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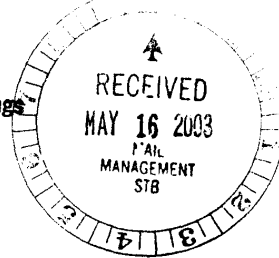
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May 15, 2003

ENTERED  
Office of Proceedings

MAY 16 2003

Part of  
Public Record



The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street NW  
Washington, DC 20423-0001

Re: Engelhard Corporation -- Petition for Declaratory  
Order -- Springfield Terminal Railway Co., Inc. and  
Consolidated Rail Corporation

STB Docket No. 42075

UPS NEXT DAY

Dear Secretary Williams:

Please find enclosed an original and ten (10) copies of the  
Opening Statement of Engelhard Corporation and Verified Statement  
of Thomas Flaherty filed pursuant to the Board's Decision in  
Engelhard Corporation - Petition For Declaratory Order -  
Springfield Terminal Railway Company and Consolidated Rail  
Corporation, STB Docket No. 42075, served April 1, 2003.

Also enclosed is a an electronic copy on 3.5 inch disk in  
Word Perfect format. If you have any questions, do not hesitate  
to call. Please date-stamp the enclosed extra copy of this  
letter and return same in the self-addressed, stamped envelope.

Very truly yours,

WICK, STREIFF, MEYER,  
O'BOYLE & SZELIGO, P.C.

*Vincent P. Szeligo*  
Vincent P. Szeligo

Enclosures

cc: David C. Ziccardi, Esq. (w/enc.)  
Robert B. Culliford, Esq. (w/enc.)  
Eric L. Hirschhorn, Esq. (w/enc.)  
Engelhard Corporation (w/enc.)

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207824

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**STB DOCKET No. 42075**

**ENGELHARD CORPORATION -- PETITION FOR DECLARATORY ORDER  
SPRINGFIELD TERMINAL RAILWAY COMPANY AND CONSOLIDATED RAIL  
CORPORATION**



**OPENING STATEMENT OF ENGELHARD CORPORATION**

**ENTERED  
Office of Proceedings**

**MAY 16 2003**

**Part of  
Public Record**

**I. INTRODUCTION**

By order dated March 31, 2003, the Surface Transportation Board opened a declaratory judgment proceeding premised on a referral from the United States District Court for the District of Massachusetts in Engelhard Corporation v. Springfield Terminal Railway Co., Inc. and Consolidated Rail Corporation, Civil Action No. 01-10829 RGS. By order dated March 31, 2003, the Surface Transportation Board instituted a declaratory order proceeding and ordered that the matter be handled under the Board's modified procedure rules. Engelhard hereby submits its opening statement, together with the Verified Statement of Thomas G. Flaherty and Petitioner's Exhibit Nos. 1 - 4 attached thereto.

**II. BACKGROUND**

Engelhard Corporation (Engelhard or Petitioner) brought the civil action on May 15, 2001 for the purpose of collecting mileage allowances owed for the use of its private rail cars in transportation service by Defendants Springfield Terminal Railway Company (Springfield Terminal) and/or Consolidated Rail Corporation (Conrail) over a 155 mile line segment from Selkirk, New York to Barber Station, Massachusetts. The vast majority of the private cars involved here are tank cars. The amended civil complaint asserted that Springfield Terminal

and/or Conrail were liable under state law theories of breach of contract, detrimental reliance, course of dealing and misrepresentation and, alternatively, for violations of the Interstate Commerce Commission Termination Act ("ICCTA", sometimes known as the "Interstate Commerce Act") resulting from their failure to report, pay or allow mileage allowances arising under Freight Tariff 6007, "Mileage Allowances and Rules Governing the Handling of and the Payment of Mileage also Charges on Cars of Private Ownership".

In considering federal preemption arguments urged by Springfield Terminal and Conrail, the District Court succinctly summarized the spotty payment record associated with the Selkirk/Barber Station segment and highlighted the varying interpretations Springfield Terminal and Conrail had placed on a private railroad agreement to avoid payment; Conrail's view being that Springfield Terminal was responsible for the payments even when Conrail received the revenue on the segment, while Springfield Terminal put the onus for the payments on Conrail if Conrail received the revenue. Engelhard v. Springfield Terminal and Conrail, 193 F.Supp. 2d 385, 387 - 388 (D. Mass. 2002)(dismissing state law based claims because of ICCTA's broad preemptive effect). Neither Springfield Terminal nor Conrail has filed verified answers to the factual averments of the Amended Complaint and discovery has been stayed;<sup>1</sup> however, in deciding a motion to dismiss, the District Court noted that applicable legal standards required that it accept the allegations of the complaint as true. Id. 193 F.Supp. 2d at 387.

Since Engelhard was not a party to the private railroad agreement, the Court refused to allow it to assert detrimental reliance or other state law claims predicated on it. However, as a

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<sup>1</sup> Although the Court's reference, Id., 193 F.Supp 2d at 391, to a possible discovery period prior to the referral may suggest that discovery has occurred, subsequent orders declined to set a discovery period.

practical matter, the agreement is inextricably involved in the background facts of the ICCTA claim because Engelhard's ability to collect on its audit claims has clearly been affected by it, as alleged in the Amended Complaint, Petitions Exhibit No. 1, ¶¶ 26 - 37.<sup>2</sup> Furthermore, the agreement was cited by Springfield Terminal as the rational for denial of as many as half of the Tariff 6007 mileage claims submitted by Engelhard's auditor,<sup>3</sup> and when Conrail declined Engelhard's audit demands, it specifically cited the agreement as the basis of its declination, contending that the terms of the Haulage Agreement absolved it of responsibility for payment. Petitioner Exhibit No. 1, ¶29.

The District Court determined that Engelhard could not assert state law based claims for damages under the Agreement of March 31, 1990, but rather would be limited to its claims for violation of the ICCTA. *Id.*, 193 F.Supp. 2d at 390. The Court recognized that a railroad's duty to pay compensation for the use of private cars arises under the ICCTA and the that subject of private car compensation is subject to ICC/STB authority. However, the Court was also under the mistaken impression that "[t]he predecessor ICC exercised this authority in promulgating Freight Tariff 6007, which establishes compensation rates for the use of tank cars, as well as rules for the filing, processing and protest of mileage allowances." *Id.*, 193 F.Supp. at 390 (Emphasis Added). The Court determined that the two year statute of limitations under 49

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<sup>2</sup> The involved private railroad agreement is identified in this record through the Verified Statement of Thomas G. Flaherty as "Agreement dated as of March 31, 1990 between Consolidated Rail Corporation and the Boston and Maine Corporation and the Springfield Terminal Railway Company". Petitioner Exhibit No. 4. It has been referred to by different parties by different names. Petitioner and much of the pre-suit correspondence call it the "Haulage Agreement"; however, other parties and the District Court refer to it as the "Interchange Agreement" or the "Agreement of March 31, 1990".

<sup>3</sup> Of the 6,055 car movements covered in various audit claims, Springfield Terminal paid the mileage claims on 2,518 movements, denied payment on 2,260 movements by contending the Conrail was responsible, and left 1,277 unpaid without explanation. Petitioner Exhibit No. 1, ¶ 32.

U.S.C. § 11704(b) applied to the ICCTA claims, but also saw that guidance from the STB was needed to assist it in determining two issues; one concerning the date on which the two year limitations period begins to run, and another issue raised solely by Springfield Terminal concerning Engelhard's standing to seek compensation on leased cars under Tariff 6007. In that regard, it must be noted that the Court appears to be operating under the impression that Tariff 6007 is an official publication. See Id., 193 F.Supp. 2d at 390 - 391 ("It is worth noting that the STB has incorporated the two year statute of limitations of section 11705(c) into Freight Tariff 6007.")<sup>4</sup>

Here, all of Engelhard's claims for unpaid mileage allowances have been calculated and submitted for railroad processing under the procedures set forth in Freight Tariff 6007 within the twenty-four month period from the month mileage was earned. Slightly less than half the claims were paid by Springfield Terminal upon its review of audit claims submitted by Engelhard. The underlying collection lawsuit only involves the claims which Springfield Terminal declined or has not answered. The first issue on which the Court seeks guidance is the question of when the two year statute of limitations period under the ICCTA begins to run.

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<sup>4</sup> The twenty-four month auditing provisions cited by the court is not part of the National Tank Car Agreement prescribed by the ICC. See Ex Parte No. 328, Investigation of Tank Car Allowance System, 7 I.C.C. 2d 645, 1991 Lexis 147, \*25, n. 19.

### III. ARGUMENT

#### 1. Commencement of the Two Year Statute of Limitations.

The first issue on which the Court seeks guidance is the question of when the two year statute of limitations period under the ICCTA begins to run. The Court framed the referred issue concerning commencement of the two year statute of limitations as follows:

Does a cause of action involving a disputed failure to pay Tariff 6007 car mileage allowances arise one month and ten days after the payment comes due, or four months from the date on which a railroad refuses to pay or act on a claim, or some other date?

Id., 193 F. Supp. 2d at 319. The Court quotes the applicable provision of Tariff 6007, Item 182 as follows:

[a] private car owner must, within twenty-four (24) months from the last day of the month the completed cycle was reported, present any claim for mileage allowance discrepancies, including incorrect rates or omissions, to the applicable rail carrier in the prescribed AAR format. ... The railroad receiving the claim must within the four (4) months from the date on which the claim was presented allow it in whole or in part, or decline it. The private car owner may reissue its claim, if applicable within four (4) months from the last day of the four (4) months' period allowed the railroad which handled the claim prior to reissuance. The railroad receiving the reissue claim must within four (4) months from the date of which the reissued claim was presented allow it in whole or in part or decline it. If the railroad fails to handle the original or reissued claim within the prescribed time limits, it will constitute a valid claim as last presented and must be honored by the railroad to which presented. Claims for amounts of \$ 25.00 per car per cycle or less shall not be issued. The \$ 25.00 limit is not applicable where no miles were reported for the railroad cycle.

Id., 193 F. Supp. 2d at 391.

Engelhard maintains that a violation of the ICCTA arises when a railroad breaches its obligation under Tariff 6007<sup>5</sup> to pay on a proper audit claim within four months of presentation of the claim. In other words, the claim would accrue upon denial of the claim, or if no response is provided, the claim would accrue four months after presentation.

Since Tariff 6007, Item 180 ¶2, requires the railroad on whose line a private car moves in revenue service to "report" a mileage credit within "one month and ten days after the month in which such fees are earned", it has been argued to the District Court that an initial failure to "report" mileage starts the beginning of the two year statute of limitations for Engelhard's suit to recover on denied audit claims. However, this view ignores the fact that the tariff imposes audit handling obligations on the member railroads in Item 182 which are the very same mileage claim handling procedures which were followed here. Since Railroads are obligated by the ICCTA to adhere to the terms of their tariffs, an improper denial of a mileage claim is an actionable violation of the ICCTA. Although the liability for payment of mileage may arise one month and ten days from the end of the month in which it is earned, the tariff contains a twenty-four (24) month period for the submission of claims and allows railroads four (4) months to "allow" or "decline". If the statute of limitation were to start in the month following the movement, it would effectively negate the tariff audit procedure.

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<sup>5</sup> Tariff 6007, Item 25 provides that the mileage tariff only governs payment of mileage compensation by a railroad over whose line private loaded cars are transported. Since Springfield Terminal was not the rail carrier over the 155 mile Selkirk/Barber segment (a line owned by Conrail), Tariff 6007 does not directly apply by its literal terms, but rather has indirect application because the parties borrowed its compensation tables, mileage formula and procedures for the handling of mileage audit submissions. See Petitioner Exhibit No. 2, Affidavit of Patrick Kelley, ¶ 6. For purposes of the District Court's referral, Engelhard must assume that Springfield Terminal's alleged violation of the assumed obligation to pay mileage allowances incurred by Conrail violates the ICCTA, rather than the state law breach of implied contract causes of action alleged in the dismissed counts of its amended complaint. By so arguing here, Engelhard does not waive its right to challenge the Court's dismissal on appeal.

The early commencement of the statutory limitations period beginning one month and ten days after the month mileage is earned would undermine the course of dealing developed between the parties and in some instances, increase the need for future regulatory action, and unjustly leave an aggrieved party who faithfully follows the Tariff 6007 mileage claim procedure without a remedy. Here, the railroads did not have an adequate system in place for initially determining their responsibility for reporting earned mileages and the frequent submission of mileage claims by Engelhard was the established norm. In fact, the records shows that Engelhard filed 18 mileage claims from October 9, 1996 through May 10, 2000.<sup>6</sup> Petitioner Exhibit No. 1, ¶ 32. If the early commencement date were held to apply, a car provider submitting a claim at the end of the twenty-four month claim period of Item 182 would see its right to file suit be barred by the two year statute of limitations prior to the date on which period the carrier was required to provide a response.<sup>7</sup> The obvious impact of this would be to discourage car providers from pursuing audits and to encourage litigation in lieu of audit review. The STB could expect to begin seeing complaints filed over matters which had previously been resolved through audit.

Since neither Springfield Terminal nor Conrail engaged in the type of self-reporting of mileage contemplated under the Tariff 6007 procedure, use of the two year audit claim review process was an integral part of the arrangement developed under the parties' course of dealing. Amended Complaint ¶ 29. Engelhard's auditor, Patrick Kelley, further explained his experience

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<sup>6</sup> Engelhard, through its Amended Complaint, sought recovery for improperly denied audits dating back to 1996 based on the theory that since both Springfield Terminal and Conrail cited the Haulage Agreement as the source of Engelhard's right to mileage compensation, Engelhard should be able to enforce that private agreement under the state law of Massachusetts, which provides a six year statute of limitation.

<sup>7</sup> Item 182 allows the railroad a 4 months after submission of the audit claim to either allow or decline the claim.

with the actual mileage audit process in handling Selkirk/Barber type claims and points out that both Springfield Terminal and Conrail cited the Haulage Agreement as the governing document for determining responsibility. Petitioner Exhibit No. 2, ¶ 1 - 6. Mr. Kelley further explained that with respect to Engelhard's leased cars, while some cars included in his audits would bear the reporting marks of Lessors, he routinely submitted claims relating to those cars, which were processed by the railroads without any question raised as to Engelhard's authority. Petitioner Exhibit No. 2, ¶ 7 - 9. Since the audit procedure was one of Springfield Terminal's obligations under the tariff, it would have had a obligation to review submissions in good faith and its wrongful denial of payment within the Tariff 6007 review period would have been a breach giving rise to a cause of action.

Parties who attempt to settle their rights and obligations under a contractual mechanism should not be prejudiced by the running of a statute of limitations before the contractual review has been exhausted. There is support for this view in cases involving analogous non-judicial review procedures associated with a carrier's internal review of shipper loss and damage claims. For example, one could argue that the limitations period for a suit for loss or damage to goods commences when the damage occurs notwithstanding the fact that shippers can submit a notice of claim to a carrier within 9 months of delivery. Blaisdell v. American Ry Equipment Co., 220 N.W. 634 (N.D. Sup. Ct.1928)(shipper's right to submit a notice of claim to the carrier is not a prerequisite to suit). Nevertheless, it is well established that the two year limitations period to

bring suit for loss and damage to goods in transit commences from the date the carrier gives written notice that the claim is disallowed.<sup>8</sup>

Here, Engelhard relied on the Tariff 6007 audit claim procedure and Springfield Terminal processed the submitted mileage claims, making payment on many movements. Since the course of dealing shows that Springfield Terminal acquiesced to the audit mechanism, the breach can only be said to have occurred when Springfield Terminal responded with payment on some movements and wrongful denials on others. Since Springfield Terminal had the obligation to review audit submissions in good faith, its wrongful denials can be seen as the breach which commences the running of the statute of limitation. Only after Springfield Terminal denied payment on a particular shipment was Engelhard an aggrieved party. Therefore, the completion of the Tariff 6007 review process was an event which had to be exhausted before harm to Engelhard was occasioned. See Bethlehem Steel Co. v. Consolidated Rail Corp., 515 F. Supp. 472, 474 (E.D.Pa. 1981) .

For these reasons, Engelhard urges the Board to determine that a violation of the ICCTA arises when a railroad breaches its obligation under Tariff 6007 to pay on a proper audit claim within four months of presentation of the claim.

## **2. Significance of Reporting Marks.**

Neither railroad declined payment on any mileage claim presented by Engelhard's auditor on the basis that mileage claims could only be pursued by the person to whom the reporting

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<sup>8</sup> Goods in Transit, Sorkin (Lexis) § 10.02 acknowledges that "Both under the ICC Termination Act of 1995 and the prior law, the period of time to commence an action commences to run from the date the carrier gives a person written notice that the carrier or freight forwarder has disallowed any part of the claim specified in the notice of claim."

marks are assigned. Nevertheless, in the civil court action, Springfield Terminal sought dismissal of the ICCTA claims on the grounds that Engelhard was not the registered holder of the reporting marks for many of the leased cars. Conrail did not question Engelhard's right to pursue collection based on the assignments.

The District Court does not address the issue in its decision, but rather refers the question to the Board, stated as follows:

Is a railroad obligated to pay compensation only to the owner of a car's reporting mark, or does Item 180 of Tariff 6007 permit the owner of the mark to assign the right to payment to a lessor like Engelhard?

Engelhard has alleged in the Amended Complaint at ¶ 9 that it is entitled to pursue collection of mileage allowances as follows:

9. Plaintiff has purchased tank cars which it owns and has leased other tank, hopper and sparger cars from the following lessors: ACF Industries, Incorporated; General American Tank Corporation; General Electric Capital Rail Car Corporation; and Union Tank Car Company. For both owned and leased cars, Engelhard is the ultimate recipient of mileage allowance payments. With the consent and/or acquiescence of lessors and railroads, including Defendants Conrail and Springfield Terminals, for many years Engelhard has pursued claims for unpaid mileage allowances in its own right on the basis of oral and/or written assignments from said private car lessors. For the cars involved in this action, Engelhard is authorized to pursue collection of mileage allowances from Defendants.

While the car companies from whom Engelhard leases cars will record and credit to Engelhard's account all mileage allowances reported by railroads under Tariff 6007, they do not audit the reported mileages and not do file and pursue mileage claims. Engelhard used outside

auditors to monitor mileage allowances on owned and leased cars. Petitioner Exhibit No. 2, ¶ 7 - 9. Historically, railroads have not refused to process mileage claims filed by Engelhard on its leased cars. In fact, the party raising the objection here, Springfield Terminal, has historically accepted and paid claims submitted by Engelhard notwithstanding the fact that many leased cars bear the lessor's reporting marks.

Here, Engelhard has conferred with its lessors and has obtained written assignments which specifically authorize Engelhard to pursue legal action to collect mileage allowances owed for transportation over the 155 mile Selkirk/Barber segment. Petitioner Exhibit No. 3. Nevertheless, the question presented by the Court notes the language of Tariff 6007, Item 180.3 and asks the Board to express an opinion of the question of whether deviation from the literal terms of Tariff 6007 is permissible.

Engelhard's position is that there is no known regulatory restriction preventing the holder of private car reporting marks from assigning its rights to payment for purposes of collection. Here, since car lessors have historically permitted Engelhard to submit mileage audit claims on leased cars registered to lessors, there is a record of Springfield Terminal having processed such claims without objecting to Engelhard's authority. In light of this established course of dealing, and Springfield Terminal's failure to raise the question of authority as a basis for declining payment, Engelhard's right to compel the railroad to pay compensation can not be denied.

Engelhard believes that the Court's apparent misapprehension that the ICC/STB "issued" or "promulgated" Tariff 6007 may explain the reason for referral of this issue. Although Engelhard had argued to the Court that the mileage system embodied in Tariff 6007 could be

altered by private contract, including those implied in fact, the Court is was unconvinced<sup>9</sup>. Engelhard believes it is a widely known fact that mileage compensation is often waived or altered by rail transportation contracts under 49 U.S.C. § 10709. For more than twenty years, the significance of tariffs has diminished as parties freely negotiate alternative terms. Freight Tariff 6007 does not set forth an unalterable body of rights and obligations which railroads, private car lessors and lessees are strictly required to follow without allowing for private contractual modifications. Parties can and do establish private contractual arrangements providing alternative terms for payment and processing of mileage allowances without running afoul of the ICCTA. Certainly, the assignments which enabled Engelhard to handle the monitoring of mileages and submission of mileage audits can not be seen as running afoul of the letter or spirit of the ICCTA.

Strict application of Tariff 6007 without reference to the parties' actual course of dealing is particularly anomalous here since the facts show Springfield Terminal paid mileage claims on thousands of Selkirk/Barber movements despite the fact that the subject segment of line was owned by Conrail. Since Conrail was the only certificated carrier over the particular segment, the payments by Springfield Terminal in fact reflect an assignment which is not strictly provided for under Freight Tariff 6007.<sup>10</sup> If Tariff 6007 is strictly applied without reference to the course of dealings of the parties, one must ask why Springfield Terminal paid mileage allowances owed

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<sup>9</sup> Id., 193 F. Supp. 2d at 390, n.9.

<sup>10</sup> Since Freight Tariff 6007 obligates the carrier owning the line to pay the allowances and Springfield Terminal did not own the 155 mile segment and did not physically handle the movement, it was obviously performing under an assigned or assumed obligation when it processed the audit claims and allowed credits on 2,518 of the 6,055 movements.

by Conrail. The obvious answer is that Tariff 6007 can not be applied with respect to these three parties in isolation. The Haulage Agreement, the history of claims processing and the assignments all further define and expand the rights and obligations of the parties beyond the four corners of Tariff 6007.

Here, the implied or actual contractual terms reflected in the assignments upon which Engelhard relies would alter the rights and obligations existing under Tariff 6007. Engelhard believes these modifications are proper because all affected parties have indicated their agreement in writing or through a course of dealing in which claims have been previously processed. In requesting that the Board find that contractual arrangements, such as assignments, can be given legal effect notwithstanding the fact that such private contracts vary the terms set forth in Tariff 6007, Engelhard is compelled to emphasize that those portions of Tariff 6007 relating to tank cars are governed by the prescription described in Ex Parte No. 328, Investigation of Tank Car Systems, 3 I.C.C. 2d 196 (1986), as supplemented at 7 I.C.C. 645 (1991)(generally prohibiting unilaterally imposed changes to the Tank Car Mileage Allowance System). While shippers and railroads are permitted to and frequently do contract for different private tank car compensation schemes in rail transportation contracts, it is important for the Board to clarify that private contractual agreements which reduce or eliminate compensation on private tank cars can not be imposed unilaterally and can only be given effect if all parties in interest assent the alternative contractual terms.

#### IV. CONCLUSION

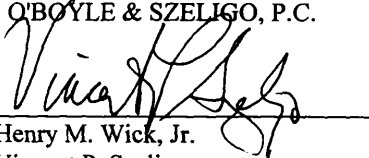
As the Board can see from a review of the correspondence generated from Engelhard's efforts to compel either Conrail or Springfield Terminal to pay private car compensation for movements over the 155 mile Selkirk to Barber Station segment (a line owned by Conrail), despite the fact that one of the two railroads should have paid compensation, the complex web of interpretations, rationalizations, denials and the interjection of the Haulage Agreement have created uncertainty as to many aspects of the collection process.

For the reasons discussed above, Engelhard requests that the Board issue a declaratory order to assist the District Court in the matters specifically referred and determine that:

- (A) A violation of the ICCTA arises when a railroad breaches its obligation under Tariff 6007 to pay on a proper audit claim within four months of presentation of the claim; and,
- (B) Contractual arrangements, such as assignments, can be given legal effect notwithstanding the fact that such private contracts vary the terms set forth in Tariff 6007.

May 15, 2003

Respectfully submitted,  
WICK, STREIFF, MEYER,  
O'BOYLE & SZELIGO, P.C.



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Attorneys for Engelhard Corporation

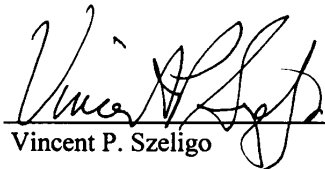
**CERTIFICATE OF SERVICE**

I, Vincent P. Szeligo, Esquire, certify that a true and correct copy the Opening Statement of Engelhard Corporation and Verified Statement of Thomas Flaherty was served upon counsel identified below by overnight delivery, this 15th day of May, 2003.

David C. Ziccardi, Esq.  
Consolidated Rail Corporation  
Two Commerce Square  
2001 Market Street, 16-A  
Philadelphia, PA 19103-1416

Robert B. Culliford, Esq.  
Guilford Transportation Industries, Inc.  
Iron Horse Park  
North Billerica, MA 01862

Eric L. Hirschhorn, Esq.  
Winston & Strawn  
1400 L St., NW  
Washington DC 20005

  
\_\_\_\_\_  
Vincent P. Szeligo

VERIFIED STATEMENT OF  
THOMAS G. FLAHERTY

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**STB DOCKET No. 42075**

**ENGELHARD CORPORATION – PETITION FOR DECLARATORY ORDER –  
SPRINGFIELD TERMINAL RAILWAY COMPANY AND CONSOLIDATED RAIL  
CORPORATION**

**VERIFIED STATEMENT OF THOMAS G. FLAHERTY**

State of Georgia :  
County of Wilkinson :  
SS: :

Being duly sworn, Thomas G. Flaherty, deposes and says that he has read this statement and the documents referred to herein, knows the facts asserted are true and that the same are true as stated.

1. My name is Thomas G. Flaherty and I am Manager, Rail Logistics, Engelhard Corporation. My responsibilities include overall management of all matters relating to rail transportation, including management of Engelhard owned railcars and contractual arrangements with rail car lessors.
2. Engelhard is the Plaintiff in a matter pending in the United States District Court for the District of Massachusetts, entitled Engelhard Corporation v. Springfield Terminal Railway Co., Inc. and Consolidated Rail Corporation, Civil Action No. C.A. 01-10829 RGS. I have been involved in this litigation since its inception and am familiar with all pleadings, affidavits, exhibits and factual assertions filed with the Court.

3. I have read Engelhard's Amended Complaint filed with the District Court. I am personally familiar with the facts alleged therein and state that the facts as stated are true. A true and correct copy the Amended Complaint filed in District Court by Engelhard on November 14, 2001 has been previously filed with the STB as Exhibit No. 1 of the Petition for Declaratory Judgment and is incorporated herein by reference and identified as Petitioner Exhibit No. 1.

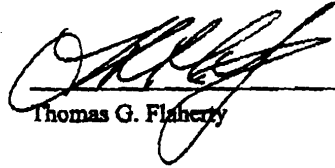
4. Verified factual assertions and exhibits contained in affidavits were also filed with the District Court in connection with motions to dismiss. True and correct copies of the following affidavits of record are attached hereto and identified as follows:

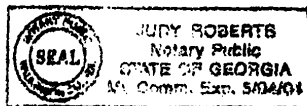
- Affidavit of Patrick Kelly, dated December 21, 2001, filed with the District Court by Engelhard on January 7, 2002 in conjunction with Engelhard's Opposition to Springfield Terminal's Motion to Dismiss Amended Complaint, a true and correct copy of which is attached hereto and identified as Petitioner Exhibit No. 2
- Affidavit of Thomas G. Flaherty, dated January 4, 2002 filed with the District Court by Engelhard on January 7, 2002 in conjunction with Engelhard's Opposition to Springfield Terminal's Motion to Dismiss Amended Complaint, a true and correct copy of which is attached hereto and identified as Petitioner Exhibit No. 3

5. In response to Engelhard's efforts to collect mileage allowances, both Conrail and Springfield Terminal have independently denied responsibility for payment, each asserting that the other railroad was responsible for payment by virtue of an agreement entitled, "Agreement dated as of March 31, 1990 between Consolidated Rail Corporation and the Boston and Maine

Corporation and the Springfield Terminal Railway Company". Assertions relating to this agreement appear through the correspondence and the District Court Pleadings. Engelhard refers to the agreement as the "Haulage Agreement", but Springfield Terminal refers to the document the "Interchange Agreement". Springfield Terminal filed a copy of said agreement with the District Court, which Engelhard now attaches and identified as Petitioner Exhibit No. 4.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. Executed this 14th day of May, 2003.

