



CITE AS
25 Energy & Min. L. Inst. ch. 9 (2005)

Chapter 9 Coal Lease Terminations: Minimizing the Pain of Untying the Knot

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§ 9.01. Introduction.

Those who contract are not clairvoyant. Commercial marriage, like all other, is laden with uncertainty.¹

The Fourth Circuit’s use of “commercial marriage” as a metaphor for the relationship between coal lessor and lessee is particularly apt. Certainly, it is not uncommon for prospective coal lessors and lessees, like engaged couples, to become excited or even euphoric at the prospect of a relationship with significant hoped-for benefits. Like a marriage contract, a coal lease represents a voluntary exchange of binding legal commitments, commitments which often cannot be ended without sobering financial consequences. The parties to a commercial marriage, like those who have gone down the aisle, acquire a shared interest in valuable assets which can—and frequently do—become the focus of acrimony, as euphoria fades and expectations fail to materialize.

Of course, all marriages, commercial and otherwise, eventually end.² Some expire naturally with relatively little adverse consequences. Others end prematurely, abruptly and painfully, with substantial economic and other consequences for the parties. Often lawyers are hired by the parties to attempt to minimize the financial pain of untying the knot. In the case of all marriages, the least painful terminations from an economic standpoint

¹ Orlandi v. Goodell, 760 F.2d 78, 81 (4th Cir. 1985).

² Perpetual leases, discussed below, may be an exception.

are those that are planned for well in advance. By far, the best opportunity to control the consequences of terminating a legal relationship is before the parties have made their initial legal commitments. Well-drawn antenuptial agreements are generally effective in controlling economic consequences of a failed marriage. And, yes, well-drawn coal leases do contain what, in effect, are antenuptial provisions. Postnuptial agreements are also effective, if the parties can reach agreement after their positions have become legally fixed and reality has set in. Even when the end of the relationship is in sight, “end game” planning may serve as effective damage control.

§ 9.02. Consequences of a Failed Commercial Marriage.

Before attempting to plan for or even manage the consequences of the breakdown of any relationship, it is necessary to understand what those consequences could be in the absence of planning or management. The end of any relationship, and particularly any business relationship, is often seen as the last opportunity for settling accounts. Typically, the parties use the occasion to review their commitments to each other and assess the extent of compliance with or violation of those commitments. In the case of modern coal leases, the parties, particularly the lessees, frequently make a wide variety of commitments, any or all of which may become the subject of claimed violations when the lease ends. When such claims cannot be amicably resolved and litigation or arbitration ensues, only rarely is a single claim asserted. More commonly, all-inclusive “laundry lists” of claims and counterclaims are made. Some of the claims typically made when coal leases end are identified below.

[1] — Termination-Related Claims.

[a] — Minimum Royalty Claims.

As the case law reflects, lessors have frequently asserted, and lessees have just as frequently resisted, claims for unpaid minimum royalties accruing after the cessation of coal production and prior to the expiration dates of the leases. True to human nature, lessees have been quick to try to shift the blame for their lack of mining success to conditions beyond their control, such as (1) no profitably recoverable coal found within the