been made will be the day following delivery of the Car to the Lessee, as specified in Paragraph 2.

SPECIAL TERMS:

Texas Oklahoma and Eastern Railroad
Lessee Company

By *W. H. Smith*

UNITED STATES RAILWAY LEASING
COMPANY

Lessor
By *Paul C. Latta*

AGREEMENT

THIS AGREEMENT is made and entered into on February 29th, 1980, by and between WEYERHAEUSER COMPANY ("Weyerhaeuser") and United States Railway Leasing Company ("United").

WHEREAS, Weyerhaeuser is the sole shareholder of the Texas, Oklahoma & Eastern Railroad Company (the "Short Line");

WHEREAS, pursuant to a lease agreement dated the date hereof (the "Lease"), United has leased to the Short Line certain railroad equipment (the "Leased Cars") more specifically described in the Lease;

WHEREAS, pursuant to Section 10(b) of the Lease, the rights of the Short Line under the Lease are subordinate to the rights of lenders providing financing to United secured by Leased Cars (the "Lenders"); and

WHEREAS, Weyerhaeuser wishes to ensure for itself the right to continued possession of the Leased Cars in the event of a default by United under such financing agreements;

NOW, THEREFORE, the parties agree as follows:

1. United covenants and agrees that it will not enter into any financing agreement which gives a Lender a right to take possession of any of the Leased Cars in the event of default by United as long as the Short Line is not in default under the Lease.

2. United covenants and agrees that immediately following the execution of any financing agreement pertaining to the Leased Cars, United will cause to be delivered to Weyerhaeuser either (a) a fully executed copy of such financing agreement or (b) a written acknowledgment from the Lenders that the requirements of paragraph 1 above are in effect with respect to such financing agreement.

IN WITNESS WHEREOF, United and Weyerhaeuser have executed this Agreement on the date first above written.

WEYERHAEUSER COMPANY

By John D. Kaufman

UNITED STATES RAILWAY LEASING COMPANY

By Paul C. [Signature]