  
Thomas G. Flaherty





# PETITIONER EXHIBIT NO. 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

ENGELHARD CORPORATION, a )  
Delaware Corporation, )

Plaintiff, )

vs. )

SPRINGFIELD TERMINAL )  
RAILWAY CO., INC., a )  
Vermont Corporation and )  
CONSOLIDATED RAIL )  
CORPORATION, a )  
Pennsylvania Corporation )

Defendants. )

Civil Action No. 01-10829 RGS

**AMENDED COMPLAINT**

Engelhard Corporation (hereinafter, "Plaintiff" or "Engelhard"), by and through its undersigned counsel, hereby files this Amended Complaint against Defendants, Consolidated Rail Corporation ("Conrail") and Springfield Terminal Railway Co., Inc. ("Springfield Terminal") and in support thereof states as follows:

**Introductory Statement.**

The Original Complaint filed on May 15, 2001 sets forth the basic factual background of Plaintiff's efforts to secure mileage allowance payments for private rail cars it furnished to Defendants for their use in for-hire transportation services. Defendants responded by filing Motions to Dismiss wherein it was argued that the Original Complaint did not clearly reveal the legal theory

upon which Plaintiff sought recovery. In its brief in opposition and in oral argument, Plaintiff set forth a clarification of the facts underlying its claims. This Court allowed Plaintiff to file an Amended Complaint to more precisely set forth the facts and to identify the legal theories (or alternative theories) upon which Plaintiff seeks relief.

Through this Amended Complaint, Plaintiff completely restates the averments upon which this action is based, as well as its prayer for relief. However, to avoid unnecessary duplication of pleadings, Plaintiff has not resubmitted its 87 page listing of each shipment over the 155 mile Selkirk to Barber line segment entitled "Appendices to Complaint - Springfield Terminal and Conrail", but instead incorporates the Appendices A through E filed May 15, 2001 with the Original Complaint by reference as if they were attached to this Amended Complaint.

Here, Plaintiff sets forth alternative causes of actions for: (1) various state law contract claims in which it is alleged that Defendants breached a private Haulage Agreement; and alternatively, (2) a federal question claim in which it is alleged that Defendants are in violation of obligations set forth in the Interstate Commerce Act regarding private car compensation.

**Jurisdiction and Venue.**

1. This Court has diversity jurisdiction over the state law claims set forth in this Amended Complaint pursuant to 28 U.S.C. §1332(a)(1) and §1367(a) in that the amount in controversy exceeds \$75,000.00, and there is complete diversity between Plaintiff and Defendants.

2. Alternatively, this Court has federal question jurisdiction pursuant to 28 U.S.C. § 1337 because Plaintiff alleges injury arising from Defendants' acts or omissions in violation the Interstate Commerce Act, specifically 49 U.S.C. §§ 11121 and 11122. See 49 U.S.C. § 11704(b).

3. This Court has venue over Defendants in that both are railroad common carriers who operated rail lines within the Commonwealth of Massachusetts during the period relevant to this action. Moreover, since this dispute concerns operations over a 155 mile segment of rail line running from Selkirk, New York to Barber Station, Massachusetts, the subject matter involves obligations incurred from operations conducted almost entirely within Massachusetts.

**Factual Allegations.**

4. Plaintiff is a corporation organized and existing under the laws of the State of Delaware with its principal office located in Iselin, New Jersey. Plaintiff is a specialty chemical company engaged in a number of businesses, including the mining and sale of high quality kaolin clay at origins in Georgia, which clay is transported in bulk, in dry and slurry form, in rail tank cars, and to a much lesser extent in hopper and sparger cars from Georgia origins to numerous customers of Plaintiff in the Northeastern United States and Canada. Although Plaintiff's product is transported by Defendant rail carriers, Plaintiff is not a "shipper", as defined by the Interstate Commerce Act. Rather, Plaintiff's customers are the "shippers".

5. Defendant Springfield Terminal is a corporation organized and existing under the laws of the State of Vermont with a principal place of business located at Iron Horse Park, North Billerica, Massachusetts. Defendant Springfield Terminal is a railroad common carrier engaged with its

connecting rail lines in the business of providing railroad freight service. As relevant here, Springfield Terminal has provided freight service for shippers who are Plaintiff's customers with facilities in various points in the Northeastern United States, through Massachusetts.

6. Defendant Conrail is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal corporate office located in Philadelphia, Pennsylvania. Defendant Conrail was, at all times relevant to this Amended Complaint, a railroad common carrier engaged with its connecting rail lines in the business of providing railroad freight service. As relevant here, Conrail has provided freight service for shippers who are Plaintiff's customers with facilities in various points in the Northeastern United States, through Massachusetts.

7. Defendants have not furnished equipment suitable for the transportation of Plaintiff's product despite the fact that all rail common carriers are required to do so under Section 11121 of the Interstate Commerce Act. 49 U.S.C. § 10101, et seq.

8. Over a period of many years, Plaintiff has made substantial capital investments in the acquisition, by purchase or long term lease, of rail equipment suitable for the transportation of clay by Defendants' for shippers who purchase Plaintiff's product. Plaintiff has made such investment because of the failure and refusal of Defendants, and other railroads, to provide specialized equipment. Since Plaintiff provides private cars and other specialized equipment utilized by rail common carriers, it is entitled to receive and, in most cases, does receive fair compensation for the railroads' use of its private equipment pursuant to 49 U.S.C. § 11121. Said compensation is known as "mileage allowances". Both Conrail and Springfield Terminal have historically paid mileage

allowances, except for the isolated instances identified in this Complaint involving movements over a 155 mile segment of line running from Selkirk, NY to Barber Station, MA.

9. Plaintiff has purchased tank cars which it owns and has leased other tank, hopper and sparger cars from the following lessors: ACF Industries, Incorporated; General American Tank Corporation; General Electric Capital Rail Car Corporation; and Union Tank Car Company. For both owned and leased cars, Engelhard is the ultimate recipient of mileage allowance payments. With the consent and/or acquiescence of lessors and railroads, including Defendants Conrail and Springfield Terminals, for many years Engelhard has pursued claims for unpaid mileage allowances in its own right on the basis of oral and/or written assignments from said private car lessors. For the cars involved in this action, Engelhard is authorized to pursue collection of mileage allowances from Defendants.

10. For the shipments transported over a 155 mile segment of line running from Selkirk, NY to Barber Station, MA, as listed in Appendix A through Appendix E, Plaintiff furnished private rail cars which Defendants used in transportation service, but for which Defendants have failed to pay compensation. The amount of unpaid compensation is \$568,155.13.

11. Conrail has paid, or approved for payment, all required mileage allowances on these same shipments for transportation over all other segments of its rail line; i.e., up to but not beyond Selkirk, NY. It has refused all payment for mileage allowances on the 155 mile segment from Selkirk, NY to Barber Station, MA.

12. Springfield Terminal has paid, or approved for payment, all required mileage allowances on these same shipments for transportation over all segments of its rail lines from Barber Station, MA to destinations in New England.

13. Although the Selkirk, NY to Barber Station, MA line does not belong to Springfield Terminal, and it is not authorized to perform rail carrier service over its length, in some instances, it has accepted responsibility for and paid mileage allowances pursuant to a March 31, 1990 Haulage Agreement.

14. The amount of compensation required for each private car is based on a per mile charge listed for specific age and value categories, updated over time, and set forth in periodic supplements to Freight Tariff 6007, "Mileage Allowances and Rules Governing the Handling of and the Payment of Mileage also Charges on Cars of Private Ownership" (Hereinafter referred to as "Mileage Tariff"). (Appendix F is a true and correct copy of relevant portions of the most recent Mileage Tariff; Freight Tariff 6007-L, effective April 1, 2001. The appended version does not materially differ from prior versions, except for the cents-per-mile rates updated semi-annually in Item 195. Items 180 and 182, which set forth procedures for reporting, payment and auditing of mileage allowances, have not been changed during the period involved in this action.)

15. The mileage allowances for which Plaintiff seeks recovery all pertain to the same 155 mile segment of line from Selkirk, NY to Barber Station, MA. In all instances, a loaded private car originating in Georgia was transported to New England. Conrail has paid mileage allowances for

transportation over each mile of its track up to Selkirk, NY, but has refused to pay mileage allowances for transportation over the 155 mile segment of line from Selkirk, NY to Barber Station, MA.

16. Conrail owns the 155 mile segment of line from Selkirk, NY to Barber Station, MA.

17. Conrail holds a certificate of public convenience issued by the Interstate Commerce Commission authorizing it to perform for-hire transportation service for the public as a railroad common carrier over the 155 mile segment of line from Selkirk, NY to Barber Station, MA. This ICC authorization is exclusive; no other carrier is certificated to provide common carrier service over this segment.

18. Springfield Terminal does not hold a certificate of public to perform for-hire transportation service for the public as a railroad common carrier over the 155 mile segment of line from Selkirk, NY to Barber Station, MA. Any physical operation performed by Springfield Terminal over this segment is performed as an agent for, and in the name of the authorized railroad carrier, which in this case is Conrail.

19. Springfield Terminal holds a certificate of public convenience issued by the ICC authorizing it to perform for-hire transportation service over numerous other rail lines in the New England Region, including a line which connects to Conrail's Selkirk to Barber line at a junction near Worcester, MA

20. For the shipments involved in this action, Barber Station, MA is an interchange point between Conrail and Springfield Terminal, marking the point where Conrail's status as the rail common carrier for a shipment ends and Springfield Terminal's rail common carrier status begins.

21. Conrail and Springfield Terminal are parties to an Agreement dated March 31, 1990 "Relating to Interchange of Loaded and Empty Freight Cars on B&M/ST's track ... at Barber, Massachusetts" (hereinafter "the Haulage Agreement"). Portions of a copy of said Haulage Agreement, as provided to Plaintiff's auditors, Larry Burkes of Freight Rate Services and Patrick Kelley of Rail Transportation Management Services, by Conrail are attached as Appendix G. ( A complete copy of the actual Haulage Agreement is not available to Plaintiff and Defendants have denied Plaintiff's requests to produce a full and complete copy.)

22. By information and belief, Plaintiff alleges that pursuant to the Haulage Agreement, on some occasions, Springfield Terminal has physically run trains over the 155 mile segment and moved Plaintiff's private cars from Selkirk, NY to Barber Station, MA and beyond. But in other cases, Conrail has physically run trains over the 155 mile segment, delivering Plaintiff's cars to Springfield Terminal at Barber Station, MA.

23 Said Haulage Agreement is a private operating agreement which was consummated without prior approval of the Interstate Commerce Commission, now the Surface Transportation Board.

24. Said Haulage Agreement has not altered Conrail's rail common carrier status for transportation over the 155 mile segment. Although Conrail reached a private agreement with a subcontractor to assist it with operations over this segment, it ultimately retains liability for movements handled on its behalf pursuant to the Haulage Agreement.

25. Although Springfield Terminal may have performed operations over the 155 mile segment, the Haulage Agreement has not elevated Springfield Terminal's status with respect to that segment to that of a rail common carrier. Only the ICC/STB can bestow common carrier status.

26. In March, 1997, Larry Burks of Freight Rate Service Co. ("FRSC"), a mileage auditor retained by Plaintiff to submit mileage allowance claims for collection of unpaid, accrued mileage allowances, made telephone and written inquiries to both Conrail and Springfield Terminal to determine why mileage allowances were being paid for some but not all movements over the 155 mile segment.

27. In response to said inquiries, Thomas J. Tremblay, Manager of Car Accounting for Springfield Terminal, spoke with Mr. Burkes and also by letter dated March 13, 1997 (a copy of which is attached as Appendix H) and stated that some shipments over the 155 mile segment were moved by Conrail and others were moved by Springfield Terminal, but that Springfield Terminal was only responsible for mileage payments on its moves and was not obligated to pay on Conrail's moves.

28. Plaintiff's auditor spoke with John DiGiovanni, Manager of Car Accounting for Conrail and in a letter dated March 13, 1997 (a copy of which is attached as Appendix I), advised Conrail of Springfield Terminal's non-payment of mileage allowances over the 155 mile segment, as well as Springfield Terminal's position that Conrail was responsible for payment on select moves.

29. In a response to Mr. Burke, a copy of which is attached as Appendix J, Mr. DiGiovanni of Conrail sent Plaintiff a copy of portions of the Haulage Agreement and took the position that the Haulage Agreement absolved Conrail of responsibility for all mileage payments over the 155 mile

segment from Selkirk, NY to Barber Station, MA and that the Haulage Agreement placed responsibility for all such moves on Springfield Terminal, regardless of which railroad actually moved the car or received a division of freight rates on the segment. Specifically, Conrail's correspondence states:

To: LARRY BURKS

Subject: S.T. HAULAGE AGREEMENT

PLEASE SEE THE ATTACHED AGREEMENT.

WE DON'T AND WE DON'T PAY PAST SELKIRK. CAR ACCOUNTING HANDLES CAR HIRE AND MILEAGE ANDS IT'S APPLICATION. PERSONALLY I DON'T CARE WHAT S.T. WANTS TO DO WITH THE BILLING OR MISBILLINGS BY THE FREIGHT SIDE AND THEIR BILLS OF LADING. THE CAR HIRE RESPONSIBILITY IS SPELLED OUT IN SECTION #4 AND SPECIFICALLY MENTIONS HOW TO HANDLE BARBER STATION. (TREATED AS IF INTERCHANGED AT SELKIRK)

YES IS SPOKE TO S.T. AND FURNISHING THEM THE AGREEMENT. IF S.T. DOESN'T WANT TO ABIDE BY THIS AGREEMENT THEY'LL HAVE TO MOVE TO GET IT CHANGED.

JOHN T. DIGIOVANNI

C.R. PHILA.

30. The non-payment for some, but not all, movements over the 155 mile segment continued despite the March, 1997 efforts to resolve responsibility. Continuing telephone discussions were undertaken by Patrick Kelley, of Rail Transportation Management Services ("RTMS"), the new mileage auditor for Plaintiff, who pursued payment through claims submitted to both Conrail and Springfield Terminal.

31. In telephone discussions, both Conrail and Springfield Terminal confirmed to Mr. Kelley that the 155 mile track was owned by Conrail, but that responsibility for mileage payments was to be determined pursuant to the Haulage Agreement.

32. RTMS submitted 18 mileage claims to Springfield Terminal between October 19, 1996 and May 5, 2000 covering 6,055 shipments over the 155 mile segment. In response to the audit filings, Springfield Terminal paid mileage on the 155 mile segment on 2,518 of the shipments, but did not pay on 3,537 of the shipments. On these 3,537 shipments for which payment was not made, Springfield Terminal denied payment for 2,260 on the grounds that Conrail handled the move up to the point of interchange at Barber Station, MA, but did not answer with respect to 1,277 shipments, most of which were included in a claim submitted shortly before this lawsuit was filed. RTMS's summary of mileage claims is attached as Appendix K.

33. By letter of April 17, 1998, Mr. Kelley wrote to Conrail and Springfield Terminal to summarize positions taken by the parties over the question of which railroad was responsible for payment and also to demand payment. A copy of this letter is attached as Appendix L.

34. In response, Jeffrey Miller of Springfield Terminal, in a letter dated April 27, 1998, took the position that the Haulage Agreement did not impose responsibility on Springfield Terminal for payment of mileage allowances on all movements over the 155 mile segment, insisting instead that the Haulage Agreement only obligated it to pay on those movement for which the 155 miles had been included in Springfield Terminal's account for the inter-railroad division of freight revenue. A copy of this letter is attached as Appendix M.

35. In response, Conrail told Mr. Kelley that Plaintiff should look to Springfield Terminal for payment under the Haulage Agreement because that agreement obligated Springfield Terminal to pay on all movements over the segment, regardless of other agreements between Conrail and Springfield Terminal concerning the division of revenues.

36. On the basis of its interpretation of the Haulage Agreement as being applicable only when it receives a division of revenues on the segment, Springfield Terminal has paid, or approved for payment, mileage allowances on some movements over the 155 mile Selkirk, NY to Barber Station, MA segment, and denied payment on other shipments for which it contends Conrail earned revenues on the segment.

37. Conrail relied on the terms of the Haulage Agreement as the rationale for denying Plaintiff's demand for payment, citing its interpretation of the Haulage Agreement as obligating Springfield Terminal to pay mileage allowances for all movements over segment, regardless of which railroad received divisions for the segment.

38. Neither Conrail nor Springfield Terminal have denied payment to Plaintiff on the basis of an interpretation of their obligations under Sections 11121 and 11122 of the Interstate Commerce Act, but rather each has asserted that the other railroad is the party responsible for payment to Engelhard pursuant to the Haulage Agreement.

**COUNT I - VIOLATION OF THE INTERSTATE COMMERCE ACT  
(Alternative Theory)**

39. The averments of Paragraphs 1 through 38 are incorporated herein by reference.

40. Plaintiff sets forth this claim for damages under the Interstate Commerce Act as an alternative theory of recovery. It is the theory of liability which Plaintiff believes would apply but for the state law rights and obligations arising out of the private Haulage Agreement. Neither Conrail nor Springfield Terminal provided rail transportation service for Plaintiff -- rail transportation service was in all instances provided to Plaintiff's customers who were the "shippers" as that term is defined in the Interstate Commerce Act.

41. Defendant Conrail used private cars provided by Plaintiff Engelhard for each shipment detailed in Appendices A - E, but failed to pay the required mileage allowances as determined under the then current version of Freight Tariff 6007 for transportation of said cars over the 155 mile segment.

42. Conrail is the only railroad carrier which has been certified by the Interstate Commerce Commission, now the Surface Transportation Board, to provide rail common carrier service over the 155 mile line segment from Selkirk, NY to Barber Station, MA. Therefore, rail transportation service over this segment, as that term is defined in the Interstate Commerce Act, could only have been performed by Conrail, or by Springfield Terminal as an agent acting on Conrail's behalf.

43. The failure of Conrail, or its agent, Springfield Terminal, to make payment of mileage allowances on said shipments is an act or omission committed in violation of common carrier obligations to pay for use of private equipment under Section 11122 of the Interstate Commerce Act.

44. As the identified railroad common carrier, Conrail was obligated to report and then pay the mileage of Plaintiff's private cars taking place over the 155 mile segment of its line within

one month and ten days after shipment pursuant to the terms of Item 180 of the Mileage Tariff; however, it failed to do so. Conrail's agent, Springfield Terminal also failed to report mileage; however, in some instances, it did pay or approve payment of mileage allowances after audit claims were presented to it.

45. Item 182-A, part 2 of the Mileage Allowance Tariff permits private car owners to submit claims for mileage payment discrepancies up to two years after a railroad's inaccurate report and/or payment of mileage allowances.

46. Each of Plaintiff's claims for unpaid mileage as listed in Appendices A - E were submitted to Conrail's agent, Springfield Terminal, within the two years period provided in the Mileage Tariff; however, said claims remain unpaid.

47. Conrail and its agent, Springfield Terminal, in violation of provisions of the Interstate Commerce Act requiring rail common carriers to pay compensation for use of private rail cars, have caused damage to Plaintiff by failing to pay the mileage allowances which are due and owing as listed in Appendices A - E in the amount of \$568,155.13.

48. A party who successfully recovers damages from a rail carrier found liable under 49 U.S.C. § 11704(d)(3) is entitled to the award of attorney's fees.

WHEREFORE, Plaintiff respectfully requests that judgment be entered against Conrail in the amount of \$568,155.13, plus attorney's fees. Alternatively, Plaintiff respectfully requests that judgment be entered against Springfield Terminal in the amount of \$568,155.13, plus attorney's fees.

Alternative, Plaintiff requests that this Court find both Conrail and Springfield Terminal to be jointly and severally liable for violation of the Interstate Commerce Act and award judgment against each in the amount of \$568,155.13, plus attorney's fees.

**COUNT II - BREACH OF IMPLIED-IN-FACT CONTRACT  
ARISING FROM COURSE OF DEALINGS  
(Alternative Theory)**

49. The averments of Paragraph 1 through 38 are incorporated by reference.

50. Under normal circumstance, in accordance with the Mileage Tariff (Appendix F, Items 25 and 185), rail common carriers are obligated to pay mileage allowances to private car providers when such cars are moved over their lines in revenue service (as opposed to empty movements).

51. Plaintiff furnished private cars to Defendants with the reasonable expectation of receiving compensation because Defendants used these cars to earn freight revenue; however, all unpaid mileage relates to movements over Conrail's 155 mile Selkirk, NY to Barber Station, MA

52. An implied contract between Plaintiff, Conrail and Springfield Terminal to handle payment for mileage allowances under the Haulage Agreement, in lieu of the normal line ownership procedure, developed through a course of dealing between Plaintiff, Conrail and Springfield Terminal.

53. In reliance upon Conrail's representations that Plaintiff's right to receive mileage allowance payments for movements over the 155 mile segment were governed by the Haulage

Agreement, Plaintiff submitted claims for unpaid mileage allowances to Springfield Terminal, notwithstanding the fact that Springfield Terminal did not own the line and was not the ICC certificated rail carrier authorized to provide transportation service over the segment.

54. Springfield Terminals tendered payment of mileage allowances for some movements over the segment pursuant to its interpretation of the Haulage Agreement.

55. In response to instances where Springfield Terminal refused payment under the Haulage Agreement, Plaintiff advised Conrail of rationale for Springfield Terminal's denials and demanded that Conrail make payment.

56. The ordinary course of dealings between Plaintiff and Defendants manifests an intent by all parties to be bound by the Haulage Agreement and such intent was commonly understood by Plaintiff and Defendants.

57. Springfield Terminal did not include the 155 mile segment on the type of reports spelled out in Item 180 of the Mileage Tariff, but relied on Plaintiff to submit claims identifying the movements which it then paid or denied in accord with its interpretation of the Haulage Agreement.

58. Defendants instructed Plaintiff to submit claims for mileage allowances in accordance with the Haulage Agreement and Plaintiff relied on Defendants' instructions.

59. The course of dealing reveals that Defendants urged Plaintiff to forebear on efforts to pursue payment based upon the ownership of the 155 mile segment, but rather look to the Haulage Agreement for payment.

60. At all relevant times, Plaintiff acted in accordance with the Haulage Agreement and Defendants acted in accordance with their respective interpretation of the Haulage Agreement.

61. The dispute over the unpaid mileage allowance is a result of differing interpretations of the Haulage Agreement by the Defendants; that is, Conrail maintains that Springfield Terminal is responsible for all mileage allowances pursuant to the Haulage Agreement, whereas Springfield Terminal maintains that the Haulage Agreement should only impose mileage liability upon it in circumstances where its division of freight revenue paid by the shipper includes the segment.

WHEREFORE, Plaintiff respectfully requests that judgment be entered jointly and severally against Conrail and Springfield Terminal in the amount of \$568,155.13, plus interest at the rate of 12%, as provided under Massachusetts statute.

**COUNT III - BREACH OF IMPLIED-IN-FACT CONTRACT  
ARISING FROM PROMISSORY ESTOPPEL  
(Alternative Theory)**

62. The averments of Paragraph 1 through 38 and Paragraphs 49 through 61 are incorporated by reference.

63. Conrail expressly represented to Plaintiff that the Haulage Agreement relieved it of liability for payment of mileage allowances on the 155 mile segment.

64. Conrail expressly urged Plaintiff to pursue Springfield Terminal for payment for mileage allowances on the 155 mile segment in accord with the Haulage Agreement.

65. In reasonable reliance upon Conrail's representations, Plaintiff's auditors submitted mileage claims to Springfield Terminal.

66. In response to mileage claims submitted to it by Plaintiff pursuant to the Haulage Agreement, Springfield Terminals paid mileage allowances on a significant portion of the shipments moving over the 155 mile segment which absent the obligations arising under the Haulage Agreement it was not otherwise obligated to pay.

67. Plaintiff understood that pursuant to the Haulage Agreement, either Conrail or Springfield Terminal would pay mileage allowances over the 155 mile segment and was therefore reasonable in relying on the Haulage Agreement in urging the railroads to jointly resolve their differences in interpretation so that payment in full would be made.

68. In light of the fact that Plaintiff followed Conrail's suggestion to rely on the Haulage Agreement as the basis for pursuing mileage claims against Springfield Terminal, Conrail should be estopped from denying that Plaintiff has a right to enforce the Haulage Agreement.

69. In light of the fact that Springfield Terminal paid some mileage claims pursuant to the Haulage Agreement, it should be estopped from denying that Plaintiff has a right to enforce the Haulage Agreement.

WHEREFORE, Plaintiff respectfully requests that judgment be entered jointly and severally against Conrail and Springfield Terminal in the amount of \$568,155.13, plus interest at the rate of 12%, as provided under Massachusetts statute.

#### **COUNT IV - QUANTUM MERUIT (UNJUST ENRICHMENT)**

70. The averments of Paragraph 1 through 38 and Paragraphs 49 through 69 are incorporated by reference.

71. Plaintiff furnished private cars to Defendants with the reasonable expectation of receiving compensation because Defendants used these cars to earn freight revenue.

72. The private cars were furnished in a manner consistent with the trade custom and under normal circumstances, rail common carriers are obligated to pay mileage allowances for use of private cars. Therefore, Conrail and Springfield Terminal were on notice that Plaintiff expected to be fully paid for mileage allowances.

73. Although Conrail was obligated under the Interstate Commerce Act to pay all relevant mileage allowances, Conrail denied payment of claims by Plaintiff for mileage allowances on the basis that Springfield Terminal was liable for such payment under the terms of the private Haulage Agreement.

74. Although Springfield Terminal might not have been obligated under the Interstate Commerce Act to pay the relevant mileage allowances directly to Plaintiff, Springfield Terminal actually paid certain claims by Plaintiff for mileage allowances but not others pursuant to its interpretation of the Haulage Agreement.

75. Plaintiff furnished the private cars in good-faith and acted under the Haulage Agreement in good-faith as instructed by Defendants.

76. Conrail and Springfield Terminal derived a benefit from Plaintiff's furnishing of the private car in that Defendants used these cars to earn freight revenue; Defendants divided their rights and obligations to such freight revenue in the private Haulage Agreement; and both Defendants denied payment based on their respective interpretation of the Haulage Agreement.

77. Plaintiff is entitled to compensation for furnishing tank cars which were transported over the 155 mile segment, the only question is which of the two Defendants is liable for the benefit so derived.

WHEREFORE, Plaintiff respectfully requests that judgment be entered jointly and severally against Conrail and Springfield Terminal in the amount of \$568,155.13, plus interest at the rate of 12%, as provided under Massachusetts statute.

**COUNT V - BREACH OF CONTRACT FOR BENEFIT OF  
THIRD PARTY BENEFICIARY**

78. The averments of Paragraph 1 through 38 and Paragraphs 49 through 77 are incorporated by reference.

79. Conrail and Springfield Terminal entered into a private Haulage Agreement which defined and divided the rights and obligations each would have with regard to transportation conducted over the specific 155 mile segment of line involve herein.

80. Said Haulage Agreement did not require the prior approval of the Interstate Commerce Commission, now the Surface Transportation Board. It created rights and obligations which are not subject to ICC/STB jurisdiction under the Interstate Commerce Act.

81. On information and belief, this Haulage Agreement defined and divided, among other things, obligations to pay mileage allowances directly to the third party who furnished the private cars.

82. In providing for such a treatment of mileage allowances under the Haulage Agreement, Defendants intended to process and pay mileage allowances outside the scope of the Interstate Commerce Act.

83. In March, 1990, when the Haulage Agreement was signed by Conrail and Springfield Terminal, both Defendants were aware that loaded private cars would be moved over the 155 mile Selkirk to Barber Station segment and that the car provider would be entitled to compensation.

84. The Haulage Agreement provides in relevant part:

SECTION 4. MILEAGE AND CAR HIRE

Except as otherwise be provided in October 27, 1989 agreement, for the purpose of determining per diem, car hire, and car mileage payments, and for no other purpose, cars interchanged at Barber, Massachusetts shall be treated as if interchanged at Conrail's Selkirk Yard, in the vicinity of Albany, New York....

