

**IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA  
BUSINESS COURT DIVISION**

**HORIZON VENTURES OF  
WEST VIRGINIA, INC.,  
a West Virginia corporation,**

**Plaintiff,**

**v.**

**CIVIL ACTION NO. 13-C-196G  
Presiding Judge – James H. Young, Jr.**

**AMERICAN BITUMINOUS POWER  
PARTNERS, L.P., a Delaware limited  
Partnership, PLEASANT VALLEY  
ENERGY COMPANY, a California  
Corporation, AMERICAN HYDRO  
POWER PARTNERS, L.P., a  
Pennsylvania limited partnership,**

**Defendants.**

**AND**

**DEUTSCHE BANK AG,  
NEW YORK BRANCH, IN ITS  
CAPACITY AS AGENT FOR THE  
BANK GROUP, WHICH ALSO  
INCLUDES JP MORGAN CHASE  
BANK, N.A.; MERRILL LYNCH  
CREDIT PRODUCTS, LLC;  
BNP PARIBAS; and  
CREDIT AGRICOLE CORPORATE  
AND INVESTMENT BANK,**

**Intervenor-Plaintiff,**

**v.**

**HORIZON VENTURES OF  
WEST VIRGINIA, INC.;  
AMERICAN PARTNERS, L.P.,**

**Intervenor-Defendants.**

**CIRCUIT COURT  
OF OHIO COUNTY  
2016 DEC 5 AM 8 53  
BRENDA L. MILLER**

### AMENDED SCHEDULING ORDER

The following schedule is ORDERED by the Court in the above-styled civil action; and shall not be further modified except by leave of Court.

1. **TRIAL DATE: APRIL 25, 2017**

  X   Jury Trial Requested

       Bench Trial Requested

Continuance motions must be heard prior to the pre-trial conference or they will not be considered. Trial is anticipated to last 3-5 days.

2. **PRE-TRIAL CONFERENCE DATE: APRIL 11, 2017**

At which time lead counsel must appear. All parties are **ORDERED** to exchange and deliver their respective **PRE-TRIAL CONFERENCE MEMORANDA** to the Judge's Chambers **NO LATER THAN TEN (10) BUSINESS DAYS BEFORE** the conference. **FAILURE TO COMPLY MAY RESULT IN CONTINUANCE OF TRIAL OR MONETARY SANCTIONS BEING IMPOSED.** Said memoranda are to contain at a minimum, the following:

- |                          |   |
|--------------------------|---|
| 1. Statement of the Case | 7. Pending Motions  |
| 2. Issues of Fact        | 8. Motions <i>in Limine</i>                                 |
| 3. Issues of Law         | 9. All Proposed Instructions of Law                         |
| 4. Proposed Stipulations | (Disk as well as hard copy shall be provided to the Court.) |
| 5. Schedule of Exhibits  | 10. Proposed Voir Dire                                      |
| 6. List of Witnesses     |   |

Parties are to confer and provide a joint instruction charge to the Court.

#### **SCHEDULE OF EXHIBITS**

The parties shall exchange a list of all proposed exhibits (including demonstrative) and shall make the exhibits available for viewing by counsel at least 5 work days prior to the pre-trial conference. By the time of the pre-trial conference counsel shall have stipulated as to which exhibits shall be admitted without objection and provide a list to the Court and Clerk. The parties shall mark all exhibits by use of standard exhibit stickers and provide a list to the Court and counsel.

#### **VIDEO DEPOSITION TO BE USED AT TRIAL**

If a video deposition is to be used, all parties must be prepared to argue objections at the pre-trial conference. Thereafter, the proponent of the video deposition shall have the video edited to reflect the court's rulings. In addition, the proponent of the video deposition must have a videographer at trial.

#### **JURY INSTRUCTIONS**

The Court desires that all counsel read all parties proposed jury instructions prior to the conference and be prepared to discuss them at the conference. The Court will not be inclined to receive instructions after the pre-trial conference.



**3. EXPERTS DISCLOSED: Party with Burden of Proof: FEBRUARY 10, 2017  
Responsive Experts: MARCH 3, 2017**

A. Any party desiring to use an expert witness must furnish opposing counsel with the specialty of such expert and copies of all reports submitted by such witness, or, if no reports have been submitted, a summary of the substance of such expert's contemplated testimony, on the date of Expert Disclosure per WVRCP 26(b)(4).

B. The admissibility of expert testimony is subject to Rule 104(a) of the Rules of Evidence. Objection to the admissibility of expert testimony will be deemed waived if not objected to by a motion *in limine* filed at least 10 days prior to the pre-trial and a hearing thereon set with the Court prior to first day of trial.

