

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

IN RE: : Case No. 1:14-bk-04586-RNO  
KEYSTONE RAILCAR, INC. :  
Debtor : Chapter 7

**APPLICATION TO EMPLOY AUCTIONEER**

TO THE HONORABLE ROBERT N. OPEL, II, CHIEF BANKRUPTCY JUDGE:

COMES NOW Lawrence G. Frank, Trustee in Bankruptcy in the above-captioned proceeding and makes this application, respectfully stating in support thereof:

1. Contemporaneously with this Application a *Motion to Establish Sale Procedures* is being filed in the above case.
2. As of the time of the conversion from Chapter 11 to Chapter 7, there remained 40 railcars that were not sold during the Chapter 11.
3. The trustee and counsel for the secured creditor, Riverview Bank, Iles Cooper, Esq., have discussed the remaining railcars to be sold with the proposed auctioneer and have agreed on a commission of 10% of the gross sale proceeds.
4. The Debtor, attorney for the secured creditor, and the Trustee believe that Missouri Rail Group, LLC d/b/a Ozark Mountain Railcar, to be well qualified to sell the remaining 38 railcars in this Chapter 7 case.
5. Attached hereto, made a part hereof, and labeled Exhibit A is an exclusive brokerage contract between the trustee and the proposed auctioneer. On the list of railcars attached to that contract, FRR 3307 and FRR 4823 are being sold privately to other buyers. A Motion for Sale Free and Clear of Liens and Encumbrances for railcars FRR 3307 has already been filed, and an Order entered approving that sale. A motion for the sale of railcar FRR 4823 has been filed. Thus, this contract includes 38 railcars to be publicly auctioned.

WHEREFORE, the Trustee in Bankruptcy respectfully requests this Honorable Court to enter an Order approving employment of Missouri Rail Group, LLC, d/b/a Ozark Mountain Railcar as auctioneer for the purpose of conducting a public auction of 38 railcars at the rate of 10% of the gross sale proceeds.

Respectfully submitted,

By: /s/ Lawrence G. Frank, Esquire

Lawrence G. Frank, Esquire  
Attorney ID No: 15619  
100 Aspen Drive  
Dillsburg PA 17019  
PH: (717) 234-7455  
Fax: (717) 432-9065  
[lawrencegfrank@gmail.com](mailto:lawrencegfrank@gmail.com)

Trustee in Bankruptcy

PLEASE NOTE: The contents of this contract are to be considered CONFIDENTIAL.  
Please do not post online or release to third parties.

**EXCLUSIVE BROKERAGE CONTRACT**

THIS EXCLUSIVE BROKERAGE CONTRACT ("Contract"), is entered into as of the 14<sup>th</sup> day of February 2019, (the "Start Date"), by and between Missouri Rail Group, LLC, d/b/a Ozark Mountain Railcar (hereinafter "OMR"), and Lawrence G Frank, Esq., Chapter 7 Trustee for Keystone Railcar, Inc. (hereinafter "Client").

RECITALS

A. Keystone Railcar Inc. owns certain railroad equipment ("Goods") that it desires to sell, and it wishes to retain OMR's services for the purpose of selling said railroad equipment.

AGREEMENT

1. Description of Services. Beginning on the Start Date, OMR will provide the following services to Client (collectively, the "Brokerage Services") in order to assist client with sale of railroad equipment as listed in "Exhibit A" also known as the Goods:

- a. Market and/or advertise the Goods to potential buyer(s);
- b. Offer client's goods for sale through OMR's website utilizing an Auction and/or Standard listing format.
- c. Assist Client with negotiating sales contract with potential buyer(s);
- d. Facilitate the sale of the Goods to potential buyer(s); and
- e. Complete the transfer of funds from potential buyer(s) to Client.

By entering into this Contract, the parties agree that OMR has the exclusive right to sell the Goods during the entire duration of the Contract. If during the duration of the Contract Client sells the Goods without OMR's permission or knowledge, Client agrees that it will pay OMR the commission it is entitled as set forth herein.

2. Compensation of OMR. In exchange for the Brokerage Services provided by OMR, Client agrees to permit OMR to add a 10% Buyer's Premium to each item sold (the "Compensation"). This commission will be added as a Buyer's Premium to each sale. Client agrees to pay OMR a lump sum payment, which shall be due no later than five (5) business days from the completion of the transaction between Client and potential buyer(s). Any compensation not paid to OMR when due shall accrue interest at the rate of eighteen percent (18%) per annum. Should OMR have to retain the services of an attorney and/or collection agency for purposes of collecting the Compensation, Client agrees that it will pay OMR's reasonable attorney's fees and costs.

