

BALL, JANIK & NOVACK

RECORDATION NO. 13631-D FILED 1425

APR 29 1994 -2 45 PM

INTERSTATE COMMERCE COMMISSION

April 29, 1994

Direct Dial: (202)466-6532

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

Dear Secretary Strickland:

I have enclosed two certified copies of the two documents described below, to be recorded pursuant to 49 U.S.C. § 11303.

The first document is an Order Approving Settlement with North American Car Corporation, a release, dated June 12, 1985, a secondary document. The primary document to which this document is connected is recorded under Recordation No. 13631. We request that the Order Approving Settlement with North American Car Corporation be recorded under Recordation No. 13631-C.

The name and address of the party to the Order Approving Settlement with North American Car Corporation is as follows:

Lessee:

North American Car Corporation
33 West Monroe Street
Suite 2400
Chicago, IL 60603

RECORD
13631-D

A description of the equipment covered by the Order Approving Settlement with North American Car Corporation consists of 450 50'6" 70-ton boxcars numbered CPAA 204300-204749, inclusive.

Judith McDonald

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Honorable Sidney L. Strickland, Jr.
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The second document is an Order Confirming Second Amended and Restated Joint Plan of Reorganization, a release, dated December 19, 1986, a secondary document. The primary document to which this document is connected is recorded under Recordation No. 13631. We request that the Order Confirming Second Amended and Restated Joint Plan of Reorganization be recorded under Recordation No. 13631-D.

The name and address of the party to the Order Confirming Second Amended and Restated Joint Plan of Reorganization is as follows:

Lessor:

Emons Industries, Inc.
490 East Market Street
York, PA 17403

A description of the equipment covered by the Order Confirming Second Amended and Restated Joint Plan of Reorganization consists of 450 50'6" 70-ton boxcars numbered CPAA 204300-204749, inclusive.

A fee of \$36.00 is enclosed. Please return one certified copy of each document to:

Louis E. Gitomer
Of Counsel
Ball, Janik & Novack
Suite 1035
1101 Pennsylvania Avenue, N.W.
Washington, DC 20004

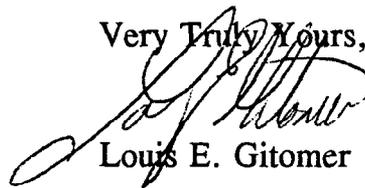
A short summary of the documents to appear in the index follows: (1) Order Approving Settlement with North American Car Corporation, dated June 12, 1985, a release by North American Car Corporation, 33 West Monroe Street, Suite 2400, Chicago, IL 60603, covering 450 50'6" 70-ton boxcars numbered CPAA 204300-204749, inclusive, and (2) an Order Confirming Second Amended and Restated Joint

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Plan of Reorganization, dated December 19, 1986, by Emons Industries, Inc., 490 East Market Street, York, PA 17403, covering 450 50'6" 70-ton boxcars numbered CPAA 204300-204749, inclusive.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Louis E. Gitomer", written over the typed name below.

Louis E. Gitomer

Enclosure

APR 29 1994 -2 45 PM

1459s-(3) INTERSTATE COMMERCE COMMISSION

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X
In re

EMONS INDUSTRIES, INC.,

In Proceedings For A Reor-
ganization Under Chapter 11
Case No. 84 B 10486 (PBA)

ORDER CONFIRMING SECOND AMENDED
AND RESTATED JOINT PLAN
OF REORGANIZATION

Debtor.
-----X

Emons Industries, Inc. ("Emons"), the above-captioned debtor, and its affiliate E.T. Railcar Corporation ("ETRAC") having proposed and filed with this Court under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§1101 et seq. (the "Code") their "Second Amended And Restated Joint Plan of Reorganization" dated November 10, 1986, including the exhibits and schedules annexed thereto (the "Plan"); and a hearing having been held before this Court on November 10, 1986 (the "Disclosure Statement Hearing") upon notice to all holders of claims against, and interests in, Emons to consider approval of the disclosure statement filed by Emons and ETRAC (collectively the "Proponent's") in accordance with 11 U.S.C. §1125; and said disclosure statement having been amended at the Disclosure Statement Hearing to reflect comments received by Emons from this Court and various parties in interest herein; and this Court having approved said disclosure statement, as amended, in the form of a pleading entitled, "First Amended And Restated Disclosure Statement Pursuant To Section 1125 Of The Bankruptcy Code" dated November 10, 1986 (the "Disclosure