85. Both Conrail and Springfield Terminal understood that the terms of this Haulage Agreement concerning "car mileage payments" referred to mileage allowances owed on cars provided by Plaintiff.

86. Defendants intended to benefit Plaintiff by providing for car mileage payments outside the scope of the Interstate Commerce Act.

87. Both Conrail and Springfield Terminal reaffirmed their intent to grant Plaintiff enforceable rights under the Haulage Agreement in the course of dealing between 1997 - 1998

wherein Plaintiff was urged to pursue its demands for payment in accord with the terms of the Haulage Agreement.

WHEREFORE, Plaintiff respectfully requests that judgment be entered jointly and severally against Conrail and Springfield Terminal in the amount of \$568,155.13, plus interest at the rate of 12%, as provided under Massachusetts statute.

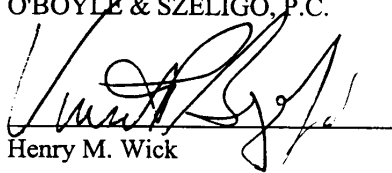
Respectfully submitted,  
FEINBERG, CAMPBELL & ZACK, P.C.

Dated: November 14, 2001

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### **APPENDICES "A" to "E"\***

\*Previously filed with Plaintiff's original Complaint on May 15, 2001.  
Appendices "A" to "E" are not attached and are incorporated by reference.

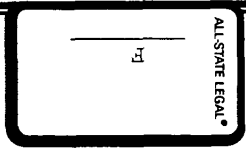
For the convenience of the Court Appendices "A" to "E" are identified below:

| <u>Appendix</u> | <u>Description</u>                                               |
|-----------------|------------------------------------------------------------------|
| A.              | SUMMARY of disputed claims                                       |
| B.              | SELKIRK - Disputed claims for owned cars (FRSC)<br>\$ 50,229.81  |
| C.              | SELKIRK - Disputed claims for owned cars (RTMS)<br>\$ 61,025.48  |
| D.              | SELKIRK - Disputed claims for leased cars (FRSC)<br>\$140,385.43 |
| E.              | SELKIRK - Disputed claims for leased cars (RTMS)<br>\$316,514.41 |

**APPENDIX "F"**

ISSUED BY  
RAILINC, AGENT  
7001 WESTON PARKWAY, SUITE 200  
CARY, NC 27513

Copyright 2001 (Pending)  
By RAILINC, Agent



ISSUED MARCH 15, 2001  
EFFECTIVE APRIL 1, 2001

This tariff is also applicable on intrastate traffic except where expressly provided to the contrary in connection with particular items.

RAILINC, AGENT  
FREIGHT TARIFF RIC 6007-L  
(Cancels Freight Tariff RPS 6007-K)  
MILEAGE ALLOWANCES AND RULES  
GOVERNING  
THE HANDLING OF AND THE PAYMENT OF MILEAGE  
ALSO CHARGES  
ON  
CARS OF PRIVATE OWNERSHIP  
AS DEFINED IN ITEMS 25 AND 400  
BY  
RAILROADS PARTIES TO THIS TARIFF  
For List of Participating Carriers, see Item 2.10.

# TARIFF 6007-L

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| Rules Governing Computation and Payment of Mileage (Section 1) .....            | 180 to 185                   |
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### LIST OF PARTICIPATING CARRIERS ALPHABETIZED BY STANDARD CARRIER ABBREVIATION (See Note 1)

| CARR<br>ABBR | AAR<br>CODE | NAME OF CARRIER                                                                                                                                                                                                                                                                                     | ITEM (S)<br>(Note 2)                                                                          |
|--------------|-------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| ASRY         | 576         | Ashland Railway, Inc.....                                                                                                                                                                                                                                                                           |                                                                                               |
| BAR          | 56          | Bangor and Aroostook Railroad Company .....                                                                                                                                                                                                                                                         |                                                                                               |
| BDRV         | 59          | Belvidere & Delaware River Railway .....                                                                                                                                                                                                                                                            |                                                                                               |
| BLE          | 61          | Bessemer and Lake Erie Railroad Company.....                                                                                                                                                                                                                                                        | 61, 412, 414                                                                                  |
| BNSF         | 777         | Burlington Northern and Santa Fe Railway Company, The .....                                                                                                                                                                                                                                         | 50,70,73,416,420,422,424,<br>426,428,430,432,434, 436,<br>438, 440, 442, 443, 444,<br>446,448 |
|              |             |                                                                                                                                                                                                                                                                                                     | 22                                                                                            |
| BOCT         | 64          | Baltimore and Ohio Chicago Terminal Railroad Company, The.....                                                                                                                                                                                                                                      |                                                                                               |
| CKKY         | 116         | Chattanooga & Chickamauga Railway Co.....                                                                                                                                                                                                                                                           |                                                                                               |
| CN           | 103         | Canadian National Railway .....                                                                                                                                                                                                                                                                     | 79,115,185,450,452,454,456,<br>512 to 518                                                     |
| CPRS         | 105         | Canadian Pacific Railway .....                                                                                                                                                                                                                                                                      | 458,460,462,464,466,468,470,<br>472,474,476,478,482                                           |
| CSKR         | 904         | C&S Railroad Corporation.....                                                                                                                                                                                                                                                                       |                                                                                               |
| CSXT         | 712         | CSX Transportation, Inc., comprised of the following carriers:<br>Carrollton Railroad, The.<br>CSX Transportation, Inc.<br>Gainesville Midland Railroad Company.<br>Richmond, Fredericksburg and Potomac Railway Company.<br>Three Rivers Railway Company.<br>Western Railway of Alabama, The ..... | 106, 484, 486                                                                                 |
| DKS          | 210         | Doniphan, Kensett & Searcy Railway .....                                                                                                                                                                                                                                                            |                                                                                               |
| EJE          | 238         | Elgin, Joliet and Eastern Railway Company .....                                                                                                                                                                                                                                                     | 112, 488, 490                                                                                 |
| EPTC         | 62          | East Portland Traction Company.....                                                                                                                                                                                                                                                                 |                                                                                               |
| FEC          | 263         | Florida East Coast Railway Company .....                                                                                                                                                                                                                                                            | 35,492,494,496                                                                                |
| FWW          | 264         | Fox Valley & Western Ltd.....                                                                                                                                                                                                                                                                       | 498, 500                                                                                      |
| GWWE         | 293         | Gateway Eastern Railway Company .....                                                                                                                                                                                                                                                               |                                                                                               |
| GWWR         | 362         | Gateway Western Railway Company .....                                                                                                                                                                                                                                                               | 505, 506                                                                                      |

# TARIFF 6007-L

## LIST OF PARTICIPATING CARRIERS ALPHABETIZED BY STANDARD CARRIER ABBREVIATION (See Note 1)

| CARR<br>ABBR | AAR<br>CODE | NAME OF CARRIER                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | ITEM (S)<br>(Note 2)                                        |
|--------------|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|
| HPTD         | 366         | High Point, Thomasville & Denton Railroad Company.....                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 511                                                         |
| IANR         | 341         | Iowa Northern Railway .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 522                                                         |
| IMRL         | 379         | I & M Rail Link, LLC .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                             |
| KCS          | 400         | Kansas City Southern Railway Company.....                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 124,185,524,526,527,528,529,<br>530                         |
| MAA          | 453         | Magma Arizona Railroad Company.....                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                             |
| NAUG         | 541         | Naugatuck Railroad Company, Inc.....                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                             |
| NS           | 555         | Norfolk Southern Railway Company, comprised of the following carriers:<br>Norfolk and Western Railway Company.<br>Norfolk Southern Railway Company.<br>Alabama Great Southern Railroad Company.<br>Atlantic and East Carolina Railway Company.<br>Camp Lejeune Railroad Company.<br>Central of Georgia Railroad Company.<br>Chesapeake Western Railway.<br>Cincinnati, New Orleans and Texas Pacific Railway Company.<br>Georgia Southern and Florida Railway Company.<br>Tennessee Railway Company..... | 135,540,542,544,545,546,547,<br>548                         |
| PIR          | 632         | Pittsburgh Industrial Railroad .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                             |
| SRN          | 678         | Sabine River & Northern Railroad Company .....                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                             |
| SSAM         | 670         | Sault Ste. Marie Bridge Company .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                             |
| ST           | 746         | ST Rail System .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 555, 560, 565                                               |
| SUN          | 734         | Sunset Railway Company .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                             |
| TPW          | 769         | Toledo, Peoria & Western Railway Corporation.....                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 160, 570                                                    |
| UP           | 802         | Union Pacific Railroad Company.....                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 50,185,416,575,576,577,578,<br>579,581,583,585,591, 592,593 |
| WC           | 250         | Wisconsin Central LTD .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 597                                                         |
| WSS          | 854         | Winston-Salem Southbound Railway Company .....                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 595                                                         |

### EXPLANATION OF NOTES

1. The code numbers shown opposite the abbreviations of the participating rail carriers are the Association of American Railroads Mandatory Accounting Rules, Rule 260 code numbers, and have no bearing on the rate application in this tariff.
2. Item of general application affecting the participation of all or large groups or numbers of carriers are not listed in this column.

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## **TARIFF 6007-L**

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### **RULES AND OTHER GOVERNING PROVISIONS GENERAL RULES AND REGULATIONS**

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#### **ITEM 5**

##### **REFERENCE TO TARIFFS, ITEMS, NOTES, RULES, ETC**

1. Where reference is made in this tariff to tariffs, items, notes, rules, etc., such references are continuous and include supplements to and successive issues of such tariffs and reissues of such items, notes, rules, etc.
  2. Where reference is made in this tariff to another tariff by number, such reference applies also to such tariff to the extent it may be applicable on intrastate traffic or traffic to or from Canada.
- 

#### **ITEM 10**

##### **CONSECUTIVE NUMBERS**

1. Where consecutive numbers are represented in this tariff by the first and last numbers connected by the word "to" of a hyphen they will be understood to include both of the numbers shown.
  2. If the first number only bears a reference mark such reference mark also applies to the last number shown and to all numbers between the first and last numbers.
- 

#### **ITEM 15**

##### **METHOD OF CANCELLING ITEMS**

1. Except as provided in Paragraph 2, as this Tariff is supplemented, numbered items with letter suffixes cancel correspondingly numbered items in the original tariff, or in a prior supplement. Letter suffixes will be used in alphabetical sequence starting with A. Example: Item 100-A cancels Item 100, Item 100-AA cancels Item 100-Z, Item 100-AB cancels Item 100-AA, Item 100-BA cancels Item 100-AZ, or Item 105-B cancels Item 105-A, in a prior supplement which in turn cancelled Item 105.
- 

#### **ITEM 20**

##### **METHOD OF DENOTING REISSUED MATTER IN SUPPLEMENTS**

1. Matter brought forward without change from one supplement to another will be designated as "Reissued" by a reference mark in the form of a square enclosing a number, the number being that of the supplement in which the reissued matter first appeared in its currently effective form. To determine its original effective date, consult the supplement in which the reissued matter first became effective.
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#### **ITEM 22**

##### **BALTIMORE AND OHIO CHICAGO TERMINAL RAILROAD COMPANY (SEE EXCEPTION 1)**

1. Provisions of this tariff for the movement of empty cars without charge to or from shop facilities for cleaning, lining, relining, maintenance or repair, will not apply to such cars moving from or to shop facilities served by BOCT, to the extent charges are published in Tariff BOCT 8100-Series.

##### **EXCEPTION**

1. These provisions do not apply to tank cars.
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## TARIFF 6007-L

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### SECTION 1 APPLIES ONLY ON TANK CARS

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#### ITEM 25

##### APPLICATION OF SECTION 1

1. The term "Cars of Private Ownership", when used in this tariff, is defined as cars bearing other than Railroad Reporting marks that are owned by individuals, firms, corporations, or car companies, including cars owned and/or operated by railroad controlled car lines.
  2. Except as otherwise provided herein, these rules govern the handling of tank cars including the payment of mileage allowances, when used by railroads parties to this tariff individually or jointly, where specifically provided herein, for transportation over their lines as follows:
    - A. Between points in the United States (interstate and intrastate) including movements where part of the through route is through the Dominion of Canada.
    - B. Internationally, i.e., between points in the United States and points in the Dominion of Canada. (Applicable only on that portion of the haul within the United States).
    - C. For that portion of the haul in the United States in connection with movements between points in the Dominion of Canada where part of the through route is through the United States.
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### EXCEPTIONS TO APPLICATION AND RULES APPLIES ONLY ON TANK CARS

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#### ITEM 30

##### GENERAL EXCEPTION

1. The rules and mileage allowances published herein will not apply to:
    - A. Cars that are not properly registered in the Official Railway Equipment Register, RER 6413-Series, showing the marked capacities and assigned reporting marks and the gallonage capacities of which are not published in Tank Car Capacities Tariff WTL 6300-Series, except that the gallonage capacities of cars designed and used exclusively for handling commodities on which weights and charges are arrived at by weight and not by gallonage capacities of cars not to be published in Tank Car Capacities Tariff WTL 6300-Series.
    - B. Mileage allowances named in Item 195-Series of this tariff will not apply to cars handled under the provisions of Item 190.
- 

#### ITEM 35

##### APPLIES ONLY FOR CARRIERS NAMED IN THIS ITEM

1. The provisions of Item 187-Series "Equalization of Mileage on Tank Cars of Private Ownership", will not apply in connection with carriers named below:

Florida East Coast Railway Company

Kansas City Southern Railway Company (Stations 31011 to 31315 only)

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#### ITEM 50

##### APPLIES ONLY FOR CARRIERS NAMED IN THIS ITEM

1. Empty privately-owned or leased tank cars used or to be used in Intra-Mexican service will be subject to the following provisions:
  - A. Owner or lessee shall secure an entry permit from the involved Mexican carrier prior to empty movement to the border crossing and permit number must be shown in the writing instructions accompanying such car.
  - B. Subsequent to Intra-Mexican service, written instructions for each car entering the U.S. must clearly indicate the exact consignee or facility for disposition of the car prior to movement beyond the border gateways.
  - C. Upon failure to comply with paragraphs A or B, a holding charge of \$10.00 per day will be assessed for each 24 hours or fraction thereof beginning at 7:00 AM of the day following arrival of such empty privately owned or leased car at the border crossing, (excluding Saturdays, Sundays and holidays), until provisions of paragraphs A and B as applicable are fulfilled.

Burlington Northern and Santa Fe Railway Company  
Union Pacific Railroad Company

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#### ITEM 61

##### BESSEMER AND LAKE ERIE RAILROAD COMPANY

1. The provisions of Item 190 Series or other provisions (or the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification or repair, will not apply to such cars moving to or from facilities located at stations served by this railroad unless the empty movement is immediately preceded by or followed by a loaded revenue movement via the Bessemer and Lake Erie Railroad Company. In all other circumstances, the published tariff charges in Tariff BLE 3500 or 8425 Series for movement of empty cars on their own wheels shall apply.
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## TARIFF 6007-L

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### SECTION 1 EXCEPTIONS TO APPLICATION AND RULES APPLIES ONLY ON TANK CARS

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#### ITEM 70

##### BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (LINES IN CANADA)

1. This tariff also applies on all traffic moving over the lines of the BNSF in Canada.
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#### ITEM 73

##### BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (SEE NOTE 1, THIS ITEM) (EXCEPTION TO ITEM 190)

1. When a tank car is released from load on BNSF, the empty will be returned via the reverse of the loaded route to the origin station of the last loaded movement. If the owner or lessee of the car desires movement via a different route or to a station other than the origin of the last loaded movement, empty billing instructions must be given to:  
Burlington Northern & Santa Fe Railway Co.  
12th Floor - Carload Billing  
176 E. 5th Street  
St. Paul, MN 55101  
Telephone: (888) 312-2673  
FAX: (800) 786-2455  
prior to release of the empty car. If the owner or lessee of the car requests movement via a different route, or to a station other than the origin of the last movement, after release of the empty car, diversion provisions and charges, as named in BNSF Diversion Tariff 6200 Series, are applicable.

##### EXPLANATION OF NOTES

1. If subject car is a tank car last containing Hazardous Materials, shipping paper must be furnished at the point of origin of the empty car for all moves whether they are reverse route or not.
- 

#### ITEM 79

##### CANADIAN NATIONAL RAILWAYS

1. The participation of the Canadian National Railways (Lines Armstrong, Thunder Bay, ON, and West thereof), and Canadian National Railways (Lines Thunder Bay, ON, Armstrong, ON and East thereof) is restricted to:

Movements over its lines in Canada, when both point of origin and destination are in the United States.

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#### ITEM 106

##### CSX TRANSPORTATION INC.

1. The participation of this carrier is restricted to movements over its lines, as follows:
    - A. Between points in the United States, including movements where part of the through route is through the Dominion of Canada.
    - B. For that portion of the haul in the United States on international movements, i.e., between points in the United States and points in the Dominion of Canada.
- 

#### ITEM 112

##### ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

1. The provisions of Item 190 Series or other provisions for the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification, repair or storage, will not apply to such cars moving to or from facilities acting as agent for the cars' owners and located at stations served by this railroad unless the empty movement is immediately preceded by or followed by a loaded revenue movement via the EJE. In all other circumstances, the published tariff charges in Tariff EJE 4193 or 6024 Series for movement of empty cars on their own wheels to and from repair or storage facilities acting as agent for the car owner shall apply.
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#### ITEM 115

##### ILLINOIS CENTRAL RAILROAD COMPANY

1. No tank car mileage allowance will be paid on shipments moving under the provisions of Section 7, Rule 35, Tariff UFC 6000 Series for account of IC.
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## TARIFF 6007-L

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### SECTION 1 EXCEPTIONS TO APPLICATION AND RULES APPLIES ONLY ON TANK CARS

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#### ITEM 124

##### KANSAS CITY SOUTHERN RAILWAY COMPANY, THE

1. Provisions of Item 190 Series, or any other provision allowing for free switching service of an empty freight car (or cars) to or from shop facilities for cleaning, lining, relining, maintenance, modification or repair, will not apply to and from shop facilities served by KCS. Matter of switch charge will be handled by contractual agreement between KCS and repair shop owner(s).
- 

#### ITEM 131

##### NORFOLK SOUTHERN RAILWAY COMPANY

1. When it is necessary to move a loaded private car to/from shop or repair facilities located on NS, NS will pay mileage payments not to exceed the amount that would have been earned had the car not required additional rail movements to/from shop or repair facilities, provided that the mileage allowances for the loaded movement are not elsewhere restricted.
- 

#### ITEM 135

##### NORFOLK SOUTHERN RAILWAY COMPANY (EXCEPTION TO ITEM 190) (See NOTE 1)

When a car is released from load on NS, the empty will be returned via the reverse of the loaded route to the origin station of the last loaded movement. If the owner or lessee of the car desires movement via a different route or to a station other than the origin of the last loaded movement, empty billing instructions must be sent prior to release of the empty car via FAX to:

FAX: 404-580-6092  
Norfolk Southern Railway Company  
Agency Operation Center  
125 Spring Street South West  
Atlanta, GA 30303

If the owner or lessee requests movement via a different route, or to a station other than the origin of the last loaded movement, after release of the empty car, diversion provisions and charges, as named in Norfolk Southern Tariff 8002 Series, are applicable. (See Exception 1.)

##### EXPLANATION OF NOTE

1. If subject tank car has last contained Hazardous Materials, shipping paper must be furnished at the point of origin of the empty car for all moves whether they are reverse or not.

##### EXCEPTION

1. The empty tank car will be allowed one diversion on Norfolk Southern without charge. All subsequent diversions on Norfolk Southern will be charged at the applicable diversion charge and be subject to rules governing diversions in NS 8002 series. Instructions to divert car should be sent on company letterhead and faxed to the following:

FAX: 404-589-6233  
Norfolk Southern Railway Company  
National Customer Service Center  
125 Spring Street South West  
Atlanta, GA 30303

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#### ITEM 160

##### TOLEDO, PEORIA AND WESTERN RAILWAY CORPORATION

1. The provisions of Item 190 Series, or other provisions for the movement of empty tank cars without charge to or from facilities for cleaning, lining, relining, maintenance, modification, repair, or storage and also cars moving for scrapping, dismantling, or retiring purposes, will not apply to such cars moving to or from facilities served by the Toledo, Peoria and Western Railway Corporation.
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## TARIFF 6007-L

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### SECTION 1 RULES AND REGULATIONS APPLIES ONLY ON TANK CARS

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#### ITEM 180

##### PAYMENT OF MILEAGE

1. Upon written application reporting marks will be assigned to car owner or lessee by the Secretary, Business Services, Association of American Railroads, provided applicants are subscribers to the AAR Mechanical Interchange Agreement. Applications for reporting marks shall state the name and address of the owner and lessee for cars under lease.
  2. Mileage allowance must be reported to the car owner (person or company at a single address, to whom the reporting marks are assigned) within one (1) month and ten (10) days from the last day of the month in which it is earned including payment for cars on hand at the end of that month.
  3. Mileage allowance for the use of tank cars will be paid only to the person or company at a single address, to whom the reporting marks are assigned provided cars are properly equipped and marked with the assigned reporting marks and car number, and providing further that:
    - A. The marked capacities and assigned reporting marks are properly submitted, not later than the date of the installations of cars in service, to The Official Railway Equipment Register for publication in the next succeeding issue.
    - B. Gallonage capacities are published in Tank Car Capacities Tariff WTL 6300 Series EXCEPT when cars are designed and used exclusively for handling commodities on which weights and charges are arrived at by weight and not by gallonage capacity of cars.
    - C. A description of each car is furnished to the Secretary, Customer Service Division, AAR, as required in the Universal Machine Language Equipment Register for the assignment of applicable mileage allowances. Such information received by the Secretary by the last working day of the month except, data transfers requiring data entry by AAR staff must be received by the 25<sup>th</sup> day of the month, will be effective the first day of the subsequent month. Cars registered with transportation code S, X, or Y are not eligible for mileage allowances and will be assigned a zero rate.
  4. Reporting marks assigned to private car owners shall consist of four letters including the final letter "X".
  5. Assigned reporting marks must be painted or stenciled on the body of the car. When reporting mileage allowances, the carding, placarding, or boarding of cars will not be recognized.
- 

#### ITEM 182

##### DEDUCTIONS AND MILEAGE CLAIM HANDLING PROCEDURES

1. Deductions By Railroads To Private Car Owners
    - A. Mileage allowed in error, by a railroad, including, but not limited to mileage allowed at incorrect rates for any reason, may be deducted from the car owner's account within twenty-four (24) months from the last day of the month for which the mileage was reported as earned, but not later. A railroad may tender an invoice for mileage allowed in error at any time within twenty-four (24) months from the last day of the month for which the mileage was reported as earned. Except as provided in paragraph 3, an owner-lessor of a private car must remit within eight (8) months after the invoice is presented the entire amount of any invoice issued to it.
    - B. Deductions for amounts of \$25.00 or less shall not be taken after the expiration of two (2) months and ten (10) days from the last day of the month the mileage was earned.
  2. Claims Issued By Private Car Owners To Railroads.
    - A. A private car owner must, within twenty-four (24) months from the last day of the month the completed cycle was reported, present any claim for mileage allowance discrepancies, including incorrect rates or omissions, to the applicable rail carrier in the prescribed AAR format, as published in AAR Circular No. OT-3 Series in The Official Railway Equipment Register. Claims not presented in the required format will not be processed. The railroad receiving the claim must within the four (4) months from the date on which the claim was presented allow it in whole or in part, or decline it. The private car owner may reissue its claim, if applicable within four (4) months from the last day of the four (4) months' period allowed the railroad which handled the claim prior to reissuance. The railroad receiving the reissue claim must within four (4) months from the date of which the reissued claim was presented allow it in whole or in part or decline it. If the railroad fails to handle the original or reissued claim within the prescribed time limits, it will constitute a valid claim as last presented and must be honored by the railroad to which presented. Claim for amounts of \$25.00 per car per cycle or less shall not be issued. The \$25.00 limit is not applicable where no miles were reported for the railroad cycle.
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## TARIFF 6007-L

### SECTION 1 RULES AND REGULATIONS APPLIES ONLY ON TANK CARS

#### ITEM 182 CONT'D

##### DEDUCTIONS AND MILEAGE CLAIM HANDLING PROCEDURES

#### 3. Claims by Owners-Lessors

- A. If a railroad takes a deduction against or issues an invoice to an owner-lessor for mileage allowed in error, including, but not limited to, mileage allowed at incorrect rates for any reason, but the erroneous allowance payment is not recoverable by the owner-lessor as defined below, the owner-lessor may present a claim for the recovery of the amounts deducted by the railroad or the cancellation of an unpaid invoice within two (2) years of receiving notice of the railroad's deduction or invoice. For application of this tariff provision, an owner-lessor may claim that an erroneous mileage payment is "not recoverable" only when (a) the erroneous mileage payment was actually paid or credited by the owner-lessor to a lessee (except those lessees whose primary business is the leasing of cars to entities other than those within a lessee's corporate family and who ship only incidentally) irrespective of whether the lessee subsequently paid or credited the mileage allowance payment to a sublessee; (b) the erroneous allowance payment cannot be recovered from the lessee because the lessee has declared bankruptcy or sought reorganization or is no longer a lessee of the owner-lessor; (c) the owner-lessor exercised timely efforts to recover the erroneous allowance payment beginning within ninety (90) days of receiving notice of the railroad's deduction or invoice; and (d) the owner-lessor undertook diligent collection efforts to recover the erroneous allowance payments until eight (8) months from the date of such notice or invoice (or until the earlier date of initiation of bankruptcy/reorganization proceedings), including making demands for payment and taking deductions against lessees' accounts. Such a claim must be accompanied by a certificate assigned by an officer or other person specifically authorized to sign the certificate of the owner-lessor stating how the claim satisfied each of the requirements set forth above, together with documents reflecting the owner-lessor's collection efforts. If, using reasonable efforts, the railroad is unable to determine whether the lessee's primary business is the leasing of cars to entities other than those in the lessee's corporate family, it shall consult with the owner-lessor, which shall provide the railroad with any evidence of the lessee's shipping activities which may be available to the owner-lessor using reasonable efforts. The owner-lessor shall provide the railroad with an assignment of the owner-lessor's claims and rights to collect the amount not recovered upon payment of the claim of cancellation of the invoice by the railroad.
- B. If the railroad had deducted the amount of an erroneous allowance payment from an owner-lessor, the railroad must remit to the owner-lessor the amount deducted within four (4) months of its receipt of a properly presented, valid claim from the owner-lessor.

#### ITEM 185

##### COMPUTATION OF MILEAGE (See Exceptions 1 through 6)

1. Mileage will be computed on the basis of actual distance based on freight mileage tables of the individual lines parties to this tariff, lawfully on file, via the route of movement from station of origin or station at which received from connecting line to destination station or to stations at which delivered to connecting line without deduction of mileage through switching districts (see Note 1).
2. When the transportation begins and ends, i.e., when a car is both loaded and unloaded, within a switching district, no mileage will be allowed. Mileage between an industry or public track and freight station at station of origin or destination will not be allowed.

##### EXPLANATION OF NOTES

1. The intent of the clause "without deduction of mileage through switching districts" is to insure mileage being allowed for the full distance the car moves, via route of movement from freight station of origin to freight station to which destined. When there are two or more freight stations on a road within a switching district, mileage will be paid to or from the station within such district at which the car is actually loaded or unloaded or at which it is received from or delivered to connecting line.

