

TAFT, STETTINIUS & HOLLISTER

1800 STAR BANK CENTER
425 WALNUT STREET
CINCINNATI, OHIO 45202-3957

WASHINGTON, D C OFFICE
SUITE 500 - 625 INDIANA AVENUE, N W
WASHINGTON, D C 20004-2901
202-628-2838
FAX 202-347-3419

513-381-2838
CABLE TAFTHOL TWX 810-461-2623
FAX 513-381-0205

COLUMBUS, OHIO OFFICE
21 EAST STATE STREET
COLUMBUS, OHIO 43215-4221
614-221-2838
FAX 614-221-2007

June 16, 1993

NORTHERN KENTUCKY OFFICE
THOMAS MORE CENTRE
2670 CHANCELLOR DRIVE
CRESTVIEW HILLS, KENTUCKY 41017-3491
606-331-2838
513-381-2838
FAX 513-381-8613

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Interstate Commerce Commission
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423
Attn: Mildred Lee
Room 2303

RECORDATION NO. 18292 FILED 1425

JUL 2 1993 3:15 PM

INTERSTATE COMMERCE COMMISSION

Dear Ms. Lee:

I have enclosed herewith an original and one copy of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a Open Top Hopper Letter Agreement, a primary document, dated April 5, 1993.

The names and addresses of the parties to the document are as follows:

LESSOR: The David Joseph Company
300 Pike Street
Cincinnati, Ohio 45202

128

LESSEE: The Delaware and Hudson Railway
Building 200
Clifton Corporate Parkway
Clifton Park, New York 12065

V

The equipment covered by the enclosed document is sixty-eight (68) 100 ton, 3,420 cubic foot capacity open top hoppers, built by Greenville in 1980, currently bearing the reporting marks set forth in Exhibit A attached hereto.

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A fee of \$16.00 is enclosed. Please return the original executed copy of the enclosed document to:

Philip F. Schultz, Esq.
Taft, Stettinius & Hollister
1800 Star Bank Center
425 Walnut Street
Cincinnati, Ohio 45202-3957

V

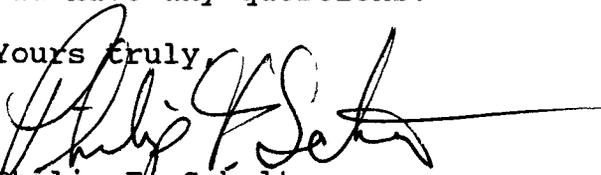
Ms. Mildred Lee
June 16, 1993
Page 2

Short summary of the document to appear in the index follows:

Open Top Hopper Letter Agreement between The Delaware and Hudson Railway, Building 200, Clifton Corporate Parkway, Clifton Park, New York 12065, as Lessee, and The David J. Joseph Company, 300 Pike Street, Cincinnati, Ohio 45202, as Lessor, dated April 5, 1993 and covering sixty-eight (68) 100 ton, 3,420 cubic foot capacity open top hoppers, built by Greenville in 1980.

Please call me if you should have any questions.

Yours truly,



Philip F. Schultz
Attorney for
The David J. Joseph Company

PFS/taj
encl.

EXHIBIT A

Sixty-eight (68) 100 ton 3420 cubic foot capacity open top
hoppers, built by Greenville and bearing reporting marks as
follows:

CAR NUMBERS

CAR NUMBER

DJJX 3906	DJJX 4033
DJJX 3907	DJJX 4034
DJJX 3908	DJJX 4039
DJJX 3911	DJJX 4040
DJJX 3912	DJJX 4041
DJJX 3913	DJJX 4043
DJJX 3918	DJJX 4044
DJJX 3932	DJJX 4048
DJJX 3934	DJJX 4051
DJJX 3942	DJJX 4053
DJJX 3947	DJJX 4055
DJJX 3950	DJJX 4057
DJJX 3961	DJJX 4058
DJJX 3962	DJJX 4059
DJJX 3966	DJJX 4062
DJJX 3967	DJJX 4069
DJJX 3979	DJJX 4071
DJJX 3980	DJJX 4072
DJJX 3983	DJJX 4073
DJJX 3988	DJJX 4077
DJJX 3991	DJJX 4078
DJJX 3996	DJJX 4081
DJJX 3997	DJJX 4085
DJJX 3998	DJJX 4087
DJJX 4004	DJJX 4089
DJJX 4007	DJJX 4090
DJJX 4013	DJJX 4097
DJJX 4014	DJJX 4098
DJJX 4015	DJJX 4101
DJJX 4017	DJJX 4106
DJJX 4019	DJJX 4109
DJJX 4024	DJJX 4111
DJJX 4028	DJJX 4112
DJJX 4031	DJJX 4113

JUL 2 1995 3-15 PM

CERTIFICATE

INTERSTATE COMMERCE COMMISSION

The undersigned, Stephen M. Griffith, Jr., a notary public in and for the County of Hamilton, State of Ohio, hereby certifies that the copy of the document attached hereto has been compared with the original and that the undersigned has found the copy to be complete and identical in all respects to the original document.

