WEST VIRGINIA CODE: §55-12A-6

§55-12A-6. Appointment of a special commissioner; sale of lease; special commissioner's report; when court not to authorize lease; investment of lease proceeds; search for owner; period during which unknown or missing owner or abandoning owner may establish identity and title.

(a) If upon presentation to the court of the petition, and the failure of the named defendants or their heirs, successors and assigns to answer the petition and deny material allegations in the complaint within the time to answer under the West Virginia rules of civil procedure, the court may accept the allegations of the verified petition, excluding allegations made upon information and belief, as prima facie proof of the facts alleged; and if it further appears to the court that (1) the petitioner has met the requirements for a lease under this article, including the evidentiary requirements of section five-b and the notice requirements of section five-c, (2) a diligent effort has been made to identify and locate the present unknown or missing owners and abandoning owners, and (3) the mineral development sought in the petition would be advantageous to the defendants and would further the public policy stated in section one of this article, the court shall appoint a special commissioner therefor and authorize the special commissioner to sell, execute and deliver a valid lease covering the mineral interests in and underlying the lands for the particular mineral development sought in the petition: Provided, That no order authorizing the special commissioner to sell, execute or deliver a lease of said mineral interest, shall be entered sooner than six months following filing of the petition, and the court may in its discretion direct the petitioner to make further efforts to locate the missing or unknown owners or abandoning owners.

(b) Should the court appoint a special commissioner pursuant to subsection (a) of this section, the order of the court shall also (1) require the special commissioner to give a bond in favor of the owners of the mineral interest which is to be leased in a specified amount, (2) provide for all of the rental, royalty, and other provisions of the lease which the special commissioner is authorized to make, except for the initial monetary consideration for the sale of the lease, (3) specify whether the special commissioner's sale of the lease shall be public or private, (4) if the order provides for a public sale, determine the notice to be given, and (5) direct that the special commissioner be paid compensation and expenses, including the bond expense, as provided in section eight of this article in an amount agreed upon by the special commissioner and the petitioner; but if no agreement is made within thirty days after the special commissioner is appointed, then the court shall fix the compensation and expenses. The sale shall be for a monetary consideration payable on confirmation of sale. No appraisal shall be required.

(c) The special commissioner shall proceed in compliance with the provisions of the order to sell the lease authorized thereby; and if two or more persons offer to purchase the lease, the sale shall be made to the offeror whose offer is deemed most beneficial to the unknown or missing owner or abandoning owner, and most consistent with the public policy stated in

section one of this article. After making the sale, the special commissioner shall make a report thereof to the court. Upon filing the report, the court may hear evidence as to whether or not the sale price and the provisions of the lease are reasonable; and if the court is satisfied with the sale price and the provisions of the lease, the sale of the lease shall be confirmed by the court, whereupon the lease shall be executed, acknowledged and delivered by the special commissioner.

(d) The court shall not authorize a special commissioner's lease of the mineral interest of any owner whose identity and whereabouts is known, or can be ascertained by diligent inquiry, or is discovered as a result of the action brought hereunder, unless such owner is proved to be an abandoning owner who fails to answer the subject petition, notice having been given as provided in section five of this article.

(e) Any person purporting to be the unknown or missing owner or an abandoning owner, or any heir, successor or assign of an unknown or missing owner or abandoning owner, may appear as a matter of right at any time prior to the entry of judgment confirming the special commissioner's lease, for the purpose of establishing his title to a mineral interest. If the appearing owner's claim is established to the satisfaction of the court, the court shall dismiss the action as to the appearing owner's interest at plaintiff's cost.

(f) The lessee shall promptly deliver the sale consideration and subsequent proceeds, if any, from the lease to the special receiver of the court, who shall hold and invest the same for the use and benefit of the unknown or missing owners or abandoning owners. The court, upon its own motion or upon motion of the special receiver, may at any time authorize the special receiver to expend an amount not to exceed ten percent of the funds collected by the special receiver for the purpose of instituting a search for the unknown or missing owners.

(g) Within seven years after the date of the special commissioner's lease, any unknown or missing owner or abandoning owner of a mineral interest leased hereunder may file a motion with the court to reopen the action, and may thereupon present such proof as the court may deem necessary to establish the movant's identity and title to the mineral interest or any part thereof. If the court finds that the identity and interest of the movant has been established, and that the movant has manifested a desire to obtain the benefits of the proceeds resulting from the lease, the court shall enter an order (1) documenting the movant's title, (2) assigning all future attributable proceeds to the movant and (3) directing the special receiver to pay over the funds then held attributable to the movant's interests. The circuit clerk of the court shall file and record a certified copy of the order with the clerk of the county commission of each county wherein such land is; and from the time of recordation, the movant shall be deemed the owner of the mineral interest specified in the order.

WV Legislature