

ITEL

September 6, 1990

0-257A042

IteI Rail Corporation

550 California Street
San Francisco, CA 94104
(415) 984-4200

Hon. Sidney L. Strickland, Jr., Esq.
Secretary
Interstate Commerce Commission
Washington, DC 20423

RECORDING NO. 170097 FILED 148

SEP 14 1990 - 3 35 PM

INTERSTATE COMMERCE COMMISSION

SEP 14 3 34 PM '90
A
RECORDING UNIT

Re: 1) Class II and III Railroad Per Diem Lease
2) Schedule No. 1

Dear Mr. Strickland:

On behalf of IteI Rail Corporation, the above instruments, in three (3) counterparts each, are hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$30 recordation fee.

Please record this Class II and III Railroad Per Diem Lease dated August 17, 1990, between Rex Leasing, Inc. and Hartford and Slocomb Railroad Company, under a new recordation number. Please record Schedule No. 1 under the recordation number assigned to the Lease Agreement.

The parties to the aforementioned instruments are listed below:

Rex Leasing, Inc. (Lessor)
550 California Street
San Francisco, California 94104

Hartford and Slocomb Railroad Company (Lessee)
P.O. Box 2243
Dothan, Alabama 36302

The Lease Agreement describes the terms and conditions by which rail equipment is leased. Schedule No. 1 adds to the Lease Agreement fourteen (14) 4650 cubic foot covered hopper cars bearing HS reporting marks to be determined at a later date.

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 Assistant

SEP 14 1990 -3 55 PM

SCHEDULE NO. 1

INTERSTATE COMMERCE COMMISSION

This Schedule No. 1 to that certain Lease Agreement (the "Agreement") made as of August 17, 1990 between Rex Leasing, Inc. ("Lessor") and Hartford and Slocomb Railroad Company ("Lessee") is made as of August 17, 1990

Lessor and Lessee agree as follows:

- Capitalized Terms:** All capitalized terms defined in the Agreement shall have the meanings defined therein when used in this Schedule No. 1 except that the term "Cars" as used herein shall only refer to the equipment described in this Schedule unless otherwise indicated.
- Cars Leased:** Lessor hereby leases the following Cars to Lessee subject to the terms and conditions of the Agreement and this Schedule:

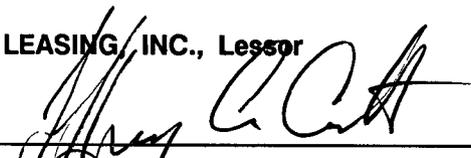
AAR Mech Desig	Description	Reporting Marks and Numbers	Cubic Foot Capacity	No. of Cars
LO	Covered Hoppers	To be provided in a completed Exhibit A	4650 c.f.	14

- Expiration Date:** The date which is 2 years ("Initial Term") from the earlier of (a) the date on which the last Car described on this Schedule is marked with Lessee's reporting marks or (b) 60 days from the date on which the first of the Cars described in this Schedule is physically interchanged onto the railroad lines of Tuscola and Saginaw Bay Railway Company, Inc. The Expiration Date shall be documented on the Certificate of Delivery Date.
- Extended Term:** If the Agreement has not been terminated early and no unremedied default has occurred and is continuing under the Agreement, the Agreement shall automatically be extended from calendar month to calendar month for a period not to exceed 24 calendar months (each such calendar month an "Extended Term") Provided, that the Cars are not subject to the Assignment Agreement dated August 27, 1990 ("Assignment Agreement") between Lessee, as assignor ("Assignor") and Tuscola and Saginaw Bay Railway Company, Inc., as assignee ("Assignee"), a copy of which is attached as Exhibit C, Lessor may terminate the Agreement at any time during the Initial Term or any Extended Term as to some or all of the Cars by providing not less than 10 days prior written notice to Lessee.
- Record Keeper:** Lessor
- Party Responsible for Maintenance:** Lessor
- Delivery of Cars:** When each Car has been marked with Lessee's reporting marks, Lessor shall move such Car to the railroad lines of Assignee.
- Reporting Marks and Numbers Rental Fee:** Lessor agrees to pay to Lessee an annual rental fee of ("Rental Fee") for the use of Lessee's reporting marks and numbers on the Cars assigned to the Assignment Agreement. Lessor shall pay the initial Rental Fee to Lessee within 60 days from September 1, 1990 and shall thereafter pay the Rental Fee to Lessee within 60 days following September 1st of each year throughout the duration of the term of the Assignment Agreement.