Statement") by order of this Court dated November 10, 1986 (the "Disclosure Statement Order"); and copies of the Plan, the Disclosure Statement, the "Notice Fixing Time For The Filing of Acceptances or Rejections of the Plan" dated November 10, 1986, the "Notice of Hearing On Confirmation" dated November 10, 1986, and the ballot forms for the acceptance or rejection of the Plan by the holders of Class 4A, Class 4B, Class 4C, Class 4D, Class 4E, Class 4F, Class 4G, Class 4H, Class 4I, Class 4J, Class 5A, Class 5B, Class 5C, Class 6 and Class 7 Claims, and Class 8A, Class 8B, Class 9, Class 10A, Class 10B, and Class 10C Interests (collectively the "Impaired Classes of Creditors and Stockholders") all having been transmitted to all holders of claims against, and interests in, Emons as provided in the Disclosure Statement Order (collectively the "Solicitation Materials"); and it appearing from the affidavits of service filed with this Court that the solicitation of acceptances from the Impaired Classes of Creditors and Stockholders was made within the time and in the manner required by the Disclosure Statement Order; and all of those ballots which were timely received by Levin & Weintraub & Cramers ("L&W&C"), Emons' counsel and the balloting agent appointed herein, from the Impaired Classes of Creditors and Stockholders having been filed with this Court by L&W&C under the cover of a pleading entitled "Certification of Acceptances to Second Amended And Restated Joint Plan of Reorganization of Emons Industries, Inc. and E.T. Railcar Corporation dated November 10, 1986"; and a hearing to consider confirmation of the Plan and

other matters relating to confirmation having been held on December 19, 1986 (the "Confirmation Hearing"), upon proper and timely notice, in accordance with §1128 of the Code and Rule 2002(b) of the Bankruptcy Rules, to all persons entitled thereto; and affidavits of service by mail of the Solicitation Materials having been filed with this Court; and upon the order signed by this Court on December 17, 1986 entitled "Order Withdrawing DES Objection #1 Against Certain Claimants and Clarifying Voting Procedures", whereby this Court, inter alia, modified the Disclosure Statement Order in respect of the method by which ballots cast by certain creditors were to be tabulated, for determining whether an impaired class of creditors accepted the Plan (the "Clarifying Order"); and Emons having filed a motion on December 16, 1986 with this Court seeking, inter alia, the entry of an order of this Court extending the time within which Reliance Insurance Company could withdraw or change its vote on the Plan (the "Reliance Ballot Motion"); and the Court having heard the Reliance Ballot Motion and having granted the relief therein requested by order dated December 19, 1986 (the "Reliance Ballot Order"); and upon the Reliance Ballot Order; and Emons having filed an application dated December 11, 1986 with this Court seeking this Court's approval of an escrow agreement pursuant to which distributions will be made in accordance with the Plan (the "Escrow Agreement"); and Emons having further filed a Notice of Settlement of an order seeking approval of an agreement between

and among, inter alia, Emons and certain creditors of Emons' affiliate, The Maryland and Pennsylvania Railroad (the "M&P Settlement Agreement"); and it appearing from the affidavits of service heretofore filed with this Court that, under the circumstances, due and sufficient notice, of the hearing to consider approval of the Escrow Agreement and the M&P Settlement Agreement was given to parties in interest; and no one having appeared in opposition to the entry of an order approving the Escrow Agreement and the M&P Settlement Agreement; and it appearing that it is a condition to confirmation of the Plan that Emons, Bamerilease Capital Corp. and Bamerilease, Inc. execute an agreement which sets forth the disposition to be made of certain funds held by Emons in accordance with a prior order of this Court (the "Interim Payment Order"); and the Disclosure Statement Order having fixed December 16, 1986 as the last day for the filing of objections to confirmation of the Plan; and there having been only one objection so filed, to wit, the "Objection To Confirmation of Debtor's Plan of Reorganization" dated December 3, 1986 filed by the Committee of Equity Security Holders of Emons Industries, Inc. (the "Equity Committee Objection"); and upon the representations made to this Court by Slade & Pellman, general corporate counsel for Emons, that Reliance Group Holdings, Inc. ("Reliance Group") has been put on notice that this order would contain a provision (substantially similar to the restrictions referred to in paragraph 6.1(K) of the Plan) which would restrict the

transferability of certain shares of stock to be received by Reliance Group under the Plan; and it further having been represented to this Court by L&W&C that Reliance Group stated it would not object to such provision; and Reliance Group, having been placed on notice that Emons intended to include such stock restriction in this order, having failed to appear at the Confirmation Hearing; and it appearing that such stock restriction is reasonably calculated to preserve, for all creditors and stockholders of Emons, certain tax attributes; and upon the record and minutes taken before me at the Confirmation Hearing; and after considering the Plan, the Escrow Agreement, the M&P Settlement Agreement, the Equity Committee Objection, the record made at the hearing to consider approval of the Disclosure Statement and all proceedings heretofore had herein; and after due deliberation and sufficient cause appearing therefor; and

IT APPEARING that the Plan has been duly accepted in accordance with §1126 of the Code; and

IT FURTHER APPEARING and the Court having found and determined, after the Hearing on the Plan, that:

- (A) The Plan complies with the applicable provisions of chapter 11 of the Code;
- (B) The Proponents, as proponents of the Plan, have complied with the applicable provisions of the Code;
- (C) The Plan has been proposed in good faith and not by any means forbidden by law;
- (D) Any payments made or promised by the Proponents for services or for costs and expenses in, or connection with, Emons' chapter 11 case or in connection with the

Plan and incident to Emons' chapter 11 case, has been disclosed to this Court, and any such payment made by the Proponents before confirmation is reasonable or, if such payment is to be determined after confirmation of the Plan, such payment is subject to the approval of the Court as reasonable;

