

7-081A017

Date MAR 23 1977

Fee \$ 50

INTERSTATE COMMERCE COMMISSION
ICC Washington, D. C.

March 8, 1977

MAR 21 1977

ADMINISTRATIVE RECORDATION NO. 8-756 Filed & Recorded UNIT

MAR 23 1977 - 9 35 AM

INTERSTATE COMMERCE COMMISSION

MAR 23 9 27 AM '77

RECEIVED

I.C.C. OPERATION BR.

Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Re: Recordation of Mortgage of
Railroad Rolling Stock

Dear Sir:

The undersigned, being one of the attorneys for South-East Coal Company, hereby transmits an original and two counterparts of a Mortgage of and Grant of a Security Interest In Railroad Rolling Stock and requests that the Mortgage be recorded with the Commission pursuant to 49 U.S.C. §20c and 49 C.F.R. Part 1116.

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

Mortgagor: South-East Coal Company
P. O. Box 336
Irvine, Kentucky 40336

Mortgagee: Sumitomo Shoji America, Inc.
875 North Michigan Avenue
Chicago, Illinois 60611

Included in the property covered by the aforesaid Mortgage is railroad rolling stock used or intended for use in connection with interstate commerce, or interests therein, owned by South-East Coal Company at the date of said mortgage or thereafter acquired by it or its successor.

A check in the amount of \$50.00 in payment of the required recordation fee is enclosed. Upon recordation the original Mortgage and evidence of recordation should be returned to:

John A. Koegel
Porter, Stanley, Platt & Arthur
37 West Broad Street
Columbus, Ohio 43215

Secretary
Interstate Commerce Commission
March 8, 1977
Page Two

Thank you for your cooperation in this matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Harry LaViers, Jr.", written in dark ink.

Harry LaViers, Jr.
(President of South-East
Coal Company)

Encl.

Interstate Commerce Commission
Washington, D.C. 20423

3/23/77

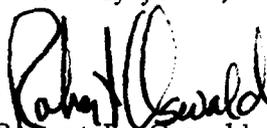
OFFICE OF THE SECRETARY

Harry LaViers, Jr.
South -East Coal Company
P.O.Box 336
Irvine, Kentucky

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 3/23/77 at 9:35am , and assigned recordation number(s) 8756

Sincerely yours,


Robert L. Oswald
Secretary

Enclosure(s)

SE-30
(5/76)

Mortgage of and Grant of a Security Interest In
Railroad Rolling Stock

Columbus, Ohio
March 16, 1977

South-East Coal Company ("Mortgagor"), a Kentucky corporation, and Sumitomo Shoji America, Inc. ("Mortgagee"), a New York corporation, hereby agree as follows:

RECORDATION NO. **8756** Filed & Recorded

MAR 23 1977-9 35 AM

R E C I T A L

INTERSTATE COMMERCE COMMISSION

Mortgagee has agreed, subject to the terms and conditions hereof and of an advance payment agreement (the "Advance Payment Agreement"), of even date herewith, entered into among the parties hereto and South-East Coal Sales Company ("Sales Company"), to advance to Mortgagor and Sales Company the principal amount of \$1,000,000, provided such indebtedness and the promissory note signed to evidence such indebtedness are secured by, among other things, a mortgage of, and grant of a security interest in, the 100 railroad hopper cars specifically identified in Schedule 1 annexed hereto.

A G R E E M E N T

1. Mortgage and Security Interest Grant. To secure the performance of Mortgagor and Sales Company under the Advance Payment Agreement and to secure payment of the promissory note (the "Note"), signed by Mortgagor and Sales Company, of even date herewith, in the principal amount of \$1,000,000, Mortgagor hereby mortgages and grants a security interest, to Mortgagee, in the following, and if sold, leased or otherwise disposed of the proceeds thereof:

Whether now in existence or hereafter acquired, the

railroad rolling stock (the "Units"), specifically identified in Schedule 1 hereto, together with all replacements, replacement parts, additions, repairs, repair parts, accessions and accessories affixed thereto, and together with all products, replacements, additions, substitutions and proceeds (including insurance payable by reason of loss or damage thereto) thereof. [All hereinafter referred to as the "Collateral."]