9. **Storage Fees:** If any Car(s) returns to Lessee's lines prior to the expiration or termination of the Assignment Agreement, Lessor shall be responsible for all costs associated with such Car(s) being entered into and removed from a storage facility ("Storage") by Lessee, including but not limited to a switching fee of _____ each per car per occurrence and a storage charge of _____ per car per day, and for all costs associated with returning such Car(s) to Assignee's lines. Lessee shall notify Lessor upon the placement of any Car(s) into Storage. Lessee shall use its best efforts to prevent any Car from being interchanged onto its lines during the term of the Assignment Agreement, including advising Lessee's connecting carrier that the Cars have been placed into an assignment pool on Assignee's lines and that the connecting carrier should not return such Cars to Lessee during the term of the Assignment Agreement.
10. **Consent to Assignment:** Lessor consents to Lessee's entering into the Assignment Agreement; provided, that Lessor shall perform Lessee's duties under the Assignment Agreement, that Lessee shall, only upon Lessor's instructions or consent, exercise its option to terminate, extend, renegotiate or request free storage under the Assignment Agreement, and that Lessee shall, if directed by Lessor, assign Lessee's interest in the Assignment Agreement to any party designated by Lessor.
11. **Rent:**
- (a)
- (b) Upon the expiration or early termination of the Assignment Agreement, Lessor shall receive earned by each Car while such Car is off the Eligible Lines.

Each party, pursuant to due corporate authority, has caused this Schedule to be executed by its authorized officer, and each of the undersigned hereto declares pursuant to 28 U.S.C. Section 1746 under penalty of perjury that the foregoing is true and correct and was executed on the date indicated below its signature.

REX LEASING, INC., Lessor

By: 

Title: President

Date: August 17, 1990

HARTFORD AND SLOCOMB RAILROAD COMPANY, Lessee

By: 

Title: Pres.

Date: 8/27/90

EXHIBIT A

CERTIFICATE OF DELIVERY DATE,
COMMENCEMENT DATE AND EXPIRATION DATE

CAR REPORTING
MARKS AND NUMBERS

DELIVERY DATE

DATE DELIVERED
TO ASSIGNEE

The Commencement Date of the Term of the Agreement dated _____, 1990 between Rex Leasing, Inc. and Hartford and Slocomb Railroad Company for the above referenced Cars shall be _____, 1990.

The Expiration Date for the above referenced Cars shall be _____, 1992.

REX LEASING, INC.
Authorized Representative

By: _____

Title: _____

Date: _____

EXHIBIT B

RUNNING REPAIRS

COVERED HOPPERS

Angle Cocks

Air Hose

Train Line

**Operating Levers
and Brackets**

Sill Steps

Grab Irons

Brake Shoes

Brake Shoe Keys

Brake Connecting Pin

Brake Head Wear Plates

Air Brakes

Hand Brakes

Brake Beams and Levers

Truck Springs

Wheel Assemblies

Yokes

Knuckles/Pins

Slack Adjuster

Couplers

Draft Gears

Coupler Carriers

**Center Plate Repair (Not
Replacement of Center Plate)**

Cotter Keys

Roller Bearing Adapters

**Outlet Gate Repair (Not
Gate Replacement)**

**Hatch Cover Repair (Not
Replacement of Hatch Cover)**

EXHIBIT C

ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT ("Assignment Agreement") is made and entered into as of this _____ day of _____, 1990 between HARTFORD AND SLOCOMB RAILROAD COMPANY ("Assignor") and TUSCOLA AND SAGINAW BAY RAILWAY COMPANY, INC. ("Assignee").

Assignor and Assignee agree as follows:

1. Assignor shall supply Assignee with the following railroad car(s) (the "Cars") subject to the terms and conditions of this Assignment Agreement:

AAR Mech Desig.	Description	Reporting Marks and Numbers	Capacity	No. of Cars
LO	Covered Hoppers	will be included on a completed Exhibit A	4650 c.f.	75

