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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	Chapter 11
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CIT GROUP INC., <u>et al.</u> ,	:	Case No. 09-16565
	:	
Debtors.	:	(Motion for Joint Administration Pending)
	:	
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CIT GROUP INC., <u>et al.</u> ,	:	Adversary Proceeding No. 09-01713
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
M&T CREDIT SERVICES, LLC;	:	DECLARATION OF BARRY
SIEMENS FINANCIAL SERVICES, INC.;	:	NOHALTY IN SUPPORT OF
FIFTH THIRD LEASING COMPANY;	:	(I) A TEMPORARY RESTRAINING
WELLS FARGO BANK NORTHWEST,	:	ORDER AND PRELIMINARY
N.A.; WELLS FARGO BANK, N.A.;	:	INJUNCTION OR, IN THE
INEOS POLYMERS INC.; WELLS	:	ALTERNATIVE, (II) AN
FARGO EQUIPMENT FINANCE,	:	ORDER EXTENDING
INC.; NORTH AMERICA RAIL	:	<u>THE AUTOMATIC STAY</u>
LEASING #2 LLC; BNY MIDWEST	:	
TRUST COMPANY; MANUFACTURERS	:	
AND TRADERS TRUST COMPANY; and	:	
WILMINGTON TRUST COMPANY,	:	
	:	
Defendants.	:	
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I, BARRY NOHALTY, declare and state as follows:

1. I am a Senior Vice President of CIT Rail which, through The CIT Group/Equipment Finance, Inc. (“CIT-EF”) and other subsidiaries, is a core business line of debtor CIT Group Inc. (“CIT”). CIT is the ultimate parent of CIT Group Funding Company of Delaware LLC, the other debtor and debtor in possession in these chapter 11 cases (collectively with CIT, the “Debtors”).

2. I am responsible for overseeing Intermediary Marketing at CIT Rail, which includes managing all relationships and financial transactions on behalf of CIT Rail. CIT Rail executes through CIT-EF certain transactions that I manage, including the Headlease Transactions described below. In general, I understand that approximately one-third of CIT-EF’s business is dedicated to the CIT Rail business line.

3. I submit this Declaration in support of (i) a temporary restraining order and preliminary injunction precluding Defendants, based upon an event of default triggered by CIT’s bankruptcy filing, from exercising any remedies against CIT-EF (the “Additional Default Remedies”) -- not including the demand for payment of Stipulated Loss Value (in exchange for title to railcars), and any other amounts due and payable under the Headleases (as defined below) -- under certain “lease-in, lease-out” transactions of railcars (the “Headlease Transactions”) during the pendency of the Debtors’ chapter 11 cases or, in the alternative, (ii) an order extending and applying the automatic stay under section 362(a) of the Bankruptcy Code to stay the enforcement of Additional Default Remedies against CIT-EF (the “Motion”).¹

¹ Capitalized terms used but not defined herein shall have the meanings assigned to them in the Motion.

I. Background

4. CIT, through various subsidiaries (including CIT-EF), among other things, operates railcar and locomotive leasing fleets, covering most bulk industries in North America. This business line of CIT is commonly referred to as “CIT Rail.”

5. CIT Rail’s portfolio, which has a net investment of approximately \$4.8 billion as of December 31, 2008, includes leases of railcars and locomotives to all of the United States and Canadian Class I railroads (which are those companies with annual revenues of at least \$250 million) and other railroads, as well as to rail shippers including, for example, power producers shipping coal and agricultural companies shipping grain.

6. CIT Rail’s operating lease fleet consists of approximately 115,000 railcars and 550 locomotives, including primarily: (i) covered hopper cars used to ship grain and agricultural products, plastic pellets and cement; (ii) gondola cars for coal, steel coil and mill service; (iii) open hopper cars for coal and aggregates; (iv) center beam flat cars for lumber; (v) boxcars for paper and auto parts; and (vi) tank cars.

7. CIT Rail’s portfolio includes railcars and locomotives which are owned by CIT Rail and leased to its customers (the “Company-Owned Railcars”). CIT Rail’s portfolio also includes railcars and locomotives which, through the Headlease Transactions, CIT Rail leases from various financing sources and, in turn, subleases to its customers (the “Leased-In Railcars” and, together with the Company-Owned Railcars, the “Railcars”). CIT Rail effects the Headlease Transactions through CIT’s non-debtor subsidiary CIT-EF.

8. CIT Rail has approximately 200 end-user customers utilizing Railcars which are subject to Headlease Transactions. The vast majority of CIT Rail’s top 25 customers sublease from CIT-EF Railcars that are subject to the Headlease Transactions. Accordingly, the

Headlease Transactions involve CIT Rail's core customers that are vital to the continued viability of CIT Rail's business and, ultimately, to CIT.