2. Use and Standards of Use and Repair.

(a) Mortgagor will keep each Unit in good repair, condition and working order and will furnish all parts, mechanisms and devices required to keep each Unit in good mechanical and working order and in compliance with the laws to which reference is made in subparagraph 2(b). Mortgagee shall have no responsibility for any cost arising under this subparagraph or for any expense arising out of or necessary for the operation and use of the Units.

(b) Mortgagor will repair, keep in repair and use the Units in a careful and proper manner and will comply with and conform to and with all current and future federal, state, and other laws, ordinances and regulations relating to the possession, use or maintenance of the Units.

(c) It is understood that Mortgagor will use the Units in shipping its coal to various of its customers and that the Units, for that purpose, will be transported in interstate commerce by and upon property of various railroads and other entities operating in the continental United States only.

(d) Mortgagor will affix to each Unit and maintain throughout the term hereof, labels, plates or other markings

identifying the Units and Mortgagee's interest therein.

3. Mortgagor's Additional Obligations. With respect to the Collateral, Mortgagor warrants and covenants that:

(a) Mortgagor will keep an accurate and complete record of the Collateral, separate and distinct from those of Mortgagor's other property, its disposition and the proceeds thereof and will permit Mortgagee to examine and inspect such records and the Collateral;

(b) except for the security interest granted herein, Mortgagor is, and as to the Collateral acquired after the date hereof shall be, the owner of the Collateral, free and clear of any prior lien, security interest or encumbrance, that Mortgagor will defend the Collateral against the claims and demands of all persons at any time claiming the same or any interest therein, and that no mortgage, financing statement or agreement is on file in any public office pertaining to the Collateral, except for financing statements to Mortgagee;

(c) without the prior written consent of Mortgagee, Mortgagor shall not part with the possession or control of the Collateral or sell, grant a security interest in, mortgage, or otherwise transfer or dispose of any interest in all, or any part of, the Collateral and that Mortgagee's security interest in the proceeds of the Collateral, or notification of its interest in such proceeds in financing statements or otherwise, shall not be construed as modifying this Mortgage or Mortgagee's consent to disposition of the Collateral other than as

set forth herein; and

(d) Mortgagor will keep the Collateral free from all claims, liens and legal process of creditors of Mortgagor, and will pay all costs, expenses, fees, taxes and charges of any kind arising by virtue of its ownership, possession or use of the Collateral.

(e) at Mortgagee's request, Mortgagor will join with Mortgagee in executing such documents, including financing statements or amendments thereto, as Mortgagee in its discretion may from time to time deem necessary or desirable in order to comply with applicable law or to preserve and protect the security interest provided for herein; and,

(f) Mortgagor will indemnify and save harmless Mortgagee from any charge, claim, proceeding, judgment, loss, expense, or liability arising from the repair, possession, operation or other use of any of the Collateral.

4. Loss or Damage. In the event of damage to or loss of any of the Collateral, with respect to that Collateral, Mortgagor will place the Collateral in the repair, condition and working order required hereby or replace the same with like equipment in the repair, condition and working order which the replaced Collateral was prior to the damage or loss. If the loss or damaged Collateral was one or more of the Units, the substituted Unit(s) will be described in a supplemental schedule which shall be duly recorded (wherever required by law) in order to give to Mortgagee the first and best lien on such substituted Unit(s).

All proceeds of insurance payable for any such damage or loss, and any and all payments for such damage or loss payable to Mortgagor by any third party (for example, a railroad) or its insurer, are deemed proceeds of the Collateral and shall be used by Mortgagor only for replacement or repair of the Collateral.

5. Default. Mortgagor shall be deemed to be in default hereunder in the event that:

(a) Mortgagor shall fail to make any payment as required under the Note;

(b) Mortgagor shall fail to make any other payment or perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder or under the Advance Payment Agreement and such failure shall continue unremedied for a period of 30 days after notice thereof by Mortgagee;

(c) any representation or warranty made by Mortgagor herein or in any document or certificate furnished Mortgagee in connection herewith or with the Advance Payment Agreement or pursuant thereto proves to have been, in any material respect, incorrect when made; or

(d) Mortgagor shall make an assignment for the benefit of creditors or consent to the appointment of a trustee or receiver, or a trustee or a receiver shall be appointed for Mortgagor or for a substantial part of its property without its consent and shall not be dismissed for a period of 30 days, or bankruptcy, reorganization or insolvency proceedings shall be instituted by or against Mortgagor and, if instituted

against Mortgagor, shall not be dismissed for a period of 30 days.

