

11396

RECORDATION NO. Filed 1425



THE DOW CHEMICAL COMPANY

JAN 21 1980 - 3 45 PM

11396 January 21, 1980
RECORDATION NO. Filed 1425

11396 INTERSTATE COMMERCE COMMISSION
RECORDATION NO. Filed 1425

MIDLAND, MICHIGAN 48644 11396 A
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Secretary of the Interstate Commerce Commission
Constitution and 12th Street, N. W.
Washington, D.C. 20423

Date JAN 21 1980
Fee \$ 100.00

Dear Sir:

ICC Washington

Pursuant to Part 1116 of the regulations of the Interstate Commerce Commission, 49 CFR Part 1116, I hereby request that you record under 49 U.S.C. Section 11303 the following documents:

1. Lease of Railroad Equipment dated as of January 14, 1980 between The Dow Chemical Company and Security Pacific Equipment Leasing, Inc.;
2. Conditional Sale Agreement dated as of January 14, 1980 between Security Pacific Equipment Leasing, Inc., ACF Industries, Incorporated and Richmond Tank Car Company;
3. Assignment of Lease and Agreement dated as of January 14, 1980 between Security Pacific Equipment Leasing, Inc. and The Prudential Insurance Company of America; and
4. Agreement and Assignment dated as of January 14, 1980 between ACF Industries, Incorporated, Richmond Tank Car Company, and The Prudential Insurance Company of America.

The original and one counterpart of each of the above-listed documents are enclosed herewith for filing purposes.

The parties to the subject transaction, and their addresses, are as follows:

Lessee

The Dow Chemical Company
2020 Dow Center
Midland, Michigan 48640
Attention: Dow Chemical U.S.A., Treasury Department

Lessor/Vendee

Security Pacific Equipment Leasing, Inc.
One Embarcadero Center, Suite 710
San Francisco, California 94111

Sam A. B. [Signature]
10 Counterparts

Vendors

ACF Industries, Incorporated
750 Third Avenue
New York, New York 10017

Richmond Tank Car Company
Suite 1500
1700 West Loop South
Houston, Texas 77027

The equipment covered by the aforesaid Lease and Conditional Sale Agreement is 502 tank cars. The A.A.R. mechanical designation of the equipment and the car numbers are set forth in Schedule A hereto.

The original and all extra copies of the enclosed documents should be returned to Mr. Donn Beloff of Schiff Hardin & Waite, 1101 Connecticut Avenue, N.W., Washington, D.C. 20036.

A \$100.00 check, payable to the Interstate Commerce Commission, also is enclosed to cover the required recordation fee.

I am an officer of The Dow Chemical Company and have knowledge of the matters set forth herein.

Very truly yours,

THE DOW CHEMICAL COMPANY

By ^{AKW} B. J. Williams

Dated: January 21, 1980.

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EXHIBIT B
to

JAN 21 1980 - 3 15 PM

Participation Agreement

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of January 14, 1980

between each of

ACF INDUSTRIES, INCORPORATED,

and

RICHMOND TANK CAR COMPANY,

Builders,

and

THE PRUDENTIAL LIFE INSURANCE COMPANY OF AMERICA,

Assignee.

[Filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 on January __, 1980, at _____.m., recordation number _____.]

AGREEMENT AND ASSIGNMENT dated
as of January 14, 1980, between ACF
INDUSTRIES, INCORPORATED, and RICHMOND
TANK CAR COMPANY (the "Builders") and
THE PRUDENTIAL LIFE INSURANCE COMPANY
OF AMERICA (the "Investor").

The Builders and SECURITY PACIFIC EQUIPMENT LEASING,
INC. (the "Vendee"), have entered into a Conditional Sale
Agreement dated as of the date hereof (the "CSA") covering
the construction, sale and delivery by the Builders and
the purchase by the Vendee of the railroad equipment des-
cribed in Annex B to the CSA other than equipment excluded
pursuant to Article 4 thereof (the "Equipment").

The Vendee and THE DOW CHEMICAL COMPANY (the
"Lessee") have entered into a Lease of Railroad Equipment
dated as of the date hereof (the "Lease") providing for
the lease to the Lessee of the Equipment.

