

RECORDATION NO. 11353-B Filed 1425



MAR 20 1980 - 2 10 PM

FUNDING SYSTEMS RAILCARS INC.

RECORDATION NO. 11353-A Filed 1425

ONE THOUSAND RIDC PLAZA • PITTSBURGH, PA. 15238 • (412) 963-9870 • TELEX: 866405 FUND SYSTEM PW

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 11356-B March 20, 1980 Filed 1425

Respond To:

MAR 20 1980 - 2 10 PM

C-080A041

Secretary INTERSTATE COMMERCE COMMISSION
Interstate Commerce Commission
Washington, DC 20423

MAR 20 1980

Date

Fee \$ 30.00

CC Washington, D. C.

RECEIVED
MAR 20 2 07 PM '80
I.C.C.
OPERATION BR.

Dear Sir:

Enclosed for recordation under the provisions of 49 U.S.C. § 11303(a) and the regulations thereunder, are the original and two counterparts each of (i) an Assignment and Agreement dated the date hereof between American National Bank and Trust Company of Chicago and Northwestern National Life Insurance Company relating to a certain Security Agreement dated as of January 10, 1980 and recorded January 11, 1980, recordation number 11353, to which is attached the Consent and Agreement of Upper Merion and Plymouth Railroad Company and the Acknowledgment and Agreement of REFCO Transport Equipment, Inc.; (ii) an Amendment to Security Agreement dated the date hereof between Funding Systems Railcars, Inc. and American National Bank and Trust Company of Chicago relating to the aforesaid Security Agreement; (iii) an Amendment to Agreement of Lease dated the date hereof between Funding Systems Railcars, Inc. and REFCO Transport Equipment, Inc. relating to a certain Agreement of Lease dated January 11, 1980 and recorded January 11, 1980, recordation number 11356.

A general description of the railroad equipment covered by the enclosed documents is as follows:

One hundred (100) 100-ton open-top triple pocket hopper cars bearing reporting marks and numbers PVS 1000-1099 inclusive.

The names and addresses of the parties to the enclosed documents are:

(i) Assignment and Agreement (to which is attached the Consent and Agreement of Upper Merion and Plymouth Railroad Company and the Acknowledgment and Agreement of REFCO Transport Equipment, Inc.)

ASSIGNOR: American National Bank and Trust
Company of Chicago
33 N. LaSalle Street
Chicago, IL 60690

C. T. Kandler

C. Dewey

11353-B

ASSIGNEE: Northwestern National Life Insurance
Company
20 Washington Avenue South
Minneapolis, MN 55440

ACKNOWLEDGERS: Upper Merion and Plymouth Railroad
Company
c/o FSC Corporation
1000 RIDC Plaza
Pittsburgh, PA 15230

REFCO Transport Equipment, Inc.
39 South LaSalle Street
Chicago, IL 60603

(ii) Amendment to Security Agreement

11353-A
DEBTOR: Funding Systems Railcars, Inc.
c/o FSC Corporation
1000 RIDC Plaza
Pittsburgh, PA 15230

SECURED PARTY: American National Bank and Trust
Company of Chicago
33 N. LaSalle Street
Chicago, IL 60690

(iii) Amendment to Agreement of Lease

11356-B
LESSOR: REFCO Transport Equipment, Inc.
39 South LaSalle Street
Chicago, IL 60603

LESSEE: Funding Systems Railcars, Inc.
c/o FSC Corporation
1000 RIDC Plaza
Pittsburgh, PA 15230

The undersigned is the attorney-in-fact of Funding Systems Railcars, Inc. and Upper Merion and Plymouth Railroad Company mentioned in the enclosed documents and has knowledge of the matters set forth therein.

Please return the original of the enclosed documents to Charles Kappler, Esq., Alvord and Alvord, 200 World Center Building, 918 Sixteenth Street, N.W., Washington, DC 10006, or to the bearer hereof.

Also enclosed is a remittance in the amount of the required recording fees.

Very truly yours,

FUNDING SYSTEMS RAILCARS, INC.