- (E) To the extent known, and in accordance with §1129(a)(5) of the Code, the Proponents have disclosed the identity and affiliations of the individuals proposed to serve, with respect to Emons, after confirmation of the Plan, and with respect to ETRAC and Emons Holdings Inc. ("Holdings"), upon the Consummation Date (as defined in the Plan), as (i) directors and officers of Emons; (ii) as directors and officers of ETRAC, an affiliate of Emons participating in a joint plan with Emons, and (iii) the officers and directors of Holdings, a successor to Emons under the Plan; and the appointment to, or continuance in, such office of such individuals is consistent with the interests of Proponents' creditors and equity security holders and with public policy, and the Proponents have disclosed the identity of any insider who will be employed or retained by Emons subsequent to confirmation of the Plan and the nature of any compensation to be paid to such insiders;
- (F) The procedures by which the ballots for acceptance or rejection of the Plan (the "Ballots") were distributed and tabulated were fair, properly conducted and in accordance with the Disclosure Statement Order and the Clarifying Order;
- (G) With respect to each of the Impaired Classes of Creditors and Stockholders, each holder of a claim or interest of such class: (i) has accepted the Plan, or (ii) will receive or retain under the Plan on account of such claim or interest, property of a value, as of the effective date of the Plan, that is not less than the amount that such holder would so receive or retain if Emons were to be liquidated under chapter 7 of the Code on such date;

- (H) The Plan has been accepted by at least one class of claims, which acceptance has been determined without including any acceptance of the Plan by any insider holding a claim of such class;
- (I) With respect to each class of claims or interests designated by the Plan, either (i) such class has accepted the Plan or (ii) such class is not impaired under the Plan;
- (J) Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of Emons or Holdings;
- (K) The holder of a claim of a kind specified in §507(a)(6) of the Code shall be conclusively deemed to have received on account of such claim, deferred cash payments of a value, as of the effective date of the Plan, equal to the allowed amount of such claim, if, in addition to, and together with, payment of the allowed amount of such claim in semi-annual cash installments over the six (6) year period after the date of assessment of ~~such claim,~~ Emons pays to such holder interest on the deferred portions of such claim, which interest shall be calculated from the Confirmation Date on the outstanding balance of the allowed amount of such claim at a rate equal to that of short-term (26 weeks) United States government treasury bills, sold at a discount from face value in units of \$10,000 to \$1,000,000, which shall be prevailing as of the date of this Order;
- (L) All securities to be issued by the Proponents and Holdings pursuant to the Plan and the M&P Settlement Agreement, including the Preferred Stock Reallocation Purchase Warrants (as defined in the Plan) and the ETRAC common stock, are being issued in exchange for a claim against, or interest in, Emons within the meaning of §1145 of the Code;

- (M) ETRAC is an affiliate participating in a joint plan with Emons under and for purposes of §1145 of the Code and paragraph "10" of this order; and
- (N) Each of the conditions to confirmation of the Plan set forth in paragraph 6.1 of the Plan has either been satisfied or waived in accordance with paragraph 6.2 of the Plan.

IT IS THEREFORE,

NOW, on motion of LEVIN & WEINTRAUB & CRAMES, attorneys for Emons,

ORDERED, ADJUDGED AND DECREED that:

- (1) The findings of this Court as set forth above shall constitute findings of fact pursuant to Bankruptcy Rule 7052, which is applicable to this proceeding by dint of Bankruptcy Rule 9014;
- (2) The Plan, a copy of which is annexed hereto and made a part hereof as Exhibit "A", is hereby confirmed;
- (3) The Escrow Agreement, a copy of which is annexed hereto as Exhibit "B", is hereby approved, and the Proponents be, they hereby are authorized to execute the Escrow Agreement or, with the consent of the Official Committee of Creditors/Lessors (the "Committee"), a version thereof substantially similar thereto;
- (4) The M&P Settlement Agreement, a copy of which is annexed hereto as Exhibit "C", is hereby approved, and the Proponents be, and they hereby are authorized to execute the M&P Settlement Agreement or, with the consent of the Committee, a version thereof substantially similar thereto;

(5) The letter agreement annexed hereto as Exhibit "D" is hereby approved and the Interim Payment Order shall be deemed modified and amended consistent with said agreement;

(6) The Plan and its provisions shall be binding upon (i) the Proponents, (ii) Holdings, (iii) any entity acquiring or receiving property or securities under the Plan, (iv) any lessor or lessee of property to or from the Proponents, and (v) any creditor or equity security holder of Emons, whether or not the claim or interest of such creditor or equity security holder is impaired under the Plan and whether or not such creditor, equity security holder or entity has accepted the Plan;

(7) In accordance with §1141(c) of the Code, all property of Emons, is free and clear of all claims and interests of creditors and equity security holders of Emons, except as otherwise provided in the Plan. In no event shall Holdings be liable to any creditors or stockholders of Emons except as specifically set forth in the Plan and this order of confirmation;

