WEST VIRGINIA CODE: §22-6B-7

§22-6B-7. Rejection; legal action; arbitration; fees and costs.

(a)(1) Unless the oil and gas developer has paid the surface owner a negotiated settlement of compensation within seventy-five days after the date the notification of claim was mailed under section five of this article, the surface owner may, within eighty days after the notification mail date, either: (i) Bring an action for compensation in the circuit court of the county in which the well is located; or (ii) elect instead, by written notice delivered by personal service or by certified mail, return receipt requested, to the designated agent named by the oil and gas developer under the provisions of section seven, article six-a of this chapter, to have his, her or its compensation finally determined by binding arbitration pursuant to article ten, chapter fifty-five of this code.

(2) Settlement negotiations, offers and counter-offers between the surface owner and the oil and gas developer are not admissible as evidence in any arbitration or judicial proceeding authorized under this article, or in any proceeding resulting from the assertion of common law remedies.

(b) The compensation to be awarded to the surface owner shall be determined by a panel of three disinterested arbitrators. The first arbitrator shall be chosen by the surface owner in the party's notice of election under this section to the oil and gas developer; the second arbitrator shall be chosen by the oil and gas developer within ten days after receipt of the notice of election; and the third arbitrator shall be chosen jointly by the first two arbitrators within twenty days thereafter. If they are unable to agree upon the third arbitrator within twenty days, then the two arbitrators shall immediately submit the matter to the court under the provisions of section one, article ten, chapter fifty-five of this code, so that, among other things, the third arbitrator can be chosen by the judge of the circuit court of the county in which the surface estate lies.

(c) The following persons are considered interested and may not be appointed as arbitrators: Any person who is personally interested in the land on which horizontal drilling is being performed or has been performed, or in any interest or right therein, or in the compensation and any damages to be awarded therefor, or who is related by blood or marriage to any person having such personal interest, or who stands in the relation of guardian and ward, master and servant, principal and agent, or partner, real estate broker, or surety to any person having such personal interest, or who has enmity against or bias in favor of any person who has such personal interest or who is the owner of, or interested in, the land or the oil and gas development of the land. A person is not considered interested or incompetent to act as arbitrator by reason of being an inhabitant of the county, district or municipal corporation in which the land is located, or holding an interest in any other land therein.

(d) The panel of arbitrators shall hold hearings and take testimony and receive exhibits

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necessary to determine the amount of compensation to be paid to the surface owner. However, no award of compensation may be made to the surface owner unless the panel of arbitrators has first viewed the surface estate in question. A transcript of the evidence may be made but is not required.

(e) Each party shall pay the compensation of the party's arbitrator and one half of the compensation of the third arbitrator, or each party's own court costs as the case may be.

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