14-0428

DATE 4-16-14

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IN THE CIRCUIT COURT OF HARDY COUNTY, WEST VIRGINIA

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS, a Public Corporation, And PAUL A. MATTOX, JR., P.E., SECRETARY/COMMISSIONER OF HIGHWAYS,
PETITIONERS,

VS.

MARGARET Z. NEWTON,
RESPONDENT.

UPON PROCEEDING TO CONDEMNATION LAND FOR PUBLIC USE.

CHARLES E. PARSONS, JUDGE

CIVIL ACTION NO. 11-C-30
PROJECT NO. X316-H-100, 40, APD-0494 (176)
PARCEL NO. 3 (Mineral Rights)

ORDER OF JUDGMENT

On this the 7th, 8th, and 9th day of April, 2014, came the Petitioners by representative of the West Virginia Department of Highways, Rick Romig, and by counsel, Matthew R. Whitler, of Martin & Seibert, L.C., and came the Respondent, Margaret Z. Newton, in person and by her attorney, J. David Judy, III, this matter coming before the Court on this date pursuant to prior Order of this Court entered October 15, 2013, scheduling this matter for trial by jury on this date and at this time.

WHEREUPON, a full panel of thirty-five (35) potential jurors have been summoned to the Court on this date for selection of twelve (12) freeholders as a jury to try the issues of this case, all of whom were qualified by the Court to serve as jurors in this matter. A panel of twenty (20) jurors were selected by lot, as well as a panel of four (4) alternates. Each of the parties examined the jurors on Voire Dire, and at the conclusion of same, there remained twenty (20) jurors on the regular panel free of challenge, as well as four (4) alternates on the alternate panel, free of challenge. The

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Petitioners and the Respondent then exercised four (4) peremptory strikes on the regular panel leaving a panel of twelve (12) jurors to serve. The Petitioners and the Respondent then exercised one peremptory strike each on the alternate panel leaving two (2) alternates to sit with the jury during the trial. The regular panel included: Robert Boyd Basye, Donna Pearl See, Orville A. Eye, David Earl Wilkins, Michael Scott Begley, Vivian L. Hodson, Maria Ann Smith-Sierra, Daniel Luther Aylor, JoAnn Marie Ernswiler, Morgan Todd Jenkins, and Judy A. Moyer. Alternates impaneled were: Tina Louise Barr and Kathy M. Greenwalt. The jurors and alternates were then sworn by the Court to serve and to render a true verdict based upon the evidence and the law.

The parties then presented opening statements to the jury, and by agreement read certain legal findings and conclusions entitled "Additional Instructions" which were filed in this action on August 29, 2013, which included the following:

1. Paul Williams and Margaret Z. Williams, now Newton, conveyed the surface only to James Parsons on June 4, 1980, reserving unto themselves fee simple ownership of all minerals underlying the Parsons real estate, without limitation or restriction, and which reservation and exception is free of ambiguity and clear in its intent.

2. The minerals reserved by Margaret Z. Newton include limestone and gravel as defined by the Court.

3. The WVDOH entered onto the Parsons real estate and excavated and appropriated the limestone minerals of Newton without permission of the Respondent.

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4. The WVDOH made no communication or contact with Margaret Z. Newton prior to entering onto the property or prior to appropriating the limestone minerals from the Newton reserves.

5. The failure of the WVDOH to communicate with the Respondent precluded an opportunity to assess the value of the limestone minerals prior to appropriation of the minerals by the WVDOH.

You may accept the findings as a matter of law and not subject to contest or dispute.