(8) In accordance with §1141(d)(1) of the Code, Emons is discharged and released from any and all debts which arose before the date of confirmation of the Plan and any and all debts of a kind specified in §§502(g), 502(h), or 502(i) of the Code, whether or not (a) a proof of claim based upon such debt has been filed or deemed filed under §501 of the Code, (b) such claim is allowed under §502 of the Code, (c) such claim is listed in Emons' schedules and lists heretofore filed herein, or (d) the holder of

such claim has accepted the Plan; provided, however, that such discharge and release shall not adversely affect the rights of any holder of a claim against, or interest in, Emons from receiving distributions of property pursuant to the Plan based upon the Allowed Amounts (as defined in the Plan) of such claims or interests;

(9) Upon the Consummation Date (as defined in the Plan), the common stock of Emons (including, without limitation, all shares of common stock held in the treasury of Emons), and all outstanding options and warrants to purchase such common stock, shall all be and hereby are deemed to be cancelled, terminated, void, rendered nugatory and of no further force, effect or value as against Emons; provided, however, that such cancellation and termination shall not adversely affect the rights of any holder of an interest in Emons from receiving distributions of property pursuant to the Plan based upon the Allowed Amounts (as defined in the Plan) of such interests;

(10) Pursuant to §1145 of the Code regarding the issuance, distribution, offer, sale or registration of securities, each of the Plan Proponents, Holdings and the Escrow Agent is exempt from the registration requirements of the Securities Act of 1933, as amended, and any state or local law requiring registration for the offer or sale of a security; all of the securities to be issued pursuant to the Plan or on conversion or exercise of rights under securities issued pursuant to the Plan,

when issued, shall be freely transferable by the recipients thereof, subject to (a) the provisions of §1145(b)(1) of the Code relating to the definition of an underwriter in Section 2(11) of the Securities Act of 1933, as amended, and compliance with rules and regulations of the Securities and Exchange Commission, if any, applicable at the time of any future transfer of such securities, (b) any restriction contained in the terms of such securities themselves; (c) any restriction on such securities which has been agreed to by the holder of such securities with respect to his securities, and (d) with respect to Reliance Group, Reliance Group shall not transfer, prior to the third (3rd) anniversary of the Consummation Date (i) any right, in whole or in part, it has or may have to receive shares of EH Preferred Stock or EH Common Stock (each as defined in the Plan), and (ii) more than fifty (50%) percent of those shares of EH Common Stock (as defined in the Plan) distributed to it pursuant to the Plan;

(11) All creditors and equity security holders of Emons whose claims or interests are discharged or whose rights and interests are terminated by the Plan and this order, are hereby jointly and severally restrained and enjoined from instituting or continuing any action or employing any process to collect such debts or pursue such interests as liabilities or obligations of the Proponents or Holdings, as a successor to Emons, except as otherwise specifically provided for by this order or the Plan. All entities which are parties to adversary proceedings or

contested matters pending before this Court, which proceedings are not finally determined as at the date of this order, are restrained and enjoined from commencing any other proceedings or taking any other action against the Proponents or Holdings as a successor to Emons with respect to any issue raised in such adversary proceedings or contested matters, except upon further order of this Court;

(12) In accordance with §1146(c) of the Code, the issuance, transfer or exchange of a security under the Plan shall not be taxed under any state or local law imposing a stamp tax or similar tax;

(13) On the Confirmation Date, (but subject to the Occurrence of the Consummation Date), Emons shall be deemed to have rejected, in accordance with 11 U.S.C §365, the Emons Equipment Leases (as defined in the Plan);

(14) On the Confirmation Date, (but subject to the occurrence of the Consummation Date), Emons shall be deemed to have assumed, in accordance with 11 U.S.C. §365, any and all executory contracts and unexpired leases (other than the Emons Equipment Leases (as defined in the Plan)) to which Emons is a party, except those which: (a) prior to the Confirmation Date shall have been rejected; or (b) at the Confirmation Date are the subject of pending motions to reject. The dollar amounts of any monetary defaults of Emons existing (as of the Confirmation Date) under a particular unexpired lease or executory contract, are set

forth on Exhibit "J" to the Plan and such amounts shall constitute Administration Expense Claims (as defined in the Plan). Each party to the executory contracts set forth in Exhibit "J" to the Plan shall be forever barred from asserting any other amount as an Administration Expense Claim against Emons or any of its affiliates;

(15) On the Confirmation Date (but subject to the occurrence of the Consummation Date), Emons shall be deemed to have assigned, in accordance with 11 U.S.C. §365(f), each of the Pledged Subleases (as defined in the Plan) (contemporaneously assumed in accordance with paragraph 7.2 of the Plan) to the respective holder of that secured claim for which said Pledged Sublease is collateral, as set forth in Exhibit "I" to the Plan;

(16) On the Confirmation Date (but subject to the occurrence of the Consummation Date), Emons shall be deemed to have assigned to Bamerilease Capital Corp. and Bamerilease, Inc. respectively, in accordance with 11 U.S.C. §365(f), those usage agreements or subleases, if any, (contemporaneously assumed in accordance with paragraph 7.2 of the Plan), which place those railcars leased by Bamerilease Capital Corp. and Bamerilease, Inc. respectively, to Emons, in service;

