

Chapter 21

Remedial Remedies – Or How I Learned to Stop Worrying and Love the UCC

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§ 21.01. Introduction.

The Uniform Commercial Code (UCC or the Code) provides the underlying legal mechanics to resolve disputes over the breach of all contracts for the sale of goods, including coal supply agreements. Because minerals extracted from the ground are considered goods under the UCC, the Code governs coal supply agreements regardless of whether they are structured as installment contracts or single delivery spot purchases.

As a uniform set of laws that has been adopted in all of the coal producing states, cases construing the commercial code of one state likely represent useful precedent to courts in other jurisdictions facing a similar issue. For

this reason, the studious lawyer faced with a coal supply dispute will want to research UCC cases decided across the country. Moreover, one should not limit his or her search to cases involving coal or other minerals, as the UCC rules apply to all goods, whether they be minerals, livestock, or ears of corn.

This chapter addresses a few key remedies issues that may arise in a case over the breach of a coal supply agreement. Although the Code also provides the rules for what constitutes a breach of a coal supply agreement, those issues are beyond the scope of this article. Only the remedies applicable to a breach by the seller (the coal supplier) will be addressed. However, the seller's remedies often mirror the buyer's remedies, and cases construing a seller's remedies will often refer to the provisions governing the buyer's remedies as support for their decisions.

§ 21.02. Overview of Buyer's Remedies — U.C.C. 2-711.

U.C.C. 2-711 — Buyer's Remedies in General

(1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract, the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid

- (a) “cover” and have damages under the next section (Section 2-712) as to all the goods affected whether or not they have been identified to the contract; or
- (b) recover damages for non-delivery as provided in this Article (Section 2-713).

The choice between the two remedies — cover under Section 2-712 or the so-called market price remedy under Section 2-713 — depends entirely upon whether or not the buyer covered. If the buyer has covered, he may not receive a windfall in damages above the actual price paid for the cover. Comment 5 to Section 2-713 provides that the market price remedy “is completely alternative to cover . . . and applies only when and to the extent