2. Upon Assignor's instruction, and not without Assignor's instruction, Assignee shall place the Cars into an assignment pool on Assignee's railroad lines as provided for in Car Service Rule 16 and under the provisions of Car Service Directive 435 of the Code of Car Service Rules, AAR Circular No. OT-10.
3. This Assignment Agreement shall become effective, with respect to each Car, on the date such Car is first interchanged onto the railroad lines of Assignee ("Delivery"). The term ("Term") of this Assignment Agreement, with respect to all Cars, shall commence on the first day of the month from the earlier of (i) the date of Delivery of the last Car or (ii) the 60th day after the date of Delivery of the first Car ("Commencement Date") and shall expire with respect to all Cars 2 years from such Commencement Date ("Expiration Date"). Upon the Delivery of the final Car, Assignor will provide Assignee a Certificate in the form of Exhibit A setting forth the Delivery Date for each Car and the Commencement Date and Expiration Date of the Assignment Agreement with respect to all the Cars. The Certificate shall be deemed accurate, final and binding unless Assignee disputes such date in writing within 15 calendar days of receipt by Assignee of such Certificate.
4. Assignee shall comply with the handling carrier's obligations under AAR Interchange Rules while the Cars are in Assignee's possession.
5. Assignee shall load the Cars prior to loading any similar Cars leased by or assigned to Assignee from other parties subsequent to the date of this Assignment Agreement, purchased by Assignee subsequent to the date of this Assignment Agreement, or received in interchange; provided, that this shall in no event prevent or prohibit Assignee from fulfilling its obligations

to provide transportation and facilities upon reasonable request therefor. If any Car remains on Assignee's lines because Assignee has not given priority to the Cars as specified in this Section, Assignee shall be liable for and remit to Assignor an amount equal to the revenues which would have been generated if such Car had been in the possession and use of a foreign road for the entire period during which such Car is on Assignee's railroad line as a result of such failure with each Car traveling 65 miles per day.

6. If any Car returns to Assignor's line as a result of Assignee not filing the assignment pool code properly, Assignee shall be responsible for all costs associated with returning such Car to Assignee. Assignor shall use its best efforts to prevent any Car from being interchanged onto its lines during the term of the Assignment Agreement, including advising Assignor's connecting carrier that the Cars have been placed into an assignment pool on Assignee's lines and that the connecting carrier should not return such Cars to Assignor during the term of the Assignment Agreement.
7. When used in this Assignment Agreement, each of the following terms shall have the definitions indicated:
 - A. "Eligible Lines" means the railroad lines owned and operated by Assignee as of the date this Assignment Agreement is executed by the parties. If Assignee's lines expand through purchase, Assignee's merger with another railroad or otherwise or if Assignee's lines are sold to and become lines of another railroad, then lines other than the Eligible Lines shall be deemed to be lines of a foreign road for purposes of determining Revenues and for purposes of distinguishing the movement of each Car on the Eligible Lines from the movement of such Car on any other lines operated by Assignee ("Distinction"), Assignee shall provide Assignor with car movement records which effect such Distinction. If Assignee sells or otherwise disposes of a part but not all of the railroad lines owned and operated by Assignee as of the date this Assignment Agreement is executed by the parties, "Eligible Lines" shall mean only that part retained by Assignee.
 - B. "Revenue Rates" means the hourly and mileage car hire rates prescribed by the ICC in any applicable time period of each Car.
 - C. "Revenues" means the total revenues, calculated at the Revenue Rates, that are earned or due in any applicable time period for the use or handling of the Cars on all railroad lines other than the Eligible Lines, including, but not limited to hours and mileage, whether or not collected and received by Assignor, and undiminished by any claimed abatement, reduction or offset caused by any action or failure of Assignee.
8. Assignee shall be entitled to full hourly and mileage relief for each Car while such Car is on the Eligible Lines and shall furnish interchange records to Assignor as requested.
9. Assignee agrees to pay rent to Assignor for the Cars, and such rent shall be equal to by Assignor.