Stephen M. Griffith Jr.

Notary Public
STEPHEN M. GRIFFITH, JR., Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My Commission has no expiration
Date: Section 147.03 O.R.C.

copy for
I C C

OPEN TOP HOPPER LETTER AGREEMENT JUL 2 1993 3:15 PM

INTERSTATE COMMERCE COMMISSION

This Letter Agreement (the "Lease") will serve to outline the terms and conditions under which The David J. Joseph Company agrees to lease a certain group of railcars to The Delaware and Hudson Railway.

Lessor: The David J. Joseph Company

Lessee: Delaware and Hudson Railway Company, Inc.

Equipment: Sixty-eight (68) 100 Ton, 3420 Cubic Foot Capacity, Open Top Hoppers, built by Greenville in 1980 and presently bearing reporting marks listed on Exhibit A hereto (the "Car(s)").

Lease Term: The Lease Term is to commence upon the date of delivery to and acceptance of the Cars being in interchange condition to the Lessee and will continue in full force and effect until September 30, 1993.

Rental: The Lessee agrees to pay Lessor monthly in advance on or before the first day of each calendar month a rental rate of [REDACTED] U.S. funds per car per month or pro-rated fraction thereof. Such rental shall commence on the date of delivery and acceptance of each Car and continue in effect until each Car is returned by Lessee in accordance with the Return Provision section below, unless earlier terminated pursuant to the provisions of this Lease.

There shall exist a mileage cap of 22,500 miles per Car during the Lease Term. In the event that the mileage shall exceed 22,500 miles per Car, the Lessee shall pay to the Lessor the sum of [REDACTED] per mile for each mile above 22,500 miles per Car during the Lease Term. Lessee shall provide Lessor with actual mileage reporting on all Cars subject to this Lease on a monthly basis within ninety (90) days of the end of the month of usage provided that the Cars bear Lessee reporting marks.

Lessee shall be entitled to all car hire and mileage earnings generated during the Lease Term.

Condition of Equipment: The Cars will be delivered to the Lessee at the commencement of the Lease in interchange condition, as provided for by the field manual of the AAR Interchange Rules and by FRA standards. Except as otherwise expressly provided herein, the Lessor shall promptly arrange and pay for all maintenance and repairs during the Lease Term as is necessary to maintain the Cars in good operating condition as specified in the AAR Interchange Rules, excluding

damages to the outlet gates and related fittings resulting from loading and unloading, and any other handling line damages as defined in AAR Interchange Rule 95B, unless the railroads transporting the Cars have assumed full responsibility for such loss or damage or unless such loss or damage results from the negligence or omission of Lessor, its agents or employees.

Lessee shall promptly notify Lessor in writing upon receipt by Lessee of knowledge of any Car in need of repair or of damage to any of the Cars. If repairs are needed which are Lessor's responsibility hereunder, rental for such Car will abate thirty (30) days after Lessee gives notice of the need for repairs on such Car, and rental will resume on such Car after it is returned repaired to Lessee. Lessee may not repair or authorize repairs, without Lessor's prior consent; except that Lessee may repair without such prior consent when such repairs are Lessee's responsibility hereunder, and may also make all AAR "running" repairs, excluding repairs covered by AAR Interchange Rule 108, when such repairs are Lessor responsibility. No rental credits will be issued for Cars which are repaired for items which are Lessee's responsibility hereunder.

Use of the Equipment: The Lessee shall be responsible for the use of the Cars and shall indemnify and hold the Lessor harmless from liabilities related to, or arising from, the use of the Cars provided however that Lessee shall not be responsible for any liabilities resulting from the negligence or willful misconduct of Lessor, its agents and/or its employees.

In the event that a repair shop contracted with by Lessor and/or such repair shop's agents or employees cause any losses arising out of their actions with respect to any of the Cars or any part thereof and Lessor chooses not to pursue its legal rights against such repair shops, their agents and/or employees, and Lessee has suffered such losses and wishes to pursue such claims, Lessee may request and Lessor shall not unreasonably refuse to appoint and constitute the Lessee as its agent and attorney-in-fact to assert and enforce, in the name of and for account of Lessee, at Lessee's sole cost and expense, whatever claims the Lessor may have against such repair shops, their agents and/or employees.

The Cars will be used only for transporting commodities for which they were designed and intended.

Taxes: Lessee agrees to indemnify Lessor against all taxes, duties and imposts (including sales, use, goods and services, personal property and other taxes) imposed by any Federal, state or local tax authority or by any foreign government or taxing authority on payments made under this Lease or on Cars

included in this Lease; excluding taxes imposed on the gross or net income of Lessor, or withholding, franchise, gross receipts, single business, capital or net worth taxes, or any other taxes to the extent they are in lieu of gross or net income taxes imposed on the Lessor by foreign, Federal, state or local tax authorities. The Lessee will not indemnify Lessor for any taxes, fines, penalties or interest, imposed or levied on Lessor where such taxes, fines, penalties or interest is the result of Lessor's act or failure to act or misrepresentation or omission or negligence.