C. Co-designation or co-reliance upon experts must also specifically be made in writing on date of Expert Disclosure.

**4. MEDICAL EXAMINATIONS AND  
EXPERT EVIDENTIARY INSPECTIONS: N/A**

All medical examinations by expert physicians must be completed by this date. Medical examinations in accordance with WVRCP 35 are granted, but subject to court control. Any modification to the standard medical examination of the plaintiff must be made by plaintiff's counsel in writing and noticed for hearing prior to the examination. Any continuing medical treatment to be admissible at trial must be disclosed prior to the discovery completion date.

**5. DISPOSITIVE MOTIONS: MARCH 28, 2017**

**6. AMENDMENTS, THIRD PARTY PLEADINGS,  
AND OTHER MATTERS NO LATER THAN: n/a**

**7. FINAL WITNESS LIST EXCHANGED: FEBRUARY 24, 2017**

This is to be a *bona fide* list of intended trial witnesses.

**8. DISCOVERY COMPLETION DATE: MARCH 3, 2017**

All requests must be filed at least 35 days in advance of this date so that all responses may be completed by this date. All trial depositions must be completed at least 5 days before the pre-trial. AMBIT will comply with the Court's October 24, 2016 Order (and specifically Horizon Request for Production of Documents No. 15) by **DECEMBER 31, 2016**. AMBIT will also provide deponent Steve Friend to conclude his Rule 30(b)(7) deposition by **DECEMBER 31, 2016** on a mutually agreeable date.

**ELECTRONICALLY STORED INFORMATION DISCOVERY: MARCH 3, 2017**

All parties and counsel shall cooperate and work diligently to agree upon the methods and conduct for discovery of electronically stored information.

All counsel are required to be informed of and understand to a reasonable degree of their client's information management systems and electronically stored information processes including how information is stored and retrieved. An attorney's lack of knowledge will not be considered as an excuse by this Court in ruling upon a motion to compel or a motion for discovery sanctions.

A party has an obligation to take reasonable and proportional steps to preserve discoverable information in the party's possession, custody, or control. The Court may issue sanctions for spoliation, the intentional or negligent destruction, or failure to preserve relevant electronically stored information. A party may move for an order to preserve electronically stored information upon a showing that the continuing existence and integrity of the information is threatened.

All requests made pursuant to Rule 34 of West Virginia Rules of Civil Procedure shall be construed to include information contained or stored in an electronic medium, regardless of format, unless otherwise stated.

Unless otherwise agreed upon, all production of electronically stored information shall be either in hard copy form or in the form of a compact disk (CD) utilizing a format best suited for viewing the information by the requesting party and reasonably accessible to the producing party. If the parties are unable to agree upon a format, the Court will rule upon the type of format to be used for a particular category or all discovery of electronically stored information.

If any party intends to utilize an electronic search of another party's electronically stored information or if any other issue regarding electronically stored information arises between the parties, then all counsel and pro se parties shall hold a conference. The requesting party shall give reasonable notice to all parties, and all counsel and pro se parties shall be present. The conference must be held at least 40 days prior to the completion of discovery, as set by the scheduling order in this matter.

At the conference, all counsel and pro se parties shall use their best efforts to reach an agreement as to the method of search, the scope of the search, the amount of searching, and the words, terms, or phrases to be used. All counsel and pro se parties shall utilize this conference to resolve all remaining electronic discovery issues such as the allocation of discovery costs for material not readily accessible, form of production, etc.

If, during a search or otherwise, electronically stored information that contains privileged information or attorney work product is inadvertently released in whole or part, then

- a. If the information, document, or material, on its face, appears to be privileged or attorney work product, it shall be immediately returned,
- b. If notice of the inadvertent disclosure is given, it shall be returned as soon as practicable, and in no case later than 10 days.



Upon returning the privileged or attorney work product material, any person to whom it has been disclosed, must destroy any copies, notes, or information derived from the material. The filing of a motion for protective order or to compel or other similarly related motion shall not affect this order.

**9. MOTIONS *IN LIMINE* MUST BE FILED AT LEAST 10 DAYS BEFORE PRE-TRIAL AND WILL BE RULED UPON AT THE PRE-TRIAL CONFERENCE.**

**10. MEDIATION/ALTERNATIVE DISPUTE RESOLUTION**

The Court finds that this is an appropriate case for mediation or alternative dispute resolution. Therefore, pursuant to Rule 25 of the West Virginia Trial Court Rules, this case is referred to mediation or other form of dispute resolution agreed to by the parties. By order of this Court, mediation or other form of dispute resolution shall be conducted by the Honorable Thomas C. Evans, III as Resolution Judge and shall be scheduled and concluded on or before **MARCH 7, 2017**, unless such deadline is otherwise extended by the Presiding Judge for good cause shown. The Resolution Judge shall contact the parties for the purpose of scheduling mediation/alternative dispute resolution. All counsel or pro se parties shall provide their email address to the Business Court Division Director at [carol.miller@courtswv.gov](mailto:carol.miller@courtswv.gov).