##### EXCEPTIONS

1. In computing distances between stations on the UP on the one hand and stations on the KCS on the other hand, via the New Orleans Gateway, deduct 11.5 miles from the actual distance to and from New Orleans via the UP and 5.4 miles from the actual distance to and from New Orleans via the KCS.
2. Mileage will be allowed on movements having origin and destinations at stations or districts within the Chicago Switching District, provided the movements originate at or are destined to industries having private sidings.
3. In computing distances between stations on the UP on the one hand and stations on the IC on the other hand via the New Orleans Gateway, deduct 11.5 miles from the actual distance to and from New Orleans, LA via the UP and 5.1 miles from the actual distance to and from New Orleans via the IC.
4. In computing distances from, to or via KCS on traffic routed via New Orleans, LA, interchanged at Shrewsbury, LA, deduct 5.4 miles from the actual distance to and from New Orleans, LA on the KCS.
5. When for account of the KCS, mileages will be computed on basis of the shortest distance over the route of these lines determined by freight mileage tables lawfully on file, in lieu of actual distance as provided in Paragraph 1 of this item.
6. All traffic between West Lake, LA on KCS and interchange with UP will be made at De Quincy, LA, in lieu of Lake Charles, LA for carriers convenience and to facilitate industries located at West Lake, LA. KCS will not pay mileage allowance between West Lake, LA and De Quincy, LA, when cars are moving under provisions of UP reroute orders.

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## TARIFF 6007-L

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### SECTION 1 RULES AND REGULATIONS APPLIES ONLY ON TANK CARS

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#### ITEM 187

#### EQUALIZATION OF MILEAGE ON TANK CARS OF PRIVATE OWNERSHIP

##### PART A AGGREGATE EMPTY MILEAGE VERSUS LOADED MILEAGE (SEE NOTE 1)

1. Should the aggregate empty mileage accumulated by tank cars carrying any of the reported marks assigned to any one person or company during a calendar year exceed the aggregate loaded mileage during the same calendar year by more than six (6) percent, such excess mileage must be paid for by the person or company to whom the reporting marks are assigned at the rate of forty-two (42) cents per mile, without minimum, subject to the procedures outlined in Part D (See Note 2, this item).
  2. Mileage on empty cars moving on revenue billing will not be included in the equalization account.
  3. Empty mileage accumulated on cars moving to and from repair facilities for modification under DOT mandated retrofit programs or for inspection and/or repair under FRA Emergency Order Nos. 16 and 17, O & M Circular No. 4, or AAR Circular Letter 7697 will not be included in the equalization account. Similar relief will be allowed only for AAR mandated bottom discontinuity programs for 1984 and subsequent equalization years through July 1, 1994; if a special movement to the repair facility is required.
  4. Except as outlined in Item 190 Series, paragraph 2 (c), no adjustments to loaded or empty mileage will be made in the equalization account for mileage caused by error in handling of the reporting railroad or of another railroad, or for mileage accumulated on cars moving on their own wheels to and from repair facilities due to railroad damage or for mileage accumulated due to longer routes for railroad convenience, detours and Surface Transportation Board Service Orders. Rail carriers will make equalization adjustments to the owners of excess reported on-line empty mileage on cars, they lease and operate under private marks, or cars of other lessees and/or owners operating on their line for company material, weed killer and similar service.
  5. Adjustments to loaded or empty mileage will be made in the AAR equalization account for apparent accounting errors in the total mileage reported for participating rail carriers under the following procedures. In the absence of appropriate adjustments being made by the AAR or a participating carrier for such accounting errors, a private car company or owner may request an appropriate adjustment for mileage summaries reported in error, from the involved rail carrier in the format prescribed by the AAR, provided such request is made within thirty (30) days of the forwarding of the monthly AAR "Year to Date Equalization Register", containing the alleged error, furnishing a duplicate of such request to the Secretary, Business Services, AAR. The rail carriers will have thirty (30) days from the date of such request in which to decline or make all or a portion of the requested adjustment, advising the Secretary of the handling accorded. If the rail carrier fails to act upon a request for adjustments in the AAR summary totals within the specified time frame, the AAR is authorized to make the adjustment to the equalization account of the private car company or owner for the amount of mileage originally requested. Exceptions to the annual national equalization statement will be handled in accordance with the provisions of Part D (2).
- ALL requests for adjustments to the equalization account must be presented by the private car company or owner to the involved rail carrier(s) or presented by the rail carrier(s) to the private car company or owner within three (3) years from the last day of the reporting month in question. However, such request for adjustments will not be accepted by the AAR if the involved rail carrier or car owner is no longer an operating entity, except as provided for in Part C.
6. Aggregate loaded and empty mileage will be computed on the basis of actual distance, as defined in Item 185-Series. Adjustments made subsequent to the deadline specified in Part D will be computed in the subsequent equalization account year.

##### PART B REPORTING OF ACTUAL LOADED AND EMPTY MILEAGE

Each participating carrier will submit a monthly mileage report in the format prescribed by the AAR to the assignee of each reporting mark forty (40) days after the close of the movement month reporting by individual car number the actual loaded and empty miles moved as computed in accordance with Item 185-Series. In addition, total actual monthly loaded and empty mileage accumulated by all cars bearing each reporting mark will be reported to the assignee of such mark in the format prescribed by the AAR, furnishing a duplicate of this summary report to the Secretary, Business Services, AAR. Adjustments for prior months will be indicated on this monthly summary report.

##### PART C CHANGE OF OWNERSHIP

When a private tank car company or owner discontinues business or disposes of all tank car equipment, any excess empty mileage balance which has accrued to the date of such action, on the tank cars bearing the reporting marks of such company or owner, shall be subject to bill as of that date, in accordance with the provisions of Parts A and D of Item 187-Series, subject to any applicable adjustments.

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## TARIFF 6007-L

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### SECTION 1 RULES AND REGULATIONS APPLIES ONLY ON TANK CARS

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#### ITEM 187 CONT'D

#### EQUALIZATION OF MILEAGE ON TANK CARS OF PRIVATE OWNERSHIP

##### PART D ANNUAL NATIONAL EQUALIZATION ACCOUNTING

1. After May 20 of each year, the Secretary, Business Services, AAR will summarize all empty and loaded mileage by reporting mark assigned to any person or company, reporting for the proceeding calendar year, by all participating carriers to this tariff. Should the aggregate empty mileage exceed the aggregate loaded mileage of all participating carriers by more than (6) percent for any such group of reporting marks, the person or company to whom the reporting marks are assigned will be billed at the rate of forty-two (42) cents per mile without minimum and must pay the AAR on behalf of each participating carrier for such excess for such empty mileage. The charges collected for this excess empty mileage will be distributed to the participating carriers by the AAR in direct proportion to such carriers portion of excess empty mileage to the total accumulated excess empty mileage. Only that mileage and any related adjustments reported to the Secretary prior to May 20 will be considered in determining and excess empty mileage, as outlined herein (See Notes 1, 2 and 3).
2. An annual national equalization statement detailing the excess empty mileage accumulated and any applicable charges will be tendered by the Secretary to the person or company assigned the reporting mark(s) for such cars for verification no later than July 1 of the year succeeding the equalization accounting year. Exceptions to this statement must be received by the Secretary within 30 days of the date tendered, and payment for all excess empty mileage is due immediately thereafter. Any adjustments made by the participating carriers up to and including the March account applicable to the prior year(s) will be incorporated in the equalization accounts for the prior equalization accounting year. Any railroad or AAR adjustments made subsequent to the March account will be carried over to the following equalization accounting year (see Note 3).
3. A private car company or owner failing to render complete payment for all excess empty mileage within thirty (30) days of the date its equalization statement is tendered by the AAR will be subject to a penalty of one and a half percent (1.5%) interest per month (i.e., annual rate of 18%) for each calendar month or fraction thereof on any outstanding balance due from the date of the AAR's invoice statement. If any portion of a private car company's or owner's equalization statement remains unpaid in excess of 3 months from the date initially tendered, all mileage allowances accrued by the tank cars registered in the UMLER file bearing its reporting marks will be withheld by the carriers participating in this item until such time as complete payment including applicable penalty interest is made. Once complete payment is made, the participating carriers will be notified by the AAR and claims for any applicable mileage allowances withheld will be honored, less a 15% penalty charge for the carriers' administrative expense.

##### EXPLANATION OF NOTES

1. The forty-two (42) cents per mile charges for excess empty mileage under the provisions of this item is subject to revision September 1 of each year under Ex Parte No. 328 agreed annual update procedures, and will be retroactively applied to cover the entire calendar year involved.
  2. Close out dates specified in Part D may be extended by the AAR for a maximum of 60 days for special national accounting problem conditions, affecting substantially all carriers and all owners.
  3. Invoices that have been issued which, after investigation, are determined to have been erroneous due to rail carriers or AAR accounting and/or system errors may be cancelled by the Secretary.
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#### ITEM 190

##### HANDLING OF EMPTY TANK CARS (SEE NOTE 2)

1. When a tank car is released from load, the owner or lessee must issue instructions for the disposition of the empty car to the agent at point of unloading either direct or through consignee or via EDI. Empty instructions may also be included with the original loaded shipping instructions if transmitted via EDI. If the owner or lessee fails to have instructions in the hands of the railroad agent having jurisdiction at point of unloading prior to the time the car is released from load to forward the car or written instructions to hold it, the agent is authorized to forward the empty car to the origin point of the last load via reverse of the loaded route. No tank car which last contained hazardous material may be moved without having shipping instructions furnished as per Title 49 Code of Federal Regulations.
  2. Empty tank cars will be handled as follows:
    - A. Except as otherwise provided in this tariff, cars covered by this section will be moved empty without charge between stations or junction points upon receipt of instructions from the car owner or lessee confirmed in writing. Such instructions must include the specific facility to which such empty car is consigned or the name and address of the person or company which controls the car. No allowance will be made for mileage of such cars during empty movement.
    - B. A new car, a car that is restenciled with private reporting marks or a newly acquired car moving prior to its first loaded move in commercial service and a newly acquired car moving prior to its first loaded move in commercial service and a car moving for sale or scrap will be moved upon surrender of a bill of lading and will be subject to applicable rates named in Consolidated Freight Classification and/or in Uniform Freight Classification or in state classification tariffs where state rates apply, or other applicable tariffs (see Note 1).
    - C. If the owner or lessee or party issued instructions to forward the empty tank car to the origin point of the last load by specific routing different than the reverse routing of the loaded movement, the total miles of such return movement will be billed at the excess empty mileage rate specified in Item 187-Series without minimum and such empty mileage so billed will be excluded from the equalization account of the owner. This billing will be made to, and collectable from, the person so requesting such variance in the return routing. If the carriers depart from the destinations, junctions or carriers of the reverse route of the load, any resulting excess empty miles will be excluded from the car owner's equalization account by erring carrier.
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## TARIFF 6007-L

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### SECTION 1 RULES AND REGULATIONS APPLIES ONLY ON TANK CARS

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#### ITEM 190 *CONT'D*

##### EXPLANATION OF NOTES

1. A car loaded with railroad company material moving on non-revenue billing will be considered as having been loaded in commercial service on which the railroads derived line-haul revenue.
  2. The provisions of this item apply except as otherwise provided in Item 192-Series of this tariff.
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#### ITEM 192

##### HANDLING AND HOLDING OF EMPTY TANK CARS BY RAILROADS ON RAILROAD TRACKS (SEE NOTE 1)

1. The rules and charges in this item apply only to empty private tank cars consigned to non-railroad repair facilities; i.e., facilities for cleaning, lining, relining, maintenance, modification or repair.
2. The rules and charges do not apply to:
  - A. Empty private tank cars moving as revenue freight under the provisions of Item 190-Series, Paragraph B 2.
  - B. Empty private tank cars handled or held for carrier operating convenience.
  - C. Empty private tank cars en route to facilities for cleaning, lining, relining or repair for heavy repairs following railroad damage.
  - D. Empty private tank cars en route to repair facilities located on the premises of a shipping facility, provided that the empty car, after repair, is subsequently shipped from the facility in revenue freight service.
3. No allowance will be made by carriers for mileage accrued during supplemental empty movement of tank cars that are assessed charges as provided in Paragraph 5.
4. Charges applicable under these provisions will apply to empty private tank cars which the consignee has not ordered to his cleaning, lining, relining, maintenance, modification or repair facility (or his owned or leased tracks in the vicinity thereof) before the expiration of 48 hours free time (not counting Saturdays, Sundays or holidays) after placement. The time calculation will start the first 7 A.M. subsequent to carrier notification to the consignee that the empty private car is ready for placement and the time calculation will stop when the carrier places or forwards the car pursuant to instructions or should have placed or forwarded the car pursuant to instructions.
5. After expiration of free time as provided in Paragraph 4, charges will be as follows: (See Note 2)
  - A. Supplementary handling charge of \$46.00 per car.
  - B. Holding charge of \$1 per car per calendar day or fraction thereof including Saturdays, Sundays and holidays while held by carrier on non-leased tracks awaiting disposition.
6. In the event the consignee orders the car to tracks owned or leased by the consignee in the vicinity of the facility for cleaning, lining, relining, maintenance, modification or repair within the forty-eight hour period described under Paragraph 4, this item, there will be no supplementary handling charge for the movement; however, such cars will be subject to the supplementary handling charge of \$46.00 per car (See Note 2) at such time that the empty tank car is subsequently ordered and moved onto the facility for cleaning, lining, relining, maintenance, modification or repair or ordered moved from that facility to the tracks or leased by the consignee in the vicinity of the facility.
7. Applicable billing will be monthly to the facility involved.

##### EXPLANATION OF NOTES

1. The rules and charges in this item do not in any way supersede or duplicate existing, or new written contractual operating, side track, track lease, property lease, etc., agreements or tariffs that contain empty private tank car handling and holding provisions as part of the overall agreement.
  2. Per ExParte No. 328, the supplemental handling charge will be revised annually at the same time as the tank car mileage allowance update, utilizing the same method as that prescribed for updating the excess mileage equalization charge.
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**TARIFF 6007-L**

**ITEM 195**

**MILEAGE RATE ALLOWANCE ON TANK "T" AND HOUSE CAR "XT"**  
**(SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOLS)**  
**(SEE NOTE 1)**

1. Mileage rate allowance for cars of foregoing mechanical designations shall be in cents per loaded mile (See Notes 2 and 7) as follows:  
 COLUMN 1 - Original cost or fair market value in dollars (see Notes 3, 4, 5 and 6, this item).  
 COLUMN 2 - Cars in service years 1 through 30.  
 COLUMN 3 - Cars in service years 31 and over.

| COLUMN 1      | COLUMN 2 | COLUMN 3 |
|---------------|----------|----------|
| \$ 0 - 1000   | 29.9     | 29.4     |
| 1001 - 2000   | 31.0     | 29.5     |
| 2001 - 3000   | 32.0     | 29.6     |
| 3001 - 4000   | 33.1     | 29.7     |
| 4001 - 5000   | 34.1     | 29.8     |
| 5001 - 6000   | 35.1     | 29.9     |
| 6001 - 7000   | 36.2     | 30.0     |
| 7001 - 8000   | 37.2     | 30.1     |
| 8001 - 9000   | 38.3     | 30.2     |
| 9001 - 10000  | 39.3     | 30.3     |
| 10001 - 11000 | 40.4     | 30.4     |
| 11001 - 12000 | 41.4     | 30.5     |
| 12001 - 13000 | 42.4     | 30.6     |
| 13001 - 14000 | 43.5     | 30.7     |
| 14001 - 15000 | 44.5     | 30.8     |
| 15001 - 16000 | 45.6     | 30.9     |
| 16001 - 17000 | 46.6     | 31.0     |
| 17001 - 18000 | 47.7     | 31.1     |
| 18001 - 19000 | 48.7     | 31.2     |
| 19001 - 20000 | 49.8     | 31.2     |
| 20001 - 21000 | 50.8     | 31.3     |
| 21001 - 22000 | 51.8     | 31.4     |
| 22001 - 23000 | 52.9     | 31.5     |
| 23001 - 24000 | 53.9     | 31.6     |
| 24001 - 25000 | 55.0     | 31.7     |
| 25001 - 26000 | 56.0     | 31.8     |
| 26001 - 27000 | 57.1     | 31.9     |
| 27001 - 28000 | 58.1     | 32.0     |
| 28001 - 29000 | 59.2     | 32.1     |
| 29001 - 30000 | 60.2     | 32.2     |
| 30001 - 31000 | 61.2     | 32.3     |
| 31001 - 32000 | 62.1     | 32.3     |
| 32001 - 33000 | 62.9     | 32.3     |
| 33001 - 34000 | 63.8     | 32.3     |
| 34001 - 35000 | 64.6     | 32.3     |

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**TARIFF 6007-L**

**SECTION 1  
RULES AND REGULATIONS  
(APPLIES ONLY ON TANK CARS)**

**ITEM 195 CONT'D**

**MILEAGE RATE ALLOWANCE ON TANK "T" AND HOUSE CAR "XT"  
(SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOLS)  
(SEE NOTE 1)**

| COLUMN 1      | COLUMN 2 | COLUMN 3 |
|---------------|----------|----------|
| 35001 - 36000 | 65.4     | 32.3     |
| 36001 - 37000 | 66.2     | 32.2     |
| 37001 - 38000 | 67.1     | 32.2     |
| 38001 - 39000 | 67.9     | 32.2     |
| 39001 - 40000 | 68.7     | 32.2     |
| 40001 - 41000 | 69.5     | 32.2     |
| 41001 - 42000 | 70.3     | 32.2     |
| 42001 - 43000 | 71.0     | 32.2     |
| 43001 - 44000 | 71.8     | 32.2     |
| 44001 - 45000 | 72.6     | 32.2     |
| 45001 - 46000 | 73.4     | 32.2     |
| 46001 - 47000 | 74.1     | 32.2     |
| 47001 - 48000 | 74.9     | 32.2     |
| 48001 - 49000 | 75.7     | 32.2     |
| 49001 - 50000 | 76.4     | 32.1     |
| 50001 - 51000 | 77.2     | 32.1     |
| 51001 - 52000 | 77.9     | 32.1     |
| 52001 - 53000 | 78.7     | 32.1     |
| 53001 - 54000 | 79.4     | 32.1     |
| 54001 - 55000 | 80.1     | 32.1     |
| 55001 - 56000 | 80.9     | 32.1     |
| 56001 - 57000 | 81.6     | 32.1     |
| 57001 - 58000 | 82.3     | 32.1     |
| 58001 - 59000 | 83.0     | 32.1     |
| 59001 - 60000 | 83.7     | 32.1     |
| 60001 - 61000 | 84.5     | 32.1     |
| 61001 - 62000 | 85.2     | 32.1     |
| 62001 - 63000 | 85.9     | 32.0     |
| 63001 - 64000 | 86.6     | 32.0     |
| 64001 - 65000 | 87.2     | 32.0     |
| 65001 - 66000 | 87.9     | 32.0     |
| 66001 - 67000 | 88.6     | 32.0     |
| 67001 - 68000 | 89.3     | 32.0     |
| 68001 - 69000 | 90.0     | 32.0     |
| 69001 - 70000 | 90.6     | 32.0     |
| 70001 - 71000 | 91.3     | 32.0     |
| 71001 - 72000 | 92.0     | 32.0     |
| 72001 - 73000 | 92.6     | 32.0     |
| 73001 - 74000 | 93.3     | 32.0     |
| 74001 - 75000 | 94.0     | 32.0     |
| 75001 - 76000 | 94.6     | 32.0     |
| 76001 - 77000 | 95.3     | 32.0     |
| 77001 - 78000 | 95.9     | 32.0     |
| 78001 - 79000 | 96.5     | 31.9     |
| 79001 - 80000 | 97.2     | 31.9     |

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# TARIFF 6007-L

## SECTION 1 RULES AND REGULATIONS (APPLIES ONLY ON TANK CARS)

### ITEM 195 CONT'D

MILEAGE RATE ALLOWANCE ON TANK "T" AND HOUSE CAR "XT"  
(SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOLS)  
(SEE NOTE 1)

| COLUMN 1      | COLUMN 2 | COLUMN 3 |
|---------------|----------|----------|
| 80001 - 81000 | 97.8     | 31.9     |
| 81001 - 82000 | 98.4     | 31.9     |
| 82001 - 83000 | 99.1     | 31.9     |
| 83001 - 84000 | 99.7     | 31.9     |
| 84001 - 85000 | 100.3    | 31.9     |
| 85001 - 86000 | 100.9    | 31.9     |
| 86001 - 87000 | 101.5    | 31.9     |
| 87001 - 88000 | 102.1    | 31.9     |
| 88001 - 89000 | 102.7    | 31.9     |
| 89001 - 90000 | 103.3    | 31.9     |
| 90001 - 91000 | 103.9    | 31.9     |
| 91001 - 92000 | 104.5    | 31.9     |
| 92001 - 93000 | 105.1    | 31.9     |
| 93001 - 94000 | 105.7    | 31.9     |
| OVER 94000    | 106.3    | 31.9     |

#### EXPLANATION OF NOTES

- Designating symbols (mechanical designation) will be assigned to car owner or lessee by the Secretary, Technical Services, Association of American Railroads, upon written application.
- For mileage allowance purposes, the service year of a car is calculated based upon year of construction of underframe. A car's first service year is the year built. Its second service year begins on January 1 of the year following the year built, with succeeding service years starting on January 1 of each following year. If the tank's service year exceeds 30, the car's service year is considered to be in excess of 30 regardless of year of construction of underframe. For those cars constructed without an underframe, the car's service year is calculated based upon year of construction of tank. Service year is determined by subtracting the year of construction (built/rebuilt) from the current calendar year, plus 1, e.g., (2000 - 1970) + 1 = 31, or Service Years 31 and over allowance bracket.
- For cars built prior to January 1, 1968 assignment of owned or leased cars to value groups will be determined by the undepreciated base classification value. In addition, capitalized additions and betterments shall be added to the value if not already included in the BCV system.
- Applies as follows:
  - For cars built between January 1, 1968 and July 1, 1991, assignment of owned or leased cars to value groups will be determined by the original cost as represented to the original buyer by the manufacturer's invoice price at the time of original installation into service. In the case of a manufacturer-lessor, the fair market value or the value which was certified, or would have been certified, for investment tax credit purposes shall be substituted therefore.
  - Assignment to value groups of cars placed into service after July 1, 1991 will be determined by the original cost of the car to the original buyer as stated in the manufacturer's invoice. In only two circumstances, owners may certify as alternative "true value" in lieu of invoice price: (a) manufacturers who retain cars for their own leasing service and (b) purchasers who can demonstrate that they contributed physical assets of significant value that were used by the manufacturer in fabricating a car, resulting in a reduction of the invoice price by more than \$1,000 per car below the price that otherwise would have been charged. For manufacturers "true value" is the price for which a car or group of cars manufactured as a group would have been sold in an arm's length transaction. For purchasers who have made a qualifying contribution to fabrication, "true value" is the invoice price plus the depreciated value of the contributed assets distributed over the cars for which the assets were used, subject to the same limitations on "true value" which would apply to a manufacturer.
 

"True value" shall not exceed the average price of similar cars registered in UMLER at invoice price within the most recent 12 months for which registration information is available in UMLER, adjusted for changes in the market values of new tank cars as reflected in average car prices. If the AAR determines by audit that a certified "true value" exceeds this value limit by an amount that causes a car to be placed in a higher allowance value bracket, the value of the car will be reduced to the appropriate value bracket. In addition, if the AAR determines by audit that a certified "true value" exceeds this value limit by an amount that causes a car to be placed in allowance value bracket more than one bracket above the otherwise applicable bracket, excess allowances paid as a result of the over valuation shall be reimbursed to the paying railroads.

Those owners who certify a "true value" in lieu of invoice price during the calendar year must provide to the AAR an officer's certificate at the end of the year stating that, based on all information available to the owner, the owner has complied with the terms of this item. Car owners must supply for entry into UMLER all information required for tank cars in the UMLER Specification Manual. Notwithstanding any other provision of this tariff item, "true value" will be subject to audit directly by the AAR.

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## TARIFF 6007-L

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### SECTION 1 RULES AND REGULATIONS (APPLIES ONLY ON TANK CARS)

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#### ITEM 195 CONT'D

#### MILEAGE RATE ALLOWANCE ON TANK "T" AND HOUSE CAR "XT" (SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOLS) (SEE NOTE 1)

##### EXPLANATION OF NOTES

4. C. If applicable, initial into service transportation costs, capitalized original lining costs, capitalized additions and capitalized betterments shall be added to car values determined pursuant to paragraphs 4 (A) and 4 (B), above, if not already included in the value of the car. For cars built after January 1, 1988, capitalized inspection costs shall be added to the value, if applicable and if not already included in the value, if applicable and if not already included in the value of the car. Values other than invoice price shall be identified in accordance with the current AAR UMLER format at the time cars are submitted to the Secretary, Business Services, AAR, for registration in the UMLER file (see Note 6, this item).
- D. The rebuilt year and rebuilt valuation of a private car will be utilized for the purpose of computing applicable mileage allowances subject to the following conditions:
1. The car must be rebuilt in accordance with the current requirements of Rule 88, Section C of the Office Manual and Sections A & B of the Field Manual, AAR Interchange Rules. Application for official rebuilt status must be filed with the AAR Technical Services and written formal approval received prior to registering such car in the UMLER file with rebuilt age and valuation data.
  2. Assignment of owned or leased rebuilt cars to value groups will be determined as outlined in Notes 4. (A), 4. (B) and 4. (C) herein, except that the maximum valuation of a rebuilt private car shall not exceed the lesser of:
    - a. 75 percent of the original cost of a comparable new car.
    - b. 75 percent of the calculated replacement cost of the rebuilt car prior to rebuilding, as computed per AAR Interchange Rule 107.
- E. All car ages and values submitted are subject to verification by the AAR, and audit by the AAR or the owners independent public accountant upon reasonable request by the AAR. If the car owner elects to have the audit performed by its independent public accountant, such audit must be performed in a timely fashion in the manner prescribed by the AAR, will be performed at the car owner's expense and must be duly certified by the car owner's auditor as representing the true value of all cars included in such audit. Failure of the car owner to furnish the required car valuation data to the AAR UMLER file, to arrange for the requested audit, or to correct errors determined as a result of such audit, will result in such car(s) being assigned to the lowest applicable mileage allowance rate group.
- F. Maximum original cost of fair market value will be as follows:
- |                                                 |          |
|-------------------------------------------------|----------|
| 1. For cars built in 1981 and prior .....       | \$64,001 |
| 2. For cars built in 1982 .....                 | \$58,001 |
| 3. For cars built in 1983 .....                 | \$56,001 |
| 4. For cars built in 1984 .....                 | \$51,001 |
| 5. For cars built in 1985 .....                 | \$54,001 |
| 6. For cars built in 1986 .....                 | \$66,001 |
| 7. For cars built in 1987 .....                 | \$62,001 |
| 8. For cars built in 1988 .....                 | \$63,001 |
| 9. For cars built in 1989 .....                 | \$64,001 |
| 10. For cars built in 1990 .....                | \$67,001 |
| 11. For cars built in 1991 .....                | \$71,001 |
| 12. For cars built in 1992 .....                | \$70,001 |
| 13. For cars built in 1993 .....                | \$76,001 |
| 14. For cars built in 1994 .....                | \$74,001 |
| 15. For cars built in 1995 .....                | \$80,001 |
| 16. For cars built in 1996 .....                | \$83,001 |
| 17. For cars built in 1997 .....                | \$84,001 |
| 18. For cars built in 1998 .....                | \$89,001 |
| 19. For cars built in 1999 .....                | \$94,001 |
| 20. For cars built in 2000 and subsequent ..... | \$92,001 |
- NOTE: Age is determined by subtracting the year of construction (built/rebuilt) from the calendar year plus 1. e.g. (2000-1988) + 1 = 13.
5. For cars built or rebuilt subsequent to December 31, 1977, all values reported to the AAR UMLER file must be stated in equivalent US dollars based on the applicable exchange rate at the time such cars were built or rebuilt. Subsequent capitalized additions and betterments reported to UMLER must also be stated in equivalent US dollars at the time such improvements were made.
6. Applies as follows:
- A. Into service transportation costs are those freight charges associated with the movement of a car that is ready for its first load to the locations of the car's original installation into service. Other transportation charges incurred during construction (e.g., to a facility which installs the original lining, etc) may be included in ledger value provided that the cost is capitalized.
  - B. A capital expenditure is an expenditure intended to benefit future periods in contrast to revenue expenditure/current expense which benefits a current period. It is an addition to a capital asset and is initially reflected on the balance sheet. A capital expenditure normally is subject to depreciation in future years.