(17) Emons, the Committee or any other party in interest may file within thirty (30) days from the date hereof any and all objections to the allowance of any claim or interest not heretofore objected to and bring on such objections for hearing

within thirty (30) days thereafter, unless such periods of time are extended by order of the Court and in the event of a failure of the Debtors, the Committee or any other party in interest to do so, any objections to the allowance of the Claims or Interests affected thereby will be deemed waived. The Court shall retain jurisdiction for the purpose of determining all objections to Claims made in accordance with this paragraph;

(18) Exhibit "H" to the Plan is hereby amended as set forth in the revised Exhibit "H" which is annexed hereto as Exhibit "E", and each creditor therein listed shall be deemed to be the holder of claims as therein set forth, all other claims previously scheduled for such creditors by Emons and any proofs of claim which they may have previously filed on their own behalf being hereby expunged, except the proof of claim previously filed by U.S. Trust Company for attorneys fees and expenses. Said creditors shall not file any additional proof of claim with this Court, except that such holders may file a proof of claim on or prior to December 23, 1986 for those reasonable attorneys fees and disbursements to which they each may be entitled under their respective loan agreements, leases, or similar agreements, subject to the right of Emons and all other parties in interest to object to any such Claim;

(19) Within sixty (60) days after resolution of all objections to Claims and completion of all distributions required pursuant to the Plan, the Plan Proponents shall file or shall

cause the Escrow Agent to file, a certification demonstrating that the distributions required under the Plan have been effectuated;

(20) This Court hereby retains jurisdiction of these proceedings pursuant to and for the purposes of Sections 105(a) and 1127 of the Code and for such purposes as may be necessary or useful to aid the confirmation and consummation of the Plan and implementation of the Plan and for the following purposes, inter alia:

- (a) To determine any and all objections to the allowance of claims and/or interests;
- (b) To determine any and all applications for allowances of compensation or reimbursement of expenses for periods prior to or after the Confirmation Date;
- (c) To determine any and all applications pending on the Confirmation Date for the rejection and disaffirmance or assumption or assignment of executory contracts (including, but not limited to, provisions for assumption or rejection of executory contracts or unexpired leases as provided in the Plan) and the allowance of any Claim resulting therefrom;
- (d) To determine all controversies and disputes arising under, or in connection with, the Plan or the Escrow Agreement;
- (e) To determine all applications, adversary proceedings or litigated matters pending on the Confirmation Date;
- (f) To effectuate payments under, and performance of, the provisions of the Plan; and
- (g) To determine such other matters and for such other purposes as may be necessary to enforce the terms of the Plan, the Escrow Agreement and this order of confirmation.

(21) Emons or its counsel shall serve a notice of entry of this order upon each member of the Committee and each creditor listed on the schedule annexed as Exhibit "E" hereto by overnight mail delivery service for delivery no later than December 22, 1986.

Dated: New York, New York
December 17, 1986
At 2:40 o'clock P.M.

PRUDENCE B. ABRAM

UNITED STATES BANKRUPTCY JUDGE

NO OBJECTION:

WACHTELL LIPTON ROSEN & KATZ
Attorneys for the Official Committee
of Creditors/Lessors

By: Richard D. Feintuch
Richard D. Feintuch, Esq.
A Member of the Firm

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

-----x

In re

NORTH AMERICAN CAR CORPORATION,
a Delaware corporation, et al.,

Debtor.

-----x

EMONS INDUSTRIES, INC.,

Plaintiff,

v.

NORTH AMERICAN CAR CORPORATION,
Debtor, and THE FIRST NATIONAL
BANK OF CHICAGO, as Collateral
Agent for the MCTA Creditors,

Defendants.

-----x

No. LA 84 23401 BR

Chapter 11

(Jointly Administered)

THIS DOCUMENT APPLIES
TO ALL CASES:

Case Nos. LA 84 23401 BR
through LA 84 23417 BR

Ref. No. M5 00908 BR

STIPULATION OF SETTLEMENT
AMONG EMONS INDUSTRIES, INC.,
NORTH AMERICAN CAR CORPORATION
AND THE MCTA CREDITORS

WHEREAS, on June 25, 1981 and September 30, 1981 Emons Industries, Inc. ("Emons") and North American Car Corporation ("NACC") entered into two agreements (the "Master Lease Agreements") for the lease of a total of 725 boxcars to NACC for the sole purpose of subleasing those boxcars to Canadian Pacific

Limited ("CP") -- the June 25 Master Lease Agreement (the "First Master Lease Agreement") covering 275 boxcars and the September 30 Master Lease Agreement covering 450 boxcars; and

WHEREAS, before Emons and NACC entered into each Master Lease Agreement, NACC had already arranged to sublease to CP all the boxcars covered by the Master Lease Agreement -- the 275 car Sublease Agreement dated as of June 15, 1981, and the 450 car Sublease Agreement dated as of August 5, 1981; and

WHEREAS, on or about August 19, 1981 Emons and NACC entered into an Exclusive Agency Agreement (the "Agency Agreement") which provided, inter alia, that NACC would be paid \$1,000 for each of Emons' boxcars either sold or leased for a period of at least 6 years to any Canadian railroad company, and which further provided that every lease arrangement would be in the form of a master lease from Emons to NACC, and then a sublease from NACC to the Canadian railroad company; and

WHEREAS, Emons paid NACC \$725,000 for placing 725 of Emons' boxcars with CP; and

