

Chapter 13

Reopening Pandora’s Box: Market Price Reopeners in Volatile and Uncertain Times

Justin W. Ross
Wyatt, Tarrant & Combs, LLP
Lexington, Kentucky

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§ 13.01. Introduction.

Persistent volatility in the energy markets has led coal buyers and sellers to reconsider the wisdom and practicality of the typical long-term coal supply agreement. Contract terms are getting shorter, but protection from pricing swings is still a primary concern. Parties increasingly rely on contractual price reopeners, but many find that these provisions often create more uncertainty than they resolve. For some parties, the exercise of a market price reopener provision (whether by their own initiative or the act of their counter-party) results in unintended consequences that neither party envisioned during contract negotiations. In other words, in volatile and un-

certain times such as these, exercising a market price reopener may unknowingly (or sometimes knowingly) open up a Pandora's Box of difficult issues that only litigation or arbitration can resolve.

§ 13.02. Pandora and Her Box.

The story of Pandora's Box first appears in print around 700 B.C. in the epic poem, *Theogony*, penned by Greek poet, Hesiod.¹ A contemporary of Homer, Hesiod later expanded the story in another work entitled *Works and Days*.² The following story of the mythological Pandora is my personal account based on those works.

In Greek mythology, the numerous gods and goddesses on Mount Olympus were feared and worshipped by the mortal human beings living in their shadow. The immortal titan, Prometheus, favored mankind and often angered Zeus, king of the gods, by championing humanity whenever possible. Prometheus went a step too far when he stole fire from Zeus and presented it to man as a gift. Zeus sought revenge against Prometheus and all of mankind.

Zeus first ordered that Prometheus be bound to a rock for eternity. Each day, he sent an eagle (which was an emblem of Zeus) to feed on Prometheus' liver. Each night, as a result of his immortality, Prometheus grew another liver. Nevertheless, the eagle returned each following day to torment Prometheus forever. Zeus envisioned a more elaborate punishment for mankind. Zeus ordered Hephaestus to make the first human woman out of clay and directed the other gods to give this original female a multitude of gifts and talents. Aphrodite conferred beauty and grace; Athena taught her weaving and clothed her in beautiful garments; Hermes presented her with the power of speech (including "lies and crafty words"). She was given the name Pandora, meaning "all-gifted," because each of the Olympians had given her a special gift.

¹ Martin L. West, *Hesiod: Theogony*, pp. 40, 535-70, Oxford University Press (1966).

² Jasper Griffin, "Greek Myth and Hesiod," p. 88, J. Boardman, J. Griffin, and O. Murray (eds), *The Oxford History of the Classical World*, Oxford University Press (1986); Martin L. West, *Hesiod: Works and Days*, pp. 59-89, Oxford University Press (1978).