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## TARIFF 6007-L

### SECTION 1 RULES AND REGULATIONS (APPLIES ONLY ON TANK CARS)

#### ITEM 195 CONT'D

#### MILEAGE RATE ALLOWANCE ON TANK "T" AND HOUSE CAR "XT" (SEE ITEM 196 FOR EXPLANATION OF DESIGNATING SYMBOLS) (SEE NOTE 1)

#### EXPLANATION OF NOTES

6. C. Applies as follows:
1. An addition or betterment has the effect of:
    - a. Extending the useful life of a car beyond the life projected when the car was entered into service; or
    - b. Increasing a car's normal use beyond that which was in effect when the car was entered into service; or
    - c. Lowering the operating costs beyond that which was in effect at the time the car was entered into service; or
    - d. Otherwise adding to the worth of the benefits a car can yield beyond that in effect when the car was entered into service (e.g., enhance safety, etc).
    - e. Any repair that maintains a car in its customary state of operating efficiency is NOT an addition or betterment.
  2. An addition is the installation of a new component of a car (not a replacement) which meets the above tests. The value registered in UMLER shall be the cost of the component added, including labor.
  3. A betterment is the replacement of a component of the car with a superior component. The value registered in UMLER for a betterment should not exceed the cost of the superior component, including labor minus (1) the original value of the component that was replaced (i.e., retired) and (2) the cost (i.e., expense) incurred in removing the old component.
  4. When a unit of property is removed from a car (i.e., partial retirement), the ledger value registered in UMLER shall be reduced by the original value of the unit removed.
  5. Any cost recovered under AAR Defect Car Billing, if applicable, must be deducted from the cost of an addition or betterment.
7. Applies as follows:
- A. When an owner: (1) makes a valuation correction to the UMLER file; or (2) changes the mechanical designation of cars registered in the UMLER file; and such changes result in an increase or decrease in the mileage allowance rates, the Secretary, Business Services, AAR, will be so notified and the increase or decrease will be applied retroactively. Once cars have been reported to the UMLER file, any of the foregoing corrections or changes that result in a retroactive increase or decrease in the mileage allowance rates will be identified by the Secretary. The car owner is required to furnish the Secretary documented proof of the basis of the correction or change and advise as to any applicable mileage allowance adjustments which are required.
  - B. Retroactive Mileage Allowance Decrease: Within five (5) months from the date of a change to the UMLER file resulting in a retroactive mileage allowance rate decrease, the owner will notify all using carriers of such decrease with either supporting details or a summary of the over-collections, with a copy to the Secretary. After receiving such notification, the using carrier shall deduct such amount(s), in the next open mileage reports to the car owner, plus fifteen (15) percent to reimburse the handling road for audit and associated administrative expenses. If the owner fails to send notification to the users within five (5) months, the Secretary shall notify carriers of the car initial(s) and number(s) involved and the user(s) shall make an adjustment, as described above.
  - C. Retroactive Mileage Allowance Increase: Within five (5) months from the date of a change to the UMLER file resulting in a retroactive mileage allowance rate increase, the owner will notify all using carriers of such increase with either supporting details or a summary of the under-collections, with a copy to the Secretary. After receiving such notification, the using carriers shall add such amount(s) in their next open mileage reports to the car owner, less fifteen (15) percent to reimburse the handling roads for audit and associated administrative expense. No retroactive mileage allowance rate increase will be applicable if the owner fails to notify the using carriers of such increase within five (5) months from the date of a change to the UMLER file.

### SECTION 1 RULES AND REGULATIONS APPLIES ONLY ON TANK CARS

#### ITEM 196

#### EXPLANATION OF SYMBOLS USED IN ITEM 195

| SYMBOL | EXPLANATION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| "T"    | Tank Car. Tank car means any car which is used only for the transportation of liquids, liquefied gases, compressed gases, or solids that are liquefied prior to unloading. Car may be without underframe if container serving as superstructure is designed to serve as underframe. If car has underframe, it must be designed only for the carriage of one or more enclosed containers (with or without compartments) that form the superstructure and are integral parts of the car. All such containers must be securely attached to underframe when offered for transportation but may have demountable features. |
| "XT"   | A house car with or without doors either metal lined or enclosing one or more tanks.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

**APPENDIX "G"**

C33090

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AGREEMENT

Dated as of March 31, 1990

between

CONSOLIDATED RAIL CORPORATION ("Conrail")

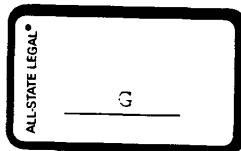
and

THE BOSTON AND MAINE CORPORATION ("B&M")

and

THE SPRINGFIELD TERMINAL RAILWAY COMPANY ("ST")

Relating to Interchange of Loaded and  
empty freight cars on B&M/ST's track  
between Mile Posts 3.0± and 4.6± (including necessary  
head and tail room) at Barber, Massachusetts.



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(ii) If Conrail is the party receiving the cars in interchange, Conrail will make the mechanical inspection at its Selkirk Yard, in the vicinity of Albany, New York.

In the event the receiving party fails to make the aforementioned mechanical inspection, the cars shall be considered interchanged as provided above and the responsibility for the mechanical condition of the cars shall be transferred to the receiving party.

(e) In the event the parties agree to operate extra freight service via the Barber Interchange Point, all provisions of this Agreement shall apply equally to such extra freight service.

(f) B&M/ST shall maintain, repair, and renew the Interchange Track(s) in reasonably good condition, for the use herein contemplated, at its sole cost and expense, with its own supervision and labor. B&M/ST does not guarantee the condition of the Interchange Track(s) or that operation thereover will not be interrupted.

+ **SECTION 4. MILEAGE AND CAR HIRE**

Except as otherwise be provided in October 27, 1989 agreement, for the purpose of determining per diem, car hire, and car mileage payments, and for no other purpose, cars interchanged at Barber, Massachusetts shall be treated as if interchanged at Conrail's Selkirk Yard, in the vicinity of Albany, New York. Conrail shall use its best efforts to handle cars between Selkirk Yard and Barber

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In accordance with the Schedule of Arranged Freight Service, as summarized in Exhibit "I". The time of interchange shall be as follows:

† (a) The time of interchange in the case of cars interchanged by Conrail to B&M/ST shall be when the eastbound train handling such interchange cars departs Selkirk Yard (CP-5K).

† (b) The time of interchange in the case of cars interchanged by B&M/ST to Conrail shall be when the westbound train handling such interchange cars arrives at Selkirk Yard (CP-5K).

(c) The aforementioned arrangements shall be subject to reclaim and other applicable Interchange Car Service and Car Hire Rules and any supplements or amendments thereto promulgated from time to time by the Association of American Railroads.

#### SECTION 5. MANAGEMENT AND OPERATION

(a) Conrail shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars and equipment are being operated over the Interchange Track(s). Conrail shall indemnify, protect, defend, and save harmless B&M/ST and its directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon B&M/ST or its

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(c) Either party may provide changes in the above addresses to the other party by personal service or certified mail.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be as a sealed instrument executed as of the date first set forth above by their duly authorized representatives.

**WITNESS:**

**CONSOLIDATED RAIL CORPORATION**

John D. C. ...

BY: L. L. Pritchett  
Title: General Superintendent - Contracts

**WITNESS:**

**BOSTON AND MAINE CORPORATION**

Robert E. Filler

BY: Timothy B. Cullen  
TITLE: Vice Pres. Thru's

**WITNESS:**

**SPRINGFIELD TERMINAL RAILWAY COMPANY**

Richard E. Latta

BY: Anthony B. Cullen  
TITLE: Vice Pres Tasks

## **APPENDIX "H"**



BOSTON & MAINE CORPORATION  
MAINE CENTRAL RAILROAD COMPANY  
SPRINGFIELD TERMINAL RAILWAY COMPANY

IRON HORSE PARK  
NO. BILERICA, MASS. 01862

March 13, 1997

Mr. Larry Burks, Manager  
Freight Rate Service Co.  
1644 North Corrington Ave.  
Kansas City, MO 64120

Dear Mr. Burks:

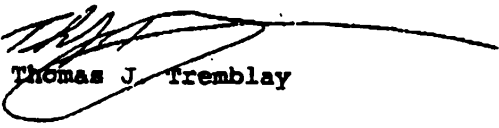
This letter is in response to your telephone conversation of March 10, 1997 with my colleague, Mr. Steve Magyar. Apparently, there is some misunderstanding about Conrail vs. Springfield Terminal liability for mileage earned through Rotterdam Junction and Selkirk, New York and Barbers Station, Massachusetts.

Responsibility is determined by means of the routing of the cars. This information is provided on individual waybills. If the car is waybilled Rotterdam Junction or Selkirk, NY, Springfield Terminal is responsible for the additional 155 miles between Selkirk and Barbers Station. If the waybill indicates Barbers Station, it is entirely a Conrail move. Conrail is receiving freight revenue on the entire move, and is responsible for car hire on the entire move. The 155 miles of track between Selkirk and Barbers Station belong to Conrail.

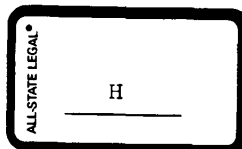
If you have access to such waybill information, you can save much time and effort for both of us by pre-screening your claims to ensure that only those waybilled Rotterdam Junction or Selkirk are filed against Springfield Terminal for the additional mileage due. If not, my colleagues and I will continue to screen all claims that you send. All claims that we return to you which are Barbers Station waybilled must be re-issued to Conrail so that you can collect from them.

This letter should clear up any misunderstandings between us. If you still have questions, please feel free to contact me at (508) 663-1064 or Mr. Magyar at (508) 663-1069.

Very truly yours,

  
Thomas J. Tremblay

Manager, Car Accounting



*Div Rates  
& Rates*

**APPENDIX "I"**

March 13, 1997

Mr. John DeGiovanni  
Manager Car Accounting  
Consolidated Rail Corporation  
PO Box 41420  
Philadelphia, PA 19101-1420

RE: Mileage Adjustment Claims

Dear John:

We have had phone conversations and previous letters to Joe Galasso concerning the attached claims.

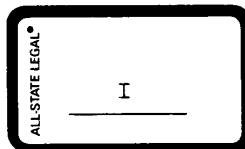
Steve Magyar states he has been in contact with you concerning these moves. The BM shows mileage due by CR because bills of lading show junction as Barbstation not Rotterdam Jct.

**Please advise when adjustment will be made.**

Yours very truly,

**Larry J. Burks**

**LJB:h1**



**APPENDIX "J"**

To: LARRY BURKS  
Subject: S.T. HAULAGE AGREEMENT

PLEASE SEE THE ATTACHED AGREEMENT.

WE DON'T AND WE WON'T PAY PAST SELKIRK . CAR ACCOUNTING HANDLES CAR HIRE AND MILEAGE ANDS IT'S APPLICATION. PERSONALLY I DON'T CARE WHAT S.T. WANTS TO DO WITH THE BILLING OR MISBILLINGS BY THE FREIGHT SIDE AND THEIR BILLS OF LADING. THE CAR HIRE RESPONSIBILITY IS SPELLED OUT IN SECTION #4 AND SPECIFICALLY MENTIONS HOW TO HANDLE BARBER STATION. ( TREATED AS IF INTERCHANGED AT SELKIRK)

YES I SPOKE TO S.T. AND FURNISHING THEM THE AGREEMENT. IF S.T. DOESN'T WANT TO ABIDE BY THIS AGREEMENT THEY'LL HAVE TO MOVE TO GET IT CHANGED.

JOHN T. DIGIOVANNI  
C.R. PHILA.

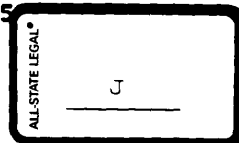
(e) in the event the parties agree to operate extra freight service via the Barber Interchange Point, all provisions of this Agreement shall apply equally to such extra freight service.

(f) B&M/ST shall maintain, repair, and renew the Interchange Track(s) in reasonably good condition, for the use herein contemplated, at its sole cost and expense, with its own supervision and labor. B&M/ST does not guarantee the condition of the Interchange Track(s) or that operation thereover will not be interrupted.

#### SECTION 4. MILEAGE AND CAR HIRE

Except as otherwise be provided in October 27, 1989 agreement, for the purpose of determining per diem, car hire, and car mileage payments, and for no other purpose, cars interchanged at Barber, Massachusetts shall be treated as if interchanged at Conrail's Selkirk Yard, in the vicinity of Albany, New York. ~~Conrail shall use its best efforts to handle cars between Selkirk Yard and Barber~~

See Letter  
of 6-12-1991



**APPENDIX "K"**

Rail Transportation Management Services  
Client: Engelhard Corporation  
Claim Status Report

| Claim Group | Date Filed | Latest Activity   | Claim Status | Total Lines | Open Lines | Unanswered Lines | Amount Filed | Amount Outstanding | Amount Paid | Amount Cancelled |
|-------------|------------|-------------------|--------------|-------------|------------|------------------|--------------|--------------------|-------------|------------------|
| EC ST       | 610 5      | 19961009 19980522 | SEND REFILE  | 100         | 18         |                  | 11,229.28    | 1,972.85           | 8,858.97    | 397.46           |
| EC ST       | 611 5      | 19961101 19980220 | SEND REFILE  | 105         | 30         |                  | 10,617.05    | 3,190.06           | 7,426.70    | .29              |
| EC ST       | 612 5      | 19961202 19980429 | SEND REFILE  | 219         | 65         |                  | 23,017.17    | 6,800.15           | 13,745.94   | 2,471.08         |
| EC ST       | 613 5      | 19961231 19980724 | SEND REFILE  | 62          | 21         |                  | 6,643.77     | 1,932.37           | 4,711.01    | .39              |
| EC ST       | 670 5      | 19960827 19980724 | SEND REFILE  | 1145        | 348        | 1                | 121,103.17   | 36,780.92          | 82,581.55   | 1,740.70         |
| EC ST       | 702 5      | 19970228 19980721 | SEND REFILE  | 415         | 161        |                  | 38,988.79    | 12,220.59          | 26,663.28   | 104.92           |
| EC ST       | 705 5      | 19970530 19990127 | SEND REFILE  | 547         | 136        |                  | 58,109.10    | 14,629.66          | 42,038.59   | 1,440.85         |
| EC ST       | 709 5      | 19970926 19980724 | SEND REFILE  | 482         | 133        |                  | 51,860.33    | 14,739.36          | 36,508.72   | 612.25           |
| EC ST       | 712 5      | 19971229 19981102 | SEND REFILE  | 164         | 137        |                  | 17,838.18    | 15,187.23          | 2,700.79    | -49.84           |
| EC ST       | 777 1      | 19970923 19970923 | SEND REFILE  | 23          | 23         | 23               | 5,668.55     | 5,668.55           |             |                  |
| EC ST       | 779 5      | 19971125 19990127 | SEND REFILE  | 288         | 119        |                  | 84,917.49    | 18,340.26          | 66,503.25   | 73.98            |
| EC ST       | 803 5      | 19980331 19980930 | SEND REFILE  | 519         | 391        |                  | 80,921.64    | 44,831.42          | 20,074.15   | 16,016.07        |
| EC ST       | 807 5      | 19980730 20000701 | OPEN         | 57          | 49         |                  | 6,118.00     | 5,367.27           | 750.71      | .02              |
| EC ST       | 808 4      | 19980826 20000701 | OPEN         | 25          | 9          |                  | 5,304.67     | 781.24             | 4,520.32    | 3.11             |
| EC ST       | 808 5      | 19980826 19980910 | SEND REFILE  | 450         | 449        |                  | 48,472.80    | 48,325.93          | 146.87      |                  |
| EC ST       | 902 5      | 19990226 20000303 | SEND REFILE  | 178         | 173        |                  | 18,648.71    | 18,128.88          | 86.45       | 433.38           |
| EC ST       | A05 5      | 20000510 20000630 | OPEN         | 1254        | 1253       | 1253             | 140,008.29   | 139,640.87         |             | 367.42           |
| EC ST       | A71 5      | 20000510 20000620 | OPEN         | 22          | 22         |                  | 6,883.56     | 6,883.56           |             |                  |

ALL-STATE LEGAL®

K

**APPENDIX "L"**



---

**Rail Transportation Management Services**

April 17, 1998

Mr. Kevin C. Brown  
Manager Car Accounting  
Consolidated Rail Corporation  
2001 Market St., Room 20E  
Philadelphia, PA 19101-1420

Mr. Jeff Miller,  
Manager - Revenue Systems  
Springfield Terminal Railway Co.  
Iron Horse Park  
North Billerica, MA 01862

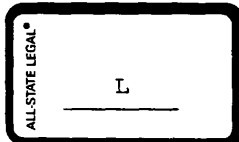
**Re: Engelhard Corporation Mileage Credits**

Gentlemen:

I am writing on behalf of Engelhard Corporation concerning an issue that has, over the last several years, escalated to major proportions, costing Engelhard hundreds of thousands of dollars in lost mileage credits. The issue concerns ST's use of Conrail's tracks between Selkirk and Barber Station.

As I understand it, the track is owned by Conrail and an operating agreement exists with ST to use the track. ST is responsible for mileage credits when operating under the agreement, however, it is ST's contention that on a large percentage of the moves Conrail is retaining the freight revenue and is therefore responsible for the mileage credits. On the other hand, Conrail claims that ST is always responsible for the mileage credits. The net effect of this disagreement is that Engelhard has not been paid at all for the 155 miles in contention over thousands of moves.

I think all parties will agree that Engelhard is due payment. Engelhard is determined to pursue a prompt resolution of this problem before the absorption of Conrail by, in the case of this section of track, CSXT. As a first step in resolving this issue, Engelhard has asked me to request that both Conrail and ST reply to this letter with a statement of its position concerning this issue. Please reply as soon as possible.



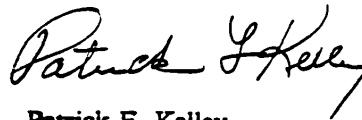
17453 Village Green Drive • Houston, TX 77040 • (713) 983-8864 • Fax (713) 856-8068

Mr. Kevin C. Brown  
Mr. Jeff Miller  
April 17, 1998  
Page 2 of 2

In order to facilitate any research you may feel is required, I am including copies of several recent claims which have been rejected by ST as Conrail's responsibility, but which Conrail has also not paid.

Thank you for your prompt attention to this matter. Please call with any questions or comments.

Yours very truly,



Patrick F. Kelley

PFK/gs  
Enclosure  
L-041698.2

cc: Mr. Bob Tunstall,  
Manager Car Accounting  
Speed Code J690  
CSX Transportation Company  
6735 Southpoint Drive S.  
Jacksonville, Florida 32216-6177

Mr. Thomas Flaherty  
Manager Transportation  
Engelhard Corporation  
McIntyre, Georgia 31054

---

**APPENDIX "M"**

---





CON & MAINE CORPORATION  
MAINE CENTRAL RAILROAD COMPANY  
SPRINGFIELD TERMINAL RAILWAY COMPANY

IRON HORSE PARK  
NO. BILLERICA, MASS. 01862

April 27, 1998

Mr. Patrick F. Kelley  
RTMS  
Rail Transportation Management Services  
17453 Village Green Drive  
Houston, TX 77040

Mr. Thomas Flaherty  
Manager Transportation  
Engelhard Corporation  
McIntyre, Georgia 31054

RE: Engelhard Corporation Mileage Credits

Gentlemen:

In response to your letter asking us to state our position on payment of mileage for the 155 mile segment from Selkirk, NY. to Barber's Station, Ma. Liability is determined from the Bill of Lading route of movement the same way divisions of revenue are determined. There is a haulage agreement between Conrail and Springfield Terminal for operational convenience but it does not change the carhire liability.

I have given you the two possible scenarios for traffic moving eastward from CR to ST. If the route states CR-ROTTJ ST, then ST divisions of revenue and liability for carhire mileage begins at Selkirk, NY. ST pays mileage between Selkirk and Barber's Station. Conrail is hauling the cars but the cars remain in ST's account for both revenue and carhire as per the haulage agreement.

If the route states CR-BRBER ST, then ST divisions of revenue and liability for carhire mileage begins at Barber's Station, Ma. The carhire from Selkirk to Barber's Station remains in the account of Conrail. This is not a haulage move and the haulage agreement does not apply. Traffic moving westward from ST to CR works the same way.

If I can be of any additional assistance please let me know.

Yours very truly,

H. Jeffrey Miller  
Mgr. Revenue Systems

HJM/cs

cc: Kevin C. Brown - Consolidated Rail Corp.



## PETITIONER EXHIBIT NO. 2

## AFFIDAVIT OF PATRICK F. KELLEY

1. My name is Patrick F. Kelley and I am employed by Rail Transportation Management Services of Houston, Texas. Since 1996, I have performed mileage auditing services for Engelhard Corporation. Mileage auditing involves the review of railroad mileage reports and comparison against the actual miles and rates evident from electronic route data and rate scales published in Mileage Tariff 6007.

2. I am familiar with the dispute concerning both Conrail's and Springfield Terminal's failure to report and, in some cases, pay mileage allowances for loaded private cars provided by Engelhard when moving over a 155 mile segment of track between Selkirk, New York and Barber Station, MA.

3. Normally, railroads comply with their obligations under Tariff 6007 to report mileage within one month and ten days after the month in which the mileage was earned. I regularly audit these self reported obligations to determine whether the current rate has been used for the identified equipment. I also check the number of miles reported for the actual route traveled.

4. On behalf of Engelhard, I routinely submit audit claims to railroads identifying discrepancies and omissions discovered from review of their mileage reports. I understand that audit claims must be submitted to railroad owning the line over which a loaded movement has taken place within 24 months in accord with Tariff 6007, Item 182-A, Paragraph 2-A, which provides:

### Claims Issued By Private Car Owners to Railroads.

A. A private car owner must, within Twenty-four (24) months from the last day of the month the completed cycle was reported, present any claim for mileage allowance discrepancies, including incorrect rates or omissions, to the applicable rail carrier ...

5. As the result of a dispute between Conrail and Springfield Terminal, neither railroad reported mileage on loaded private cars provided by Engelhard moving over the 155 mile segment from Selkirk, N.Y. to Barber Station, MA. As a result, this 155 mile segment is not included in monthly mileage reports submitted by Conrail and Springfield Terminal.

6. Conrail told me to file claims with Springfield Terminal and provided me with a portion of an agreement stating that Springfield Terminal should pay mileage allowances on this segment. Although Springfield Terminal did not own the Selkirk - Barber line, and would not be the carrier obligated to pay mileage under Mileage Tariff 6007, I submitted mileage claims to Springfield Terminal, borrowing the procedures laid out in Tariff 6007. Despite the fact that Springfield Terminal paid on many of the movements, it did not voluntarily report on this segment, but rather relied on Engelhard to claim payment via my mileage audit claims.

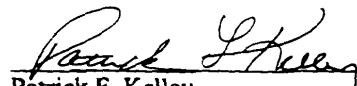
7. Beginning in October, 1996, I filed mileage claims with Springfield Terminal on behalf of Engelhard covering private cars leased by Engelhard bearing reporting marks of Lessors such as ACF Industries ("ACFX"), General American Tank Car Corp. ("GATX"), General Electric Rail Car Services ("HARX" and "NATX") and Union Tank Car Co. ("UTLX"). These claims were filed in Engelhard's name despite the fact the cars provided were leased. The car lessors and Springfield Terminal were aware of this practice and no one objected.

8. Each mileage claim I submitted could cover several hundred movements, although some smaller claims only covered 20 movements. Springfield Terminals regularly reviewed my submissions and eventually would either agreed to pay or decline payment on each movement, recording its rational on a written copy of the claim, a copy of which was returned to me.

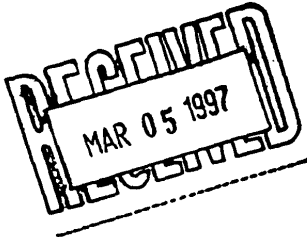
9. Engelhard would have only been aware of Springfield Terminal's refusal to pay on a particular movement after Springfield Terminal responded to the claim. For example, Claim EC ST 613 5, submitted on 12/31/1996 (a copy of which is attached), claimed \$ 6,643.77 for movements from August through November, 1995. Springfield Terminal reviewed each of the 62 movements and responded on March 5, 1997, allowing payment of \$ 4,711.40 on 41 movements and denying payment on the remaining 21 movements by asserting that Conrail was responsible for payment.

10. Springfield Terminal routinely paid many of mileage claims for movements over Conrail's Selkirk to Barber line. Until such time Engelhard exhausted the audit claim review procedure and Springfield Terminal returned a response to the claim, Engelhard had no way to know whether or not a dispute existed with respect to a particular movement.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed December 21, 2001.

