

The CIT Group/  
Equipment Financing, Inc.  
1211 Avenue of the Americas  
New York, NY 10036  
212 536-9400



RECORDATION NO. 10905 FILED 1425

DEC 13 1993 -10 05 AM

INTERSTATE COMMERCE COMMISSION  
December 10, 1993

**BY FEDERAL EXPRESS**

0100065004

Mrs. Mildred Lee  
Interstate Commerce Commission  
12th and Constitution Avenue, N.W.  
Room 2303  
Washington, DC 20423

Re: **Lease of Railroad Equipment between  
Consolidated Rail Corporation and  
Merrill Lynch Leasing, Inc.  
dated as of September 1, 1979**

Dear Mrs. Lee:

Enclosed please find one (1) originally executed and one (1) photocopy of the notarized Assignment and Assumption Agreement to the above referenced lease, dated as of November 30, 1993. The original lease was filed on October 19, 1979 at 10:10 a.m. and bears Recordation No. 10905A. I request that you record the enclosed Assignment and Assumption Agreement. I have enclosed a check in the amount of \$18.00 to cover the filing fee.

Please return the photocopy of the stamped recorded Assignment and Assumption Agreement to the address noted above in the enclosed Federal Express envelope. Should you require any additional information, please feel free to contact me.

Very truly yours,

*Lisa A. Tari*

Lisa A. Tari

Enclosure

LAT/ib

cc: S. McGee, Esq.

1621.jtr

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COPY

DEC 13 1993 -10 05 AM

[CONRAIL V]

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement, dated as of November 30, 1993, is between Citicorp Railmark, Inc. ("Assignor"), a Delaware corporation, and The CIT Group/Equipment Financing, Inc. ("Assignee"), a New York corporation.

RECITAL

Assignor and Assignee have entered into a Purchase Agreement dated as of November 29, 1993 (the "Purchase Agreement"). Pursuant to the Purchase Agreement, Assignor wishes to sell, assign, transfer, and convey to Assignee, and Assignee wishes to purchase, receive and accept, all of Assignor's right, title and interest in and to the owner interests described in Appendix 1 (the "Operative Documents"), relating to the interest in the railcar equipment described in Appendix 2.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

Section 1. Assignment of Owner Interests. Assignor hereby sells, assigns, transfers and conveys to Assignee, as of the date hereof, all its right, title and interest in, to and under the Owner Interests; and Assignee hereby accepts and receives all such right, title and interest in, to and under the Owner Interests; subject, however, to the Purchase Agreement and excluding any claim, cause of action, liability or obligation of any nature or description or other right to payment accruing, arising or relating to any period on or prior to the date hereof or payable by reason of any act, event or omission occurring or existing on or prior to the date hereof, whether known or unknown, contingent or otherwise, as of the date hereof, to have and to hold the same unto Assignee, its successors and assigns, forever.

Section 2. Assumption of Liabilities. Assignee assumes, with respect to the periods after the date hereof, all of the duties and obligations of Assignor hereafter accruing or arising incident to the Operative Documents. Assignee confirms, with respect to the periods after the date hereof, that as of the date hereof it shall be deemed a party to those agreements set forth in Appendix 1 to which Assignor is a party, and Assignee agrees

to be bound by all the terms of, and to undertake all such obligations of, Assignor contained therein arising after the date hereof.

Section 3. Exception. Notwithstanding the foregoing, Assignor shall be entitled, to the extent set forth in the Purchase Agreement, to pursue claims incident to its interests in the Operative Documents, and all its rights and remedies related to such claims, for (a) payments of indemnity now or hereafter due under the agreements set forth in Appendix 1 from any obligor thereunder, and/or (b) insurance payments or proceeds, provided, however, that any obligor's liability for such claims shall not exceed the liability it would have incurred if the assignment had not been made.

Section 4. Miscellaneous. Each party to this Agreement shall execute and deliver such instruments, documents and other written information and take such other actions as the other party may reasonably require in order to carry out the intent of this Agreement. This Agreement and all the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument. This Agreement shall be construed in accordance with the laws of New York without regard to its conflict of laws doctrine.

**IN WITNESS WHEREOF**, the parties hereto have executed and delivered this Agreement.

CITICORP RAILMARK, INC.