3. Contract Duration. This Contract shall automatically terminate one year from the Start Date, or upon completion by OMR of the Brokerage Services set forth herein. Additionally, Client can terminate the Contract at any time upon thirty (30) days' written notice delivered to OMR. In the event this Contract is terminated without completing the sale of the Goods, Client agrees to pay OMR the Compensation described in Section 2 above, if Client sells to a buyer(s)

Client's Initials KEF

who is on OMR's contact list, or an individual or corporation that has a Buyers Contract with OMR, within 180 days of termination. If client cancels contract without completing the contract term. Client agrees to compensate OMR \$5,000.00 for marketing efforts.

4. Confidential Information. OMR, its employees, agents and/or representatives will not at any time or in any manner, either directly or indirectly, use for the personal benefit of OMR or divulge, disclose or communicate in any manner, any information that is proprietary to Client. OMR, its employees, agents and/or representatives will protect such information and treat it as strictly confidential. This provision will continue to be effective after termination of this Contract.

5. Errors or Omissions. OMR makes all reasonable efforts to ensure that all information provided through OMR and/or its website is accurate; however, it is possible from time to time there may be occasional errors or omissions, for which OMR shall not be held responsible for. OMR makes no representation or warranty, express or implied, as to the accuracy or completeness of the information provided or the contents of its website. Neither OMR nor its related companies, associates, directors, officers, employees or agents shall have any liability to any person(s) or entity(ies) for any direct, special, indirect or consequential damages, or any other damages of any kind whatsoever, or for costs or expenses resulting from their use of information provided by OMR or the contents of its website. Any and all decisions which may be based on information provided by OMR, its employees, agents and/or representatives, or information provided on its website, are entirely the responsibility of the potential buyer(s).

6. Remedies in the Event Default Occurs. In addition to any and all other rights available according to law, if either party defaults by failing to substantially perform any material provision, term or condition of this Contract (including without limitation the failure to pay the Compensation to OMR), the non-defaulting party may elect to terminate this Contract if such default is not cured within three (15) days of providing written notice of the default to the defaulting party. The notice shall describe with sufficient detail the nature of the default. Unless waived by the party providing notice, the failure to cure the default(s) within such time period shall result in the automatic termination of this Contract.

7. Notices. All notices required or permitted under this Contract shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, postage prepaid, and addressed as follows:

If for OMR: Ozark Mountain Railcar  
P.O. Box 167  
Kirbyville, MO 65679

If for Client: Lawrence G Frank, Esq., Chapter 7 Trustee for Keystone Railcar, Inc.  
100 Aspen Drive  
Dillsburg PA 17019

Client's Initials LF

8. Severability. If any provision of this Contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written and enforced as so limited.

9. Amendment. This Contract may be modified or amended if the amendment is made in writing and is signed by both parties.

10. Assignment. Neither party may assign or transfer this Contract without prior written consent of the other party, which consent shall not be unreasonably withheld.

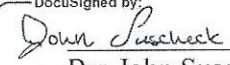
11. Entire Agreement. This Contract constitutes the entire agreement between the parties, and no oral agreements or statements will be effective or binding on either party. The provisions of this Contract can only be amended or changed by a written document signed by both Client and OMR. This Contract supersedes any prior written or oral agreements that may exist between the parties.

12. Waiver of Contractual Right. The failure of either party to enforce any provision of this Contract shall not be construed as a waiver of limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Contract.

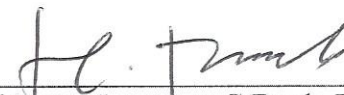
13. Construction and Attorney's Fees. This Contract shall be construed under the laws of the Commonwealth of Pennsylvania. Jurisdiction for any litigation related to this Contract shall be exclusive in the federal courts of the Middle District of Pennsylvania. In the event either party has to bring suit on account of the other party's breach of this Contract, the non-breaching party shall be entitled to reimbursement for its reasonable attorney's fees and costs incurred therein. The parties, by entering into this Contract, agree to waive their right to a jury trial in the event it is necessary to file suit.

