

12436

RECORDATION NO. _____ Filed 1425

P. E. MYERS & ASSOCIATES
Practice Before The Interstate Commerce Commission
SUITE 348, PENNSYLVANIA BUILDING
PENNSYLVANIA AVENUE AT THIRTEENTH STREET, WASHINGTON, D. C. 20004
INTERSTATE COMMERCE COMMISSION

NOV 24 1980-2 00 PM

No. **0-329A070**

Date **NOV 24 1980**

Fee \$ _____

ICC Washington, D. C.

(202) 737-2188

November 24, 1980

Registered Practitioners
PAULINE E. MYERS
MARK D. RUSSELL

Mrs. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
Washington, DC 20423

ATTENTION: Recordation Office
IN RE: Lease Agreement Between GWI Leasing Corp.
And Genesee and Wyoming RR Company

Dear Mrs. Mergenovich:

Attached hereto for recordation is an original copy of the
above noted lease, between:

GW I Leasing Corporation
71 Lewis Street
Greenwich, CT

And

Genesee and Wyoming Railroad Company
3846 Retsof Road
Retsof, NY 14539

Your cooperation is greatly appreciated. Check No. 2724 is
attached covering the recordation fee.

Yours very truly,
Pauline E. Myers
Pauline E. Myers

PEM/s

Attachments

Counterpart 1 of 3 Pauline E. Myers

NOV 24 1980
1 51 PM '80
MYERS & ASSOCIATES
BRANCH

Interstate Commerce Commission
Washington, D.C. 20423

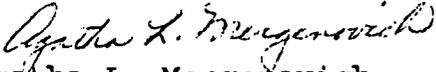
OFFICE OF THE SECRETARY

P. E. Myers & Associates
Suite 348, Pennsylvania Bldg.
Pennsylvania Ave. at 13th Street, N. W.
Washington, D. C. 20004

Dear **Madam:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/24/80 at 2:00PM, and assigned re-
recording number(s). 12436, 12436-A, & 12436-B.

Sincerely yours,


Agatha L. Mergenovich
Secretary

Enclosure(s)

LEASE AGREEMENT

NOV 24 1980-2 22 PM

THIS AGREEMENT, made as of this 11th day of November, 1980, between GWI LEASING CORPORATION, a Delaware corporation, with offices at 71 Lewis Street, Greenwich, Connecticut ("GWILC") and GENESEE AND WYOMING RAILROAD COMPANY, a New York corporation ("GWRR"), with offices at 3846 Retsof Road, Retsof, New York 14539.

1. Scope of Agreement.

A. GWILC has contracted to purchase 50 Pullman covered hopper railroad cars described in Schedule I attached hereto and made a part hereof. Such cars are hereinafter called collectively the "Cars." GWILC and GWRR agree that GWILC shall deliver such Cars to GWRR for GWRR's use pursuant to the terms of this Lease Agreement.

B. It is the intent of the parties that GWILC shall receive an amount equal to all the per diem payments, mileage payments and any other payments however designated earned by the Cars (all of which are hereinafter collectively referred to as "payments" or "car hire payments") and GWRR shall have the availability and use of the Cars in its present transportation operation and in any expansion of such service without payment of any other charge to GWILC.

2. Term.

This Agreement shall remain in full force until it shall have been terminated as to all of the Cars as provided herein. Subject to any termination rights hereinafter contained, this Agreement shall commence upon the delivery of the first Car to GWRR as set forth in Section 3A hereof and shall terminate as to all Cars fifteen (15) years thereafter.

3. Supply Provisions.

A. GWILC will inspect each of the Cars tendered by the manufacturer for delivery. Upon GWILC's determination that each Car conforms to the specifications and to all applicable governmental regulatory specifications, GWILC will accept delivery thereof at the manufacturer's facility. GWILC shall arrange for the Cars to be delivered to the car lining shop where a lining shall be applied to each Car. Upon GWILC's determination that each Car conforms to the lining specifications, GWILC will accept delivery of each such Car hereunder at the car liner's facility

and notify GWRR of such acceptance. Each of the Cars shall be deemed delivered to GWRR upon such acceptance and notification by GWILC and control of the Cars shall immediately pass from GWILC to GWRR at such time.

