

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

**HORIZON VENTURES OF WEST VIRGINIA,
INC.,**

Plaintiff,

v.

**Civil Action No. 13-C-196
Judge James H. Young, Jr.**

**AMERICAN BITUMINOUS POWER
PARTNERS, L.P.,**

Defendant.

TRIAL ORDER

Came the parties on March 19, 2018, and continuing into March 20, 2018, for jury trial before the Honorable James H. Young, Jr. The Plaintiff/Counterclaim Defendant Horizon Ventures of West Virginia, Inc., appeared by its corporate president Stanley Sears, and by its representative Gregory H. Schillace of Schillace Law Offices, and the Defendant/Counterclaim Plaintiff appeared by its plant manager Steven D. Friend, and by its representatives John F. McCuskey, Roberta F. Green and Shuman McCuskey & Slicer, PLLC.

AMBIT presented its expert (mining engineer Herbert Thompson) in support of its counterclaim for reimbursement of costs incurred in treating the preexisting acid mine drainage (AMD) and the AMD resulting from preexisting conditions on the Joanna Parcel. Mr. Thompson testified to causes and existence of AMD on the Joanna Parcel starting in the early to mid-1900s with Eastern Associated Coal, up through North Marion Development (Horizon's predecessor) and continuing at this time. Among the topics addressed were, by example only, the beneficial use of ash to create an "ash cap" to divert surface water from the gob pile (the source of the AMD), the French drain installed to divert both surface and ground water, and the various regulatory and industry protocols for maintaining the site. Additionally, Mr. Thompson testified that AMBIT gave the notice required by law and commensurate with the Lease Agreement (publication for four days

in the local paper) and that the ash cap, while hard, was not impenetrable (as demonstrated by AMBIT's site work in November). Mr. Thompson further testified to the costs incurred as of November 2017 and the costs continuing at this time, further testifying that notice of the charges and plan to seek reimbursement was provided to Horizon in 2012. AMBIT then called its plant manager Steve Friend in support of its presentation of damages and to address DEP permitting issues Horizon raised with Mr. Thompson on cross examination. When AMBIT rested, Horizon moved unsuccessfully for directed verdict.

Horizon called its president Stanley Sears, who testified that the ash cap and the DEP-approved changes to the Joanna Parcel had resulted in an unacceptable parcel for Horizon's alleged intended uses after the lease (i.e., timbering). While Mr. Sears admitted that the AMD predated the Lease Agreement, he testified over AMBIT's objections that Horizon had never received notice of the intended alleged changes to the parcel through remediation, although no evidence was produced as to any source of the alleged notice mandate.

At the conclusion of the presentation of evidence by both parties, the jury was instructed upon the law and after closing arguments, the jury deliberated returning the following verdict:

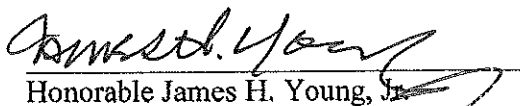
Did Horizon violate the contract between the parties (that is, the lease) by failing to reimburse AMBIT's costs proven at trial?

To which the jury responded "No" (Rodney Anthony Eikey, Foreperson).

The objections and exceptions of the parties are noted and preserved.

All accordingly which is ORDERED and DECREED.

Entered this 18 day of April, 2018.


Honorable James H. Young, Jr.
Business Court Division

A copy, Teste:


Circuit Clerk

***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***

***Judge Mazzone – Janet
Helen – Circuit Clerk’s office keeps trial calendars***

***Resolution Judge:
Honorable James A. Matish
Harrison County Courthouse
301 West Main Street
Clarksburg, WV 26301***

Counsel for Plaintiff:
Gregory H. Schillace, Esq.
PO Box 1526
Clarksburg, WV 26302
Phone: 304-624-1000
Email: ghs@schillacelaw.com

Counsel for Defendants:
John McCuskey, Esq.
Roberta F. Green, Esq.
Shuman McCuskey & Slicer PLLC
P. O. Box 3953
Charleston, WV 25339-3953
Phone: 304-345-1400
Email: rgreen@shumanlaw.com
jmccuskey@shumanlaw.com