By John D. McHenry
Title: Attorney-in-Fact

UPPER MERION AND PLYMOUTH RAILROAD
COMPANY

By John D. McHenry
Title: Attorney-in-Fact

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INTERSTATE COMMERCE COMMISSION
ASSIGNMENT AND AGREEMENT

THIS AGREEMENT made as of this 20 day of March, 1980, by and between AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association ("Assignor"), and NORTHWESTERN NATIONAL LIFE INSURANCE COMPANY, a Minnesota corporation ("Assignee").

WITNESSETH:

WHEREAS, Assignor loaned \$2,706,060 to Funding Systems Railcars, Inc., a Delaware corporation ("Railcars"), under a Note Purchase Agreement dated as of January 10, 1980 (the "Note Purchase Agreement") and, in connection therewith, received a Secured Note dated January 11, 1980, from Railcars in the principal amount of \$2,706,060 (the "Secured Note"); and

WHEREAS, Assignor and Railcars entered into a Security Agreement dated as of January 10, 1980 (the "Security Agreement"), under which Railcars granted to Assignor a security interest in the Collateral (as defined in the Security Agreement) including, without limitation, the open-hopper railcars designated PVS 1000 through PVS 1099 (the "Hopper Cars") and the right, title, interest, claims and demands of Railcars in, to and under the Purchase Agreement dated August 20, 1979, between Railcars and The Chessie Corporation, relating to the Hopper Cars (the "Purchase Agreement"), and the Lease and Management Agreement between Railcars and Upper Merion & Plymouth Railroad Company, dated as of January 10, 1980 (the "Lease and Management Agreement"); and

WHEREAS, in connection with the Note Purchase Agreement and the transactions contemplated thereby, Assignor has also received a Continuing Guaranty dated as of January 10, 1980 (the "Continuing Guaranty") from FSC Corporation, of which Railcars is a wholly-owned subsidiary, opinions from counsel to the various parties, and other certificates, instruments and documentation relating to the Note Purchase Agreement, the Secured Note, the Security Agreement, the Purchase Agreement, the Lease and Management Agreement, the Hopper Cars, and the Continuing Guaranty (all such agreements, documents, instruments and opinions hereinafter referred to collectively as the "Loan Documents"); and

WHEREAS, Assignor has sold the Secured Note to Assignee and desires to assign to Assignee and Assignee desires to accept the assignment from Assignor of all of Assignor's right, title, interest, claims and demands in, to and under the Loan Documents.

NOW THEREFORE, the parties hereto agree as follows:

1. Assignor hereby assigns, transfers, sets over and delivers unto Assignee, its successors and assigns all of Assignor's right, title, interest, claims and demands in, to or under the Loan Documents and Assignee hereby accepts such assignment, transfer, setting over and delivery.

2. Assignor represents, warrants to and agrees with Assignee that:

(a) Assignor is entitled to all the right, title, interest, claims and demands attributed to or provided for Assignor in, to or under any and all of the Loan Documents and none of such right, title and interest has been diminished by the Assignor in any respect prior to the execution hereof.

(b) Upon the execution hereof, Assignee will be entitled to all of the right, title, interest, claims and demands in, to or under the Loan Documents as to which Assignor was entitled immediately prior to the execution hereof.

(c) The representations and warranties of the Assignor as Note Purchaser under the Note Purchase Agreement are true and correct on the date hereof.

(d) Assignor is not an underwriter of securities under the Securities Act of 1933 with respect to any of the Loan Documents or any transaction contemplated thereunder.

3. Assignor will execute and deliver such further instruments and do such further acts and things as may reasonably be required to perfect Assignee's right, title, interest, claims and demands in, to or under the Loan Documents.

4. Except to the extent of any misrepresentation or any breach of any warranty or agreement of Assignor hereunder, Assignee agrees that Assignor shall not be liable to Assignee with respect to any obligations of Assignor under the Loan Documents.

5. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois and shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed as of the day and year first written above.

AMERICAN NATIONAL BANK AND
TRUST COMPANY OF CHICAGO

By *Jonathan P. Hecht*

Its *2 VP*

STATE OF ILLINOIS)

)SS:

COUNTY OF COOK)

On this *19th* day of March, 1980, before me personally appeared *Jonathan P. Hecht* to me personally known, who being by me duly sworn says that he is a *Second Vice President* of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, that said instrument was signed 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.

