

CRAVATH, SWAINE & MOORE

10056

ONE CHASE MANHATTAN PLAZA

NEW YORK, N. Y. 10005

212 HANOVER 2-3000

TELEX

RCA 233663

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RECORDATION NO. Filed 1425

OCT 29 1979 - 12 40 PM

INTERSTATE COMMERCE COMMISSION

9-302A060

OCT 29 1979

Date ICC, CC

CC Washington, D. C.

RECORDATION NO. Filed 1425

OCT 29 1979 - 12 40 PM

INTERSTATE COMMERCE COMMISSION

October 29, 1979

Boston and Maine Corporation  
Lease Financing Dated as of August 15, 1979  
[CS&M Ref.: 4255-305]

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Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. § 11303(a), I enclose here-  
with on behalf of Boston and Maine Corporation, for filing  
and recordation counterparts of the following documents:

1. (a) Conditional Sale Agreement dated as of  
August 15, 1979, between Merrill Lynch Leasing Inc.,  
as Owner, and FMC Corporation, as Builder; and

(b) Agreement and Assignment dated as of August 15,  
1979, between FMC Corporation, as Builder, and MLL Leasing  
Corp., as Assignee.

2. (a) Lease of Railroad Equipment dated as of  
August 15, 1979, between Robert W. Meserve and Benjamin H.  
Lacy, Trustees of the Property of Boston and Maine  
Corporation, as Lessee, and Merrill Lynch Leasing Inc.,  
as Lessor; and

MAURICE T. MOORE  
BRUCE BROMLEY  
WILLIAM B. MARSHALL  
RALPH L. MCAFEE  
ROYALL VICTOR  
ALLEN H. MERRILL  
HENRY W. DEKOSMIAN  
ALLEN F. MAULSBY  
STEWART R. BROSS, JR.  
HENRY P. RIORDAN  
JOHN R. HUPPER  
SAMUEL C. BUTLER  
WILLIAM J. SCHRENK, JR.  
BENJAMIN F. CRANE  
FRANCIS F. RANDOLPH, JR.  
JOHN F. HUNT  
GEORGE J. GILLESPIE, III  
RICHARD S. SIMMONS  
WAYNE E. CHAPMAN  
THOMAS D. BARR  
MELVIN L. BEDRICK  
GEORGE T. LOWY  
ROBERT ROSENMAN  
JAMES H. DUFFY  
ALAN J. HRUSKA

JOHN E. YOUNG  
JAMES M. EDWARDS  
DAVID O. ORMSBY  
DAVID L. SCHWARTZ  
RICHARD J. HIEGEL  
FREDERICK A. O. SCHWARZ, JR.  
CHRISTINE BESHAR  
ROBERT S. BISHOP  
DAVID BOIES  
DAVID O. BROWNWOOD  
PAUL M. DOOY  
RICHARD M. GALE  
THOMAS R. BROME  
ROBERT D. JOFFE  
ROBERT  
ALLEN F. NELSON  
RONALD S. ROLFE  
JOSEPH R. SAHID  
PAUL C. SAUNDERS  
MARTIN L. SENZEL  
DOUGLAS D. BROADWATER  
ALAN C. STEPHENSON  
RICHARD L. HOFFMAN  
JOSEPH A. MULLINS  
MAX R. SHULMAN

COUNSEL  
LYLE E. MAW  
FRANK R. CONNELLY  
FRANK H. DETWEILER  
GEORGE G. TYLER  
ROSWELL L. GILPATRICK  
L. R. BRESLIN, JR.  
GEORGE B. TURNER  
JOHN H. MORSE  
HAROLD R. MEDINA, JR.  
CHARLES R. LINTON  
4, PLACE DE LA CONCORDE  
75006 PARIS, FRANCE  
TELEPHONE: 265-81-54  
TELEX: 290530  
33 THROGMORTON STREET  
LONDON, EC2N 2BR, ENGLAND  
TELEPHONE 01-606-1421  
TELEX: 8814901  
CABLE ADDRESSES  
CRAVATH, N. Y.  
CRAVATH, PARIS  
CRAVATH, LONDON E. C. 2

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*Countersigned Joseph P. M. Moran*

(b) Assignment of Lease and Agreement dated as of August 15, 1979, between Merrill Lynch Leasing Inc., as Lessor, and MLL Leasing Corp., as Vendor.