"OMR" By:  
Missouri Rail Group, LLC, d/b/a  
Ozark Mountain Railcar

"Client" By: Lawrence G Frank, Esq

DocuSigned by:  
  
By: John Suscheck, CEO

2/21/2019 | 11:18 AM CST

  
Printed Name: Lawrence G Frank, Esq  
Title (if applicable): Trustee

Client's Initials \_\_\_\_\_

EXHIBIT "A"

- 1. FRR 4948
- 2. FRR 4950
- 3. FRR 4953
- 4. FRR 4957
- 5. FRR 4958
- 6. FRR 4959
- 7. FRR 9860
- 8. FRR 4943
- 9. FRR 4951
- 10. FRR 4952
- 11. FRR 4956
- 12. FRR 4822
- 13. FRR 4950
- ~~14. FRR 3307~~ JEF
- ~~15. FRR 4823~~ JEF
- 16. FRR 9624
- 17. FRR 4499
- 18. FRR 4945
- 19. FRR 4946
- 20. FRR 4947
- 21. FRR 4949
- 22. FRR 4954
- 23. KRLX 5506
- 24. KRLX 5511
- 25. FRR 4955
- 26. CMQ 4309
- 27. CMQ 4312
- 28. CMQ 4313
- 29. CMQ 4314
- 30. CMQ 4315
- 31. CMQ 4316
- 32. CMQ 4317
- 33. CMQ 4496
- 34. FRR 4497
- 35. CMQ 4498
- 36. CMQ 4500
- 37. CMQ 4504
- 38. CMQ 4524
- 39. FRR 14307

In Process

Client's Initials JEF

40. FRR 14308

In Process

Client's Initials JAF



Wrap+®

**CRIME  
DECLARATIONS**

POLICY NO. 107108187

**Travelers Casualty and Surety Company of America  
Hartford, Connecticut**  
(A Stock Insurance Company, herein called the Company)

<b>ITEM 1</b>	<b>NAMED INSURED:</b>  <b>MISSOURI RAIL GROUP LLC</b>  D/B/A: <b>Ozark Mountail Railcar</b>  Principal Address: <b>315 MINCY LN KIRBYVILLE, MO 65679-7261</b>
<b>ITEM 2</b>	<b>POLICY PERIOD:</b>  Inception Date: <b>June 11, 2019</b> Expiration Date: <b>June 11, 2020</b> 12:01 A.M. standard time both dates at the Principal Address stated in ITEM 1.
<b>ITEM 3</b>	<b>ALL NOTICES OF CLAIM OR LOSS MUST BE SENT TO THE COMPANY BY EMAIL, FACSIMILE, OR MAIL AS SET FORTH BELOW:</b>  Email: <b>BSIclaims@travelers.com</b> Fax: <b>(888) 460-6622</b>  Mail: <b>Travelers Bond &amp; Specialty Insurance Claim 385 Washington St. – Mail Code 9275-NB03F St Paul, MN 55102</b>
<b>ITEM 4</b>	<b>COVERAGE INCLUDED AS OF THE INCEPTION DATE IN ITEM 2:</b>  Crime



**ITEM 5**

<b>CRIME</b>		
<b>Insuring Agreement</b>	<b>Single Loss Limit of Insurance</b>	<b>Single Loss Retention</b>
<b>A. Fidelity</b> 1. Employee Theft 2. ERISA Fidelity 3. Employee Theft of Client Property	Not Covered Not Covered \$280,000	\$1,000
<b>B. Forgery or Alteration</b>	Not Covered	
<b>C. On Premises</b>	Not Covered	
<b>D. In Transit</b>	Not Covered	
<b>E. Money Orders and Counterfeit Money</b>	Not Covered	
<b>F. Computer Crime</b> 1. Computer Fraud 2. Computer Program and Electronic Data Restoration Expense	Not Covered Not Covered	
<b>G. Funds Transfer Fraud</b>	Not Covered	
<b>H. Personal Accounts Protection</b> 1. Personal Accounts Forgery or Alteration 2. Identity Fraud Expense Reimbursement	Not Covered Not Covered	
<b>I. Claim Expense</b>	\$5,000	\$0

**ITEM 5.  
(Cont'd)**

If "*Not Covered*" is inserted above opposite any specified Insuring Agreement, or if no amount is included in the Limit of Insurance, such Insuring Agreement and any other reference thereto is deemed to be deleted from this **Crime Policy**.

**Policy Aggregate Limit of Insurance:**     Applicable                       Not Applicable

If a Policy Aggregate Limit of Insurance is applicable, then the Policy Aggregate Limit of Insurance for each **Policy Period** for Insuring Agreements A through H, inclusive, is:                      **Not Applicable**

If a Policy Aggregate Limit of Insurance is not included, then this **Crime Policy** is not subject to a Policy Aggregate Limit of Insurance as set forth in Section V. CONDITIONS B. PROVISIONS AFFECTING LOSS ADJUSTMENT AND SETTLEMENT 1. Limit of Insurance a. Policy Aggregate Limit of Insurance.

