

RECORDATION NO. 8658-K

JUL 5 1988 11 53 AM

ITEL

July 1, 1988

IteI Rail Corporation INTERSTATE COMMERCE COMMISSION

55 Francisco Street
San Francisco, California 94133
(415) 984-4000

JUL 5 1988
Date:
Fee \$ 1300

8-187A032

ICC Washington, D. C.

Hon. Noreta R. McGee
Secretary
Interstate Commerce Commission
Washington, DC 20423

Re: Amendment No. 5 dated June 10, 1988, to the Lease Agreement dated October 18, 1976, between SSI Rail Corp. and Clarendon and Pittsford Railroad Company

Dear Ms. McGee:

On behalf of IteI Rail Corporation, the above instrument, in four (4) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$26 recordation fee.

Please record this Amendment under the Lease Agreement dated October 18, 1976, between SSI Rail Corp. and Clarendon and Pittsford Railroad Company, which was filed with the ICC on January 12, 1977, under Recordation No. 8658. Please cross-index this Amendment to the Equipment Trust Agreement dated January 1, 1982, between IteI Rail Corporation and First Security Bnak of Utah, which was filed with the ICC September 20, 1983, under Recordation No. 14165.

The parties to the aforementioned instrument are listed below:

IteI Rail Corporation (Lessor)
55 Francisco Street
San Francisco, California 94133

Clarendon and Pittsford Railroad Company (Lessee)
267 Battery Street
Burlington, Vermont 05401

This amendment covers twelve (12) 50'6", XP boxcars bearing reporting marks CLP 3163-3191 (n.s.).

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

patricia schumacker

Patricia Schumacker
Legal Department

JUL 5 1988

RECORDATION NO. 8658-K

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JUL 5 1988 - 11 20 AM

INTERSTATE COMMERCE COMMISSION

AMENDMENT NO. 5

THIS AMENDMENT NO. 5 (the "Amendment") to that certain Lease Agreement (the "Agreement") made as of October 18, 1976, between SSI Rail Corp. and **CLARENDON AND PITTSFORD RAILROAD COMPANY** ("Lessee") is made this 10th day of June, 1988, by and between **I TEL RAIL CORPORATION** ("Lessor"), as successor in interest to SSI Rail Corp., and Lessee.

RECITALS:

- A. Lessor and Lessee are parties to the Agreement pursuant to which two hundred sixty (260) boxcars bearing the reporting marks CLP 3001-3260 (together with the boxcars described on the Schedule attached hereto, the "Boxcars") originally were leased by Lessor to Lessee.
- B. The Boxcars bearing the reporting marks CLP 3035, CLP 3063, CLP 3069, CLP 3189, and CLP 3209 were destroyed on or about May 8, 1979, October 25, 1979, August 22, 1978, November 21, 1984 and July 30, 1978, respectively.
- C. Pursuant to Amendment No. 2 dated October 15, 1982 to the Agreement, forty (40) Boxcars bearing reporting marks from within the series CLP 3100-3199 (the "40 Cars") were modified from the XM to the XP mechanical designation.
- D. Thirty-five (35) of the 40 Cars were assigned to Omya, Inc. ("Omya") pursuant to the Assignment Agreement dated December 13, 1982, as amended by the agreement dated September 6, 1983, between Lessee and Omya (the "Omya Assignment").
- E. Five (5) of the 40 Cars which bear the reporting marks CLP 3105, CLP 3112, CLP 3116, CLP 3119 and CLP 3122 were likewise assigned to Omya pursuant to the Assignment Agreements dated September 6, 1983, between Lessee and Green Mountain Railroad Corporation ("GMRC") and the Assignment Agreement dated October 14, 1983, between GMRC and Omya.
- F. Pursuant to the letter dated October 14, 1985, Lessor terminated one hundred fifty-seven (157) Boxcars bearing reporting marks from within the series CLP 3061-3260.
- G. Pursuant to the letters dated June 5, 1987, and October 13, 1987, Lessor terminated fifty-eight (58) Boxcars bearing reporting marks from within the series CLP 3061-3260, and forty (40) Boxcars bearing reporting marks from within the series CLP 3016-3199, such termination with respect to each Boxcar to be effective on the date that such Boxcar is remarked to new reporting marks as designated by Lessor.

THIS INSTRUMENT IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF HELLER FINANCIAL CO. UNDER THE RAILROAD FINANCIAL, INC. LEASE AGREEMENT BETWEEN ITEL RAIL CORPORATION DATED AS OF SEPTEMBER 30, 1986.

ASSIGNED TO FIRST SECURITY BANK OF UTAH, N.A., TRUSTEE, UNDER A LEASE ASSIGNMENT.