The Investor is a party to the Participation
Agreement dated as of the date hereof (the "Participation
Agreement") among the Vendee, the Lessee, and the Investor.
As used herein, the term "Assignee" shall refer to the
Investor.

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT
(this "Assignment") WITNESSETH: that in consideration
of the sum of One Dollar (\$1.00) and other good and valuable
consideration paid by the Assignee to each Builder, the
receipt of which is hereby acknowledged, as well as the
mutual covenants herein contained, the parties hereto agree
as follows:

SECTION 1. Each Builder hereby assigns, transfers
and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of
such Builder in and to each unit of the Equipment
manufactured by it when and as severally delivered
to and accepted by the Vendee, subject to payment
by the Assignee to such Builder of the amount
required to be paid pursuant to Section 4 hereof;

(b) all the right, title and interest of
such Builder in and to the CSA (except the right
to construct and deliver the Equipment) and in
and to any and all amounts which may be or become
due or owing to such Builder under the CSA; and

(c) except as limited by paragraph (b) of this Section, all such Builder's rights, titles, powers, privileges and remedies under the CSA;

without any recourse hereunder, however, against such Builder for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of such Builder to deliver the Equipment in accordance with the CSA or with respect to its warranties and agreements referred to in Article 13 of the CSA or relieve the Vendee from its obligations to each Builder contained in Articles 2, 3, 4, 6 and 13 of the CSA, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 14 of the CSA, all obligations of each Builder to the Vendee with respect to the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the appropriate Builder. In furtherance of the foregoing assignment and transfer, each Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for such Builder, to ask, demand, sue for, collect, receive and become entitled under this Assignment and compliance by the Vendee with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. Each Builder agrees that it shall construct the Equipment in full accordance with the CSA and will deliver the same upon completion to the Vendee in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by such Builder. Each Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of the Equipment manufactured by it under the CSA it had legal title to such unit and good and lawful right to sell such security interests and other encumbrances of any nature (except only the rights of the Vendee under the CSA and the rights of the Lessee under the Lease); and each Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by such Builder under the CSA; all subject, however, to the provisions of the CSA

and the rights of the Vendee thereunder. The Builders will not deliver any of the Equipment to the Vendee under the CSA until the CSA and the Lease have been filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 (each Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filing and recordation have been effected).

SECTION 3. (a) Each Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment manufactured by it or to enforce any provision of the CSA, such Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Lessee arising out of a breach by such Builder of any obligation with respect to such Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by such Builder. Each Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (i) the Assignee's timely motion or other appropriate action, on the basis of Article 14 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Lessee in any such suit, proceeding or action and (ii) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the appropriate Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Builder the right, at such Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

(b) Except in cases of articles or materials specified by the Vendee or the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, each Builder agrees, except as otherwise specifically provided in Annex A to the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed

upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment manufactured by such Builder of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the appropriate Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give such Builder the right, at such Builder's expense, to compromise, settle or defend against such claim.

(c) Each Builder agrees that any amounts payable to it by the Vendee or the Lessee with respect to the Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the appropriate Builder an amount equal to the portion of the Purchase Price as shown on the invoice therefor then being settled for which, under the terms of said Article 4, is payable in installments, provided that there shall have been delivered to the Assignee on or prior to such Closing Date, the following documents, in form and substance satisfactory to the Assignee and its special counsel, in such number of counterparts as may be reasonable requested by such special counsel:

(a) a bill or bills of sale from the Builder of the units being settled for to the Assignee transferring to the Assignee the security interest of such Builder in such units, warranting to the Assignee and to the Vendee that, at the time of delivery of such units under the CSA, such Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances of any nature, except only the rights of the Vendee under the CSA and the rights of the Lessee of under the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by such Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of Equipment in such Group as contemplated by Article 3 of the CSA and § 2 of the Lease;

(c) an invoice of the Builder of the units being settled for in such Group accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof and the correctness of the Purchase Price; and