**11. SANCTIONS:** In accordance with WVRCP 16(f), the Court may impose the full spectrum of sanctions authorized by the WVRCP if a party or party's counsel fails to obey this order or other orders of this Court including exclusion of evidence and granting of default for failure to comply.

**12. UNLESS AUTHORIZED BY COURT ORDER, THE ABOVE DATES ARE FINAL.** No additional evidence developed as a result of deviations from the above schedule will be admissible at trial unless justice requires.

**13. OBJECTIONS** to the above schedule must be made to the undersigned Judge within **15 days** of the date of this Order or will be deemed waived.

**14.** It will be the responsibility of plaintiff or their counsel to notify opposing counsel and *pro se* parties of the existence of this scheduling order, if and when such counsel or *pro se* party appears of record.

**15.** The dates set out above do not relieve counsel or parties from timely compliance with discovery requests propounded pursuant to the West Virginia Rules of Civil Procedure.

The Clerk shall transmit certified copies to counsel of record; the Presiding Judge James H. Young, Jr.; the Resolution Judge Thomas C. Evans, III; the Business Court Division Central Office, Berkeley County Judicial Center, 380 W. South Street, Martinsburg, West Virginia 25401, and *pro se* parties.

ENTER:

Dec 1/16Amestl. Young  
JUDGE

***Horizon Ventures of West Virginia, Inc. vs. American Bituminous Power Partners, L.P.,  
Pleasant Valley Energy Company, American Hydro Power Partners, L.P., Business Court  
Case, Civil Action No. 13-C-196, Ohio County***

**Counsel for Plaintiff:**

Gregory H. Schillace, Esq.  
Post Office Box 1526  
Clarksburg, WV 26302  
Phone: 304-624-1000  
Email: [ghs@schillacelaw.com](mailto:ghs@schillacelaw.com)

**Counsel for Defendants:**

John McCuskey, Esq.  
Robert F. Green, Esq.  
Shuman McCuskey & Slicer PLLC  
Post Office Box 3953  
Charleston, WV 25339-3953  
Phone: 304-345-1400  
Email: [rgreen@shumanlaw.com](mailto:rgreen@shumanlaw.com)  
[jmuccuskey@shumanlaw.com](mailto:jmuccuskey@shumanlaw.com)

**Counsel for Deutsche Bank AG, New York Branch, as Agent:**

Matthew O. Gatewood, Esq.  
Sutherland Asbill & Brennan LLP  
700 Sixth Street NW  
Washington, DC 20001  
Phone: 202.383.0122  
Email: [matt.gatewood@sutherland.com](mailto:matt.gatewood@sutherland.com)

Alexander Macia, Esq.  
Spilman Thomas & Battle, PLLC  
Post Office Box 273  
Charleston, WV 25321-0273  
Phone: 304.340.3835  
Cell: 304.541.1932  
Email: [amacia@spilmanlaw.com](mailto:amacia@spilmanlaw.com)

12/5/16



**TWENTY-FOURTH JUDICIAL CIRCUIT**

WAYNE COUNTY, WEST VIRGINIA

POST OFFICE BOX 68

WAYNE, WEST VIRGINIA 25570

**JAMES H. YOUNG, JR.**

*Judge*

*Telephone*

*304-272-6332*

*Fax*

*304-272-6335*

December 1, 2016

Brenda L. Miller, Circuit Clerk  
Ohio County Courthouse  
1500 Chapline Street  
Wheeling, West Virginia 26003

RE: Horizon Ventures of West Virginia, Inc. vs. American Bituminous Power  
Partners, L.P., et al., Civil Action No. 13-C-196

Dear Ms. Miller:

Please find enclosed an original Amended Scheduling Order in the above-referenced matter, along with a self-addressed envelope in order that **a time-stamped copy can be returned to me. Also, please mail copies to the Business Court Division, all attorneys of record, and the Resolution Judge in this matter.** For your convenience, I have also enclosed a list of the attorneys of record.

If you need anything further, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Diana Fields".

Diana Fields  
Secretary

Enclosures

CIRCUIT COURT  
OF OHIO COUNTY  
2016 DEC 5 AM 8 54  
BRENDA L. MILLER