- H. By letter dated December 11, 1987 Lessor rescinded the termination letter dated October 13, 1987, with respect to fifteen (15) Boxcars bearing reporting marks from within the series CLP 3163-3198 (the "15 12/87 Boxcars") which remain subject to the Omya Assignment. 12/87 OPA
- I. There remain 15 Boxcars subject to the Agreement, and Lessor and Lessee desire to amend the terms of the Agreement with respect to the 15 12/87 Boxcars. 12/87 OPA

NOW, THEREFORE, the parties hereto amend the Agreement as follows:

- 1. All terms defined in the Agreement shall have their defined meanings when used in the Amendment.
- 2. Effective upon the full execution of this Amendment, the two (2) unnumbered Equipment Schedules which were fully executed on October 18, 1976 and on February 2, 1977, and which describe the sixty (60) Boxcars bearing the reporting marks CLP 3001-3060, shall be deleted in their entirety.
- 3. Effective upon the remark of the final Boxcar to be terminated pursuant to the letters dated June 5, 1987 and October 13, 1987, Equipment Schedules No. 2.A. and No. 2.B. shall be deleted in their entirety, and Equipment Schedule No. 3 shall be deleted and replaced by Equipment Schedule No. 3.A. attached hereto, which describes the 15 Boxcars.
- 4. Effective March 1, 1988, with respect to the 15 Boxcars only, Section 2 of the Agreement shall be deleted and replaced by: 12/87 OPA

"2. Term

The term of the Agreement ('Term'), with respect to the Boxcars described on Equipment Schedule No. 3.A. only, shall commence on the date and at the location that such Boxcars were remarked pursuant to Subsection 3.A. of the Agreement and shall expire as to such Boxcars, on March 1, 1991."

- 5. Effective ~~November 1, 1987~~ ^{MARCH 1 1988}, the following two (2) sentences shall be added to Subsection 5.B. of the Agreement:

"Lessee shall not place any Boxcar into any private contract repair facility or have any Boxcar repaired by a private contractor on Lessee's lines unless Lessee has received prior approval from Lessor and all such repairs are performed under the direction and control of Lessor. Should the AAR Mechanical Department inspect or investigate Lessee's facilities and determine that restitution is due owners of boxcars repaired by Lessee at Lessee's facilities, then Lessor shall be entitled to such restitution pursuant to AAR Rule 120 for all boxcars owned or managed by Lessor, including the Boxcars, that were repaired by Lessee at Lessee's facilities."

6. Effective March 1, 1988, with respect to the ~~15~~ ¹² Boxcars only, Section 6 of the Agreement shall be deleted and replaced by:

6. Rent

A. Definitions

- (i) 'Eligible Lines' is defined as the railroad lines owned and operated by Lessee and by Vermont Railway, Inc. as of ~~November 1, 1987~~ ^{MARCH 1, 1988}. Unless otherwise agreed by Lessor and Lessee, any lines purchased by Lessee or added to the Eligible Lines during the Term are deemed to be the lines of another railroad company (a foreign road) for the purposes of determining Revenues (as defined in Subsection 6.A.(iii) hereinbelow).
- (ii) 'Revenue Rates' is defined as the hourly and mileage car hire rates prescribed for excluded boxcars under the ICC's decision in ICC Ex Parte No. 346, Sub-No. 19 served September 12, 1986, set forth in the Appendix to such decision in paragraph (c)(3) of 49 C.F.R. 1039.14.
- (iii) 'Revenues' is defined as the total revenues, calculated at the Revenue Rates, that are earned and collected for the use and handling of the Boxcars on all railroad lines other than the Eligible Lines, including, but not limited to, per diem and mileage, whether or not collected and received by Lessor and undiminished by any claimed abatement, reduction or offset caused by any action or failure of Lessee. Failure shall not be considered to include legal action.
- (iv) The 'Base Rent' is defined as
per Boxcar per calendar month
('Month').

- B. Lessee agrees to pay the following rent to Lessor for the use of the Boxcars:

- (i) Lessor shall receive the Base Rent for each Boxcar each Month.
- (ii) In the event Revenues earned in any Month exceed the Base Rent, Lessor shall receive, in addition to the Base Rent, an amount equal to _____ of all Revenues in excess of the Base Rent ('Excess Revenues') and Lessee shall retain _____ of all Excess Revenues.

- C. (i) In the event that any Boxcars earn revenues calculated at hourly or mileage car hire rates that are lower in amount than those specified for excluded boxcars as provided in Subsection 6.A. (ii), as a result of any

action or inaction by Lessee, Lessee shall pay to Lessor, within ten (10) days of Lessor's request, an amount equal to the difference between the Revenues such Boxcars would have earned at the Revenue Rates and the amount of revenues actually received or earned for such Boxcars.

(ii) Upon any abatement, reduction or offset as described in Subsection 6.A.(iii), Lessee shall, within ten (10) days of Lessor's request, pay Lessor such amounts.

(iii) If, at any time during the Agreement, Lessee operates lines other than the Eligible Lines, then Lessee shall supply Lessor with records which distinguish the movement of each Boxcar on the Eligible Lines from the movement of such Boxcar on any other lines operated by Lessee.

D. (i) Lessee hereby authorizes Lessor to initiate a draft against Lessee's account for the Base Rent for any Month within sixty (60) days after the end of such Month.