Marilyn Puchota
Notary Public

My Commission Expires: *February 5, 1984*

UPPER MERION AND PLYMOUTH RAILROAD COMPANY

Consent and Agreement

Northwestern National Life
Insurance Company
P. O. Box 20
Minneapolis, Minnesota 55440

March 20, 1980

Gentlemen:

Reference is made to the Lease and Management Agreement dated as of January 10, 1980 between Funding Systems Railcars, Inc. ("Railcars"), as lessor, and Upper Merion and Plymouth Railroad Company ("UMP"), as lessee (the "Lease"). The interests of Railcars under the Lease have been assigned by Railcars to American National Bank and Trust Company of Chicago (the "Bank") by a Security Agreement dated as of January 10, 1980 (the "Security Agreement") between Railcars and the Bank, and further assigned by the Bank to Northwestern National Life Insurance Company ("Northwestern") by an Assignment and Agreement between the Bank and Northwestern dated the date hereof (the "Assignment and Agreement"). The capitalized terms used herein shall have the respective meanings set forth in the Security Agreement unless the context otherwise requires.

As an inducement to and as part of the consideration for the permanent financing to be provided by Northwestern for the Equipment, UMP represents, warrants and agrees as follows:

1. Insurance. The Equipment is covered by the insurance required by the Lease and all premiums due on or prior to the date hereof in respect of such insurance have been paid in full.
2. Rights of Secured Party. UMP acknowledges receipt of a copy of the Security Agreement and Assignment and Agreement and consents to the terms and provisions thereof. UMP agrees that all rentals and other payments due under the Lease are payable to Northwestern for application as provided in the Security Agreement; provided, however, that until notified to the contrary by Northwestern at the address specified in the Lease for notice to UMP, UMP shall not be required to pay to Northwestern rentals in excess of the amounts necessary for application pursuant to clause first of Section 4.1 of the Security Agreement.

Payments to Northwestern shall be by bank wire transfer of Federal or other immediately available funds, to First National Bank of Minneapolis, Main Office, Account No. 4001-446, Minneapolis, Minnesota 55480, in each case with sufficient information to identify the source and application of such funds, or in such other manner or to such other address in the United States as Northwestern may designate in writing to Railcars.

3. Amendment or Modification. This Consent and Agreement shall not be amended, modified or terminated without the prior written consent of REFCO Transport Equipment, Inc.

UPPER MERION AND PLYMOUTH
RAILROAD COMPANY

WITNESS:

Edward F. Douckens

BY John D. McHenry
Its Attorney-in-Fact

REFCO TRANSPORT EQUIPMENT, INC.

ACKNOWLEDGMENT AND AGREEMENT

March 20, 1980

Northwestern National Life
Insurance Company
P. O. Box 20
Minneapolis, Minnesota 55440

Attention: Securities Department

Re: One Hundred 100-Ton Open Top Hopper Cars
Manufactured by the Chessie Corporation
and Bearing Road Numbers PVS 1000 - PVS
1099, Inclusive

Gentlemen:

Reference is made to that Assignment and Agreement dated March 20, 1980 by and between American National Bank and Trust Company of Chicago ("Assignor") and Northwestern National Life Insurance Company ("Assignee"), relative to the financing of the above-captioned railcars.

Receipt of a copy of and due notice of said Assignment and Agreement is hereby made.

The undersigned acknowledges and agrees that the above-captioned railcars are subject to the lien of the Security Agreement dated as of January 10, 1980 between Funding Systems Railcars, Inc. ("Debtor") and American National Bank and Trust Company (the "Bank"), which Security Agreement has been assigned by the Bank to the Assignee in the above-described Assignment and Agreement and secures that certain \$2,706,060 11-3/4% Secured Note of Debtor, dated the date hereof, payable to the Assignee.

Very truly yours,

REFCO TRANSPORT EQUIPMENT, INC.

By 
Title: Vice Pres