By: Bradford Holley  
Its: Vice President

THE CIT GROUP/EQUIPMENT FINANCING, INC.

By: Will D. Hill  
Its: Vice President

STATE OF NEW YORK            )  
                                          )  
COUNTY OF NEW YORK        )        SS:

On this 30th day of November, 1993, before me personally appeared Bradford L. Holley, to me personally known, who being duly sworn, says that he is a Vice President of CITICORP RAILMARK, INC., 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.

  
\_\_\_\_\_  
Notary Public

[NOTARY SEAL]

CLEVE M. SCOTT  
NOTARY PUBLIC, State of New York  
No. 41-4986679  
Qualified in Queens County  
Commission Expires September 23, 1995

My Commission Expires:

STATE OF NEW YORK            )  
                                  )  
COUNTY OF NEW YORK         )        SS:

On this 30th day of November, 1993, before me personally appeared William J. Hunter, to me personally known, who being duly sworn, says that he is a Vice President of THE CIT GROUP/EQUIPMENT FINANCING, INC., 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.

  
\_\_\_\_\_  
Notary Public

[NOTARY SEAL]

CLEVE M. SCOTT  
NOTARY PUBLIC, State of New York  
No. 41-4986679  
Qualified in Queens County  
Commission Expires September 23, 1995

My Commission Expires:

APPENDIX 1  
TO  
ASSIGNMENT AND ASSUMPTION AGREEMENT

OPERATIVE DOCUMENTS

A. Transaction Documents

1. Participation Agreement dated as of September 1, 1979 among Consolidated Rail Corporation, Mercantile-Safe Deposit and Trust Company, as Agent, Merrill Lynch Leasing Inc., as Vendee and the parties named in Schedules A and B, as Investors, and exhibits thereto.
2. Conditional Sale Agreement (the "CSA"), with Interstate Commerce Commission ("ICC") recordation stamp affixed thereto, dated as of September 1, 1979 between The Chessie Corporation and Merrill Lynch Leasing Inc. (Recordation No. 10905)
3. Agreement and Assignment, with ICC recordation stamp affixed thereto, dated as of September 1, 1979 between The Chessie Corporation and the Agent. (Recordation No. 10905-A)
4. Lease of Railroad Equipment, with ICC recordation stamp affixed thereto, dated as of September 1, 1979 between Consolidated Rail Corporation and Merrill Lynch Leasing Inc., as Lessor. (Recordation No. 10905-B)
5. Assignment of Lease and Agreement, with ICC recordation stamp affixed thereto, dated as of September 1, 1979 between the Lessor and Agent with Consent and Agreement to the Lease Assignment by Consolidated Rail Corporation attached thereto (Recordation No. 10905-C)

B. Documents from the Lessee

6. Certificate dated October 19, 1979 of the Assistant Secretary of Consolidated Rail Corporation as to (a) the continuing corporate existence and good standing of Consolidated Rail Corporation, (b) no amendment to the restated

articles of incorporation of Consolidated Rail Corporation since the date of the last amendment, (c) no amendment to the By-laws of Consolidated Rail Corporation since the date of the last amendment, (d) the due adoption and continued force and effect of resolutions by the Board of Directors theorizing the actions taken in connection with this financing, including the execution and delivery of the Participation Agreement, the Lease and the Consent, and (e) the authority, incumbency and specimen signatures of the officers of Consolidated Rail Corporation executing the Participation Agreement, the Lease, the Consent and the closing documents.

7. Certificate as to Original Use dated October 19, 1979 of the Assistant Treasurer-Financing and Collections of Consolidated Rail Corporation pursuant to paragraphs 7(h) and 8 of the Participation Agreement.
8. Certificate of Chief Mechanical Officer dated October 19, 1979 of the Assistant Vice President-Maintenance of Equipment of Consolidated Rail Corporation pursuant to Paragraphs 7(f) and 8 of the Participation Agreement.
9. Opinion dated October 16, 1979 of URS Coverdale & Colpitts, Inc. regarding equipment life and residual value pursuant to Paragraphs 7(f) and 8 of the Participation Agreement.
10. Certificates of Insurance from Marsh & McLennen, Inc. and Certificate dated October 19, 1979 of the Assistant Treasurer-Financing and Collections of Consolidated Rail Corporation regarding public liability insurance furnished pursuant to Paragraphs 7(j) and 8 of the Participation Agreement.
11. Opinion of Charles P. Northrop, Vice President-Law of Consolidated Rail Corporation, dated October 19, 1979 pursuant to Paragraphs 7(b) and 8 of the Participation Agreement.
12. Opinion of Messrs. McCarthy & McCarthy, special Canadian counsel for Consolidated Rail Corporation, dated October 19, 1979.
13. Certificate dated October 19, 1979 of the Assistant Treasurer-Financing and Collections of Consolidated Rail Corporation regarding, among