(d) an opinion of counsel for the Builder of the units being settled for, dated as of such Closing Date, addressed to the Assignee and the Vendee, to the effect that the aforesaid bill or bills of sale have been duly authorized, executed and delivered by such Builder and, assuming that the CSA and this Assignment have been duly filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303, are valid and effective to vest in the Assignee the security interest of such Builder in the units of the Equipment in such Group, free from all claims, liens, security interests and other encumbrances (other than those created by the CSA and the rights of the Lessee under the Lease) arising from, through or under such Builder.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Vendee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 14 of the CSA, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. Each Builder hereby:

(a) represents and warrants to the Assignee, the Vendee and their successors and assigns, that the CSA was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Vendee, the CSA is, insofar as such Builder is concerned, a legal, valid and existing agreement binding upon such Builder in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee by such Builder or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of such Builder therein or in the Equipment.

SECTION 7. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Michigan; provided, however, that the parties shall be entitled to all the rights conferred by 49 U.S.C. § 11303, such additional rights arising out of the filing, recording or depositing of the CSA and this Assignment as shall be conferred by the laws of the several jurisdictions in which the CSA or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. The rights and obligations of the Builders under this Assignment are several in accordance with their interests and not joint. Accordingly, whenever this Assignment, by use of such designation as "each Builder", "such Builder", or other similar term, confers a right or imposes an obligation upon any Builder or its successor, such right or obligation shall be construed to accrue to or to be enforceable against only the specific Builder giving rise to such right or obligation and its successor as herein provided.

SECTION 9. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

ACF INDUSTRIES, INCORPORATED

[Corporate Seal]

By 
~~Vice President~~
TREASURER

Attest:


ASSISTANT Secretary

RICHMOND TANK CAR COMPANY

[Corporate Seal]

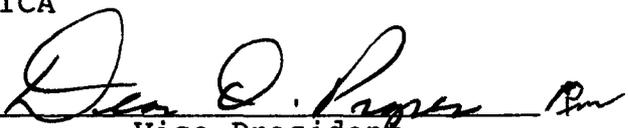
By _____
Vice President

Attest:

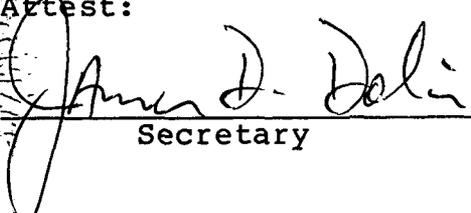
Secretary

THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA

[Corporate Seal]

By 
Vice President

Attest:


Secretary

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

ACF INDUSTRIES, INCORPORATED

[Corporate Seal]

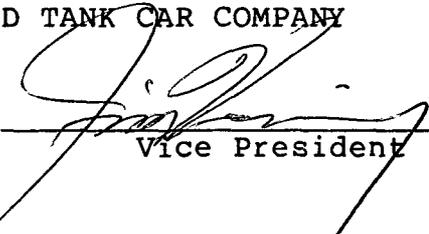
By _____
Vice President

Attest:

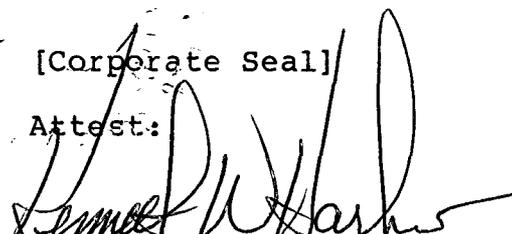
Secretary

RICHMOND TANK CAR COMPANY

[Corporate Seal]

By  _____
Vice President

Attest:



Secretary

THE PRUDENTIAL INSURANCE COMPANY
OF AMERICA

[Corporate Seal]

By _____
Vice President

Attest:

Secretary

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

The undersigned hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment as of January 14, 1980.

SECURITY PACIFIC EQUIPMENT LEASING,
INC.,

By

Charles T. Pearson

EXECUTIVE VICE PRESIDENT

STATE OF ILLINOIS)
) ss. :
COUNTY OF COOK)

On this 14th day of January, 1980 before me personally appeared DEAN D. PROPER, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed 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.

Bernadette Metherell
Notary Public

[Notarial Seal]

My Commission Expires:

August 21, 1982