If any claim is made against the Lessor for any taxes, duties or imposts, indemnified against pursuant to preceding paragraph, Lessor shall promptly notify Lessee in writing. The Lessee may, and the Lessor shall, upon Lessee's request, contest any claim that could result in an indemnity payment pursuant to the preceding paragraph, through any appropriate administrative or judicial forum. Lessee shall pay all costs incurred in connection with such a contest. Lessee shall have the right to review and approve all submission to any administrative agency or court. The Lessee shall not be required to pay or discharge any tax or claim so long as Lessee or the Lessor shall, in good faith, contest the validity of the tax or claim in accordance with this section.

Insurance: Lessee shall insure or self insure the Cars to the same extent, in the same manner, and according to the same policies and practices as is Lessee's practice in respect to Lessee's own equipment and furnish evidence of such coverage on the Cars to Lessor upon request.

Casualty Occurrences: In the event any Car covered hereunder is damaged beyond repair in the opinion of Lessee or otherwise destroyed in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Rules 7 and 8 of the AAR code of Car Hire Rules and Interpretations - Freight, rental shall cease as to any such damaged or destroyed Car on the date car hire ceased as set forth in the aforementioned rules 7 and 8. For any such Car so destroyed or damaged, Lessee shall remit to Lessor an amount equal to the Depreciated Value as defined in AAR Interchange Rule 107 within thirty (30) days of receipt of an invoice therefor from Lessor. Upon payment of such Casualty Value, title to the Car will automatically pass to Lessee, free and clear of any security interest. 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 Cars, provided, however, that this shall not affect their respective obligations under this Section.

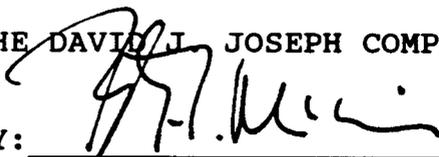
Reporting Marks: At lease commencement when the Cars are delivered by Lessor to Lessee, Lessee shall have the right to restencil the Cars at Lessee's sole expense. The Lessee shall ensure, at Lessee's expense, that the Cars upon lease termination bear DJJX reporting marks and numbers as delivered.

Freight Cost: At Lease commencement, the Lessor shall be responsible for the payment of any freight charges to transport the cars from their current location to the Delaware and Hudson Railway. At Lease expiration, Lessee shall be responsible for using its best efforts to provide the Lessor with a free movement of the Cars after a loaded move to such location as Lessor may reasonably direct. In the event such movement is not feasible, Lessee shall provide a free movement of the Cars on CP Rail System lines to interchange with other carriers at such points designated by the Lessor, but not further than Chicago, Illinois.

Renewal Option: At Lease expiration, provided the Lessee is not then in default and has given the Lessor notice (at least sixty (60) days prior to Lease expiration) of its intention to renew the Lease, the Lessee may renew the Lease on all, but not less than all, of the Cars at the then current fair market value rental rate, to be mutually agreeable between the Lessee and the Lessor.

Return Provision: The Cars shall be returned at the conclusion of the Lease in interchange condition, as provided for by the field manual of the AAR Interchange Rules and by FRA standards, except for repairs which are Lessor's responsibility hereunder. Upon termination of the Lease, the Lessee shall provide the Lessor up to 90 days free storage and a free movement as provided in the Freight Cost Section above, as directed by Lessor. Any inspection of the Cars by Lessor or its agents will be at the risk of Lessor, and all persons so entering onto the property of Lessee will, as a precondition to entry onto Lessee's property, execute a Release of Liability form.

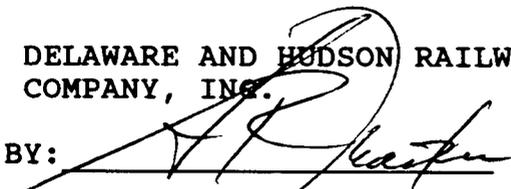
THE DAVID J. JOSEPH COMPANY

BY: 

Title: Vice President

Date: 4 5-93

DELAWARE AND HUDSON RAILWAY
COMPANY, INC.

BY: 

Title: PRESIDENT

Date: 93-04-27

EXHIBIT A

Sixty-eight (68) 100 ton 3420 cubic foot capacity open top
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CAR NUMBERS

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DJJX 4024	DJJX 4111
DJJX 4028	DJJX 4112
DJJX 4031	DJJX 4113

STATE OF OHIO)
COUNTY OF HAMILTON) SS:

The foregoing instrument was acknowledged before me this 5th day of April, 1993, by DOUGLAS F McMillan, the VICE PRESIDENT of The David J. Joseph Company, a Delaware corporation, on behalf of the corporation.


Notary Public
JAMES H GOETZ
Notary Public, State of Ohio
My Commission Expires July 10, 1995

PROVINCE
~~STATE~~ OF ONTARIO)
COUNTY OF YORK) SS:

The foregoing instrument was acknowledged before me this 27th day of April, 1993, by G R Mackie, the President of Delaware and Hudson Railway Company Inc. a Delaware corporation, on behalf of the corporation.


Notary Public