10. If, for any calendar quarter, Revenues received by Assignor for the Cars in the aggregate while they were on railroad lines other than the Eligible Lines are less than an amount equal to what the Cars would have earned had they been on railroad lines other than Eligible lines for during such quarter, with each Car traveling and with each Car earning Revenues at the Revenue Rates ("Minimum Rent"), then Assignor may so notify Assignee. Within ten (10) days of receipt of such notice from Assignor, Assignee may either:
 - A. Notify Assignor of intent to Pay Assignor the shortfall between the Minimum Rent and the Revenues received by Assignor for the Cars in such calendar quarter and agree to pay the shortfall, if any, between the Minimum Rent and the Revenues received by Assignor for the Cars in each subsequent calendar quarter for the duration of the term. Assignee shall pay Assignor such shortfall not later than 60 days after receiving an invoice.
 - B. Elect in writing not to pay Assignor such shortfall for such quarter. In such event, Assignor may terminate the Assignment Agreement with respect to all or any of the Cars upon not less than 10 days written notice to Assignee at any time during the Assignment Agreement.
13. During the Term, Assignor may, at its expense, replace any or all of the Cars with similar cars upon not less than ten (10) days' prior written notice to Assignee.
14. Assignor is responsible for normal maintenance and repair expenses except as provided below and except for any transportation costs incurred pursuant to this paragraph, which shall be at Assignee's sole expense. Assignee shall be responsible for and shall pay all costs and expenses of all repair work or other work or materials required because of (i) damage or other conditions caused by Assignee's negligence or misuse in loading or unloading, or by use other than as permitted under this Assignment Agreement; (ii) damage for which Assignee is responsible under applicable AAR Rules; (iii) Assignee's failure to note any damage to any Car that returns to its lines, the repair of which is the responsibility under AAR Rules of any third party railroad. Assignee shall promptly notify Assignor of any damage to, defect in, need of repair to, or destruction of any Car. For any damaged Car that requires repairs other than running repairs as provided in Exhibit B, car hire (hours and mileage) shall be governed by applicable Car Hire and Car Service Rules. In no event shall Assignee place any Car for repair at a private contract repair facility, or allow repair by a private contractor on the property of Assignee without Assignor's prior approval. Any such repair must be performed under the direction and control of Assignor.
15. Upon expiration or termination of this Assignment Agreement with respect to any Car(s), Assignee shall surrender possession of such Car(s) to Assignor. Assignee shall insure that each Car returned to Assignor upon the expiration or termination of the Assignment Agreement shall be (a) in the same condition, order and repair as when delivered to Assignee, normal wear excepted, (b) in interchange condition in accordance with AAR and FRA rules and regulations, (c) suitable for loading, (d) free from all accumulations or deposits from commodities transported in or on it while in the service of Assignee, and (e) free of any and all Rule 95 damage.

Assignee shall remove the Cars from the provisions of Car Service Rule 16 and Car Service Directive 435, and deliver the Cars to a point on the Eligible Lines to be designated by Assignor. At Assignor's option and Assignee's expense, Assignee shall remark the Cars to bear new reporting marks to be provided by Assignor and use its best efforts to provide final outbound loads for each Car.

16. Assignee's rights shall be subject and subordinate to the rights of Assignor, of any lessor, and of any owner or secured party under any financing agreement with respect to the Cars.
17. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the mail, postage prepaid, certified or registered, or when transmitted and received by telex addressed as follows:

If to Assignor:

Hartford & Slocomb Railroad
Company
550 California Street
San Francisco, CA 94104
Attention: Manager, Car Hire
Accounting

If to Assignee:

Tuscola and Saginaw Bay Railway
Company, Inc.
538 East Huron Street
Vassar, Michigan 48768
Attention: President

18. This Assignment Agreement may not be modified, altered, or amended, except by an agreement in writing signed by the parties.
19. This Assignment Agreement may be executed in two counterparts and such counterparts together shall constitute one and the same contract.

HARTFORD AND SLOCOMB RAILROAD COMPANY

TUSCOLA AND SAGINAW BAY RAILWAY
COMPANY, INC.

By: _____

By: Maynard Ritter

Title: _____

Title: Chairman + CEO

Date: _____

Date: 7-19-90

EXHIBIT A

CERTIFICATE OF DELIVERY DATE, ASSIGNMENT AGREEMENT
COMMENCEMENT DATE AND EXPIRATION DATE

CAR REPORTING
MARKS AND NUMBERS

DELIVERY DATE

The Commencement Date of the Term of the Assignment Agreement dated _____, 1990 between Hartford and Slocomb Railroad Company and Tuscola and Saginaw Bay Railway, Company, Inc. for the above referenced Cars shall be _____, 1990.

The Expiration Date for the above referenced Cars shall be _____, 1992.

HARTFORD AND SLOCOMB RAILROAD COMPANY
Authorized Representative :

By: _____

Title: _____

Date: _____

EXHIBIT B

RUNNING REPAIRS

COVERED HOPPERS

Angle Cocks	Wheel Assemblies
Air Hose	Yokes
Train Line	Knuckles/Pins
Operating Levers and Brackets	Slack Adjuster
Sill Steps	Couplers
Grab Irons	Draft Gears
Brake Shoes	Coupler Carriers
Brake Shoe Keys	Center Plate Repair (Not Replacement of Center Plate)
Brake Connecting Pin	Cotter Keys
Brake Head Wear Plates	Roller Bearing Adapters
Air Brakes	Outlet Gate Repair (Not Gate Replacement)
Hand Brakes	Hatch Cover Repair (Not Replacement of Hatch Cover)
Brake Beams and Levers	
Truck Springs	