



CITE AS  
25 *Energy & Min. L. Inst.* ch. 8 (2005)

## Chapter 8

### General Overview of Remedies for Breach of Coal Supply Agreement and Case Study: What Happens when the Trains Don't Show Up?

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### **§ 8.01. Introduction.**

This chapter examines the remedies available to Buyer and Seller, in general, for breach of a coal supply agreement, and addresses certain unsettled areas of the law regarding remedies. It also presents a case study on remedies in a context currently being experienced throughout the coal industry—*i.e.*, the inability of Seller to deliver, and Buyer to accept, in a timely manner, coal called for under a coal supply agreement due to the unavailability of rail transportation.

### **§ 8.02. Overview of Remedies.**

A coal supply agreement is a contract for the sale of goods and, as such, is governed by Article 2 of the Uniform Commercial Code (UCC). The sources of remedies available for breach of a coal supply agreement include the express terms of a parties’ contract; Article 2 of the UCC (particularly Part 6, entitled “Breach, Repudiation and Excuse” and Part 7, “Remedies”); and case law in the particular jurisdictions. Of these three, the most important source is the parties’ contract. Section 1-102 of the UCC provides that parties can agree, by contract, to terms that are different from the provisions of the UCC, as long as the terms are not unreasonable. The parties cannot, however, contract away the obligations of good faith, diligence, reasonableness and care prescribed by the UCC.

Section 2-719 of the UCC, entitled “Contractual Modification or Limitation of Remedy,” expressly provides that the parties may, by agreement, provide for remedies that are in addition to, or in substitution for, those provided in Article 2. Parties may also limit or alter the measure of damages recoverable. However, parties cannot contract away all remedies. If an exclusive or limited remedy fails of its essential purpose, a party may pursue the remedies provided for in the UCC.