WHEREAS, in accordance with the terms of the Master Lease Agreements, Emons has been responsible for all charges relating to the preparation and transportation of the boxcars to CP, and for the maintenance of those boxcars, and Emons alleges that it has incurred over \$1 million in such costs and expenses; and

WHEREAS, by Lease Amendment and Assignment dated December 1, 1981, the September 30 Master Lease Agreement for 450 boxcars, was subdivided into three separate agreements -- with one

agreement continuing between Emons and NACC for 325 boxcars, the second such agreement being between EMCOB, a wholly owned subsidiary of Emons', and NACC for 75 boxcars; and the third such agreement being between EMCOA, another wholly owned subsidiary of Emons, and NACC for 50 boxcars (the three agreements are collectively referred to as the "Second Master Lease Agreement"); and

WHEREAS, NACC's only rent obligations under the First and Second Master Lease Agreements are to "forward" to Emons, EMCOA and EMCOB (Emons, EMCOA and EMCOB are sometimes collectively referred to as the "Emons' companies") their proportionate share of 98% of the net revenues which NACC receives from CP under the Sublease Agreements, after deduction of expenses invoiced by CP (the "Net Sublease Payments"), while NACC retains 2% of the Net Sublease Payments as its monthly fee; and

WHEREAS, during the period of December 1981 through October 1984 NACC received monthly Sublease Payments from CP, and remitted 98% of the Net Sublease Payments to the Emons' companies; and

WHEREAS, on December 5, 1984 NACC filed its petition for reorganization under chapter 11; and

WHEREAS, subsequent to December 5, 1984 NACC has continued to receive Sublease Payments from CP pursuant to the terms of the Sublease Agreements; and

WHEREAS, NACC has failed to remit to each of the Emons' companies its respective proportionate share of the following Net Sublease Payments (from which NACC's 2% fee already has been deducted):

<u>Date Sublease Payments Remitted by CP to NACC</u>	<u>Amount of Net Aggregate Sublease Payments Due From NACC to the Emons' Companies</u>
December 6, 1984	\$ 168,237.27
December 20, 1984	\$ 132,337.58
January 23, 1985	\$ 173,869.68
February 1985	\$ 35,134.98*
March 4, 1985	\$ 169,587.00
March 27, 1985	\$ 35,427.00
April 12, 1985	\$ 172,867.33
April 23, 1985	\$ 133,740.17
April 24, 1985	\$ <u>4,366.50</u>
Total	\$1,025,567.51

(The payments scheduled above and any additional Net Sublease Payments, payments on account of damaged or destroyed boxcars, or any other payments made by CP under the Sublease Agreements which are received by NACC and due to the Emons' companies under the Master Lease Agreements until the assignment of the Sublease Agreements pursuant to the terms of this Stipulation are collectively referred to as the "Total Net Sublease Payments."); and

WHEREAS, on or about January 3, 1985 General Electric Railcar Services Corporation ("Gersco"), the manager of NACC's

* This sum represents CP's payment for one of the subleased boxcars which was destroyed during its use by CP. Under the terms of the Master Lease Agreements, all proceeds relating to damaged or destroyed boxcars are payable to Emons.

railcar fleet, paid to the Emons' companies the aggregate sum of \$168,237.27 (the "Gersco Payment") out of Gersco's own funds on account of the November 27, 1984 payment due to the Emons' companies; and

WHEREAS, Gersco has demanded of NACC that NACC reimburse Gersco for the Gersco Payment; and

WHEREAS, NACC has contended that payment of that sum prior to resolution of the dispute between NACC and Emons was improper, and therefore NACC has refused to reimburse Gersco for the Gersco Payment; and

WHEREAS, the sum to be remitted by NACC to Emons pursuant to this Stipulation will include payment on account of the a Sublease Payment received by NACC on or about December 6, 1984, which was the subject of the Gersco Payment; and

WHEREAS, NACC represents and warrants that it has reimbursed CP or will in its ordinary course of business reimburse CP in full for all outstanding charges and expenses relating to the boxcars which CP has invoiced to NACC prior to the date hereof with respect to the Total Net Sublease Payments scheduled above, and that NACC will, to the extent of any Sublease Payments received by it after the date hereof, continue to reimburse CP for all additional charges and expenses (for which NACC is required to reimburse CP under the Master Lease Agreements and the Sublease Agreements) invoiced by CP in connection with all additional Total

Sublease Payments received by NACC between the date this Stipulation is signed, and the date the Subleases are assigned pursuant to the terms hereof;

WHEREAS, the Master Lease Agreements, by their terms, provide the Emons' companies with security interests in the Sublease Agreements and in all payments made under the Sublease Agreements to secure NACC's performance of all of its obligations to the Emons' companies under the Master Lease Agreements; and

WHEREAS, the Emons' companies allege that they have perfected their security interests in the Sublease Agreements and in all Sublease payments thereunder; and

WHEREAS, the Emons' companies allege that under the terms of the Master Lease Agreements and Agency Agreement, once NACC placed the boxcars with CP, NACC's sole role has been to serve as the Emons' companies' collection agent, and as the conduit of the Total Net Sublease Payments from CP to the Emons' companies; and