B. It is expressly understood and acknowledged by the parties hereto that (i) pursuant to a similar agreement dated as of November 7, 1978 between GWRR and States Marine Corporation (whose interest has since been assigned to BRAE Corporation) GWRR is obligated to give loading preference in a surplus situation to 425 covered hopper railroad cars which are managed under a 1978-1983 Covered Hopper Management Program, (ii) pursuant to a similar agreement dated as of December 10, 1979 between GWI Rail Management Corporation ("GWIRM") and GWRR, GWRR is obligated to give loading preference in a surplus situation to 10 covered hopper railroad cars which are managed under a 1979-1984 Covered Hopper Management Program, and (iii) pursuant to a similar agreement dated May 1, 1980, between GWRR and GWIRM GWRR is obligated to give loading preference in a surplus situation to 50 covered hopper railroad cars which are leased by GWIRM from C.K. Industries, Inc. In addition, it is expressly understood that GWRR may, because of practical operating considerations, give loading preference to cars now owned or leased by it (or to any substitutes for such cars). It is further understood that shipper cars at all times have loading priorities at the shipper's option.

4. Railroad Markings and Record Keeping.

A. GWILC and GWRR agree that on or before delivery of any Cars to GWRR, said Cars will be lettered with the railroad markings of GWRR and may also be marked with the name and/or other insignia used by GWRR, all at no cost to GWRR. GWILC will insure that such name and/or insignia comply with all applicable regulations.

B. At no cost to GWRR, GWILC shall during the term of this Agreement prepare for GWRR's signature and filing all documents relating to the registration, maintenance and record keeping functions involving the Cars. Such documents shall include but are not limited to the following: (i) appropriate Association of American Railroads ("AAR") documents (ii) registration in the Official Railway Equipment Register and the Universal Machine Language Equipment Register (UMLER); and (iii) such reports as may be required from time to time by the Interstate Commerce Commission ("ICC") and/or other regulatory agencies.

5. Maintenance, Taxes and Insurance.

A. Except as otherwise provided herein and excluding the operating costs of GWRR as would be incurred whether or not this Agreement were in effect, GWILC will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each of the Cars during the term of this Agreement, including but not limited to repairs, maintenance and servicing, unless the same was occasioned by the negligence or willful misconduct of GWRR while a Car was in the physical possession of GWRR. GWRR hereby transfers and assigns to GWILC for and during the term hereof all of its right, title and interest in any warranty in respect to the Cars. All claims or actions on any warranty so assigned shall be made and prosecuted by GWILC at its sole expense and GWRR shall have no obligation or right to make any claim on such warranty. Any recovery under such warranty shall be payable solely to GWILC.

B. Except as provided above, GWILC shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as may be required. At GWILC's expense, GWRR shall perform any necessary maintenance and repairs to Cars on GWRR's railroad tracks as may be reasonably requested by GWILC. GWILC shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition throughout the term hereof. GWRR may make running repairs to facilitate continued immediate use of a Car and bill GWILC for such repairs. All bills for repairs by GWRR are payable upon receipt by GWILC of an invoice.

C. GWILC agrees to reimburse GWRR upon demand for all taxes (including but not limited to sale or use taxes imposed on the mileage charges, payments hereunder and/or car hire revenues), assessments and other governmental charges of whatsoever kind or character paid by GWRR relating to each Car and on the deployment, lease, delivery or operation thereof of which may remain unpaid as of the date of delivery of such Car to GWRR or which may be accrued, levied, assessed or imposed during the term hereof, except taxes, however designated, imposed on income of GWRR. Moreover, GWILC agrees to indemnify and hold harmless GWRR from any and all such tax, assessment or charge liability and from any costs, penalties or expenses, including legal fees, relating thereto. GWILC and GWRR will comply with all state and local laws requiring the filing of ad valorem tax returns on the cars.

6. Consideration.

A. In consideration for its performance of its obligations hereunder, GWILC shall be entitled for the account of the owners to a sum equal to all car hire payments made to GWRR on account of the Cars. In addition, GWILC shall be entitled to a sum equal to all monies, if any, earned by the Cars prior to their initial loading.

B. GWRR shall pay or cause to be paid to GWILC, or its designee or agent, a sum equal to all revenues received with regard to the Cars, including but not limited to payments described in Section 6A and 6C as soon as possible after such payments are actually received by GWRR.

C. In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 7 of the AAR Car Service and Car Hire Agreement, Code of Car Hire Rules and Interpretations - Freight and the appropriate amount due as a result thereof is received by GWILC, said damaged or destroyed Car will be removed from the coverage of this Agreement as of the date that payment of car hire payments as to such Car ceased.