  
Patrick F. Kelley

EC ST 6135



Mileage Difference Claims

filed with

SPRINGFIELD TERMINAL RAILROAD  
MANAGER CAR HIRE  
CAR ACCOUNTING DEPT.  
IRON HORSE PARK  
NORTH BILLERICA MA. 01862  
Attn: MR. TOM LUTTREL

on 12/31/96 on behalf of

Engelhard Corporation

Please send all correspondence concerning these claims to:

Rail Transportation Management Services  
1500 S. Dairy Ashford, Suite 400  
Houston, Texas 77077  
Phone: (713) 293-9575

Totals this submission:

|         |                       |         |
|---------|-----------------------|---------|
| Claims: | 62                    | 1       |
| Pages:  | 22                    |         |
| Amount: | <del>\$6,643.77</del> | 4711.40 |

REVENUE ACCOUNTING

JAN 9 1997

|      |   |            |
|------|---|------------|
| GATX | # | 4601.65    |
| TimX | # | 109.75     |
|      |   | <hr/>      |
|      |   | \$ 4711.40 |

Claim Prefix: EC-ST -

Engelhard Corporation

PAGE 1

Mileage Difference Claims

Filed With SPRINGFIELD TERMINAL RAILROAD  
on 12/31/96

\*\*\*\*\*

| Claim<br>Number | Car ID     | Date<br>Shipped | Date<br>On-line | Miles<br>Earned | Miles<br>Allow | Miles<br>Due | Avg<br>Rate | Amount<br>Claimed |
|-----------------|------------|-----------------|-----------------|-----------------|----------------|--------------|-------------|-------------------|
| 13500087        | GATX065435 | 950822          | 950900          | 385             | 233            | 152          | .757        | 114.99            |

Route: MCINTYRE GA to SHAWMUT ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

| Earn | Allow | Miles | Rate | Amount |
|------|-------|-------|------|--------|
| 9508 | 9511  | 142   | .741 | 105.22 |
| 9509 | 9601  | 91    | .749 | 68.15  |

| Date   | Miles | Rate | Amount |
|--------|-------|------|--------|
| 950900 | 385   | .749 | 288.36 |

----- C/LM Data -----

| Date  | Hr | City Name | RR    | A | L/E |
|-------|----|-----------|-------|---|-----|
| 50909 | 01 | SHAWMUT   | ME ST | Z | L   |

ELKIRK - BARBER STATION NOT PAID

Claim Prefix: EC-ST -

Engelhard Corporation  
Mileage Difference Claims  
Filed With SPRINGFIELD TERMINAL RAILROAD  
on 12/31/96

PAGE 2

\*\*\*\*\*

| Claim     |            | Date    | Date    | Miles  | Miles | Miles | Avg  | Amount  |
|-----------|------------|---------|---------|--------|-------|-------|------|---------|
| Number    | Car ID     | Shipped | On-line | Earned | Allow | Due   | Rate | Claimed |
| 513500088 | TIMX014018 | 951027  | 951030  | 385    | 233   | 152   | .722 | 109.75  |

Route: MCINTYRE GA to SHAWMUT ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

| Earn | Allow | Miles | Rate | Amount |
|------|-------|-------|------|--------|
| 9511 | 9511  | 233   | .722 | 168.22 |

| Date   | Miles | Rate | Amount |
|--------|-------|------|--------|
| 951030 | 385   | .722 | 277.97 |

----- CLM Data -----

| Date   | Hr | City Name | RR | A    | L/E | Date | Hr | City Name | RR | A | L/E |
|--------|----|-----------|----|------|-----|------|----|-----------|----|---|-----|
| 951030 | 18 | SELKIRK   | NY | CRSL | A L |      |    |           |    |   |     |
| 951030 | 18 | SELKIRK   | NY | ST   | A L |      |    |           |    |   |     |
| 951031 | 22 | BARSTA    | MA | ST   | R L |      |    |           |    |   |     |
| 951101 | 01 | AYER      | MA | ST   | A L |      |    |           |    |   |     |
| 951101 | 10 | PORTLAND  | ME | ST   | A L |      |    |           |    |   |     |
| 951103 | 13 | SHAWMUT   | ME | ST   | Z L |      |    |           |    |   |     |

SELKIRK - BARBER STATION NOT PAID

Claim Prefix: EC-ST -

Engelhard Corporation  
Mileage Difference Claims

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Filed With SPRINGFIELD TERMINAL RAILROAD  
on 12/31/96

```

*****
Claim      Date      Date      Miles   Miles   Miles      Avg      Amount
Number     Car ID    Shipped  On-line  Earned   Allow   Due      Rate     Claimed
513500089  GATX017573  951109   951116   361     278     83      .715     59.34

```

Route: GORDON GA to RUMFORD ME Via NS-POTYAR-CPRS-MECHAN-ST

```

----- ALLOWED DETAIL -----
Earn Allow Miles Rate Amount      Date Miles Rate Amount
9511  9607   278   .715  198.77  951116   361   .715  258.11

```

CLM Data

```

Date Hr City Name      RR A L/E      Date Hr City Name      RR A L/E
951116 20 MECHANICV NY CPRS A L
951117 15 EDEERFIEL MA ST P L
951118 15 PORTLAND ME ST A L
951120 03 RUMFORD ME ST Z L

```

```

*****
Claim      Date      Date      Miles   Miles   Miles      Avg      Amount
Number     Car ID    Shipped  On-line  Earned   Allow   Due      Rate     Claimed
513500090  GATX019830  951124   951128   429     277     152     .673     102.30

```

Route: MCINTYRE GA to MILLINOCKEME Via NS-HAGERS-CR-SELKIR-ST-N-BAR

```

----- ALLOWED DETAIL -----
Earn Allow Miles Rate Amount      Date Miles Rate Amount
9511  9607   142   .673   95.56  951128   429   .673  288.71
9512  9609   135   .673   90.85

```

SELKIRK - BARBER STATION NOT PAID

```

*****
Claim      Date      Date      Miles   Miles   Miles      Avg      Amount
Number     Car ID    Shipped  On-line  Earned   Allow   Due      Rate     Claimed
513500091  GATX019841  951111   951116   341     257     84      .673     56.53

```

Route: MCINTYRE GA to RILEYS ME Via NS-POTYAR-CPRS-MECHAN-ST

```

----- ALLOWED DETAIL -----
Earn Allow Miles Rate Amount      Date Miles Rate Amount
9511  9607   257   .673  172.96  951116   341   .673  229.49

```

```

*****
Claim      Date      Date      Miles   Miles   Miles      Avg      Amount
Number     Car ID    Shipped  On-line  Earned   Allow   Due      Rate     Claimed
513500092  GATX019851  951124   951127   457     302     155     .673     104.32

```

Route: GORDON GA to BUCKPORT ME Via NS-HAGERS-CR-SELKIR-ST

```

----- ALLOWED DETAIL -----
Earn Allow Miles Rate Amount      Date Miles Rate Amount
9511  9607   142   .673   95.56  951127   457   .673  307.56
9512  9609   160   .673  107.68

```

SELKIRK - BARBER STATION NOT PAID

*BARBER  
STATION*

*BARBER  
STATION*

Claim Prefix: EC-ST -

Engelhard Corporation  
Mileage Difference Claims

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Filed With SPRINGFIELD TERMINAL RAILROAD  
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```

*****
Claim      Date      Date      Miles  Miles  Miles  Avg  Amount
Number     Car ID   Shipped  On-line Earned Allow Due  Rate  Claimed
613500093  GATX019854   951111   951116   659      0   659   .673   443.50

```

Route: MCINTYRE GA to WOODLAND ME Via NS-POTYAR-CPRS-MECHAN-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

Earn Allow Miles Rate Amount

```

Date Miles Rate Amount
951116   659   .673   443.50

```

```

*****
Claim      Date      Date      Miles  Miles  Miles  Avg  Amount
Number     Car ID   Shipped  On-line Earned Allow Due  Rate  Claimed
613500094  GATX046415   951116   951120   457     302   155   .584   264.52

```

Route: GORDON GA to BUCKPORT ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

Earn Allow Miles Rate Amount

```

Date Miles Rate Amount
951116   302   .584   176.36

```

SELKIRK - BARBER STATION NOT PAID

```

*****
Claim      Date      Date      Miles  Miles  Miles  Avg  Amount
Number     Car ID   Shipped  On-line Earned Allow Due  Rate  Claimed
613500095  GATX046423   951117   951122   695     242   453   .584   264.56

```

Route: MCINTYRE GA to MADISON ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

Earn Allow Miles Rate Amount

```

Date Miles Rate Amount
951116   221   .584   129.06
951122   695   .584   405.88

```

```

*****
Claim      Date      Date      Miles  Miles  Miles  Avg  Amount
Number     Car ID   Shipped  On-line Earned Allow Due  Rate  Claimed
613500096  GATX046439   951029   951102   401     221   180   .584   105.12

```

Route: MCINTYRE GA to MADISON ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

Earn Allow Miles Rate Amount

```

Date Miles Rate Amount
951116   221   .584   129.06
951102   401   .584   234.18

```

```

*****
Claim      Date      Date      Miles  Miles  Miles  Avg  Amount
Number     Car ID   Shipped  On-line Earned Allow Due  Rate  Claimed
613500097  GATX048581   951124   951128   385     233   152   .651   98.95

```

Route: MCINTYRE GA to SHAWMUT ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

Earn Allow Miles Rate Amount

```

Date Miles Rate Amount
951116   142   .651   92.44
951128   385   .651   250.63

```

SELKIRK - BARBER STATION NOT PAID

Claim Prefix: EC-ST -

Engelhard Corporation  
Mileage Difference Claims

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Filed With SPRINGFIELD TERMINAL RAILROAD  
on 12/31/96

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| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 613500098    | GATX065365 | 951020       | 951102       | 454          | 0           | 454       | .749     | 340.04         |

Route: GORDON GA to BUCKPORT ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

| Earn   | Allow | Miles | Rate   | Amount |
|--------|-------|-------|--------|--------|
| 951102 | 454   | .749  | 340.04 |        |

| Date   | Miles | Rate | Amount |
|--------|-------|------|--------|
| 951102 | 454   | .749 | 340.04 |

CLM Data

| Date   | Hr | City Name | RR | A    | L/E | Date | Hr | City Name | RR | A | L/E |
|--------|----|-----------|----|------|-----|------|----|-----------|----|---|-----|
| 951102 | 01 | SELKIRK   | NY | CRSL | J L |      |    |           |    |   |     |
| 951102 | 01 | SELKIRK   | NY | ST   | R L |      |    |           |    |   |     |
| 951107 | 01 | BUCKSPORT | ME | ST   | Z L |      |    |           |    |   |     |

\*\*\*\*\*

| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 613500099    | GATX065387 | 951109       | 951119       | 361          | 278         | 83        | .749     | 62.16          |

Route: GORDON GA to RUMFORD ME Via NS-POTYAR-CPRS-MECHAN-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

| Earn | Allow | Miles | Rate | Amount |
|------|-------|-------|------|--------|
| 9511 | 9607  | 278   | .749 | 208.22 |

| Date   | Miles | Rate | Amount |
|--------|-------|------|--------|
| 951119 | 361   | .749 | 270.38 |

CLM Data

| Date   | Hr | City Name  | RR   | A   | L/E | Date | Hr | City Name | RR | A | L/E |
|--------|----|------------|------|-----|-----|------|----|-----------|----|---|-----|
| 951119 | 01 | MECHANICVI | CPRS | J L |     |      |    |           |    |   |     |
| 951119 | 01 | MECHANICVI | ST   | R L |     |      |    |           |    |   |     |
| 951124 | 01 | RUMFORD    | ME   | ST  | Z L |      |    |           |    |   |     |

\*\*\*\*\*

| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 613500100    | GATX065431 | 951026       | 951100       | 398          | 242         | 156       | .749     | 116.85         |

Route: MCINTYRE GA to MADISON ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

| Earn | Allow | Miles | Rate | Amount |
|------|-------|-------|------|--------|
| 9510 | 9605  | 142   | .749 | 106.35 |
| 9511 | 9607  | 100   | .749 | 74.90  |

| Date   | Miles | Rate | Amount |
|--------|-------|------|--------|
| 951100 | 398   | .749 | 298.10 |

CLM Data

| Date   | Hr | City Name | RR | A  | L/E | Date | Hr | City Name | RR | A | L/E |
|--------|----|-----------|----|----|-----|------|----|-----------|----|---|-----|
| 951113 | 01 | MADISON   | ME | ST | Z L |      |    |           |    |   |     |

SELKIRK - BARBER STATION NOT PAID

Claim Prefix: EC-ST -

Engelhard Corporation  
Mileage Difference Claims

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Filed With SPRINGFIELD TERMINAL RAILROAD  
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| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 13500101     | TARX000504 | 951120       | 951125       | 454          | 302         | 152       | .260     | 39.52          |

Route: GORDON GA to BUCKPORT ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

| Earn | Allow | Miles | Rate | Amount |
|------|-------|-------|------|--------|
| 9511 | 9511  | 302   | .260 | 78.52  |

| Date   | Miles | Rate | Amount |
|--------|-------|------|--------|
| 951125 | 454   | .260 | 118.04 |

CLM Data

| Date   | Hr | City Name | RR | A    | L/E | Date | Hr | City Name | RR | A | L/E |
|--------|----|-----------|----|------|-----|------|----|-----------|----|---|-----|
| 951125 | 17 | SELKIRK   | NY | CRSL | A L |      |    |           |    |   |     |
| 951125 | 17 | SELKIRK   | NY | ST   | A L |      |    |           |    |   |     |
| 951126 | 21 | BARSTA    | MA | ST   | R L |      |    |           |    |   |     |
| 951127 | 07 | PORTLAND  | ME | ST   | A L |      |    |           |    |   |     |
| 951129 | 08 | NMAINEJCT | ME | ST   | A L |      |    |           |    |   |     |
| 951129 | 17 | BUCKSPORT | ME | ST   | D L |      |    |           |    |   |     |

*BARBER  
WAYBILL*

SELKIRK - BARBER STATION NOT PAID

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| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 13500102     | TARX000507 | 951116       | 951122       | 454          | 302         | 152       | .260     | 39.52          |

Route: GORDON GA to BUCKPORT ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

| Earn | Allow | Miles | Rate | Amount |
|------|-------|-------|------|--------|
| 9511 | 9511  | 302   | .260 | 78.52  |

| Date   | Miles | Rate | Amount |
|--------|-------|------|--------|
| 951122 | 454   | .260 | 118.04 |

CLM Data

| Date   | Hr | City Name | RR | A    | L/E | Date | Hr | City Name | RR | A | L/E |
|--------|----|-----------|----|------|-----|------|----|-----------|----|---|-----|
| 951122 | 20 | SELKIRK   | NY | CRSL | A L |      |    |           |    |   |     |
| 951122 | 20 | SELKIRK   | NY | ST   | A L |      |    |           |    |   |     |
| 951125 | 14 | BARSTA    | MA | ST   | R L |      |    |           |    |   |     |
| 951126 | 08 | PORTLAND  | ME | ST   | A L |      |    |           |    |   |     |
| 951128 | 05 | NMAINEJCT | ME | ST   | A L |      |    |           |    |   |     |
| 951128 | 12 | BUCKSPORT | ME | ST   | Z L |      |    |           |    |   |     |

*BARBER  
WAYBILL*

SELKIRK - BARBER STATION NOT PAID

Claim Prefix: EC-ST -

Engelhard Corporation  
Mileage Difference Claims  
Filed With SPRINGFIELD TERMINAL RAILROAD  
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| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 13500103     | TARX000541 | 951117       | 951125       | 454          | 302         | 152       | .260     | 39.52          |

Route: GORDON GA to BUCKPORT ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

| Earn | Allow | Miles | Rate | Amount |
|------|-------|-------|------|--------|
| 9511 | 9511  | 302   | .260 | 78.52  |

| Date   | Miles | Rate | Amount |
|--------|-------|------|--------|
| 951125 | 454   | .260 | 118.04 |

CLM Data

| Date  | Hr | City Name | RR | A    | L/E | Date | Hr | City Name | RR | A | L/E |
|-------|----|-----------|----|------|-----|------|----|-----------|----|---|-----|
| 51125 | 17 | SELKIRK   | NY | CRSL | A L |      |    |           |    |   |     |
| 51125 | 17 | SELKIRK   | NY | ST   | A L |      |    |           |    |   |     |
| 51126 | 21 | BARSTA    | MA | ST   | R L |      |    |           |    |   |     |
| 51127 | 07 | PORTLAND  | ME | ST   | A L |      |    |           |    |   |     |
| 51129 | 08 | NMAINEJCT | ME | ST   | A L |      |    |           |    |   |     |
| 51129 | 17 | BUCKSPORT | ME | ST   | D L |      |    |           |    |   |     |

*BARBER  
WABILLER*

SELKIRK - BARBER STATION NOT PAID

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| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 13500104     | TARX000565 | 951101       | 951110       | 454          | 302         | 152       | .260     | 39.52          |

Route: GORDON GA to BUCKPORT ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

| Earn | Allow | Miles | Rate | Amount |
|------|-------|-------|------|--------|
| 9511 | 9511  | 302   | .260 | 78.52  |

| Date   | Miles | Rate | Amount |
|--------|-------|------|--------|
| 951110 | 454   | .260 | 118.04 |

CLM Data

| Date  | Hr | City Name | RR | A    | L/E | Date | Hr | City Name | RR | A | L/E |
|-------|----|-----------|----|------|-----|------|----|-----------|----|---|-----|
| 51110 | 20 | SELKIRK   | NY | CRSL | A L |      |    |           |    |   |     |
| 51112 | 01 | BARBER    | MA | ST   | R L |      |    |           |    |   |     |
| 51112 | 01 | BARSTA    | MA | ST   | R L |      |    |           |    |   |     |
| 51112 | 19 | PORTLAND  | ME | ST   | A L |      |    |           |    |   |     |
| 51114 | 04 | NMAIJCT   | ME | ST   | A L |      |    |           |    |   |     |
| 51114 | 12 | BUCKSPORT | ME | ST   | Z L |      |    |           |    |   |     |

*BARBER  
WABILLER*

SELKIRK - BARBER STATION NOT PAID

Claim Prefix: EC-ST -

Engelhard Corporation

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Mileage Difference Claims

Filed With SPRINGFIELD TERMINAL RAILROAD  
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| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 513500105    | TARX000572 | 951101       | 951110       | 454          | 302         | 152       | .260     | 39.52          |

Route: GORDON GA to BUCKPORT ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

| Earn | Allow | Miles | Rate | Amount |
|------|-------|-------|------|--------|
| 9511 | 9511  | 302   | .260 | 78.52  |

| Date   | Miles | Rate | Amount |
|--------|-------|------|--------|
| 951110 | 454   | .260 | 118.04 |

CLM Data

| Date   | Hr | City Name | RR | A    | L/E |
|--------|----|-----------|----|------|-----|
| 951110 | 20 | SELKIRK   | NY | CRSL | A L |
| 951112 | 01 | BARBER    | MA | ST   | R L |
| 951112 | 01 | BARSTA    | MA | ST   | R L |
| 951112 | 19 | PORTLAND  | ME | ST   | A L |
| 951114 | 04 | NMAINEJCT | ME | ST   | A L |
| 951114 | 12 | BUCKSPORT | ME | ST   | Z L |

| Date | Hr | City Name | RR | A | L/E |
|------|----|-----------|----|---|-----|
|------|----|-----------|----|---|-----|

SELKIRK - BARBER STATION NOT PAID

*BARBER  
WMB*

Claim Prefix: EC-ST -

Engelhard Corporation  
Mileage Difference Claims

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Filed With SPRINGFIELD TERMINAL RAILROAD  
on 12/31/96

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| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 613500106    | GATX012225 | 951202       | 951207       | 388          | 233         | 155       | .622     | 96.41          |

Route: MCINTYRE GA to SHAWMUT ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

| Earn | Allow | Miles | Rate | Amount |
|------|-------|-------|------|--------|
| 9512 | 9609  | 233   | .622 | 144.92 |

| Date   | Miles | Rate | Amount |
|--------|-------|------|--------|
| 951207 | 388   | .622 | 241.33 |

CLM Data

| Date   | Hr | City Name | RR | A    | L/E | Date | Hr | City Name | RR | A | L/E |
|--------|----|-----------|----|------|-----|------|----|-----------|----|---|-----|
| 951207 | 00 | SELKIRK   | NY | CRSL | A L |      |    |           |    |   |     |
| 951207 | 00 | SELKIRK   | NY | ST   | A L |      |    |           |    |   |     |
| 951208 | 07 | PORTLAND  | ME | ST   | A L |      |    |           |    |   |     |
| 951215 | 11 | SHAWMUT   | ME | ST   | D L |      |    |           |    |   |     |

SELKIRK - BARBER STATION NOT PAID

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| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 613500107    | GATX012228 | 951202       | 951207       | 388          | 233         | 155       | .622     | 96.41          |

Route: MCINTYRE GA to SHAWMUT ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

| Earn | Allow | Miles | Rate | Amount |
|------|-------|-------|------|--------|
| 9512 | 9609  | 233   | .622 | 144.92 |

| Date   | Miles | Rate | Amount |
|--------|-------|------|--------|
| 951207 | 388   | .622 | 241.33 |

CLM Data

| Date   | Hr | City Name | RR | A    | L/E | Date | Hr | City Name | RR | A | L/E |
|--------|----|-----------|----|------|-----|------|----|-----------|----|---|-----|
| 951207 | 00 | SELKIRK   | NY | CRSL | A L |      |    |           |    |   |     |
| 951207 | 00 | SELKIRK   | NY | ST   | A L |      |    |           |    |   |     |
| 951208 | 07 | PORTLAND  | ME | ST   | A L |      |    |           |    |   |     |
| 951217 | 14 | SHAWMUT   | ME | ST   | Z L |      |    |           |    |   |     |

SELKIRK - BARBER STATION NOT PAID

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| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 613500108    | GATX017584 | 951205       | 951209       | 385          | 233         | 152       | .715     | 108.68         |

Route: MCINTYRE GA to SHAWMUT ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

| Earn | Allow | Miles | Rate | Amount |
|------|-------|-------|------|--------|
| 9512 | 9609  | 233   | .715 | 166.59 |

| Date   | Miles | Rate | Amount |
|--------|-------|------|--------|
| 951209 | 385   | .715 | 275.27 |

CLM Data

| Date   | Hr | City Name | RR | A    | L/E | Date | Hr | City Name | RR | A | L/E |
|--------|----|-----------|----|------|-----|------|----|-----------|----|---|-----|
| 951209 | 20 | SELKIRK   | NY | CRSL | A L |      |    |           |    |   |     |
| 951210 | 18 | BARBER    | MA | ST   | R L |      |    |           |    |   |     |
| 951210 | 18 | PORTLAND  | ME | ST   | A L |      |    |           |    |   |     |
| 951214 | 14 | SHAWMUT   | ME | ST   | Z L |      |    |           |    |   |     |

SELKIRK - BARBER STATION NOT PAID

Claim Prefix: EC-ST -

Engelhard Corporation  
Mileage Difference Claims

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Filed With SPRINGFIELD TERMINAL RAILROAD  
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| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 13500109     | GATX019821 | 951130       | 951204       | 385          | 233         | 152       | .680     | 103.36         |

Route: MCINTYRE GA to SHAWMUT ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

| Earn | Allow | Miles | Rate | Amount |
|------|-------|-------|------|--------|
| 9512 | 9609  | 233   | .680 | 158.44 |

| Date   | Miles | Rate | Amount |
|--------|-------|------|--------|
| 951204 | 385   | .680 | 261.80 |

CLM Data

| Date  | Hr | City Name | RR | A    | L/E | Date | Hr | City Name | RR | A | L/E |
|-------|----|-----------|----|------|-----|------|----|-----------|----|---|-----|
| 51204 | 19 | SELKIRK   | NY | CRSL | A L |      |    |           |    |   |     |
| 51204 | 19 | SELKIRK   | NY | ST   | A L |      |    |           |    |   |     |
| 51205 | 23 | BARBER    | MA | ST   | P L |      |    |           |    |   |     |
| 51206 | 11 | PORTLAND  | ME | ST   | A L |      |    |           |    |   |     |
| 51208 | 12 | SHAWMUT   | ME | ST   | Z L |      |    |           |    |   |     |

SELKIRK - BARBER STATION NOT PAID

\*\*\*\*\*

| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 13500110     | GATX019834 | 951219       | 951224       | 432          | 277         | 155       | .673     | 104.31         |

Route: MCINTYRE GA to LINCOLN ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

| Earn | Allow | Miles | Rate | Amount |
|------|-------|-------|------|--------|
| 9512 | 9609  | 277   | .673 | 186.42 |

| Date   | Miles | Rate | Amount |
|--------|-------|------|--------|
| 951224 | 432   | .673 | 290.73 |

SELKIRK - BARBER STATION NOT PAID

\*\*\*\*\*

| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 13500111     | GATX019847 | 951201       | 951205       | 388          | 233         | 155       | .673     | 104.32         |

Route: MCINTYRE GA to SHAWMUT ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

| Earn | Allow | Miles | Rate | Amount |
|------|-------|-------|------|--------|
| 9512 | 9609  | 233   | .673 | 156.80 |

| Date   | Miles | Rate | Amount |
|--------|-------|------|--------|
| 951205 | 388   | .673 | 261.12 |

SELKIRK - BARBER STATION NOT PAID

\*\*\*\*\*

| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 13500112     | GATX019852 | 951129       | 951203       | 388          | 233         | 155       | .673     | 104.32         |

Route: MCINTYRE GA to SHAWMUT ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

| Earn | Allow | Miles | Rate | Amount |
|------|-------|-------|------|--------|
| 9512 | 9609  | 233   | .673 | 156.80 |

| Date   | Miles | Rate | Amount |
|--------|-------|------|--------|
| 951203 | 388   | .673 | 261.12 |

SELKIRK - BARBER STATION NOT PAID

Claim Prefix: EC-ST -

Engelhard Corporation  
Mileage Difference Claims  
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*****
Claim      Date      Date      Miles Miles Miles      Avg      Amount
Number     Car ID    Shipped  On-line  Earned  Allow  Due    Rate    Claimed
13500113   GATX019857    951211  951221    457    302    155    .673    104.32
  
```

```

Route: GORDON  GA to BUCKPORT ME Via NS-HAGERS-CR-SELKIR-ST
----- ALLOWED DETAIL -----
Earn Allow Miles Rate Amount      Date Miles Rate Amount
9512  9609    302 .673  203.24    951221    457 .673  307.56
  
```

*BARBER  
STATION*

SELKIRK - BARBER STATION NOT PAID

```

*****
Claim      Date      Date      Miles Miles Miles      Avg      Amount
Number     Car ID    Shipped  On-line  Earned  Allow  Due    Rate    Claimed
13500114   GATX019862    951203  951207    388    233    155    .680    105.40
  
```

```

Route: MCINTYRE GA to SHAWMUT ME Via NS-HAGERS-CR-SELKIR-ST
----- ALLOWED DETAIL -----
Earn Allow Miles Rate Amount      Date Miles Rate Amount
9512  9609    233 .680  158.44    951207    388 .680  263.84
  
```

SELKIRK - BARBER STATION NOT PAID

```

*****
Claim      Date      Date      Miles Miles Miles      Avg      Amount
Number     Car ID    Shipped  On-line  Earned  Allow  Due    Rate    Claimed
13500115   GATX020614    951127  951201    388    233    155    .673    104.32
  
```

```

Route: MCINTYRE GA to SHAWMUT ME Via NS-HAGERS-CR-SELKIR-ST
----- ALLOWED DETAIL -----
Earn Allow Miles Rate Amount      Date Miles Rate Amount
9512  9609    233 .673  156.80    951201    388 .673  261.12
  
```

SELKIRK - BARBER STATION NOT PAID

```

*****
Claim      Date      Date      Miles Miles Miles      Avg      Amount
Number     Car ID    Shipped  On-line  Earned  Allow  Due    Rate    Claimed
13500116   GATX020615    951125  951200    401    242    159    .673    107.01
  
```

```

Route: MCINTYRE GA to MADISON ME Via NS-HAGERS-CR-SELKIR-ST
----- ALLOWED DETAIL -----
Earn Allow Miles Rate Amount      Date Miles Rate Amount
9512  9609    242 .673  162.86    951200    401 .673  269.87
  
```

SELKIRK - BARBER STATION NOT PAID

Claim Prefix: EC-ST -

Engelhard Corporation  
Mileage Difference Claims  
Filed With SPRINGFIELD TERMINAL RAILROAD  
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\*\*\*\*\*

| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 613500117    | GATX020632 | 951210       | 951217       | 385          | 233         | 152       | .673     | 102.30         |

Route: MCINTYRE GA to SHAWMUT ME Via NS-HAGERS-CR-SELKIR-ST  
----- ALLOWED DETAIL ----- EARNED DETAIL -----  
Earn Allow Miles Rate Amount Date Miles Rate Amount  
9512 9609 233 .673 156.80 951217 385 .673 259.10

SELKIRK - BARBER STATION NOT PAID

\*\*\*\*\*

| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 613500118    | GATX020638 | 951207       | 951212       | 388          | 233         | 155       | .673     | 104.32         |

Route: MCINTYRE GA to SHAWMUT ME Via NS-HAGERS-CR-SELKIR-ST  
----- ALLOWED DETAIL ----- EARNED DETAIL -----  
Earn Allow Miles Rate Amount Date Miles Rate Amount  
9512 9609 233 .673 156.80 951212 388 .673 261.12

SELKIRK - BARBER STATION NOT PAID

\*\*\*\*\*

| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 613500119    | GATX030102 | 951201       | 951205       | 401          | 242         | 159       | .680     | 108.12         |

Route: MCINTYRE GA to MADISON ME Via NS-HAGERS-CR-SELKIR-ST  
----- ALLOWED DETAIL ----- EARNED DETAIL -----  
Earn Allow Miles Rate Amount Date Miles Rate Amount  
9512 9609 242 .680 164.56 951205 401 .680 272.68

\*\*\*\*\*

| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 613500120    | GATX046430 | 951214       | 951221       | 457          | 302         | 155       | .584     | 90.52          |

Route: ALLENTOWN PA to BUCKPORT ME Via CR-SELKIR-ST  
----- ALLOWED DETAIL ----- EARNED DETAIL -----  
Earn Allow Miles Rate Amount Date Miles Rate Amount  
9512 9609 302 .584 176.36 951221 457 .584 266.88

SELKIRK - BARBER STATION NOT PAID

\*\*\*\*\*

| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 613500121    | GATX048577 | 951206       | 951209       | 457          | 302         | 155       | .666     | 102.23         |

Route: GORDON GA to BUCKPORT ME Via NS-HAGERS-CR-SELKIR-ST  
----- ALLOWED DETAIL ----- EARNED DETAIL -----  
Earn Allow Miles Rate Amount Date Miles Rate Amount  
9512 9609 302 .666 201.13 951209 457 .666 304.36

