



**Opinion Title:** 06/20/2014 PUBLISHED Gary E. Jubber, Chapter 7 Trustee v. Hiawatha Coal Proceeds, et al., 11-08001, Judge Mosier.

**Body:**

The Debtor was party to a contract that gave the Debtor the exclusive right to mine coal. An involuntary chapter 11 petition was filed against the Debtor. During the GAP period, the Debtor transferred its rights in the mine to a third party, which mined coal until an order for relief was entered and the case was converted to chapter 7. The Chapter 7 Trustee brought an adversary proceeding against the third party and others seeking avoidance of the mine's transfer and recovery of the mined coal under §§ 542, 549 and 550, arguing, inter alia, that the coal mined post-petition, as well as any proceeds of the coal, was property of the estate. The Court denied the Trustee's claims to the mined coal and the Trustee appealed to the District Court. The District Court affirmed that the mined coal, while it was in situ, was not property of the estate but remanded the case to address the Trustee's additional arguments. On remand, the Court found that, under the terms of the contract and Utah law, the Debtor's property interest was an incorporeal hereditament, a future right to possession of the coal, which was contingent on the Debtor mining the coal. While the Trustee may have a claim for damages, the Debtor had no possessory interest in the mined coal because the third party, not the Debtor, mined the coal. The Court also held that none of the Trustee's alternative arguments - (1) the third party was not authorized to mine the coal; (2) the Debtor had expenditure significant sums preparing the coal for extraction; (3) the estate was liable for royalties on the coal it did not mine; (4) the transfer of the mine was a violation of the automatic stay; and (5) equity supported finding the coal to be property of the estate - were sufficient to create a possessory interest in the mined coal. The Court therefore denied the Trustee's §§ 542, 549 and 550 causes of action with respect to the mined coal.

**File:**  [577.pdf](#) [1]

**Judge:** [Chief Judge R. Kimball Mosier](#) [2]

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