

In the Circuit Court of Marion County, West Virginia

American Bituminous Power Partners,)
LP,)
Plaintiff,)
vs.))
Employers' Innovative Network, LLC c/o)
Cogency Global Inc.,)
Vensure HR, Inc. c/o Cogency Global)
Inc.,)
Defendants)

Case No. CC-24-2020-C-136

Order Granting Defendants' Motion to Compel Discovery Responses

On May 11, 2021, came Defendants, Employers' Innovative Network, LLC ("EIN") and Vensure HR, Inc. ("Vensure HR") (collectively, "Defendants"), by counsel, and moved to compel Plaintiff, American Bituminous Power Partners, L.P. ("AMBIT" or "Plaintiff") to provide supplemental responses to "Defendants' First Set of Interrogatories and Requests for Production to Plaintiff." The motion was fully briefed by the parties and was argued by counsel during a telephonic hearing before the Court on June 14, 2021.

Defendants contend that AMBIT is too narrowly reading various interrogatories and requests for production, which call for the identification of persons with knowledge and documents "related to" AMBIT's allegations and claims. AMBIT contends that, because its allegations focus on its alleged lack of knowledge, discovery is limited to information and documents specifically about its claims and supporting allegations. And, because AMBIT contends that its claims rest on its asserted lack of knowledge, it thus contends that little to no discoverable information and documents exist that predate its asserted discovery of its claims in 2020.

Upon consideration of the record before it and the oral argument of counsel, the

Court agrees with Defendants that AMBIT has too narrowly interpreted the discovery requests that are the subject of this Order.^[1] The scope of discovery extends to information and documents relevant to both claims and defenses. *See* W. Va. R. Civ. P. 26(b)(1) (“Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party”). Thus, Defendants’ permitted discovery into persons with knowledge and documents *related to* AMBIT’s claims is broader than AMBIT’s current responses. Background information regarding the negotiation and administration of the subject contract—including persons with knowledge, internal and external communications, and internal documentation regarding the same—are relevant and discoverable.

For these reasons and those set out more fully on the record during the hearing on June 14, 2021, the Court **GRANTS** Defendants’ motion, subject to Defendants’ withdrawal of certain requests in its original motion, and **ORDERS** AMBIT to make a reasonable inquiry, as required by W. Va. R. Civ. P. 26(g), and to provide full and complete responses to the following discovery requests, including all information requested in each:

INTERROGATORY NO. 1: Please identify all AMBIT-related persons with knowledge related to AMBIT’s allegations and claims that EIN (or any related business entity) has maintained and continues to maintain overpayments made by AMBIT pursuant to the CSA’s estimated payment system. For current AMBIT employees, please identify by providing: (i) their name, (ii) all positions held with AMBIT and the timeframes they have held those positions, and (iii) a description of the areas of their relevant knowledge. For former AMBIT employees, please identify by providing: (i) their name, (ii) all positions held with AMBIT and the timeframes they held those positions, (iii) their date of termination and the reasons for termination, (iv) their last known address and telephone number, and (v) a description of the areas of their relevant knowledge. For any AMBIT-related persons who are neither current nor former employees, please identify by providing: (i) their name, (ii)

the nature of their relationship to AMBIT, (iii) their address and telephone number, and (iv) a description of the areas of their relevant knowledge.

INTERROGATORY NO. 2: Please identify all AMBIT-related persons with knowledge related to AMBIT's allegations and claims, whether stated or unstated to date, that EN (or any related business entity) wrongfully retains monies other than the alleged overpayments made by AMBIT under the CSA's estimated payment system. For current AMBIT employees, please identify by providing: (i) their name, (ii) all positions held with AMBIT and the timeframes they have held those positions, and (iii) a description of the areas of their relevant knowledge. For former AMBIT employees, please identify by providing: (i) their name, (ii) all positions held with AMBIT and the timeframes they held those positions, (iii) their date of termination and the reasons for termination, (iv) their last known address and telephone number, and (v) a description of the areas of their relevant knowledge. For any AMBIT-related persons who are neither current nor former employees, please identify by providing: (i) their name, (ii) the nature of their relationship to AMBIT, (iii) their address and telephone number, and (iv) a description of the areas of their relevant knowledge.

REQUEST FOR PRODUCTION NO. 1: Please produce any and all documents created, maintained, or received by Susan Santee relating to AMBIT's allegations that EIN (or any related business entity) has maintained and maintains overpayments made pursuant to the CSA's estimated payment system.

REQUEST FOR PRODUCTION NO. 2: Please produce any and all documents created, maintained, or received by Steve Friend relating to AMBIT's allegations that EIN (or any related business entity) has maintained and maintains overpayments made pursuant to the CSA's estimated payment system.

REQUEST FOR PRODUCTION NO. 3: Please produce any and all documents created, maintained, or received by Eddie Huffman relating to AMBIT's allegations that EIN (or any related business entity) has maintained and maintains overpayments made pursuant to the CSA's estimated payment system.

REQUEST FOR PRODUCTION NO. 4: Please produce any and all documents created, maintained, or received by any AMBIT-related person other than Susan Santee, Steve Friend, or Eddie Huffman relating to AMBIT's allegations that EIN (or any related business entity) has maintained and

continues to maintain overpayments made by AMBIT pursuant to the CSA's estimated payment system.

REQUEST FOR PRODUCTION NO. 5: Please produce any and all documents relating to AMBIT's allegations, whether stated or unstated to date, that EIN (or any related business entity) wrongfully retains monies other than the alleged overpayments made by AMBIT under the CSA's estimated payment system.

With regard to Interrogatory Nos. 1 and 2, the Court **ORDERS** AMBIT to provide supplemental responses within thirty (30) days of the entry of this Order. With regard to Request for Production Nos. 1, 2, 3, 4, and 5, the Court **ORDERS** AMBIT to produce responsive documents within thirty (30) days of the entry of this Order.

Furthermore, should AMBIT withhold any information or documents, or if it already has withheld any information or documents, based on an assertion of the attorney-client privilege or the work product doctrine, the Court **ORDERS** AMBIT to provide an appropriate privilege log within thirty (30) days of the entry of this Order, which privilege log shall be appropriately updated with any subsequent or supplemental production.

The parties' representations on the record at the hearing and the Court's responses to same are preserved as part of the record of this matter. Plaintiff's exceptions and objections are noted and preserved.

Prepared by:

/s/ Russell D. Jessee

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[1] In briefing and during the hearing on June 14, 2021, Defendants withdrew their motion to compel as it pertains to Interrogatory Nos. 4, 7, 10, and 13, as well as related Request for Production Nos. 13, 14, 15, and 16. During the hearing, AMBIT agreed to provide supplemental responses to Request for Production Nos. 1, 2, 3, 4, and 5 in light of the Court's ruling on Interrogatory Nos. 1 and 2.

/s/ James H Young Jr.
Circuit Court Judge
16th Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.