SELKIRK - BARBER STATION NOT PAID

*BARBER  
WMBIL*

*BARBER  
WMBIL*

Claim Prefix: EC-ST -

Engelhard Corporation  
Mileage Difference Claims

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| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 13500122     | GATX048579 | 951125       | 951201       | 659          | 571         | 88        | .651     | 57.28          |

oute: MCINTYRE GA to WOODLAND ME Via NS-POTYAR-CPRS-MECHAN-ST

| ----- ALLOWED DETAIL ----- |       |       |      | ----- EARNED DETAIL ----- |        |       |      |        |
|----------------------------|-------|-------|------|---------------------------|--------|-------|------|--------|
| Earn                       | Allow | Miles | Rate | Amount                    | Date   | Miles | Rate | Amount |
| 9512                       | 9609  | 571   | .651 | 371.72                    | 951201 | 659   | .651 | 429.00 |

\*\*\*\*\*

| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 13500123     | GATX048590 | 951125       | 951200       | 401          | 242         | 159       | .651     | 103.51         |

oute: MCINTYRE GA to MADISON ME Via NS-HAGERS-CR-SELKIR-ST

| ----- ALLOWED DETAIL ----- |       |       |      | ----- EARNED DETAIL ----- |        |       |      |        |
|----------------------------|-------|-------|------|---------------------------|--------|-------|------|--------|
| Earn                       | Allow | Miles | Rate | Amount                    | Date   | Miles | Rate | Amount |
| 9512                       | 9609  | 242   | .651 | 157.54                    | 951200 | 401   | .651 | 261.05 |

ELKIRK - BARBER STATION NOT PAID

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| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 13500124     | GATX048596 | 951202       | 951206       | 388          | 233         | 155       | .651     | 100.90         |

oute: MCINTYRE GA to SHAWMUT ME Via NS-HAGERS-CR-SELKIR-ST

| ----- ALLOWED DETAIL ----- |       |       |      | ----- EARNED DETAIL ----- |        |       |      |        |
|----------------------------|-------|-------|------|---------------------------|--------|-------|------|--------|
| Earn                       | Allow | Miles | Rate | Amount                    | Date   | Miles | Rate | Amount |
| 9512                       | 9609  | 233   | .651 | 151.68                    | 951206 | 388   | .651 | 252.58 |

ELKIRK - BARBER STATION NOT PAID

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| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 13500125     | GATX050101 | 951212       | 951217       | 385          | 233         | 152       | .622     | 94.55          |

oute: MCINTYRE GA to SHAWMUT ME Via NS-HAGERS-CR-SELKIR-ST

| ----- ALLOWED DETAIL ----- |       |       |      | ----- EARNED DETAIL ----- |        |       |      |        |
|----------------------------|-------|-------|------|---------------------------|--------|-------|------|--------|
| Earn                       | Allow | Miles | Rate | Amount                    | Date   | Miles | Rate | Amount |
| 9512                       | 9609  | 233   | .622 | 144.92                    | 951217 | 385   | .622 | 239.47 |

ELKIRK - BARBER STATION NOT PAID

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| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 13500126     | GATX050115 | 951206       | 951212       | 388          | 233         | 155       | .622     | 96.41          |

oute: MCINTYRE GA to SHAWMUT ME Via NS-HAGERS-CR-SELKIR-ST

| ----- ALLOWED DETAIL ----- |       |       |      | ----- EARNED DETAIL ----- |        |       |      |        |
|----------------------------|-------|-------|------|---------------------------|--------|-------|------|--------|
| Earn                       | Allow | Miles | Rate | Amount                    | Date   | Miles | Rate | Amount |
| 9512                       | 9609  | 233   | .622 | 144.92                    | 951212 | 388   | .622 | 241.33 |

ELKIRK - BARBER STATION NOT PAID

Claim Prefix: EC-ST -

Engelhard Corporation  
Mileage Difference Claims

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*****
Claim      Date      Date      Miles   Miles   Miles   Avg   Amount
Number     Car ID   Shipped On-line Earned Allow Due  Rate  Claimed
113500127  GATX065360  951118  951200   454    302    152   .749   113.85
  
```

Route: GORDON GA to BUCKPORT ME Via NS-HAGERS-CR-SELKIR-ST

```

----- ALLOWED DETAIL -----
Earn Allow Miles Rate Amount      Date Miles Rate Amount
9511  9607    302   .749  226.19  951200   454   .749  340.04
  
```

```

----- CLM Data -----
Date Hr  City Name      RR  A L/E      Date Hr  City Name      RR  A L/E
951128 01 SELKIRK      NY  CRSL  J  L
951128 01 SELKIRK      NY  ST    R  L
951205 01 BUCKSPORT   ME  ST    Z  L
  
```

SELKIRK - BARBER STATION NOT PAID

```

*****
Claim      Date      Date      Miles   Miles   Miles   Avg   Amount
Number     Car ID   Shipped On-line Earned Allow Due  Rate  Claimed
113500128  GATX065362  951122  951204   385    233    152   .749   113.86
  
```

Route: MCINTYRE GA to SHAWMUT ME Via NS-HAGERS-CR-SELKIR-ST

```

----- ALLOWED DETAIL -----
Earn Allow Miles Rate Amount      Date Miles Rate Amount
9512  9609     91   .749   68.15  951204   385   .749  288.36
9512  9609    142   .749  106.35
  
```

```

----- CLM Data -----
Date Hr  City Name      RR  A L/E      Date Hr  City Name      RR  A L/E
951204 01 SELKIRK      NY  CRSL  J  L
951204 01 SELKIRK      NY  ST    R  L
951209 01 SHAWMUT     ME  ST    Z  L
  
```

SELKIRK - BARBER STATION NOT PAID

```

*****
Claim      Date      Date      Miles   Miles   Miles   Avg   Amount
Number     Car ID   Shipped On-line Earned Allow Due  Rate  Claimed
113500129  GATX065364  951213  951223   385    233    152   .749   113.85
  
```

Route: MCINTYRE GA to SHAWMUT ME Via NS-HAGERS-CR-SELKIR-ST

```

----- ALLOWED DETAIL -----
Earn Allow Miles Rate Amount      Date Miles Rate Amount
9512  9609    233   .749  174.51  951223   385   .749  288.36
  
```

```

----- CLM Data -----
Date Hr  City Name      RR  A L/E      Date Hr  City Name      RR  A L/E
951223 01 SELKIRK      NY  CRSL  J  L
951223 01 SELKIRK      NY  ST    R  L
951228 01 SHAWMUT     ME  ST    Z  L
  
```

SELKIRK - BARBER STATION NOT PAID

*BANBOS  
WAYBILLS*

Claim Prefix: EC-ST -

Engelhard Corporation  
Mileage Difference Claims

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Filed With SPRINGFIELD TERMINAL RAILROAD  
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\*\*\*\*\*  
Claim                      Date              Date              Miles   Miles   Miles              Avg              Amount  
Number              Car ID      Shipped   On-line   Earned   Allow   Due              Rate              Claimed  
513500130      GATX065367      951122      951204              454              302              152              .749              113.85

Route: GORDON      GA to BUCKPORT      ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

Earn Allow Miles      Rate      Amount  
9512      9609              302              .749              226.19Date      Miles      Rate      Amount  
951204              454              .749              340.04

CLM Data

| Date   | Hr | City Name | RR | A    | L/E | Date | Hr | City Name | RR | A | L/E |
|--------|----|-----------|----|------|-----|------|----|-----------|----|---|-----|
| 951204 | 01 | SELKIRK   | NY | CRSL | J L |      |    |           |    |   |     |
| 951204 | 01 | SELKIRK   | NY | ST   | R L |      |    |           |    |   |     |
| 951209 | 01 | BUCKSPORT | ME | ST   | Z L |      |    |           |    |   |     |

SELKIRK - BARBER STATION NOT PAID

\*\*\*\*\*  
Claim                      Date              Date              Miles   Miles   Miles              Avg              Amount  
Number              Car ID      Shipped   On-line   Earned   Allow   Due              Rate              Claimed  
513500131      GATX065369      951205      951215              385              233              152              .749              113.85

Route: MCINTYRE      GA to SHAWMUT      ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

Earn Allow Miles      Rate      Amount  
9512      9609              233              .749              174.51Date      Miles      Rate      Amount  
951215              385              .749              288.36

CLM Data

| Date   | Hr | City Name | RR | A    | L/E | Date | Hr | City Name | RR | A | L/E |
|--------|----|-----------|----|------|-----|------|----|-----------|----|---|-----|
| 951215 | 01 | SELKIRK   | NY | CRSL | J L |      |    |           |    |   |     |
| 951215 | 01 | SELKIRK   | NY | ST   | R L |      |    |           |    |   |     |
| 951220 | 01 | SHAWMUT   | ME | ST   | Z L |      |    |           |    |   |     |

SELKIRK - BARBER STATION NOT PAID

\*\*\*\*\*  
Claim                      Date              Date              Miles   Miles   Miles              Avg              Amount  
Number              Car ID      Shipped   On-line   Earned   Allow   Due              Rate              Claimed  
513500132      GATX065373      951129      951211              454              302              152              .749              113.85

Route: GORDON      GA to BUCKPORT      ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

Earn Allow Miles      Rate      Amount  
9512      9609              302              .749              226.19Date      Miles      Rate      Amount  
951211              454              .749              340.04

CLM Data

| Date   | Hr | City Name | RR | A    | L/E | Date | Hr | City Name | RR | A | L/E |
|--------|----|-----------|----|------|-----|------|----|-----------|----|---|-----|
| 951211 | 01 | SELKIRK   | NY | CRSL | J L |      |    |           |    |   |     |
| 951211 | 01 | SELKIRK   | NY | ST   | R L |      |    |           |    |   |     |
| 951216 | 01 | BUCKSPORT | ME | ST   | Z L |      |    |           |    |   |     |

SELKIRK - BARBER STATION NOT PAID

Claim Prefix: EC-ST -

Engelhard Corporation

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Mileage Difference Claims

Filed With SPRINGFIELD TERMINAL RAILROAD  
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```
*****
Claim      Date      Date      Miles   Miles   Miles   Avg   Amount
Number     Car ID   Shipped  On-line  Earned   Allow   Due    Rate   Claimed
13500133   GATX065380   951129   951211   385      233     152    .749   113.85
```

oute: MCINTYRE GA to SHAWMUT ME Via NS-HAGERS-CR-SELKIR-ST

```
----- ALLOWED DETAIL -----
Earn Allow Miles Rate Amount      Date Miles Rate Amount
9512  9609   233  .749  174.51  951211   385  .749  288.36
```

```
----- CLM Data -----
Date Hr  City Name      RR  A L/E      Date Hr  City Name      RR  A L/E
51211 01  SELKIRK      NY  CRSL  J  L
51211 01  SELKIRK      NY  ST    R  L
51216 01  SHAWMUT      ME  ST    Z  L
```

ELKIRK - BARBER STATION NOT PAID

```
*****
Claim      Date      Date      Miles   Miles   Miles   Avg   Amount
Number     Car ID   Shipped  On-line  Earned   Allow   Due    Rate   Claimed
13500134   GATX065385   951211   951221   385      233     152    .749   113.85
```

oute: MCINTYRE GA to SHAWMUT ME Via NS-HAGERS-CR-SELKIR-ST

```
----- ALLOWED DETAIL -----
Earn Allow Miles Rate Amount      Date Miles Rate Amount
9512  9609   233  .749  174.51  951221   385  .749  288.36
```

```
----- CLM Data -----
Date Hr  City Name      RR  A L/E      Date Hr  City Name      RR  A L/E
51221 01  SELKIRK      NY  CRSL  J  L
51221 01  SELKIRK      NY  ST    R  L
51226 01  SHAWMUT      ME  ST    Z  L
```

```
*****
Claim      Date      Date      Miles   Miles   Miles   Avg   Amount
Number     Car ID   Shipped  On-line  Earned   Allow   Due    Rate   Claimed
13500135   GATX065392   951204   951214   385      233     152    .749   113.85
```

oute: MCINTYRE GA to SHAWMUT ME Via NS-HAGERS-CR-SELKIR-ST

```
----- ALLOWED DETAIL -----
Earn Allow Miles Rate Amount      Date Miles Rate Amount
9512  9609   233  .749  174.51  951214   385  .749  288.36
```

```
----- CLM Data -----
Date Hr  City Name      RR  A L/E      Date Hr  City Name      RR  A L/E
951214 01  SELKIRK      NY  CRSL  J  L
951214 01  SELKIRK      NY  ST    R  L
951219 01  SHAWMUT      ME  ST    Z  L
```

SELKIRK - BARBER STATION NOT PAID

Main Prefix: EC-ST -

Engelhard Corporation  
Mileage Difference Claims

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Filed With SPRINGFIELD TERMINAL RAILROAD  
on 12/31/96

```
*****
Claim          Date      Date      Miles   Miles Miles   Avg   Amount
Number        Car ID    Shipped On-line Earned Allow Due   Rate Claimed
13500136      GATX065426    951212  951222   385    233   152   .749   113.85
```

Route: MCINTYRE GA to SHAWMUT ME Via NS-HAGERS-CR-SELKIR-ST

```
----- ALLOWED DETAIL -----
Earn Allow Miles Rate Amount      Date Miles Rate Amount
9512  9609   233   .749  174.51  951222   385   .749  288.36
```

```
----- CLM Data -----
Date Hr City Name      RR A L/E      Date Hr City Name      RR A L/E
951222 01 SELKIRK      NY CRSL J L
951222 01 SELKIRK      NY ST  R L
951227 01 SHAWMUT      ME ST  Z L
```

SELKIRK - BARBER STATION NOT PAID

```
*****
Claim          Date      Date      Miles   Miles Miles   Avg   Amount
Number        Car ID    Shipped On-line Earned Allow Due   Rate Claimed
13500137      GATX065447    951125  951200   454    302   152   .749   113.85
```

Route: GORDON GA to BUCKPORT ME Via NS-HAGERS-CR-SELKIR-ST

```
----- ALLOWED DETAIL -----
Earn Allow Miles Rate Amount      Date Miles Rate Amount
9511  9607   142   .749  106.35  951200   454   .749  340.04
9512  9609   160   .749  119.84
```

```
----- CLM Data -----
Date Hr City Name      RR A L/E      Date Hr City Name      RR A L/E
951212 01 BUCKSPORT ME ST  Z L
```

SELKIRK - BARBER STATION NOT PAID

```
*****
Claim          Date      Date      Miles   Miles Miles   Avg   Amount
Number        Car ID    Shipped On-line Earned Allow Due   Rate Claimed
13500138      GATX065448    951208  951218   385    233   152   .749   113.85
```

Route: MCINTYRE GA to SHAWMUT ME Via NS-HAGERS-CR-SELKIR-ST

```
----- ALLOWED DETAIL -----
Earn Allow Miles Rate Amount      Date Miles Rate Amount
9512  9609   233   .749  174.51  951218   385   .749  288.36
```

```
----- CLM Data -----
Date Hr City Name      RR A L/E      Date Hr City Name      RR A L/E
951218 01 SELKIRK      NY CRSL J L
951218 01 SELKIRK      NY ST  R L
951223 01 SHAWMUT      ME ST  Z L
```

SELKIRK - BARBER STATION NOT PAID

*Barber  
1/11/97*

Claim Prefix: EC-ST -

Engelhard Corporation  
Mileage Difference Claims

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Filed With SPRINGFIELD TERMINAL RAILROAD  
on 12/31/96

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| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 613500139    | GATX065549 | 951124       | 951200       | 398          | 242         | 156       | .742     | 115.75         |

Route: MCINTYRE GA to MADISON ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

| Earn | Allow | Miles | Rate | Amount |
|------|-------|-------|------|--------|
| 9511 | 9607  | 142   | .742 | 105.36 |
| 9512 | 9609  | 100   | .742 | 74.20  |

| Date   | Miles | Rate | Amount |
|--------|-------|------|--------|
| 951200 | 398   | .742 | 295.31 |

CLM Data

| Date   | Hr | City Name | RR | A  | L/E | Date | Hr | City Name | RR | A | L/E |
|--------|----|-----------|----|----|-----|------|----|-----------|----|---|-----|
| 951211 | 01 | MADISON   | ME | ST | Z L |      |    |           |    |   |     |

SELKIRK - BARBER STATION NOT PAID

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| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 613500140    | GATX065550 | 951206       | 951216       | 385          | 233         | 152       | .742     | 112.79         |

Route: MCINTYRE GA to SHAWMUT ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

| Earn | Allow | Miles | Rate | Amount |
|------|-------|-------|------|--------|
| 9512 | 9609  | 233   | .742 | 172.88 |

| Date   | Miles | Rate | Amount |
|--------|-------|------|--------|
| 951216 | 385   | .742 | 285.67 |

CLM Data

| Date   | Hr | City Name | RR | A    | L/E | Date | Hr | City Name | RR | A | L/E |
|--------|----|-----------|----|------|-----|------|----|-----------|----|---|-----|
| 951216 | 01 | SELKIRK   | NY | CRSL | J L |      |    |           |    |   |     |
| 951216 | 01 | SELKIRK   | NY | ST   | R L |      |    |           |    |   |     |
| 951221 | 01 | SHAWMUT   | ME | ST   | Z L |      |    |           |    |   |     |

SELKIRK - BARBER STATION NOT PAID

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| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 613500141    | GATX065561 | 951201       | 951211       | 454          | 302         | 152       | .742     | 112.78         |

Route: GORDON GA to BUCKPORT ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

| Earn | Allow | Miles | Rate | Amount |
|------|-------|-------|------|--------|
| 9512 | 9609  | 302   | .742 | 224.08 |

| Date   | Miles | Rate | Amount |
|--------|-------|------|--------|
| 951211 | 454   | .742 | 336.86 |

CLM Data

| Date   | Hr | City Name | RR | A    | L/E | Date | Hr | City Name | RR | A | L/E |
|--------|----|-----------|----|------|-----|------|----|-----------|----|---|-----|
| 951211 | 01 | SELKIRK   | NY | CRSL | J L |      |    |           |    |   |     |
| 951211 | 01 | SELKIRK   | NY | ST   | R L |      |    |           |    |   |     |
| 951216 | 01 | BUCKSPORT | ME | ST   | Z L |      |    |           |    |   |     |

SELKIRK - BARBER STATION NOT PAID

*BARBER*  
*UABill*

Claim Prefix: EC-ST -

Engelhard Corporation  
Mileage Difference Claims

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Filed With SPRINGFIELD TERMINAL RAILROAD  
on 12/31/96

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| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 13500142     | GATX065563 | 951205       | 951215       | 385          | 233         | 152       | .742     | 112.79         |

Route: MCINTYRE GA to SHAWMUT ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

| Earn | Allow | Miles | Rate | Amount |
|------|-------|-------|------|--------|
| 9512 | 9609  | 233   | .742 | 172.88 |

| Date   | Miles | Rate | Amount |
|--------|-------|------|--------|
| 951215 | 385   | .742 | 285.67 |

CLM Data

| Date   | Hr | City Name | RR | A    | L/E | Date | Hr | City Name | RR | A | L/E |
|--------|----|-----------|----|------|-----|------|----|-----------|----|---|-----|
| 951215 | 01 | SELKIRK   | NY | CRSL | J L |      |    |           |    |   |     |
| 951215 | 01 | SELKIRK   | NY | ST   | R L |      |    |           |    |   |     |
| 951220 | 01 | SHAWMUT   | ME | ST   | Z L |      |    |           |    |   |     |

SELKIRK - BARBER STATION NOT PAID

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| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 13500143     | GATX065566 | 951115       | 951200       | 385          | 233         | 152       | .742     | 112.79         |

Route: GORDON GA to SHAWMUT ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

| Earn | Allow | Miles | Rate | Amount |
|------|-------|-------|------|--------|
| 9511 | 9607  | 142   | .742 | 105.36 |
| 9512 | 9609  | 91    | .742 | 67.52  |

| Date   | Miles | Rate | Amount |
|--------|-------|------|--------|
| 951200 | 385   | .742 | 285.67 |

CLM Data

| Date   | Hr | City Name | RR | A    | L/E | Date | Hr | City Name | RR | A | L/E |
|--------|----|-----------|----|------|-----|------|----|-----------|----|---|-----|
| 951125 | 01 | SELKIRK   | NY | CRSL | J L |      |    |           |    |   |     |
| 951125 | 01 | SELKIRK   | NY | ST   | R L |      |    |           |    |   |     |
| 951202 | 01 | SHAWMUT   | ME | ST   | Z L |      |    |           |    |   |     |

SELKIRK - BARBER STATION NOT PAID

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| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 13500144     | GATX065582 | 951130       | 951212       | 385          | 233         | 152       | .742     | 112.79         |

Route: MCINTYRE GA to SHAWMUT ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

| Earn | Allow | Miles | Rate | Amount |
|------|-------|-------|------|--------|
| 9512 | 9609  | 233   | .742 | 172.88 |

| Date   | Miles | Rate | Amount |
|--------|-------|------|--------|
| 951212 | 385   | .742 | 285.67 |

CLM Data

| Date   | Hr | City Name | RR | A    | L/E | Date | Hr | City Name | RR | A | L/E |
|--------|----|-----------|----|------|-----|------|----|-----------|----|---|-----|
| 951212 | 01 | SELKIRK   | NY | CRSL | J L |      |    |           |    |   |     |
| 951212 | 01 | SELKIRK   | NY | ST   | R L |      |    |           |    |   |     |
| 951217 | 01 | SHAWMUT   | ME | ST   | Z L |      |    |           |    |   |     |

SELKIRK - BARBER STATION NOT PAID

Claim Prefix: EC-ST -

Engelhard Corporation

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Mileage Difference Claim

Filed With SPRINGFIELD TERMINAL RAILROAD  
on 12/31/96

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| Claim<br>Number | Car ID     | Date<br>Shipped | Date<br>On-line | Miles<br>Earned | Miles<br>Allow | Miles<br>Due | Avg<br>Rate | Amount<br>Claimed |
|-----------------|------------|-----------------|-----------------|-----------------|----------------|--------------|-------------|-------------------|
| 313500145       | GATX065595 | 951116          | 951206          | 454             | 302            | 152          | .742        | 112.78            |

Route: GORDON GA to BUCKPORT ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

| Earn | Allow | Miles | Rate | Amount |
|------|-------|-------|------|--------|
| 9512 | 9609  | 302   | .742 | 224.08 |

| Date   | Miles | Rate | Amount |
|--------|-------|------|--------|
| 951206 | 454   | .742 | 336.86 |

| CLM Data |    |              |    |       |
|----------|----|--------------|----|-------|
| Date     | Hr | City Name    | RR | A L/E |
| 951203   | 01 | BUCKSPORT ME | ST | Z L   |

SELKIRK - BARBER STATION NOT PAID

*BARBER  
WMB*

Claim Prefix: EC-ST -

Engelhard Corporation  
Mileage Difference Claims

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Filed With SPRINGFIELD TERMINAL RAILROAD  
on 12/31/96

| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 613500146    | TARX000504 | 951216       | 951219       | 454          | 302         | 152       | .260     | 39.52          |

Route: GORDON GA to BUCKPORT ME Via NS-HAGERS-CR-SELKIR-ST

| ALLOWED DETAIL |       |       |      |        | EARNED DETAIL |       |      |        |  |
|----------------|-------|-------|------|--------|---------------|-------|------|--------|--|
| Earn           | Allow | Miles | Rate | Amount | Date          | Miles | Rate | Amount |  |
| 9512           | 9512  | 302   | .260 | 78.52  | 951219        | 454   | .260 | 118.04 |  |

CLM Data

| Date   | Hr | City Name | RR | A    | L/E | Date | Hr | City Name | RR | A | L/E |
|--------|----|-----------|----|------|-----|------|----|-----------|----|---|-----|
| 951219 | 20 | SELKIRK   | NY | CRSL | A L |      |    |           |    |   |     |
| 951219 | 20 | SELKIRK   | NY | ST   | A L |      |    |           |    |   |     |
| 951221 | 20 | BARSTA    | MA | ST   | R L |      |    |           |    |   |     |
| 951222 | 09 | PORTLAND  | ME | ST   | A L |      |    |           |    |   |     |
| 951224 | 14 | NMAINEJCT | ME | ST   | A L |      |    |           |    |   |     |
| 951224 | 18 | BUCKSPORT | ME | ST   | D L |      |    |           |    |   |     |

SELKIRK - BARBER STATION NOT PAID

| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 613500147    | TARX000507 | 951213       | 951217       | 454          | 302         | 152       | .260     | 39.52          |

Route: GORDON GA to BUCKPORT ME Via NS-HAGERS-CR-SELKIR-ST

| ALLOWED DETAIL |       |       |      |        | EARNED DETAIL |       |      |        |  |
|----------------|-------|-------|------|--------|---------------|-------|------|--------|--|
| Earn           | Allow | Miles | Rate | Amount | Date          | Miles | Rate | Amount |  |
| 9512           | 9512  | 302   | .260 | 78.52  | 951217        | 454   | .260 | 118.04 |  |

CLM Data

| Date   | Hr | City Name | RR | A    | L/E | Date   | Hr | City Name | RR | A  | L/E |
|--------|----|-----------|----|------|-----|--------|----|-----------|----|----|-----|
| 951217 | 21 | SELKIRK   | NY | CRSL | A L | 951222 | 14 | BUCKSPORT | ME | ST | D L |
| 951217 | 21 | SELKIRK   | NY | ST   | A L |        |    |           |    |    |     |
| 951218 | 19 | BARSTA    | MA | ST   | R L |        |    |           |    |    |     |
| 951219 | 03 | BARBER    | MA | ST   | P L |        |    |           |    |    |     |
| 951219 | 12 | PORTLAND  | ME | ST   | A L |        |    |           |    |    |     |
| 951222 | 08 | NMAINEJCT | ME | ST   | A L |        |    |           |    |    |     |

SELKIRK - BARBER STATION NOT PAID

Claim Prefix: EC-ST -

Engelhard Corporation  
Mileage Difference Claim

PAGE 22

Filed With SPRINGFIELD TERMINAL RAILROAD  
on 12/31/96

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| Claim Number | Car ID     | Date Shipped | Date On-line | Miles Earned | Miles Allow | Miles Due | Avg Rate | Amount Claimed |
|--------------|------------|--------------|--------------|--------------|-------------|-----------|----------|----------------|
| 613500148    | TARX000541 | 951215       | 951219       | 454          | 302         | 152       | .260     | 39.52          |

Route: GORDON GA to BUCKPORT ME Via NS-HAGERS-CR-SELKIR-ST

----- ALLOWED DETAIL -----

----- EARNED DETAIL -----

| Earn | Allow | Miles | Rate | Amount |
|------|-------|-------|------|--------|
| 9512 | 9512  | 302   | .260 | 78.52  |

| Date   | Miles | Rate | Amount |
|--------|-------|------|--------|
| 951219 | 454   | .260 | 118.04 |

CLM Data

| Date   | Hr | City Name | RR | A    | L/E | Date | Hr | City Name | RR | A | L/E |
|--------|----|-----------|----|------|-----|------|----|-----------|----|---|-----|
| 951219 | 20 | SELKIRK   | NY | CRSL | A L |      |    |           |    |   |     |
| 951219 | 20 | SELKIRK   | NY | ST   | A L |      |    |           |    |   |     |
| 951221 | 20 | BARSTA    | MA | ST   | R L |      |    |           |    |   |     |
| 951222 | 09 | PORTLAND  | ME | ST   | A L |      |    |           |    |   |     |
| 951224 | 14 | NMAINEJCT | ME | ST   | A L |      |    |           |    |   |     |
| 951224 | 18 | BUCKSPORT | ME | ST   | D L |      |    |           |    |   |     |

*BARBER  
W. J. BILLO*

SELKIRK - BARBER STATION NOT PAID

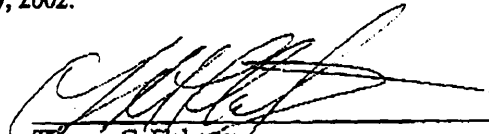
Mileage Difference Claims 12/31/96 Totals: 62 claims 22 pages \$6,643.77

## PETITIONER EXHIBIT NO. 3

### AFFIDAVIT OF THOMAS G. FLAHERTY

1. My name is Thomas G. Flaherty and I am Manager, Rail Logistics of Engelhard Corporation, which is the Plaintiff in the proceeding involving Conrail and Springfield Terminal Railway Co. My responsibilities include management of all contractual arrangements with rail car lessors.
2. I understand that Defendant Springfield Terminal Railway Co. in its Motion to Dismiss and in an accompanying Affidavit by Jeffrey Miller, has taken the position that Engelhard is not entitled to mileage allowance payments on any leased car claims listed in Exhibits to the Complaint. Mr. Miller, in his Affidavit (Page 3), also questions concerning Engelhard's right to receive mileage allowances listed on Exhibits B and C which were earned under the reporting mark of "TIMX".
3. Both the Motion and Mr. Miller's Affidavit (see Page 3) list car lessors as ACF Industries ("ACFX"); General American Tank Car Corp. ("GATX"); General Electric Rail Car Services Corp. ("HARX and "NATX") and Union Tank Car Co. ("UTLX").
4. Engelhard Corporation has secured from ACF Industries, General American Tank Car Corp., General Electric Rail Car Services Corp. and Union Tank Car Co. Assignments of the interest which each of these car lessors has in the mileage allowance payments due for cars leased to Engelhard and used for transportation over the 155 mile segment of track between Selkirk, NY and Barber Station, MA during the years brought in question by this Complaint. Copies of those Assignments are attached to this Affidavit as Exhibits 1, 2, 3 and 4.
5. On or about August 11, 1983 Engelhard purchased eighty three (83) tank cars from Trinity Industries Leasing Co., those cars which bear the reporting mark of TIMX and, as the owner of such cars, Engelhard Corporation is entitled to recovery of car mileage allowances earned under those reporting marks. After the purchase, those cars continued to bear the TIMX marks under the terms of a management agreement between Engelhard and Trinity. That agreement expired on or about August 1999 and the cars now bear the ENGX marks.
6. Engelhard provides this information to the Court to respond to the factual statements made by Defendant Springfield Terminal Railway Company in its Motion to Dismiss and attached Affidavit.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 4<sup>th</sup> day of January, 2002.