D. Upon mutual written consent of GWILC and GWRR, this Agreement may be terminated as to any Car at any time.

7. Possession and Use.

A. So long as GWRR shall not be in default under this Agreement, GWRR shall be entitled to the possession and use of the Cars in accordance with and subject to the terms of this Agreement and in the manner and to the extent Cars are customarily used in the railroad freight business.

B. GWRR will not directly or indirectly create, incur, or cause to exist any mortgage, lien, or other security interest on or with respect to the Cars or any interest therein or in this Agreement or any Schedule thereto. GWRR will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, lien, or security interest if the same shall arise at any time.

C. Unless otherwise directed by GWILC in writing, GWRR shall use its best efforts to provide that the Cars will not be used predominantly outside the United States during 1980 or any subsequent calendar year within the meaning of Section 48(a)(2)(A) of the Internal Revenue Code, as amended, or any successor provision thereof, and the regulations thereunder. It

is expressly understood that GWRR shall have no other obligation in this regard.

8. Default of GWRR

A. The occurrence of any of the following events shall be an event of default of GWRR:

(i) The nonpayment by GWRR of any sum required herein to be paid by GWRR within twenty (20) days after the date any such payment is due.

(ii) The breach by GWRR of any other term, covenant, or condition of this Agreement, which is not cured within twenty (20) days after receipt of written notice thereof.

(iii) Any act of insolvency by GWRR, or the filing by GWRR of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other similar law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against GWRR that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of GWRR, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(v) The subjection of any material portion of GWRR's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency which is not discharged within sixty (60) days.

B. Upon the occurrence of any event of default, GWILC at its option, may

(i) Proceed by any lawful means to enforce performance by GWRR of this Agreement or to recover damages for a breach thereof, or

(ii) By notice in writing to GWRR, terminate GWRR's right of possession and use of the Cars, whereupon all right and interest of GWRR in the Cars shall terminate; and thereupon GWILC may enter upon any premises where the Cars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of GWRR. GWILC shall nevertheless have the right to recover from GWRR any and all rental and any other amounts which under the terms of this Agreement may then be due or which may have accrued to that date.

9. Default of GWILC

A. The occurrence of any of the following events shall be an event of default of GWILC:

(i) The nonpayment by GWILC of any sum required herein to be paid by GWILC within twenty (20) days after the date any such payment is due.

(ii) The breach by GWILC of any other term, covenant, or condition of this Agreement, which is not cured within twenty (20) days of receipt of written notice thereof.

(iii) Any act of insolvency by GWILC or the filing by GWILC of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other similar law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against GWILC that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of GWILC, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(v) The subject of any material portion of GWILC's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency which is not discharged within sixty (60) days.

B. Upon the occurrence of any event of default, GWRR, at its option, may

(i) Proceed by any lawful means to enforce performance of GWILC of this Agreement and to recover damages for a breach hereof, or

(ii) Terminate this Agreement and, by notice to GWILC, require GWILC to take possession of any Cars situated on GWRR's line.

10. Rights of Termination

At the expiration or termination of this Agreement as to any Car or Cars, GWRR shall deliver the Cars to GWILC at the GWRR tracks in Retsof, New York (or to such other place designated by GWILC). GWRR shall bear the cost of returning the Cars to Retsof, New York. If the Cars are sent to some other place designated by GWILC, then GWILC shall bear the incremental cost above the cost to GWRR of returning the Cars to Retsof, New York. After the date of termination, GWRR shall continue to pay to GWILC all revenues received with regard to the Cars attributable to the period prior to the termination date.

11. Indemnities

GWILC will defend, indemnify and hold GWRR harmless from and against (1) any and all liability, including attorney's fees, to any third party for loss or damage of or to the Cars, usual wear and tear excepted, unless occurring while GWRR has physical possession of Cars and (2) any claim, cause of action, damage, liability, cost or expense, including attorney's fees, which may be asserted against GWRR with respect to the Cars (other than loss or damage to the Cars as in (1)), including without limitation that arising out of the construction, purchase and delivery of the Cars to GWRR's railroad line, ownership, leasing or return of the Cars, or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects, if any, are latent or are discoverable by GWILC or GWRR); provided, however, that GWILC shall not defend, indemnify or hold GWRR harmless from and against, and GWRR shall not be exculpated from any claim, action, judgment, settlement, damage, expense, loss or liability caused by or arising from negligence or willful misconduct of GWRR, but in such case GWRR shall defend, indemnify and hold GWILC harmless from any such claim, action, judgment, settlement, damage, expense, loss or liability, including attorney's fees.