WHEREAS, the Emons' companies also allege that they are entitled to receive use and occupancy from NACC with respect to the boxcars for the period from and after December 5, 1984, in an amount at least equal to 98% of the Total Net Sublease Payments; and

WHEREAS, in accordance with the foregoing the Emons' companies claim they are entitled to receive their respective pro rata shares of the Total Net Sublease Payments currently being

held by NACC, and any additional Sublease Payments and other payments made by CP pursuant to the Sublease Agreements which NACC may receive and be obligated to remit to the Emons' companies under the Master Lease Agreements; and

WHEREAS, the MCTA creditors consist of 25 financial institutions which entered into a master credit terms agreement with NACC dated September 9, 1983, which was amended and restated as of December 6, 1983 (the "MCTA"); and

WHEREAS, the MCTA and related documents provides the MCTA creditors with security interests in certain of NACC's assets; and

WHEREAS, the MCTA creditors allege that pursuant to the MCTA they perfected security interests in the Sublease Agreements and in Sublease Payments which are superior to the security interests alleged by the Emons' companies; and

WHEREAS, NACC contests both the underlying validity and the perfection of the security interests alleged by the MCTA creditors in the Sublease Agreements and Sublease Payments; and

WHEREAS, NACC also contests: (i) the perfection of the security interests in the Sublease Agreements and Sublease Payments alleged by the Emons' companies; (ii) the Emons' companies' allegation that NACC's sole role under the Emons-NACC-CP arrangement was to serve as their agent and as the conduit of Total Net Sublease Payments from CP to the Emons' companies; and (iii) the amount of use and occupancy claimed by the Emons' companies; and

WHEREAS, NACC and the MCTA creditors each claim rights and interests to the Total Net Sublease Payments superior to the Emons' companies, and to each other; and

WHEREAS, on March 22, 1985 Emons served and filed a complaint for turnover against NACC and the MCTA creditors which requests judgment, inter alia, directing NACC to turn over to Emons all Net Sublease Payments received by NACC since December 5, 1984; authorizing Emons to direct CP to make all future Sublease Payments directly to Emons; and declaring that any interests which the MCTA creditors may have in the Sublease Agreements and in the Sublease Payments are subordinate to Emons' interests therein; and

WHEREAS, the MCTA creditors and NACC have filed answers to the turnover complaint which request judgment denying the relief sought by Emons; and

WHEREAS, by application dated April 8, 1985 (the "Rejection Application") NACC has sought authority (i) to reject the Master Lease Agreements with the Emons' companies, but to continue to retain possession of their boxcars to enable NACC to continue to provide CP with those boxcars under the Sublease Agreements, or (ii) in the alternative, to reject both the Master Lease Agreements and the Sublease Agreements; and

WHEREAS, the MCTA creditors filed a response to the Rejection Application which requested, inter alia, that NACC be granted an extension of time in which to assume or reject the

Master Lease Agreements, and alternatively requested that NACC be permitted to reject the Master Lease Agreements; and

WHEREAS, Emons, on behalf of itself, EMCOA and EMCOB, filed a memorandum of points and authorities in opposition to the Rejection Application which requested that the Court require NACC either to affirm both the Master Lease Agreements and the Sublease Agreements, or assume the Sublease Agreements and turn them over to Emons; and

WHEREAS, pursuant to an earlier stipulation dated March 19, 1985, Emons' complaint for turnover, and NACC's Rejection Application have been consolidated for trial (the "Consolidated Action"); and

WHEREAS, the Emons' companies, NACC and the MCTA creditors are desirous of settling the Consolidated Action,

NOW, THEREFORE, the parties hereto hereby stipulate and agree that the Consolidated Action and all claims and controversies among the parties relating to or emanating from the Master Lease Agreements and Sublease Agreements are compromised and settled upon the following terms and conditions:

1. By single application, or concurrently filed applications, NACC shall obtain an order or orders:

(A) Approving this Stipulation and authorizing NACC's performance of all its obligations hereunder;

(B) Authorizing and constituting NACC's assumption of the Sublease Agreements and their assignment to Emons; and

(C) Authorizing and constituting NACC's rejection of the Master Lease Agreements with Emons, EMCOA and EMCOB.

(D) Providing that payment to Emons hereunder shall be in lieu of any other payment to Emons under any prior order of this Court, including the order authorizing NACC to make payments to secured creditors and railroad lessors. The parties hereto shall not be bound by this Stipulation unless all relief contemplated by subparagraphs (A), (B) and (C) above is granted.

2. On the date that NACC obtains the relief set forth in Paragraphs 1(A)-1(C) above (the "Consummation Date"),

(A) NACC shall pay to Emons, free and clear of all liens and encumbrances, the sum of \$845,567.51, plus all Total Net Sublease Payments received by NACC after the date hereof.