  
Thomas G. Flaherty

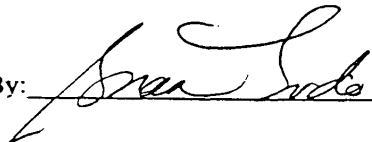
## EXHIBIT 1

### ASSIGNMENT

ACF INDUSTRIES INCORPORATED, (hereinafter ACF) a New Jersey corporation, Lessor, under one or more of Car Leasing Agreements with ENGELHARD CORPORATION, (hereinafter ENGELHARD) a Delaware corporation, as Lessee, hereby assigns to ENGELHARD, without recourse, any and all rights which ACF may have under the car leasing Agreements to collect, at ENGELHARD'S sole cost and expense, mileage compensation payments from SPRINGFIELD TERMINAL RAILWAY COMPANY, INC., and/or CONSOLIDATED RAIL CORPORATION (hereinafter SPRINGFIELD TERMINAL and CONRAIL) arising out of claims for mileage compensation payments incurred by SPRINGFIELD TERMINAL and/or CONRAIL, in the transportation of ENGELHARD rail tank cars leased by ACF to ENGELHARD, which cars were used by SPRINGFIELD TERMINAL and/or CONRAIL for the transportation of ENGELHARD clay slurry in interstate commerce over a 155 mile segment of rail line owned by CONRAIL and extending from Selkirk, NY, to Barber Station, MA, during the period January 1, 1990, through December 31, 2000.

IN WITNESS WHEREOF, ACF INDUSTRIES INCORPORATED has caused this Assignment to be executed on this 14th day of May, 2001.

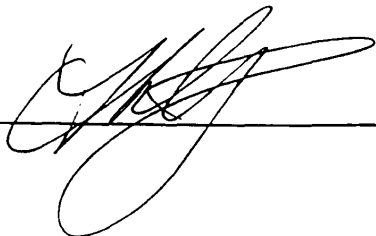
ACF INDUSTRIES INCORPORATED

By: 

### ACCEPTANCE OF ASSIGNMENT

ENGELHARD CORPORATION hereby accepts the Assignment described above.

ENGELHARD CORPORATION

By: 

## EXHIBIT 2

### ASSIGNMENT

GATX Rail, a division of GATX Financial Corporation, a Delaware Corporation, (hereinafter GATX) successor by merger to GENERAL AMERICAN TRANSPORTATION CORPORATION, a New York corporation, Lessor under one or more of Car Leasing Agreements with ENGELHARD CORPORATION, (hereinafter ENGELHARD) a Delaware corporation, as Lessee, hereby assigns to ENGELHARD, without recourse, any and all rights which GATX may have under the Car Leasing Agreements to collect, at ENGELHARD'S sole cost and expense, mileage compensation payments from SPRINGFIELD TERMINAL RAILWAY COMPANY, INC., and/or CONSOLIDATED RAIL CORPORATION (hereinafter SPRINGFIELD TERMINAL and/or CONRAIL, in the transportation of rail tank cars leased by GATX to ENGELHARD, which cars were used by SPRINGFIELD TERMINALS and/or CONRAIL for the transportation of ENGLHARD clay slurry in interstate commerce over a 155 mile segment of rail line owned by CONRAIL and extending from Selkirk, NY, to Barber Station, MA, during the period January 1, 1990 through December 31, 2000 and which mileage compensation payments were not otherwise paid by SPRINGFIELD TERMINALS and/or CONRAIL to GATX.

IN WITNESS WHEREOF, GATX FINANCIAL CORPORATION has caused this Assignment to be executed on this 15<sup>TH</sup> day of August, 2001.

GATX FINANCIAL CORPORATION

By: 

### ACCEPTANCE OF ASSIGNMENT

ENGELHARD CORPORATION hereby accepts the Assignment described above.

ENGELHARD CORPORATION

By: 

### EXHIBIT 3

#### ASSIGNMENT

GENERAL ELECTRIC CAPITAL RAILCAR SERVICES CORPORATION, (hereinafter GE) a Delaware corporation, Lessor, under one or more of Car Leasing Agreements with ENGELHARD CORPORATION, (hereinafter ENGELHARD) a Delaware corporation, as Lessee, hereby assigns to ENGELHARD, without recourse, any and all rights which GE may have under the car leasing Agreements to collect, at ENGELHARD'S sole cost and expense, mileage compensation, payments from SPRINGFIELD TERMINAL RAILWAY COMPANY, INC., and/or CONSOLIDATED RAIL CORPORATION (hereinafter SPRINGFIELD TERMINAL and CONRAIL) arising out of claims for mileage compensation payments incurred by SPRINGFIELD TERMINAL and/or CONRAIL, in the transportation of ENGELHARD rail tank cars leased by GE to ENGELHARD, which cars were used by SPRINGFIELD TERMINAL and/or CONRAIL for the transportation of ENGELHARD clay slurry in interstate commerce over a 155 mile segment of rail line owned by CONRAIL and extending from Selkirk, NY, to Barber Station, MA, during the period January 1, 1990, through December 31, 2000.

IN WITNESS WHEREOF, GENERAL ELECTRIC CAPITAL RAILCAR SERVICES CORPORATION has caused this Assignment to be executed on this 11 day of MAY, 2001.

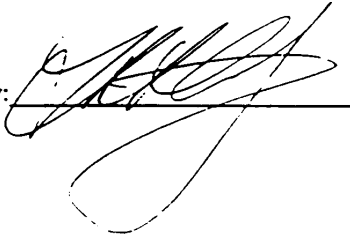
GENERAL ELECTRIC CAPITAL  
RAILCAR SERVICES CORPORATION

By:  \_\_\_\_\_

#### ACCEPTANCE OF ASSIGNMENT

ENGELHARD CORPORATION hereby accepts the Assignment described above.

ENGELHARD CORPORATION

By:  \_\_\_\_\_

## EXHIBIT 4

### ASSIGNMENT

UNION TANK CAR COMPANY, (hereinafter UNION TANK) a Delaware corporation, Lessor, under one or more of Car Leasing Agreements with ENGELHARD CORPORATION, (hereinafter ENGELHARD) a Delaware corporation, as Lessee, hereby assigns to ENGELHARD, without recourse, any and all rights which UNION TANK may have under the car leasing Agreements to collect, at ENGELHARD'S sole cost and expense, mileage compensation payments from SPRINGFIELD TERMINAL RAILWAY COMPANY, INC., and/or CONSOLIDATED RAIL CORPORATION (hereinafter SPRINGFIELD TERMINAL and CONRAIL) arising out of claims for mileage compensation payments incurred by SPRINGFIELD TERMINAL and/or CONRAIL, in the transportation of ENGELHARD rail tank cars leased by UNION TANK to ENGELHARD, which cars were used by SPRINGFIELD TERMINAL and/or CONRAIL for the transportation of ENGELHARD clay slurry in interstate commerce over a 155 mile segment of rail line owned by CONRAIL and extending from Selkirk, NY, to Barber Station, MA, during the period January 1, 1990, through December 31, 2000.

IN WITNESS WHEREOF, UNION TANK CAR COMPANY has caused this Assignment to be executed on this 14<sup>th</sup> day of May, 2001.

UNION TANK CAR COMPANY

By: William R. Constantino

### ACCEPTANCE OF ASSIGNMENT

ENGELHARD CORPORATION hereby accepts the Assignment described above.

ENGELHARD CORPORATION

By: [Signature]

**PETITIONER EXHIBIT NO. 4**

033090

AGREEMENT

Dated as of March 31, 1990

between

CONSOLIDATED RAIL CORPORATION ("Conrail")

and

THE BOSTON AND MAINE CORPORATION ("B&M")

and

THE SPRINGFIELD TERMINAL RAILWAY COMPANY ("ST")

Relating to Interchange of Loaded and  
empty freight cars on B&M/ST's track  
between Mile Posts 3.0± and 4.6± (including necessary  
head and tail room) at Barber, Massachusetts.

AGREEMENT

THIS AGREEMENT, entered into as of this 31st day of March, 1990, by and between CONSOLIDATED RAIL CORPORATION (hereinafter referred to as "Conrail" ) and THE BOSTON AND MAINE CORPORATION (hereinafter referred to as "B&M") and THE SPRINGFIELD TERMINAL RAILWAY COMPANY ("ST") (hereinafter collectively referred to as "B&M/ST")

WHEREAS, Conrail and B&M/ST are parties to that certain Agreement dated October 27, 1989, as amended (the "October 27, 1989 Agreement"), concerning the movement of finished motor vehicles destined for the New England area for the Ford Motor Company (the "Ford Traffic") over certain B&M/ST Trackage between Barber, Massachusetts and the B&M/ST's Hill Yard at Ayer, Massachusetts and

WHEREAS, in the interest of improved service the parties desire to enter into an agreement providing for the interchange of loaded and empty freight cars between them of other, non-Ford Traffic (the "Other Traffic") in accordance with applicable tariffs and commercial arrangements, on B&M/ST's track, at Barber, Massachusetts.

NOW THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

SECTION 1. FORD TRAFFIC NOT GOVERNED BY THIS AGREEMENT

This Agreement shall not govern the movement of Ford Traffic between the parties. The movement of the Ford traffic over the B&M/ST's Trackage between Barber and the

Hill Yard, and all rights and obligations of the parties with respect thereto, shall be governed by the October 27, 1989 Agreement.

**SECTION 2. CONRAIL'S TRACKAGE RIGHTS OVER P&W**

Conrail hereby represents and warrants that Conrail has secured trackage rights (the "P&W Trackage Rights") over the tracks of the Providence and Worcester Railway Company ("P&W") between the junction of Conrail's and the P&W's tracks in Worcester, Massachusetts, and the junction of the P&W's and the B&M/ST's tracks at approximately milepost 3.0 in Barber (the "P&W Trackage"). Conrail shall maintain the P&W Trackage Rights throughout the term of this Agreement.

**SECTION 3. INTERCHANGE PROVISIONS**

Except as otherwise provided in the October 27, 1989 agreement, Conrail and B&M/ST hereby establish B&M/ST's track(s) between Mile Post 3.0± and Mile Post 4.6± (Burncoat Street) at Barber, Massachusetts as the location for the interchange of cars (other than Ford traffic referenced in Section 1 of this Agreement) in arranged freight service in accordance with the attached "Exhibit I" or extra freight service as mutually agreed to between the parties hereto, routed via Barber (the "Barber Interchange Point"). Conrail and B&M/ST shall deliver interchange cars to and pull interchange cars from B&M/ST's tracks(s) so designated by B&M/ST between Mile Posts 3.0± and 4.6± (including necessary head and tail room), hereinafter referred to as "Interchange Track(s)".

(a) Conrail shall not handle interchange cars via Barber, Massachusetts which originate or terminate on rail properties now or formerly owned or operated by B&M/ST in the City of Worcester or originate or terminate on that portion of B&M/ST's Ayer Branch between Barber's Station and Clinton, Massachusetts. Further operating arrangements under this Agreement shall in no way violate Conrail's operating rights over the Providence and Worcester Railroad Company (P&W), as governed by an agreement between Conrail and the P&W dated June 30, 1989.

(b) For all purposes, except for determining responsibility for Per Diem/Car Hire Charges, cars together with containers and/or trailers loaded thereon (hereinafter referred to as "cars") shall be considered as interchanged from the account of one party to the other as follows:

- (i) Interchange of eastbound cars shall take place at the Barber Interchange Point when the eastbound train clears Mile Post 3.0±, comes to a complete stop on the Interchange Track(s), cars are accompanied or preceded by proper billing for forwarding to ensure delivery, and Conrail's crew is physically relieved by B&M/ST personnel taking custody and control of said eastbound train.
- (ii) Interchange of westbound cars shall take place at the Barber Interchange Point when the westbound train comes to a complete stop on the Interchange Track(s) (north of

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Mile Post 3.0±), cars are accompanied or preceded by proper billing for forwarding to ensure delivery, and B&M/ST's crew is physically relieved by Conrail personnel taking custody and control of said westbound train.

(c) Except as provided herein, the interchange of cars covered by this Agreement shall be governed by the applicable Interchange Car Service and Car Hire Rules and any supplements or amendments thereto promulgated from time to time by the Association of American Railroads.

(d) Except as otherwise provided in the October 27, 1989 agreement, the party receiving the cars in interchange shall be responsible for making a mechanical inspection thereof in accordance with the current rules of the Association of American Railroads. Inspection of cars shall be conducted by the parties at the points of destination of the train handling such interchange cars, as indicated by (i) and (ii) below, or the first point where Car Inspectors are available to conduct such inspections. Any car failing the mechanical inspection referred to in the preceding sentence shall not be considered as interchanged.

(i) If B&M/ST is the party receiving the cars in interchange, B&M/ST will make the mechanical inspection at Ayer, Massachusetts, Lawrence Yard, Massachusetts, Portland, Maine, or Waterville, Maine.

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- (ii) If Conrail is the party receiving the cars in interchange, Conrail will make the mechanical inspection at its Selkirk Yard, in the vicinity of Albany, New York.

In the event the receiving party fails to make the aforementioned mechanical inspection, the cars shall be considered interchanged as provided above and the responsibility for the mechanical condition of the cars shall be transferred to the receiving party.

- (e) In the event the parties agree to operate extra freight service via the Barber Interchange Point, all provisions of this Agreement shall apply equally to such extra freight service.

- (f) B&M/ST shall maintain, repair, and renew the Interchange Track(s) in reasonably good condition, for the use herein contemplated, at its sole cost and expense, with its own supervision and labor. B&M/ST does not guarantee the condition of the Interchange Track(s) or that operation thereover will not be interrupted.

#### SECTION 4. MILEAGE AND CAR HIRE

Except as otherwise be provided in October 27, 1989 agreement, for the purpose of determining per diem, car hire, and car mileage payments, and for no other purpose, cars interchanged at Barber, Massachusetts shall be treated as if interchanged at Conrail's Selkirk Yard, in the vicinity of Albany, New York. Conrail shall use its best efforts to handle cars between Selkirk Yard and Barber

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in accordance with the Schedule of Arranged Freight Service, as summarized in Exhibit "I". The time of interchange shall be as follows:

(a) The time of interchange in the case of cars interchanged by Conrail to B&M/ST shall be when the eastbound train handling such interchange cars departs Selkirk Yard (CP-SK).

(b) The time of interchange in the case of cars interchanged by B&M/ST to Conrail shall be when the westbound train handling such interchange cars arrives at Selkirk Yard (CP-SK).

(c) The aforementioned arrangements shall be subject to reclaim and other applicable Interchange Car Service and Car Hire Rules and any supplements or amendments thereto promulgated from time to time by the Association of American Railroads.

#### SECTION 5. MANAGEMENT AND OPERATION

(a) Conrail shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars and equipment are being operated over the Interchange Track(s). Conrail shall indemnify, protect, defend, and save harmless B&M/ST and its directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon B&M/ST or its

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directors, officers, agents, or employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of Conrail to comply with its obligations in this regard.

(b) Conrail in its use of the Interchange Track(s) will comply in all respects with the operating rules and regulations of B&M/ST and the movement of Conrail's trains, locomotives, cars and equipment over the Interchange Track(s) and shall at all times be subject to the orders of the Transportation Officers of B&M/ST. Conrail's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Interchange Track(s) as published in Railway Line Clearances, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by B&M/ST's operating rules and regulations without the prior consent of B&M/ST. Conrail shall indemnify, protect, defend, and save harmless B&M/ST and its directors, officers, agents and employees from and against all liabilities when attributable solely to the failure of Conrail to comply with the provisions of this subsection.

(c) Conrail shall make such arrangements with B&M/ST as may be required to have all of its employees who shall operate its trains, locomotives, cars and equipment over the Interchange Track(s) qualified for operation thereover, and Conrail shall pay to B&M/ST, promptly upon receipt of bills therefor, any cost incurred by B&M/ST in

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connection with the qualification of such employees of Conrail as well as the cost of pilots furnished by B&M/ST, until such time as such employees are deemed by the appropriate examining officer of B&M/ST to be properly qualified for operation as herein contemplated.

(d) B&M/ST may conduct an investigation at its option if a Conrail employee working on B&M/ST's property is alleged to have violated NORAC operating rule or B&M/ST's rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. To exercise its option, B&M/ST will schedule the investigation and notify Conrail's Local Transportation Officer in the territory thereof, who will, in turn, arrange to issue proper notice to Conrail's employee(s) of the investigation. B&M/ST's scheduling of the investigation must comply with the time limits provided in the applicable agreement on Conrail's railroad. B&M/ST will provide its regulations, supplements, and safety rules to Conrail at no cost.

(e) If B&M/ST conducts an investigation, B&M/ST shall have the right to exclude from the Interchange Track(s) any employee of Conrail except officers, determined by B&M/ST as the result of B&M/ST's investigation or hearing described below, to be in violation of NORAC operating rules or B&M/ST's rules, regulations, orders, practices or instructions.

(f) In a major offense such as violation of Rule G, dishonesty, insubordination, or a serious violation

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of operating rules, wherein B&M/ST desires to bar a Conrail employee from service on B&M/ST's territory pending an investigation by B&M/ST, immediate verbal notification will be given to the appropriate Transportation Officer of Conrail so that proper written notice can be issued to the employee.

(g) If B&M/ST conducts an investigation, its officer will conduct the investigation, but an officer of Conrail may be present to assure compliance with Conrail's labor agreement and practices with respect to investigation procedures. After the investigation is concluded, B&M/ST will promptly furnish Conrail with two copies of the transcript and a recommendation as to the discipline to be assessed. Conrail's Transportation Officer will arrange to assess discipline, subject to receipt of B&M/ST's recommended discipline, within the applicable time limits. If B&M/ST recommends dismissal, Conrail reserves the right to change the recommendation to the extent of barring the individual from operating over B&M/ST's territory.

(h) It is understood that B&M/ST shall reimburse Conrail for all payments that Conrail might be required to make as a result of a successful challenge being made by the employee or his representative as to the discipline recommended by B&M/ST and assessed by Conrail. Conrail agrees to notify B&M/ST before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, B&M/ST will be given an opportunity to review Conrail's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in

"overtaken", shall include not only actual wages, but in addition, shall include expenses which Conrail may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.

(i) The trains, locomotives, cars and equipment of Conrail, B&M/ST, and any other present or future user of the Interchange Track(s) or any portion thereof shall be operated without prejudice or partiality and in such manner as will afford the most economical and efficient manner of movement of all traffic.

#### SECTION 6. LIABILITY

The responsibility of the parties hereto as between themselves for loss of, damage to, or destruction of any property whatsoever or injury to or death of any person or persons whomsoever, resulting from, arising out of, incidental to, or occurring in connection with the interchange operations at Barber, Massachusetts set forth in this Agreement, shall be determined as follows:

(a) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars or equipment of, or in the account of, Conrail being involved, without the trains, locomotives, cars, or equipment of, or in the account of, B&M/ST being involved, Conrail shall assume all liability therefor and bear all cost and expense

in connection therewith, and shall forever protect, defend, indemnify, and save harmless B&M/ST and its directors, officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of B&M/ST or its directors, officers, agents or employees.

(b) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, B&M/ST being involved, without the trains, locomotives, cars, or equipment of, or in the account of, Conrail being involved, B&M/ST shall assume all liability therefor and bear all cost and expense in connection therewith, and shall forever protect, defend, indemnify, and save harmless Conrail and its directors, officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of Conrail or its directors, officers, agents, or employees.

(c) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or

equipment of, or in the account of, both B&M/ST and Conrail being involved, B&M/ST and Conrail shall separately assume and bear all liability, cost, and expense for loss of and damage to said trains, locomotives, cars (including without limitation lading), and equipment operated by each of them and for injury to and death of each of their directors, officers, agents, and employees, and persons in each of their care and custody, and all liability, cost, and expense for injury to and death of any other person or persons whomsoever, for loss of, damage to, or destruction of all other property (including without limitation the Interchange Track(s)) and for any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, so occurring shall be borne equally by B&M/ST and Conrail. Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the indemnitee or its directors, officers, agents or employees.

(d) Notwithstanding the foregoing provisions, whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the

trains, locomotives, cars, or equipment of, or in the account of, both parties to this Agreement being so involved, without the trains, locomotives, cars, or equipment of, or in the account of, any other user being involved, and in the event such loss, damage, destruction, injury, or death is attributable to the sole negligence of the employee(s) on the train(s), locomotive(s), car(s), or caboose(s) of, or in the account of, only one of the parties to this Agreement where such sole negligence is the active or proximate cause of such loss, damage, destruction, injury, or death, the party hereto whose employee(s) was (were) solely negligent shall assume and bear all liability, cost, and expense in connection with the loss, damage, destruction, injury, and death so occurring, and said party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its directors, officers, agents, and employees from and against any such liability, cost, and expense.

(e) In every case of death or injury suffered by an employee of either B&M/ST or Conrail, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability, or other law, and either of said parties under the provisions of this Agreement is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

(f) For the purposes of this Section 6, the word "equipment" shall mean and be confined to (i) cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Interchange Track(s), and (iii) vehicles and machinery that, at the time of an occurrence, are on the Interchange Track(s), or their rights-of-way, for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.

**SECTION 7. CLEARING OF WRECKS**

Clearing of wrecks or derailments and repair and restoration of roadbed, track and structures, on the designated interchange track(s) will be performed by B&M/ST, and the cost thereof will be distributed in accordance with Section 6 hereof.

**SECTION 8. INVESTIGATION**

(a) Except as provided in Subsection (b) hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

(b) Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11707 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contracts filed pursuant to 49 U.S.C. Section 10713.

**SECTION 9. PAYMENT OF BILLS**

(a) Except for payments which a party may be required to make pursuant to Section 6 herein, all payments called for under this Agreement shall be made within sixty (60) days after receipt of bills therefor. No payments shall be withheld while any dispute is pending as to the correctness of items in the bills rendered. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party.

(b) Bills rendered pursuant to the provisions of this Agreement, shall include direct labor and material costs, together with the surcharges, overhead percentages, and equipment rentals in effect at the time any work is performed.

**SECTION 10. EMPLOYEE PROTECTION**

B&M/ST shall assume and hold Conrail harmless from all B&M/ST employee claims predicated on loss of, or adverse impact on, compensation, benefits, or working conditions, arising from the routing of Conrail - B&M/ST interchange traffic via the Barber Gateway, arising from this Agreement or the activities of the parties hereunder, whether such claims are based on conditions imposed by the Interstate Commerce Commission or are predicated on the Railway Labor Act or labor agreements.

**SECTION 11. TERM**

This Agreement shall take effect as of March 31, 1990 (the "Effective Date") and shall continue in full force and effect thereafter for a term of thirty (30) years, and unless sooner terminated as provided below, shall renew upon terms and conditions then mutually agreed upon between the parties for one (1) additional thirty (30) year term. During the first three (3) years following the Effective Date, this Agreement may be terminated only upon mutual agreement of the parties. At any time after the third anniversary of the Effective Date, this Agreement may be terminated by either party upon six (6) months written notice to the other party. Notwithstanding the foregoing, if one party fails to maintain substantial compliance ("non-compliance") with the Arranged Freight Service, as summarized in Exhibit "I" as the same may be amended from time to time, or causes the other party to be unable to maintain such Arranged Freight Service, the other party shall advise the party responsible for non-compliance in writing that said party has thirty (30) days to re-establish compliance with the Arranged Freight Service. In the event that the party responsible for non-compliance fails to re-establish compliance with the Arranged Freight Service within thirty (30) days, the other party shall have the right to terminate this Agreement upon giving thirty (30) days written notice to the party responsible for non-compliance. Termination of this Agreement shall not relieve, release or excuse either party from any liability which either party may have incurred or any obligation which may have accrued under any provision of this Agreement prior to the effective date of termination.

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(c) Either party may provide changes in the above addresses to the other party by personal service or certified mail.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be as a sealed instrument executed as of the date first set forth above by their duly authorized representatives.

WITNESS:

CONSOLIDATED RAIL CORPORATION

John J. Cornue

BY: L. J. Dwyer  
Title: General Superintendent - Contracts

WITNESS:

BOSTON AND MAINE CORPORATION

Richard E. Miller

BY: Stephen B. Phillips  
Title: Vice Pres. Traffic

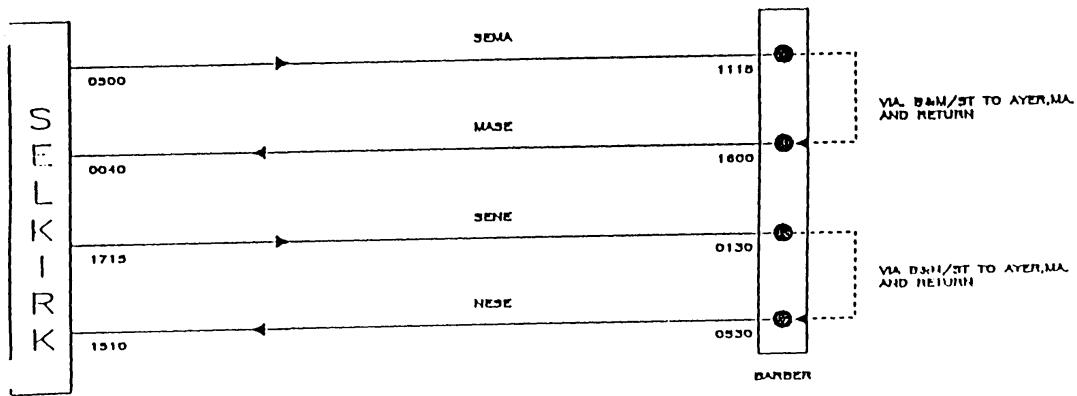
WITNESS:

SPRINGFIELD TERMINAL RAILWAY COMPANY

Richard E. Miller

BY: Stephen B. Phillips  
Title: Vice Pres. Traffic

ARRANGED FREIGHT SERVICE  
AND LOCOMOTIVE CYCLES



ALL SERVICE DAILY