12. Representations, Warranties and Covenants of GWRR

GWRR represents, warrants and covenants that GWRR is a corporation duly organized, validly existing and in good standing under the laws of the State of New York and has taken all of the corporate action necessary to enter into and perform its obligations under this Agreement.

13. Representations, Warranties and Covenants of GWILC

GWILC represents, warrants and covenants that GWILC is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has taken all corporate action necessary to enter into and perform its obligations under this Agreement

14. Inspection

GWILC shall at any time during normal business hours have the right to enter the premises where the Cars may be located for the purpose of inspecting and examining the Cars to insure GWRR's compliance with its obligations hereunder. GWRR shall immediately notify GWILC of any accident connected with the malfunctioning or operation of the Cars, including in such report the time, place and nature of the accident and the damage caused, the names and addresses of any persons injured and of witnesses, and other information pertinent to GWRR's investigation of the accident. GWRR shall also notify GWILC in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Car. GWRR will execute any authorization necessary for GWILC or Owner to examine the Cars.

15. Miscellaneous

A. This Agreement, together with the attached Schedule, shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. GWRR may not without the prior consent of GWILC assign this Agreement or any of its rights and obligations hereunder and any purported assignment in violation hereof shall be void. GWILC may not without the prior written consent of GWRR assign its agency rights and obligations under this Agreement to any party and any assignment in violation hereof shall be void.

B. It is expressly understood and agreed by GWRR and GWILC that this Agreement constitutes an agreement as to use of the Cars only and no joint venture or partnership is being created. Notwithstanding the calculation of car hire payments, nothing herein shall be construed as conveying to GWRR any right, title or interest in the Cars except as GWRR's rights are specifically provided herein.

C. No failure or delay by GWILC shall constitute a waiver or otherwise affect or impair any right, power or remedy available to GWILC nor shall any waiver or indulgence by GWILC or any partial or single exercise of any right, power or remedy preclude any other or future exercise thereof or the exercise of any other right, power or remedy.

D. This Agreement shall be governed by and construed according to the laws of the State of New York.

E. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, addressed to the president of the other party at the address set forth above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

GENESEE AND WYOMING RAILROAD COMPANY

By: Gerald E. Johnson, President
Gerald E. Johnson, President

GWIL LEASING CORPORATION

By: M. M. Buller, President
M. M. Buller, President

NOV 24 1980-2 00 PM

SCHEDULE I

IN FEDERAL COMMERCE COMMISSION

<u>Quantity</u>	<u>Description</u>	<u>Car Numbers</u>
Fifty (50)	100-Ton, 4750 cfc. covered hoppers manufactured by Pullman Standard, a division of Pullman Incorporated, in accordance with Pullman Standard's Specification No. 1137 and "Buyer's" Purchase Order acceptance dated May 13, 1980 and Pullman Standard's acknowledgment letter dated May 18, 1980.	GNWR 610001 through 610050 inclusive

GWI LEASING CORPORATION

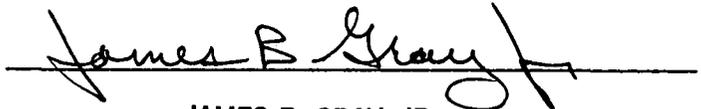
By: *[Signature]*

GENESEE AND WYOMING RAILROAD COMPANY

By: *Gerald E. Johnson, PRESIDENT*

STATE OF New York)
COUNTY OF Monroe) SS:
City of Rochester

On this 12th day of November, 1980, before me personally appeared Gerald E. Johnson, to me personally known, who being by me duly sworn, says that he is the President of GENESEE AND WYOMING RAILROAD COMPANY, 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.



JAMES B. GRAY, JR.
Notary Public, State of NY, Monroe Co.
Commission expires March 30, 1981

STATE OF CONNECTICUT)
COUNTY OF FAIRFIELD) SS:

On this 11th day of November, 1980, before me personally appeared Mortimer B. Fuller, III, to me personally know, who being by me duly sworn, says that he is the President of GWI LEASING CORPORATION, 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.



GRETCHEN M. KOOPMAN
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1981