6. Remedies of Mortgagee.

(a) In the event a default hereunder occurs, Mortgagee may then, or at any time thereafter (such default not having previously been cured), declare all of the Note to be immediately due and payable, and in respect to the Collateral shall have all the rights and remedies of a secured party under the laws of the State of Ohio, or any other applicable laws.

(b) No right or remedy of Mortgagee hereunder shall be exclusive of any other remedy herein or by law provided; each right or remedy shall be cumulative in addition to every other right or remedy and, in addition, the exercise of any remedy by Mortgagee.

7. Applicable Law. Mortgagee and Mortgagor agree that the law of the State of Ohio shall govern their rights and duties hereunder, excepting applicable federal law and except only to the extent precluded by other states' law of mandatory application. Any action, suit or proceeding in respect of or arising from or out of this mortgage, its making, validity or performance, shall be prosecuted as to all parties and their successors and assigns at Columbus, Ohio. Each party hereto consents to and submits to the exercise of jurisdiction over its person by any court situated at Columbus, Ohio, and having jurisdiction over the subject matter.

8. Notices. Any notice, request or demand given or required

to be given hereunder, shall, except as expressly otherwise provided herein, be in writing and shall be determined to have been given when mailed by United States registered or certified mail, return receipt requested, postage prepaid, to the other party hereto at the address as follows (or such other address as may be designated by either party):

Mortgagor - South-East Coal Company
Attn: Mr. Harry LaViers, Jr.
P. O. Box 336
Irvine, Kentucky 40336

and

South-East Coal Sales Company
Attn: Mr. Keith F. Merrick
88 East Broad Street
Columbus, Ohio 43215

and

Mr. Roger F. Day or
Mr. John A. Koegel
37 West Broad Street
Columbus, Ohio 43215

Mortgagee - Sumitomo Shoji America, Inc.
Attn: Mr. Harry Matsushita
875 North Michigan Avenue
Chicago, Illinois 60611

and

Mr. Howard Joseph
3265 Broadway
Chicago, Illinois 60657

9. Miscellaneous Provisions.

(a) Upon satisfaction of all provisions and conditions hereof and after receiving Mortgagor's written request, Mortgagee shall have 20 working days in which to furnish any termination statement required by law.

(b) All the terms and provisions of this Mortgage and attendant documents are intended to be binding upon, and inure to the benefit of, the assigns and successors of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Mortgage to be executed by their duly authorized representatives as of the 10th day of March, 1977.

Signed and acknowledged in the presence of:

Thomas J. James
[Signature]

SOUTH-EAST COAL COMPANY,
a Kentucky corporation

By: [Signature]
Harry LaViers, Jr.
President

MORTGAGOR

Signed and acknowledged in the presence of:

[Signature]
[Signature]

SUMITOMO SHOJI AMERICA, INC.,
a New York corporation

By: [Signature]
Hiroshi Matsushita
Senior Vice President

MORTGAGEE

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

I do hereby certify that on the 10 day of March, 1977, before me, the subscriber, a notary public in and for said County, personally appeared Harry LaViers, Jr., to me personally known, who being duly sworn, says that he is the President of South-East Coal Company, that the seal 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

SCHEDULE 1

To Mortgage of Railroad Rolling Stock
Dated March ____, 1977

Description of Equipment (Units):

<u>Type</u>	<u>ARR Mechanical Designation</u>	<u>Number of Units</u>	<u>Identifying Marks</u>	<u>Road or Serial Numbers</u>
41'8"--70 ton hopper cars	HT	100	SECX	768024 768703 769024
				768112 768899 769161
				768173 769018 769234
				768297 769100 769305
				768356 769222 769366
				768436 769262 769418
				768572 769353 769468
				768723 769398 769513
				768892 769441 769744
				769015 769499 769856
				769099 769695 769901
				769173 769741 769957
				769243 769818
				769336 769929
				769377 770006
				769439 770036
				769473 770123
				769565 770175
				769637 770252
				769722 770381
				769886 770461
				769980 770564
				770029 770619
				770104 770695
				770170 770746
				770215 770827
				770264 770881
				770327 770914
				770409 770930
				770526 770976
				770596 770989
				770682 771044
				770729 768012
				770780 768107
				770894 768162
				770925 768199
				770951 768285
				770986 768337
				771034 768421
				768064 768513
				768120 768719
				768186 768752
				768326 768821