9. The railcar leasing business is highly competitive. This is particularly the case in the current environment where the supply of railcars far exceeds demand. The operations goal of the railcar leasing business is to consistently initiate new leases and renew existing leases with as little off-lease time for the railcars as possible. Also, most of CIT Rail's Railcar lease customers generally require full-service leases, under which the customer relies on CIT Rail to arrange and pay for the maintenance of the equipment and to pay property taxes. Accordingly, it is of critical importance to CIT-EF that it maintain its reputation for stability and reliability, and that its ability to initiate new Railcar leases and renew existing Railcar leases going forward not be seriously impaired by CIT's bankruptcy filing.

II. Overview of The Headlease Transactions

10. Each of CIT Rail's Headlease Transactions consists of two leases: a headlease and a sublease. In each Headlease Transaction, CIT-EF enters into or assumes an equipment headlease (the "Headlease") with a lessor for the lease of Leased-In Railcars. CIT-EF then enters into various subleases (the "Subleases") with its customers (the "Sublessees"), whereby CIT-EF leases to them the Leased-In Railcars associated with the Headlease Transactions.

11. A mix of Company-Owned and Leased-In Railcars are sometimes included under the same Sublease, and Sublessees pay rents to CIT-EF on the Railcars on a consolidated basis. Cash inflows associated with Leased-In Railcars are thereby commingled with cash inflows associated with Company-Owned Railcars. Similarly, the Railcars, whether Leased-In or Company-Owned, typically are marked with the same CIT Rail reporting mark.

Accordingly, from a customer perspective, there is no distinction between a Leased-In Railcar and a Company-Owned Railcar.

12. As of September 2009, there are approximately 28,493 Leased-In Railcars in the railcar fleet, and the contractual rents owed to CIT-EF under the Subleases with respect to the Leased-In Railcars were approximately \$12.8 million² per month. That amount may increase or decrease from month to month based on the short-term nature of the Subleases. Presently, CIT-EF maintains 41 separate Headlease Transactions.

13. While the structure of each Headlease Transaction is similar, there are three distinct categories of Headlease Transactions, referred to as: (i) the CIT Rail Trusts; (ii) the Bombardier Leveraged Leases; and (iii) the Bombardier Single-Investor Leases. Each category of Headlease Transaction is described below.

A. The CIT Rail Trusts

14. Of the 41 Headlease Transactions, 20 were created under a CIT rail trust program between 2001 to 2007 (collectively, the “CIT Rail Trusts”). Each of the 20 CIT Rail Trusts was created by CIT-EF entering into a participation agreement (the “Participation Agreement”) in which it agreed to the sale and leaseback of certain Company-Owned Railcars under a leveraged Headlease Transaction.

15. In addition, each beneficiary (the “Owner Participant”) of each entity purchasing Company-Owned Railcars entered into a trust agreement with an owner trustee as lessor (the “Lessor” or “Owner Trustee”), pursuant to which the Lessor agreed, among other things, to hold the trust estate for the benefit of the Owner Participant.

² This amount includes: (i) the scheduled rent due on all Subleases; (ii) the rent due on expired Subleases under which customers continue to operate the Railcars on a holdover basis; and (iii) the aggregate per diem amounts paid to CIT-EF in September 2009.

16. Each Lessor accepted delivery of the bill of sale of Company-Owned Railcars and executed and delivered the Headlease in which the Lessor agreed to lease the Railcars back to CIT-EF. Concurrent with the execution and delivery of the Participation Agreement, each Lessor also entered into an indenture (the “Indenture”) with an indenture trustee (the “Indenture Trustee”)³ pursuant to which the Lessor agreed, among other things, to issue notes (the “Railcar Notes”) to the Indenture Trustee or the loan participants (the “Loan Participants”) participating in the financing of the Leased-In Railcars under each Indenture.

17. The proceeds of the sale of each tranche of Railcar Notes were applied, together with equity contributions made by the Owner Participant, to effect the purchase of the corresponding Leased-In Railcars. Under the terms of the Indenture, the Lessor granted to the Indenture Trustee a security interest in, and lien on, the Lessor’s right, title and interest in, among other things, the Headlease, the Leased-In Railcars and the Parent Guaranty (as defined below). This pledge of assets by the Lessor to the Indenture Trustee is security for the Lessor’s obligation to make payments to the Indenture Trustee on the Railcar Notes.

18. Also concurrent with the execution and delivery of the Participation Agreement, CIT executed parent guaranties (each, a “Parent Guaranty”) for the benefit of the Lessors, the Owner Participants, the Indenture Trustees and the Loan Participants (collectively, the “Beneficiaries”). Each Parent Guaranty provides that CIT will absolutely and unconditionally guarantee to the Beneficiaries (i) the full and prompt payment by CIT-EF of all obligations under the Headlease, and (ii) the due and complete performance of each and every other covenant, agreement and obligation to be performed by CIT-EF under the Headlease, the Participation Agreement and related agreements.

