

RECORDATION NO. 21533-A FILED

SEP 28 '01 4-24 PM

TC  
SURFACE TRANSPORTATION BOARD

ALVORD AND ALVORD  
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ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

OF COUNSEL  
URBAN A. LESTER

September 28, 2001

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of a Assignment and Assumption Agreement, dated September 27, 2001, a secondary document as defined in the Board's Rules for the Recordation of Documents.

The enclosed document relates to the Memorandum of Lease Agreement which was previously filed with the Board under Recordation Number 21533.

The names and addresses of the parties to the enclosed document are:

Seller: Newcourt Capital USA, Inc.  
70 West Madison Street, Suite 5360  
Chicago, Illinois 60602-4208

Buyer: General Electric Railcar Services Corporation  
161 North Clark Street  
Chicago, Illinois 60601

A description of the railroad equipment covered by the enclosed document is:

One hundred and seventeen (117) railcars: CWEX 6236 - CWEX 6355 inclusive -- except CWEX 6253, CWEX 6270 and CWEX 6344, which are casualties.

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Mr. Vernon A. Williams  
September 27, 2001  
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A short summary of the document to appear in the index is:

Assignment and Assumption Agreement.

Also enclosed is a check in the amount of \$28.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,

A handwritten signature in black ink that reads "Robert W. Alvord". The signature is written in a cursive style with a large initial 'R'.

Robert W. Alvord

RWA/anm  
Enclosures

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT, dated September 27, 2001 (this "Agreement"), is between Newcourt Capital USA, Inc., a Delaware corporation (the "Seller"), and General Electric Railcar Services Corporation, a Delaware corporation (the "Buyer").

WITNESSETH:

WHEREAS, the Seller and the Buyer have entered into that certain Purchase Agreement, dated as of September 27, 2001 (the "Purchase Agreement"), providing for the purchase of the Ownership Interest by the Buyer from the Seller, subject to the terms and conditions set forth therein; and

WHEREAS, the Purchase Agreement contemplates the execution and delivery of this Agreement by the Seller and the Buyer on the date hereof.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows.

1. Definitions. Capitalized terms used herein without definition shall have the meanings assigned to them in Section 4 of this Agreement.

2. Assignment. Effective as to each unit of Equipment, on the Closing Date, the Seller sells to the Buyer all of the Seller's rights, title and interest in and to such unit and assigns to the Buyer all of the Seller's rights and obligations under each of the following as they relate to such unit;

(a) the Lease;

(b) Memorandum of Lease Agreement dated as of April 30, 1998 between the Seller, as lessor, and the Lessee, as lessee regarding cars CWEX 6236 through 6355, inclusive, and recorded with STB on July 28, 1998 as recordation number 21533;

(c) Memorandum of Lease Agreement dated as of April 30, 1998 between the Seller, as lessor, and the Lessee, as lessee regarding cars CWEX 6116 through 6235, inclusive, and recorded with STB on July 28, 1998 as recordation number 21534;

(d) Assignment Agreement dated December 8, 1999 among Commonwealth Edison Company, Midwest Generation, LLC and the Seller;

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(e) Guarantee Agreement dated as of December 8, 1999 between the Guarantor and the Seller; and

(f) Confidentiality Agreement dated October 18, 1999 between Edison Mission Energy and The CIT Group/Capital Finance, Inc. (collectively, the "Assigned Operative Agreements").

Notwithstanding the foregoing, the Seller shall continue to be entitled to the benefit of any rights to indemnification for tax and other matters which arose or may arise from or be related to any event or circumstance occurring or in existence prior to the Closing Date, as specified in the Purchase Agreement.

3. Acceptance of Assignment; Assumption of Obligations; Effect of Assignment. The Buyer accepts the assignment contained in Section 2 hereof and, in respect of the period on and after the Closing Date, assumes all obligations of the Seller under, and agrees to be bound to the same extent as the Seller by all the terms of, the Assigned Operative Agreements. Effective on and after the Closing Date, the Buyer shall be deemed to stand in the place of the Seller for all purposes under the Assigned Operative Agreements and each reference in the Assigned Operative Agreements to the Seller shall be deemed to mean the Buyer. The Seller, in respect of the period on and after the Closing Date, is released of all obligations of the Seller under the Assigned Operative Agreements.

4. Definitions. Except as otherwise specified or as the context may otherwise require, the following terms have the respective meanings set forth below whenever used in this Agreement (terms defined in the singular to have a correlative meaning when used in the plural and vice versa).

Bill of Sale: the Bill of Sale executed by the Seller, substantially in the form of Appendix I hereto.

Closing Date: as to a unit of Equipment and related Ownership Interest the date of the Bill of Sale.

Equipment: the railcars listed on Schedule A to the Bill of Sale, together with each and every part, accessory, component and equipment installed therein or attached thereto owned by the Seller (individually such railcars shall be referred to as a "unit" or "unit of Equipment").