(B) NACC will deposit the balance of the Net Sublease Payments Account not paid to Emons in a segregated interest bearing account (the "Proceeds Account"), which may be created by an appropriate reserve of funds on NACC's books and records. By appropriate order of the Court, it shall be provided that the right title and interest of NACC and of the MCTA Banks, if any, in the Master Lease Agreements and in the Sublease Agreements shall be transferred free and clear of liens, claims and encumbrances upon such right, title and interest, and any such liens, claims and encumbrances (if any) shall attach to the Proceeds Account. Parties asserting liens, claims or encumbrances

upon the Proceeds Account (other than NACC which asserts an ownership interest), shall, upon proper notice, be given a reasonable period to assert such liens, claims or interests or be forever barred.

(C) NACC and the Emons' companies shall give written notice to CP directing CP to make all future Sublease Payments and all other payments due under the Sublease Agreements directly to the Emons' companies, or pursuant to Emons' instructions.

3. Emons shall pay Gersco the sum of \$168,237.27 to reimburse Gersco for the Gersco Payment, upon Emons' receipt of Gersco's written acknowledgment that Gersco will receive that sum in full and complete satisfaction of any and all claims which Gersco may have against NACC and Emons on account of and in connection with the Gersco Payment.

4. In the event that NACC and/or Gersco receives any Sublease Payments or any other CP payments arising from the Subleases which NACC is obligated to remit to the Emons' companies under the Master Lease Agreements, NACC or Gersco shall turn over to Emons the full amount of such payments, without deductions, within three business days after learning of the receipt thereof.

5. Without prejudice to, or waiver of, each party's rights to enforce the terms of this Stipulation, or to assert any and all claims which may arise as a result of the failure of any

other party to comply with all the terms, covenants and warranties of this Stipulation,

(A) Emons, EMCOA and EMC OB hereby waive, release, and covenant not to sue upon any and all claims, demands and causes of action which each of them may have, as of the date of this Stipulation against NACC and its affiliated debtors in possession and the MCTA creditors for use and occupancy, for rejection damages arising from rejection of the Master Lease Agreements, and any and all other claims arising out of the Master Lease Agreements, the Sublease Agreements or the parties' performance thereunder. The Emons companies agree to cause the prompt dismissal of the Consolidated Actions with prejudice.

(B) NACC hereby waives, releases, and covenants not to sue upon any and all claims, demands and causes of action which it may have as of the date of the Stipulation against the Emons' companies arising out of or related to the Master Lease Agreements, the Sublease Agreements, or the parties' performance thereunder. NACC further agrees to cause the prompt dismissal of the Rejection Application with prejudice.

(C) In consideration for the payment by Emons, EMCOA and EMC OB of the sums provided for in Paragraph 2(A) above, the MCTA creditors expressly waive any and all claims which they may have against Emons, EMCOA and EMC OB with respect to the Sublease Agreements, and the Sublease Payments, including all Sublease Payments received by Emons, EMCOA and EMC OB prior to the date hereof.

6. No party to this Stipulation of Settlement shall be bound hereby, and the relief provided for in Paragraphs 1(B) and 1(C) hereof shall not be effective until: (i) Emons obtains the approval of the United States Bankruptcy Court for the Southern District of New York to undertake all of its obligations and benefits under this Stipulation; and (ii) NACC obtains the approval of the United States Bankruptcy Court for the Central District of California to undertake all of its obligations and benefits under this Stipulation. Emons and NACC undertake that they will use their best efforts to obtain such court approval.

7. In the event that either NACC or Emons has obtained the approval of its bankruptcy court prior to June 20, 1985 (the "Conforming Party"), but the other has not (the "Non-Conforming Party"), the Conforming Party, by written notice to the Non-Conforming Party and the other parties hereto, may (but is not required to) declare this Stipulation to be null and void. If both Emons and NACC have failed to obtain the approval of their respective bankruptcy courts by June 30, 1985, then this Stipulation shall be treated as null and void, unless all the parties hereto by written agreement extend the time of NACC and Emons to obtain such court approvals.

8. The parties agree that during the pendency of NACC's bankruptcy case, the United States Bankruptcy Court for the Central District of California shall have exclusive jurisdiction over the enforcement of this Stipulation, and to the extent necessary to give effect to this paragraph, Emons agrees to a

modification of the stay imposed by Section 362 or 1141(d) of the Bankruptcy Code.

9. This Stipulation of Settlement contains the entire agreement of the parties, and supersedes all prior writings and oral understandings of the parties.

Dated: May , 1985

EMONS INDUSTRIES, INC.

By Robert Grossman
Chairman and President

EMCOA

By Robert Grossman
Chairman and President

EMCOB

By Robert Grossman
Chairman and President

NORTH AMERICAN CAR CORPORATION

By _____

FIRST NATIONAL BANK OF CHICAGO
As Agent for the MCTA Creditors

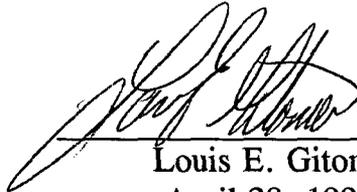
By _____

GENERAL ELECTRIC RAILCAR
SERVICES CORP.

By _____

CERTIFICATION

I, LOUIS E. GITOMER, have compared this copy to the Order Confirming Second Amended and Restated Joint Plan of Reorganization, dated December 19, 1986, and found the copy to be complete and identical in all respects to the original document. I declare under penalty of perjury that the foregoing is true and correct.



Louis E. Gitomer
April 28, 1994