³ In some of the Headlease Transactions, the Owner Trustee or Lessor entered into a security agreement (the “Security Agreement”) with a security trustee (the “Security Trustee”). The rights and obligations under the Security Agreement and the role of the Security Trustee are substantially similar to those of the Indenture and Indenture Trustee, respectively.

19. In addition to the security interest pledged under the Indentures, each of the CIT Rail Trust Headleases contemplates the pledge of additional collateral in the event of certain downgrade events involving CIT. Specifically, each of the 20 CIT Rail Trust Headleases provides that, if at any time the credit rating with respect to CIT's senior unsecured indebtedness falls below BBB by Standard & Poor's Rating Services ("S&P") or Baa2 by Moody's Investors Service, Inc. ("Moody's"), then all existing Subleases shall, at CIT-EF's election, be either (i) subject and subordinate to the Headlease, or (ii) assigned to the Lessor as security for CIT-EF's obligations under the Headlease (solely to the extent related to the Leased-In Railcars).

20. On or about April 24, 2009, such a downgrade event occurred, as S&P downgraded CIT's unsecured debt rating from BBB to BBB- and Moody's downgraded CIT from Baa2 to Ba2. As a result, on or about June 17, 2009, CIT-EF sent a Notice of Downgrade Event to each Lessor, stating that CIT-EF had elected to assign Subleases to the Leased-In Railcars to the Lessor as security for CIT-EF's obligations under each of the Headleases.

B. The Bombardier Leveraged Leases

21. In addition to the CIT Rail Trusts, CIT-EF maintains 14 other leveraged Headlease structures, all of which were assumed from Bombardier Capital Rail Inc. ("Bombardier") in 2006 (the "Bombardier Leveraged Leases"). The Bombardier Leveraged Leases have a similar leveraged structure to the CIT Rail Trusts detailed in paragraphs 14 through 17 above. Likewise, all of the Bombardier Leveraged Leases enjoy the benefit of a Parent Guaranty from CIT.

22. Unlike the CIT Rail Trusts, however, the Bombardier Leveraged Leases do not involve an initial sale and leaseback by CIT-EF of Company-Owned Railcars under a Participation Agreement. Instead, CIT-EF assumed Bombardier's obligations under each of the Bombardier Leveraged Leases subsequent to the consummation of the initial sale and leaseback

transaction. The then-existing Subleases and all future Subleases were also pledged under the Headlease Transaction documents, and a guaranty by the Bombardier parent in the initial transaction was replaced by a Parent Guaranty from CIT.

23. In addition, all of the Bombardier Leveraged Leases, as amended, require CIT-EF to provide a payment direction letter for each applicable Sublease (the “Payment Direction Letters”) to the Indenture Trustees upon certain downgrade events. Specifically, CIT-EF agreed to deliver Payment Direction Letters to the Indenture Trustees if CIT’s unsecured indebtedness fell below BBB- from S&P or below Baa3 from Moody’s. The Payment Direction Letters are addressed to the Sublessees and instruct them to pay all Sublease rents on Leased-In Railcars directly to the Indenture Trustees. Upon the occurrence of CIT’s bankruptcy, the Indenture Trustees have the right to deliver the Payment Direction Letters to the Sublessees.

24. As set forth in paragraph 20 above, such a downgrade event occurred on or about April 24, 2009. Accordingly, CIT-EF has executed and delivered undated Payment Direction Letters to the Indenture Trustees for each of the 14 Bombardier Leveraged Leases. To date, I have no knowledge of any Payment Direction Letters having been sent by an Indenture Trustee to any Sublessee.

C. The Bombardier Single-Investor Leases

25. In addition to the leveraged lease structures described above, CIT-EF also assumed from Bombardier seven separate leases whereby CIT-EF leases Leased-In Railcars from a single investor (the “Bombardier Single-Investor Leases”).

26. One of the Headleases in the Bombardier Single-Investor Leases requires the issuance by CIT-EF of a Payment Direction Letter similar to the one described above in connection with the Bombardier Leveraged Leases. The remaining six Headleases in the Bombardier Single-Investor Leases do not require the issuance by CIT-EF of a Payment

Direction Letter. Like all of the Headleases, the Bombardier Single-Investor Leases enjoy the benefit of a Parent Guaranty.

III. The Event of Default and Defendants' Potential Exercise of Default Remedies

27. Each Headlease provides that CIT's filing of a bankruptcy case is an event of default under the Headlease (the "Event of Default"). In turn, each Indenture provides that the Event of Default under the Headlease operates as an event of default under the Indenture.

28. I am advised by my internal and external counsel that the occurrence of an Event of Default will permit Defendants to seek to effectuate certain remedies and Additional Default Remedies, as set forth below.