Lease: The Lease Agreement Dated April 30, 1998 between the Seller and the Lessee, as supplemented by Rider #1 and Rider #2, in each case dated April 30, 1998 between Lessee and Lessor, and the letter dated April 30, 1998 from Lessor to Commonwealth Edison Company.

Lessee: Midwest Generation, LLC, a Delaware limited liability company, as successor in interest by assignment to Commonwealth Edison Company.

Ownership Interest: the Seller's rights, title and interest in and to the Equipment and the Seller's rights and obligations under the Assigned Operative Agreements.

5. Amendments. No provision of this Agreement may be amended, modified or waived except by written agreement duly executed by each of the parties hereto.

6. Notices. All notices, requests or other communications to or upon any party hereto in connection herewith shall be given in the manner prescribed by Section 10.5 of the Purchase Agreement.

7. Headings. The section headings used in this Agreement are for convenience of reference only and shall not be used or construed to define, interpret, expand or limit any provision hereof.

8. Counterparts. This Agreement may be executed in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

9. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the internal substantive laws of the State of New York, without giving effect to the conflict of law rules thereof, other than Section 5-1401 of the New York General Obligations Law.

10. Entire Agreement. This Agreement and the Purchase Agreement (together with exhibits and schedules hereto and thereto) represent the entire agreement of the parties hereto with respect to the subject matter hereof and supersede and cancel any prior oral or written agreement, letter of intent or understanding with respect to such subject matter.

11. Recordation. The Seller and the Buyer agree to record this Agreement with the Surface Transportation Board to evidence the assignment by the Seller to the Buyer of the Seller's rights and obligations under the Lease.

(THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, this Assignment and Assumption Agreement has been duly executed by the parties hereto as of the date first above written.

NEWCOURT CAPITAL USA, INC.

By:   
Name: C. JEFFREY KNITTEL  
Title: EVP

GENERAL ELECTRIC RAILCAR SERVICES CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

State of New York    )  
                                  )ss:  
County of New York )

On this, the 27<sup>th</sup> day of September, 2001, before me, a Notary Public in and for said County and State, personally appeared C. Jeffrey Knittel an EVP of Newcourt Capital USA, Inc., who acknowledged himself to be a duly authorized officer of Newcourt Capital USA, Inc., and that, as such officer, being authorized to do so, he executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.

Indra Bedasie  
Notary Public

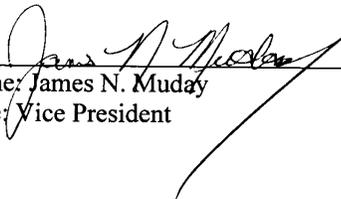
My Commission Expires: \_\_\_\_\_  
**INDRA BEDASIE**  
Notary Public, State of New York  
No. 01BE6014602  
Qualified in Queens County  
Certificate filed in New York County  
Commission Expires Oct. 19, 2002

IN WITNESS WHEREOF, this Assignment and Assumption Agreement has been duly executed by the parties hereto as of the date first above written.

NEWCOURT CAPITAL USA, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

GENERAL ELECTRIC RAILCAR SERVICES CORPORATION

By:  \_\_\_\_\_  
Name: James N. Muday  
Title: Vice President

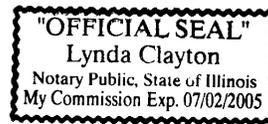
State of Illinois        )  
                                  )ss:  
County of Cook         )

On this 27 day of September, 2001, before me, a Notary Public in and for said County and State, personally appeared James N. Muday, a Vice President of General Electric Railcar Services Corporation, who acknowledged himself to be a duly authorized officer of General Electric Railcar Services Corporation, and that, as such officer, being authorized to do so, he executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.

Lynda Clayton  
Notary Public

My Commission Expires: 7/2/2005



Appendix I  
To  
Assignment And  
Assumption Agreement

BILL OF SALE

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Newcourt Capital USA, Inc. (the "Seller") does hereby sell, transfer and assign to General Electric Railcar Services Corporation (the "Buyer") all of the Seller's rights, title and interest in an to the equipment described in Schedule A hereto, subject to the terms and conditions of the Purchase Agreement, dated as of September \_\_, 2001, between the Seller and the Buyer, and the Assignment and Assumption Agreement, dated September \_\_, 2001, between the Seller and the Buyer.

Newcourt Capital USA, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Schedule A  
To  
Bill of Sale

EQUIPMENT

<u>Lease #</u>	<u>#Cars</u>	<u>Year Built</u>	<u>Description</u>	<u>Reporting Marks</u>	<u>Casualty Marks</u>
1	237	1998	Aluminum BethGon Rotary Coalporter Cars, manufactured by Freight Car Services, Inc.	CWEX 6116-6235, inclusive  CWEX 6236 -6355, inclusive	CWEX 6253, CWEX 6270 and CWEX 6344