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

(1) Vendor-Assignee:

MLL Leasing Corp.  
165 Broadway  
New York, N.Y. 10080

(2) Owner-Lessor:

Merrill Lynch Leasing Inc.  
165 Broadway  
New York, N. Y. 10080

(3) Builder-Vendor:

FMC Corporation  
200 East Randolph Drive  
Chicago, Illinois 60601

(4) Lessee:

Robert W. Meserve and  
Benjamin H. Lacy, Trustees  
of the Property of Boston  
and Maine Corporation  
Iron Horse Park  
North Billerica, Massachusetts 01862

Please file and record the documents referred to in this letter and cross-index them under the names of the Vendor-Assignee, the Owner-Lessor, the Builder-Vendor and the Lessee.

The equipment covered by the aforementioned documents consists of 25 50' 6" 100-ton, class XP box car bearing identifying numbers BM 80000-80024, inclusive.

There is also enclosed a check for \$100 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agree-

ment and Assignment (together constituting one document) and the Lease of Railroad Equipment, and related Assignment of Lease and Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,

*Laurance V. Goodrich*

Laurance V. Goodrich  
As Agent for  
Boston and Maine Corporation

Interstate Commerce Commission,  
Washington, D. C. 20423

Attention of Ms. Agatha L. Mergenovich,  
Secretary.

Encls.

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10956-A

[CS&M Ref.: 4255-035]

RECORDATION NO.....Filed 1425

OCT 29 1979 - 12 40 PM

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INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of August 15, 1979

between

FMC CORPORATION,

Builder,

and

MLL LEASING CORP.

Assignee.

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AGREEMENT AND ASSIGNMENT dated as of August 15, 1979, between FMC CORPORATION (the "Builder"), and MLL LEASING CORP., (the "Assignee").

The Builder and MERRILL LYNCH LEASING INC. (the "Owner"), have entered into a Conditional Sale Agreement dated as of the date hereof (the "Conditional Sale Agreement") covering the construction, sale and delivery by the Builder, and the purchase by the Owner, of the railroad equipment described in Annex B to the Conditional Sale Agreement (the "Equipment").

The Owner and the Trustees of the Property of Boston and Maine Corporation, Debtor (the "Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") providing for the lease to the Lessee of the Equipment.

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT WITNESSETH: that in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of the Builder in and to each unit of Equipment when and as delivered to and accepted by the Owner, subject to payment by the Assignee to the Builder of the amount required to be paid pursuant to Section 4 hereof and subject to the payment to the Builder by the Owner of the amounts required to be paid pursuant to subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement;

(b) all the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to deliver the Equipment, the right

to receive the payments specified in subparagraph (a) of the third paragraph of Article 4 thereof and the right to reimbursement for taxes paid or incurred by the Builder) and, except as aforesaid, in and to any and all amounts which may be or become due or owing to the Builder under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Owner under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all of the Builder's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse hereunder, however, against the Builder for or on account of the failure of the Owner to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement, provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained or referred to in Article 13 of the Conditional Sale Agreement or relieve the Owner from its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Agreement, or any subsequent assignment pursuant to the provisions of Article 14 of the Conditional Sale Agreement, all obligations of the Builder to the Owner with respect to the Equipment shall be and remain enforceable by the Owner, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Owner with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it shall construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Owner in accordance with the provisions of the Conditional Sale Agreement and, that notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Owner that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights created under the Conditional Sale Agreement, this Agreement and Assignment and the Lease; and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the Conditional Sale Agreement; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Owner thereunder.

SECTION 3. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Owner or the Lessee arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Owner or the Lessee by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 14 of the Conditional Sale Agreement, to strike any defense, set-off, counterclaim or recoupment asserted by the Owner or the Lessee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such

suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Owner or the Lessee with respect to the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder an amount equal to the portion of the Purchase Price thereof which, under the terms of said Article 4, is payable in installments, provided that there shall have been delivered to the Assignee on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel, Messrs. Cravath, Swaine & Moore, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill or bills of sale from the Builder to the Owner transferring to the Owner and its successors and



assigns all right, title and interest (other than the security interest assigned to the Assignee) of the Builder in such units, warranting to the Owner that, immediately prior to delivery to the Owner of such units under the Conditional Sale Agreement, the Builder had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature (other than those created by the Conditional Sale Agreement and the rights of Lessee under the Lease) and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder to the Owner under the Conditional Sale Agreement;