A. The Stipulated Loss Value Remedy

29. Under each of the Headleases, following an Event of Default, the Lessor is entitled to demand a liquidated damages payment equal to a stipulated loss value ("Stipulated Loss Value"). Stipulated Loss Value is generally designed to allow the Lessor to: (i) repay indebtedness incurred under the Indenture or otherwise in connection with the Headlease Transaction; (ii) recoup the equity investment made by the Lessor or Owner Participant, as well as a return thereon; and (iii) provide additional compensation for certain adverse tax consequences as a result of the acceleration of income resulting from the early termination of the Headlease.

30. The aggregate Stipulated Loss Values for the Leased-In Railcar fleet under the Headlease Transactions is approximately \$1.65 billion. If Stipulated Loss Value is demanded and paid, the Lessor would be required to mitigate its damages, which could include the transfer of all right, title and interest in the Leased-In Railcars to CIT-EF.

B. The Additional Default Remedies

31. Significantly, whether or not the Lessor demands payment of Stipulated Loss Value, the Lessor also may, as part of its Additional Default Remedies, take effective control of the Railcars involved in its Headlease Transaction by: (i) terminating the Headlease; (ii) requiring the return and storage of Leased-In Railcars that are not subject to Subleases; and (iii) with respect to those Railcars that are subject to Subleases, foreclosing upon CIT-EF's rights and interests in the Subleases.

32. Upon the Event of Default triggered by the bankruptcy filing, the Indenture Trustee and Security Trustee are empowered under the Indentures and Security Agreements to control the Lessor's exercise of the Additional Default Remedies under the Headleases. The Indenture Trustee or the Security Trustee generally act on the instruction of the majority in interest of the Loan Participants under the specific Headlease Transaction for which it acts as Trustee.

33. As a further consequence of the Event of Default, the Indenture Trustees under the Bombardier Leveraged Leases and the Lessors under the applicable Bombardier Single-Investor Leases, may issue the Payment Direction Letters to the Sublessees whereby Sublessees would be instructed to pay rent directly to the Indenture Trustees.

C. The Exercise of The Additional Default Remedies Would Be Highly Detrimental to The Debtors

34. The Motion seeks to restrain Defendants' exercise of the Additional Default Remedies -- those remedies other than demand for payment of Stipulated Loss Value and any other amounts due and payable under the Headleases (in exchange for title to Railcars) -- during the pendency of Debtors' chapter 11 cases. The exercise of the Additional Default Remedies would not result in any greater payments, proceeds or value to the Lessors or the

Indenture Trustees than they would receive from the payment of Stipulated Loss Value.

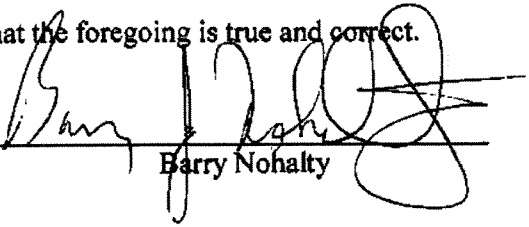
However, the exercise of the Additional Default Remedies would likely destroy the going-concern value of the Railcars and therefore cause the needless loss of up to approximately \$680 million of value to CIT Rail and, indirectly, to CIT. It could also result in significant damage to CIT Rail's overall franchise value and business because the customers of the Leased-In Railcars are also CIT Rail's customers for leasing of Company-Owned Railcars.

35. Moreover, the issuance of Payment Direction Letters will likely lead to confusion and the risk of defection by the Sublessees to CIT Rail's competitors. In a down market and with every customer looking for a competitive advantage, the Payment Direction Letters may cause the perception that CIT Rail (and ultimately CIT) has lost its standing in the marketplace due to its inability to maintain and operate its rail fleet. In turn, CIT Rail will have difficulty trying to re-lease to existing customers as they move their business to competitors. Such defections will increase the sublease turnover rate and -- along with Defendants' potential termination of CIT's rights to the Railcars -- further operate to damage the franchise value of CIT Rail.

**D. Despite Diligent Efforts, The Debtors Have Not Obtained
Forbearance Agreements from Defendants and Other Claimholders**

36. Over the past several weeks, CIT Rail has reached out to various claimholders associated with the Headlease Transactions in an effort to obtain a six-month forbearance on the exercise of all remedies in exchange for a payment by CIT-EF into a securities account an amount equal to the Headlease rent payments for the same six-month period. At the time of this Motion, CIT has not been able to finalize any forbearance agreements with the Defendants and, accordingly, there is nothing currently preventing Defendants from exercising the Additional Default Remedies as set forth herein.

I declare under penalty of perjury that the foregoing is true and correct.



Barry Nohalty

Dated: October 30, 2009