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## Chapter 6

### Use of Master Agreements in the Coal Industry

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#### Synopsis

<b>§ 6.01. Master Agreements and General Contract Law .....</b>	<b>166</b>
[1] — Article 2 of the Uniform Commercial Code .....	166
[2] — Traditional Negotiations .....	167
[3] — Master Agreements .....	168
[4] — Purpose of Master Agreements .....	168
[5] — Problems with Master Agreements .....	169
<b>§ 6.02. General Issues Regarding Master Agreements.....</b>	<b>170</b>
[1] — Formation/Enforceability .....	170
[2] — Statute of Frauds .....	171
[3] — Battle of the Forms .....	173
[4] — Parol Evidence Rule and Oral Modification of Contracts .....	178
[5] — Illusory/Ancillary Contracts .....	180
<b>§ 6.03. Master Agreements in the Coal Industry .....</b>	<b>181</b>
[1] — Method of Calculating Damages .....	181
[2] — Limitations of Tort Liability .....	184
[3] — Telephone Agreements .....	185
[4] — Bankruptcy .....	187
[5] — Substitution .....	187
[6] — Defaults .....	187
<b>§ 6.04. Practice Tips .....</b>	<b>188</b>

In recent years, energy producers have attempted to develop “master agreements” to govern the purchase and sale of coal. Increasingly, coal suppliers and coal consumers are following suit. This chapter is an attempt to discuss various issues that are present regarding the use of such agreements.

The first set of issues is broad in scope and pertains generally to the use of “master agreements” of all types. The second set of issues is specific

to the master agreements that have been drafted and used in the coal industry. Some of the latter issues may have developed from negotiated positions, or perhaps may have simply resulted from drafting oversights, but have nonetheless become some of the “form” master agreements that are relied upon in the industry.

Master agreements may be drafted as form agreements that are designed to cover future purchase and sale transactions and theoretically eliminate the need for buyer and seller to negotiate any terms other than price and quantity.

A summary of practice tips can be found at the conclusion of this chapter; the practice tips serve as a quick guide for practitioners in the coal industry to aid in issue-spotting and problem-prevention.

### **§ 6.01. Master Agreements and General Contract Law.**

#### **[1] — Article 2 of the Uniform Commercial Code.**

At the outset, it is important to note that contract law, relative to the sale of goods, enjoys a consistent and uniform application throughout the United States. This is in large part due to the widespread acceptance of Article 2 of the Uniform Commercial Code (U.C.C.). Article 2 has been adopted in 49 of the 50 states.<sup>1</sup> The U.C.C. applies to transactions involving goods.<sup>2</sup> Goods are “all things . . . which are movable at the time of identification. . . .”<sup>3</sup>

Coal expressly falls within the scope of the U.C.C. The U.C.C. has a specific provision regarding goods to be severed from realty that states, “a contract for the sale of minerals or the like (including oil and gas) . . . to be removed from realty is a contract for the sale of goods within [the U.C.C.] if they are to be severed by the seller. . . .”<sup>4</sup> Accordingly, the vast majority of transactions anticipated by master agreements between

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<sup>1</sup> Only Louisiana has failed to adopt Article 2 of the Uniform Commercial Code, although it has adopted Articles 1, 3, 4, 5, 7 and 8.

<sup>2</sup> U.C.C. § 2-102.

<sup>3</sup> *Id.* § 2-105.

<sup>4</sup> *Id.* § 2-107.