

**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 Denying AMBIT's Motion for Protective Order**

Came the parties on American Bituminous Power Partners' (AMBIT's) Motion For Protective Order And For Expedited Ruling Or Stay: Certification Of Good Faith Effort To Confer (Motion for Protective Order), seeking the protection of this Court from Defendants' Rule 30(b)(7) Notice of Zoom Deposition of Plaintiff – Internal Record-Keeping and Data Storage Topics (Notice) on the basis that the discovery Employers' Innovative Network, LLC, and Vensure HR, Inc., (Defendants) seek is unrelated to any event in this litigation, is irrelevant to the course of discovery at this time, and, for these reasons, is unlikely to lead to the discovery of admissible evidence. AMBIT further argues that, for these reasons and pursuant to West Virginia Rules of Civil Procedure Rule 26, less burdensome and cumbersome means exist for accomplishing this discovery, all of which Defendants have declined to consider.

In response, Defendants cite the discovery issues at the heart of their motion to compel (addressed in ancillary motions, order), alleging that "AMBIT [has] refused to provide discoverable information and documents, AMBIT seeks to improperly limit discovery and prevent Defendants' from conducting a normal corporate representative deposition on document retention and maintenance topics."

In support of its motion for protective order, AMBIT cites the 30(b) deposition as, at best, premature since the process of discovery is ongoing (including the supplementation of responses already provided). AMBIT attests that it has never claimed that documents no longer exist; conversely, AMBIT has repeatedly agreed to supplement and has done so three times to date.<sup>[1]</sup> Also, the Court is now ordering additional supplementations, which have yet to occur. AMBIT argues that, whereas the course of discovery is broad, it never extends to discovery intended to annoy, embarrass, oppress or place undue burden or expense upon a party. AMBIT argued that, because Defendants' Rule 30(b)(7) deposition notice runs afoul of each of these precepts, Defendants must be precluded from proceeding as they envision in the Notice they filed without basis in law or fact.

Defendants have argued that "[b]ecause AMBIT's discovery responses that are the subject of Defendants' Motion to Compel are so deficient, they inexorably lead to questions about AMBIT's internal record-keeping and data storage practices." Whereas AMBIT argues that this use of a 30(b) deposition is oppressive and burdensome (given ongoing discovery that may obviate the need for the deposition), Defendants respond that they are confused by AMBIT's aggressive resistance to identifying a corporate representative. A deposition under Rule 30(b)(7) is a typical and frequently used avenue of discovery, and AMBIT is not entitled to dictate the manner in which Defendants conduct discovery. Specifically, Defendants propose to question AMBIT's representative on the following topics:

1. AMBIT's document retention policy/ies for hard copy and electronic documents, including, without limitation, AMBIT's policies and procedures for preserving documents in connection with litigation.
2. WITHDRAWN
3. WITHDRAWN
4. WITHDRAWN<sup>[2]</sup>
5. AMBIT's process for collecting information and documents in response to discovery requests in this action.
6. The identity of all persons who participated in the identification, location, collection,

production, and/or withholding of documents to respond to Defendants' first set of discovery.

7. The location of any documents in AMBIT's possession, custody, or control that may be relevant to and/or discoverable in this action.

8. The identity of all custodians whose files and/or documents were searched or considered for purposes of responding to Defendants' first set of discovery.

9. AMBIT's filing system for both hard copies of documents and electronic copies of documents.

10. From 2013 through the present, AMBIT's current and prior system(s) used for purposes of creating, transmitting, storing, backing up, retrieving, and deleting e-mail and/or electronic records, including, without limitation, the name and version, installation dates, number of users and location of users' mail files.

11. Information on the location and preservation of Edison Mission's hard copy documents and electronic documents, including, without limitation, e-mail, relevant to and/or discoverable in this action.

The Court FINDS that Defendants may structure their defense and inquiries as they prefer as allowed under the Rules, including [the noticed Rule 30\(b\)\(7\)](#) deposition. Therefore, the Court DENIES plaintiff's motion for protective order and allows Defendants to proceed with the noticed Rule 30(b)(7) deposition on topics 1, 5-11. Finally, 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.

It is further **ORDERED** that the objections and exceptions of any aggrieved party are noted and preserved; and

Entered this \_\_\_\_ day of \_\_\_\_\_, 2021.

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HONORABLE JAMES H. YOUNG, JR.

Prepared by:

/s/ Roberta F. Green

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[1] AMBIT filed discovery upon the Defendants on November 30, 2020, and Defendants have filed seven responses (some by Order of this Court). Defendants filed discovery on AMBIT on March 23, 2021. AMBIT responded initially on April 21, 2021, and has supplemented three times since.

[2] During the June 14, 2021 hearing, Defendants withdrew topics numbered two, three, and four as a concession to AMBIT's concerns about invading the attorney-client privilege. As stated, below, AMBIT does not have to prepare a representative to testify on those topics.

/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/](http://www.courtswv.gov/e-file/) for more details.