**Cancellation of Prior Insurance:**

By acceptance of this **Crime Policy**, the **Insured** gives the Company notice canceling prior policies or bonds issued by the Company that are designated by policy or bond numbers **Not Applicable**, such cancellation to be effective at the time this **Crime Policy** becomes effective.

**INSURED'S PREMISES COVERED:**

All Premises of the Insured in the United States of America, its territories and possessions, Canada, or any other country throughout the world, except:

**Not Applicable**

**ITEM 6**

**PREMIUM FOR THE POLICY PERIOD:**

**\$790.00**                                      Policy Premium

**N/A**    Annual Installment Premium

**ITEM 7**

**FORMS AND ENDORSEMENTS ATTACHED AT ISSUANCE:**

**ACF-7006-0511; CRI-3001-0109; CRI-7059-0109; CRI-7236-0109; CRI-19002-0412; CRI-19060-0713; CRI-19061-0713; CRI-19072-0315; CRI-19086-0516; CRI-19101-1117; CRI-7027-0109; CRI-5026-0613; CRI-7026-0713; CRI-7021-0116; CRI-4011-1010; CRI-19097-0517**

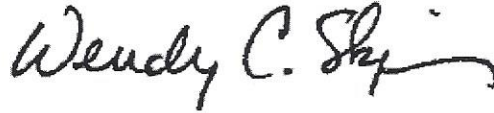
THE DECLARATIONS, THE APPLICATION, THE CRIME TERMS AND CONDITIONS, ANY PURCHASED INSURING AGREEMENTS, AND ANY ENDORSEMENTS ATTACHED THERETO, CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE COMPANY AND THE NAMED INSURED.

\_\_\_\_\_  
Countersigned By

IN WITNESS WHEREOF, the Company has caused this policy to be signed by its authorized officers.



Executive Vice President



Corporate Secretary

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

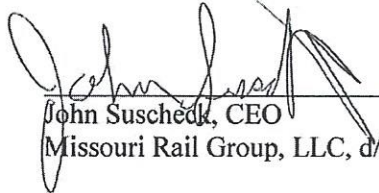
IN RE: : Case No. 1:14-bk-04586-RNO  
KEYSTONE RAILCAR, INC. :  
Debtor : Chapter 7

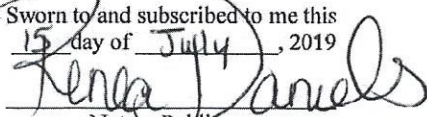
AFFIDAVIT OF PROPOSED AUCTIONEER

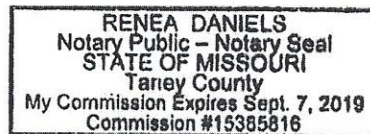
STATE OF MISSOURI :  
 : SS  
COUNTY OF Taney :

I, John Suscheck CEO of Missouri Rail Group, LLC, d/b/a Ozark Mountain Railcar,  
hereby make solemn oath:

1. I am an auctioneer/broker specializing in the sale of railroad cars.
2. I maintain an office at PO Box 167, Kirbyville, MO 65679.
3. I represent no interest adverse to Keystone Railcar, Inc. or its estate or creditors in the matter upon which I am to be engaged.
4. I am a disinterested person within the meaning of §101(14) of the Bankruptcy Code.

  
John Suscheck, CEO  
Missouri Rail Group, LLC, d/b/a Ozark Mountain Railcar

Sworn to and subscribed to me this  
15 day of July, 2019  
  
Notary Public



My Commission Expires: 9/7/2019

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

IN RE: : Case No. 1:14-bk-04586-RNO  
KEYSTONE RAILCAR, INC. :  
Debtor : Chapter 7

**CERTIFICATE OF SERVICE**

I hereby certify that on the 19<sup>th</sup> day of July 2019, I electronically filed a copy of the *Application to Employ Auctioneer* with the Clerk of the U.S. Bankruptcy Court by using the CM/ECF system which sent notification of such filing to the following filing user at the email address below:

U.S. Trustee: [ustpregion03.ha.ecf@usdoj.gov](mailto:ustpregion03.ha.ecf@usdoj.gov)

LAW OFFICE OF LAWRENCE G. FRANK

By: /s/ Lawrence G. Frank, Esquire

Lawrence G. Frank, Esquire

Attorney ID No: 15619

100 Aspen Drive

Dillsburg PA 17019

PH: (717) 234-7455

Fax: (717) 432-9065

[lawrencegfrank@gmail.com](mailto:lawrencegfrank@gmail.com)

Trustee in Bankruptcy