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## **EMINENT DOMAIN - WEST VIRGINIA**

### **West Virginia Department of Transportation, Division of Highways v. Newton**

**Supreme Court of Appeals of West Virginia - March 7, 2017 - S.E.2d - 2017 WL 958602**

Mineral rights owner filed petition for writ of mandamus seeking to force Department of highways to institute condemnation proceedings for limestone it excavated from its land.

The Circuit Court entered judgment for owner and subsequently awarded her attorney fees and expenses of \$32,510.05 for mandamus proceeding and \$228,917.44 for fees and expenses incurred in condemnation proceeding. Department appealed and owner cross-appealed.

The Supreme Court of Appeals held that:

- Mandamus and eminent domain proceedings constituted inverse condemnation action for which owner was entitled to recover attorney fees;
- Trial court did not abuse its discretion by concluding that owner was entitled to fees and expenses for her mandamus action on ground that Department acted in bad faith; but
- Remand was warranted for trial court to make factual findings as to factors to be used to determine whether fees and expenses awarded were reasonable.

Mandamus and eminent domain proceedings constituted inverse condemnation action for which mineral rights owner was entitled to recover reasonable attorney fees after she ultimately prevailed and judgment was entered in her favor, despite claim that there was no inverse condemnation because Department of Highways ultimately filed eminent domain proceeding. Department did not intend to institute eminent domain proceedings against owner's mineral interest, although Department was aware that limestone it was removing from property belonged to owner, no effort was made to contact her, and, upon learning of removal of limestone from property, owner's only recourse was to file petition for writ of mandamus.

Trial court did not abuse its discretion by concluding that mineral rights owner was entitled to attorney fees and expenses for her mandamus action seeking to force Department of Highways to institute condemnation proceedings for limestone it excavated from her land on ground that Department acted in bad faith. Department failed to exercise its nondiscretionary duty to institute condemnation proceedings for taking of limestone from property and failed to disclose volume of limestone removed, and delay occasioned by Department's refusal to file condemnation action coupled with commencement of highway construction while it was trespassing upon owner's mineral interests put owner at distinct disadvantage in proving volume and value of her mineral interest, which greatly increased litigation costs and expenses.

Remand was warranted for trial court to make factual findings as to factors to be used to determine whether attorney fees and expenses awarded to mineral rights owner in mandamus and eminent domain proceedings after she ultimately prevailed against Department of Highways were reasonable; Department raised factual questions as to accuracy of fees, and there was complete

absence of factual findings in final order to permit meaningful review of reasonableness of amount of fees and expenses awarded.

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