other things, representations and warranties, pursuant to Paragraphs 7(e) and 8 of the Participation Agreement.

C. Documents from the Builder

14. Certificate dated October 19, 1979 of the Assistant Secretary of The Chessie Corporation as to (a) the due adoption and continued force and effect of resolutions authorizing the actions taken in connection with this financing, and (b) the incumbency and specimen signatures of the officers of The Chessie Corporation executing the CSA, the CSA Assignment and the closing documents.
15. Opinion of Robert F. Hochwarth, Attorney for The Chessie Corporation, dated October 17, 1979, pursuant to Paragraphs 7(c) and 8 of the Participation Agreement.

D. Documents from the Agent

16. Incumbency Certificate dated October 19, 1979 of the Assistant Vice President of the Agent as to the authority, incumbency and specimen signatures of the officers of the Agent executing the Participation Agreement, the CSA Assignment, the Lease Assignment, the Consent, the certificates of interest issued under the Participation Agreement and the closing documents.
17. Certificate dated October 19, 1979 of the Assistant Vice President of the Agent as to the due adoption and continued force and effect of resolutions authorizing the actions taken in this financing.
18. Opinion of Messrs Cravath, Swaine & Moore, special counsel for the Investors and the Agent, dated October 19, 1979, pursuant to Paragraph 7(a) of the Participation Agreement.

E. Documents from the Vendee

19. Certificate of the Assistant Secretary of Merrill Lynch Leasing Inc. as to: (a) the continuing corporate existence of Merrill Lynch Leasing Inc., (b) the Charter and By-laws of Merrill Lynch Leasing Inc. being in full force and effect, (c)

the due adoption and continued full force and effect of resolutions by the Board of Directors authorizing the actions taken in connection with this financing, and (d) the incumbency and specimen signatures of the officers of Merrill Lynch Leasing Inc. executing the Participation Agreement, the CSA, the Lease, the Lease Assignment, the Acknowledgment of Notice of Assignment and the closing documents.

20. Opinion of Messrs. Shearman & Sterling, special counsel for Merrill Lynch Leasing Inc. dated October 19, 1979 pursuant to Paragraphs 7(i) and 8 of the Participation Agreement.
21. Certificate dated October 19, 1979 of the Executive Vice President of Merrill Lynch Leasing Inc. pursuant to Paragraph 7(g) of the Participation Agreement.
22. Certificate, undated, of Merrill Lynch Leasing Inc. regarding the debt placement fee pursuant to Paragraph 12 of the Participation Agreement.

F. Other Documents

23. Memorandum of Closing Documents.
24. Letter dated October 18, 1979 by the Vice President of Merrill Lynch Leasing Inc. as to dating and delivery of certain documents on Document closing Date.

G. Documents Relating to the Overall Transaction

25. Agreement dated June 22, 1979 between Consolidated Rail Corporation and The Chessie Corporation regarding construction of railroad equipment.
26. Good standing certificate dated September 17, 1979 of the Secretary of State of Delaware as to the continued good standing of Merrill Lynch Leasing Inc.
27. Composite conformed copy of the Participation Agreement, together with all exhibits thereto.

H. Equipment Closing Dates: October 22, November 1, and November 27, 1979

APPENDIX 2  
TO  
ASSIGNMENT AND ASSUMPTION AGREEMENT

RAILCAR EQUIPMENT

<u>Quantity</u>	<u>Road Numbers</u>	<u>Description</u>
536	CR 491890 - 492425	Open Top Hopper Cars

Excluding, however, the following five Units which previously sustained a casualty:

CR 492230  
CR 492382  
CR 492285  
CR 492181  
CR 492412