(b) a bill or bills of sale from the Builder to the Assignee transferring to the Assignee the security interest of the Builder in such units, warranting to the Assignee that, immediately prior to delivery of such units under the Conditional Sale Agreement, the Builder had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature (other than those created by the Conditional Sale Agreement and the rights of the Lessee under the Lease) and covenanting to defend such security interest in such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder to the Owner under the Conditional Sale Agreement;

(c) a Certificate or Certificates of Acceptance on behalf of the Owner and the Lessee with respect to the units of the Equipment as contemplated by Article 3 of the Conditional Sale Agreement and § 2 of the Lease;

(d) Invoice (as defined in Article 4 of the Conditional Sale Agreement) for the units of the Equipment accompanied by or having endorsed thereon a certification by the Owner and the Lessee as to their approval thereof;

(e) an opinion of counsel for the Builder, dated as of the Closing Date, addressed to the Assignee and the Owner, to the effect that the bill or bills of sale

described in clauses (a) and (b) above have been duly authorized, executed and delivered by the Builder and are valid and effective to transfer to the Owner title to, and to the Assignee the security interest in, the units of the Equipment, free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement and the rights of the Lessee under the Lease) arising from, through or under the Builder; and

(g) a receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Owner.

SECTION 5. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Owner thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 14 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee, the Owner and their successors and assigns, that the Conditional Sale Agreement and this Assignment were duly authorized by it and duly and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Owner, the Conditional Sale Agreement and this Assignment are, insofar as the Builder is concerned, legal, valid and binding agreements, enforceable in accordance with their terms and that each is now in force without amendment thereto;

(b) agrees that it will from time to time, at the request of the Assignee or the Owner or their respective successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts and things as may

be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee and the Owner or intended so to be; and

(c) agrees that, subsequent to payment upon request of the Assignee or the Owner or their respective successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York, provided, however, that the parties shall be entitled to all the rights conferred by 49 U.S.C. § 11303 and Section 86 of the Railway Act of Canada, such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

FMC CORPORATION,

by

David C. Smith  
Vice President

[Corporate Seal]

Attest:

J. R. [Signature]  
ASST. SECRETARY

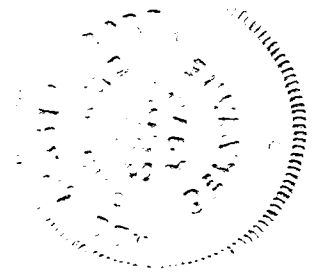
MLL LEASING CORP.,

by Lester Shepfield  
Executive Vice President

[Seal]

Attest,

Frederick C. Butler  
Assistant Secretary



STATE OF ILLINOIS, )  
 ) ss:  
 COUNTY OF COOK ,)

On this 23RD day of October 1979, before me personally appeared DANIEL C. SMITH, to me personally known, who being by me duly sworn, says that he is a Vice President of FMC CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Barbara J. Neal  
 Notary Public

[Notarial Seal]

My Commission Expires

My Commission Expires May 31, 1983

STATE OF NEW YORK , )  
 ) ss.:  
 COUNTY OF NEW YORK, )

On this 26<sup>TH</sup> day of October 1979, before me personally appeared Lester Schoenfeld, to me personally known, who, being by me duly sworn, says that he is an Executive Vice President of MLL LEASING CORP., that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Yolanda Agoplan  
 Notary Public

[Notarial Seal]

My Commission Expires

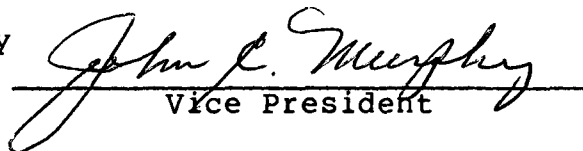
**YOLANDA AGOPLAN**  
 Notary Public, State of New York  
 No. 41-4685317  
 Qualified in Queens County  
 Certificate filed in New York County  
 Commission Expires March 30, 1981

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment dated as of August 15, 1979, is hereby acknowledged as of August 15, 1979.

MERRILL LYNCH LEASING INC.,

by

  
Vice President