The Respondent then presented testimony and evidence subject to cross-examination, and at the conclusion of same, rested. The Petitioners moved the Court for a directed verdict as more fully stated on the record, which said motion was denied based upon findings made by the Court, on the record, objection saved. The Petitioners then proceeded to present testimony and evidence, subject to cross-examination, commencing in the afternoon of April 8, 2014, and during the morning of April 9, 2014, rested. Respondent then presented rebuttal testimony and evidence, subject to cross-examination, and at the conclusion of same, rested. The Petitioners then renewed their motion for directed verdict, which said motion was again as previously stated, objection saved. The Court then read the Charge and Limiting Instruction to the jury. Closing arguments were then made on behalf of each of the parties. The alternate jurors were released and the twelve (12) members of the regular panel proceeded to deliberate upon the evidence and testimony presented and the instructions given by the Court. After due passage of time, the jury announced that they had reached a verdict. The jury returned to the Courtroom and presented the

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completed Verdict Form to the bailiff and to the Court. The Clerk then read the Verdict into the record as follows:

VERDICT FORM

We, the jury, upon the issues joined, find as follows:

1. Do you find, by a preponderance of the evidence, that the Respondent has demonstrated the following with respect to the limestone actually excavated and removed from the 6.714 acres as of April 29, 2011:

a. the quantity; and

Yes ___X___ No_____

b. the quality; and

Yes ___X___ No _____

c. the marketability; and

Yes ___X___ No _____

d. market value.

Yes ___X___ No _____

2. Do you find, by a preponderance of the evidence, that the Respondent has demonstrated the following with respect to the limestone remaining beneath the 6.714 acres where the Corridor H right-of-way is now located, in its natural state in the ground, as of April 29, 2011:

a. the quantity; and

Yes ___X___ No_____

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b. the quality; and

Yes ___X___ No _____

c. the marketability; and

Yes ___X___ No _____

d. market value.

Yes ___X___ No _____

If you answered "No" to any part of Question No. 1 (One), and "No" to any part of Question No. 2 (Two), please notify the bailiff that your deliberations are concluded.

3. If you answered Yes to all aspects of Question No. 1 (One):

We, the jury, find that the West Virginia Department of Transportation, Division of Highways excavated and removed a total quantity of ___236,187___ tons of limestone from the 6.714 acres of the subject property, and that the value of this limestone is: $ ___3.79___ per ton.

4. If you answered Yes to all aspects of Question No. 2 (Two):

We, the jury, find that the West Virginia Department of Transportation, Division of Highways has alienated a total quantity of ___318,622___ tons of limestone beneath the 6.714 acre where the Corridor H right of way is now located, in its natural state in the ground, and that the value of this limestone is : $ ___0.25___ per ton.

Morgan Todd Jenkins
Foreperson

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The Court allowed counsel to review the Verdict Form, and the Court concluded that the Verdict Form was in the form and manner required by law.

WHEREFORE, in accordance with the foregoing:

1. The Judgment is Granted to the Respondent upon the quantity of tons and the price per ton found by the jury for that limestone excavated and removed in the amount of $895,148.73, and for that limestone remaining alienated under the highway in the amount of $ 79,655.50, for a total judgment in the amount of $974,804.23.

2. The limestone mineral valuation for which judgment is granted in the preceding paragraph is offset by the consideration paid to the surface owner, James S. Parsons, in that Deed dated October 7, 2004, for which consideration was paid in the amount of $33,500.00, pursuant to prior Order of this Court of October 25, 2012, leaving a net judgment granted herein in the amount of $941,304.23.

3. Pursuant to Chapter 54, Article 2, Section 13, of the West Virginia Code, the Respondent is granted interest at the rate of 10% per annum from the date of the filing of the Petition for Condemnation by the Petitioners, April 29, 2011, until the date of payment by the Petitioners to the Respondent, on the full judgment granted herein.

4. All costs assessed by the Clerk in this action shall be paid by the Petitioners.

5. The pending motion by the Respondent for Attorney Fees and Expenses in this action will be considered together with other motions anticipated to be filed after the entry of this Order.

6. Objection and exception is saved to each of the parties for any adverse rulings and Order of the Court.

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Nothing further remaining to be done in this matter is continued for any further proceedings as may be brought before the Court pursuant to the WVRCP.

Entered this 15th day of April, 2014.

Enter: _____
Judge Charles E. Parsons

Prepared by:

_____
J. David Judy, III
Counsel for Respondent

Seen and Approved by:

_____
Matthew R. Whitler
Counsel for Petitioners

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