(ii) Within sixty (60) days after the end of each Month, Lessee shall submit to Lessor a report ('Monthly Report') which shall include the hours earned, miles travelled and the dollar amount of Excess Revenues earned by the Boxcars for such Month. Upon Lessor's receipt of each Monthly Report, Lessor's fifty percent (50%) share of Excess Revenues for such Month ('Lessor's Revenue Share') shall be due and payable and Lessor shall hereby be authorized by Lessee to initiate a draft against Lessee's account for Lessor's Revenue Share, provided, however, that within twenty (20) days after the end of the calendar year, any amount paid by either party in excess of the amounts required shall be refunded to the appropriate party.

(iii) Upon Lessor's request, Lessee shall provide Lessor with any records of Lessee, including car hire summaries and detailed reports, as Lessor deems necessary to substantiate Revenues earned and received by Lessee for the use and handling of the Boxcars. Further, Lessor shall be entitled to visit Lessee at any time during normal business hours upon prior notice to Lessee to review any and all records required to complete the calculations in Subsection 6.D. (ii).

E. In the event destruction or damage beyond repair of a Boxcar has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Car Hire Rules 7 and 8 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Boxcar will be removed from the

rental calculations of this Agreement on the date car hire ceased as set forth in the aforementioned Rules 7 and 8. Lessor may, at its expense, replace any destroyed Boxcar with similar equipment upon prior written notice from Lessor to Lessee.

F. If any Boxcar, while on the Eligible Lines, is damaged to the extent that such damage exceeds the AAR Depreciated Value ('DV') for such Boxcar, Lessee shall notify Lessor within sixty (60) days following the date of the occurrence of such damage ('Damage Date'). If Lessee fails to notify Lessor within sixty (60) days of the Damage Date, Lessor has the right to engage an independent appraiser to inspect such Boxcar to determine the extent of such damage. Regardless of whether or not Lessee has notified Lessor of the damage pursuant to this Subsection, Lessee shall remit to Lessor an amount equal to the DV of such Boxcar within thirty (30) days of receipt of an invoice from Lessor.

G. Lessee shall not enter into any agreement with any other party with respect to the Boxcars ('Third Party Agreement(s)') without Lessor's prior written approval; provided, however, that Lessor consents to the Omya Assignment which shall be amended by Lessee as necessary with respect to the ~~to~~ Boxcars in accordance with Amendment no. 5 to the Agreement. *J.P. Omya*

H. Lessor and Lessee agree to cooperate with and to assist each other in any reasonable manner requested to establish and pursue proper claims against parties responsible for loss or destruction of, or damage to, the Boxcars, provided, however, that this shall not affect their respective obligations under this Section 6."

7. Except as expressly modified by this Amendment, all terms and provisions of the Agreement shall remain in full force and effect with respect to the Boxcars.

8. This Amendment may be executed by the parties hereto in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL RAIL CORPORATION

CLARENDON AND PITTSFORD
RAILROAD COMPANY

By: *J.P. Omya*

By: *John Pennington*

Title: *President*

Title: *President*

Date: *June 10, 1988*

Date: *June 7, 1988*

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On this 10th day of June, 1988, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Rail Corporation, that the foregoing Amendment No.5 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Patricia Schumacker
Notary Public

STATE OF Vermont)
) ss:
COUNTY OF Chittenden)

On this 2nd day of June, 1988, before me personally appeared John Pennington, to me personally known, who being by me duly sworn says that such person is President of Clarendon & Pittsford Railroad Company, that the foregoing Amendment No.5 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Kathleen E. Wilson
Notary Public

EQUIPMENT SCHEDULE NO. 3.A.

Itel Rail Corporation hereby leases the following Boxcars to Clarendon & Pittsford Railroad Company subject to the terms and conditions of that certain Lease Agreement dated as of October 18, 1976.

A.A.R. Mech. Desig.	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XP	50' cushioned underframe boxcars with 10" end-of- car cushioning	CLP 3163, 3164, 3170, 3173, 3175, 3178- 3181, 3185, 3186, 3191, 3195, 3197, 3198	50' 6"	9'6"	11'	10'	15 3 ADA

This Equipment Schedule replaces Equipment Schedule No. 3 which was fully executed on June 8, 1978.

ITEL RAIL CORPORATION

By: AP/Byers

Title: President

Date: June 10, 1988

CLARENDON & PITTSFORD
RAILROAD COMPANY

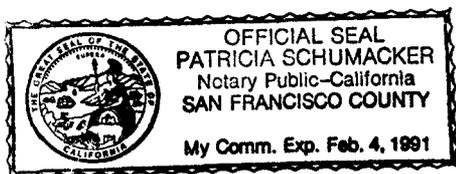
By: John L. ...

Title: President

Date: June 2, 1988

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On this 10th day of June, 1988, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of ITEL Rail Corporation, that the foregoing Equipment Schedule No. 3.A. was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Patricia Schumacker
Notary Public

STATE OF Vermont)
) ss:
COUNTY OF Chittenden)

On this 2nd day of June, 1988, before me personally appeared John Bennington, to me personally known, who being by me duly sworn says that such person is President of Clarendon & Pittsford Railroad Company, that the foregoing Equipment Schedule No. 3.A. was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Kathleen E. Wilson
Notary Public