

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

**AMERICAN BITUMINOUS POWER
PARTNERS, L.P., a Delaware limited
partnership,**

Plaintiff,

vs.

**Civil Action No.: 18-C-130
Presiding: Judge Lorensen**

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

Defendant.

DAY ORDER FROM AUGUST 30, 2022 HEARING

CAME the parties, in a Status Hearing and Scheduling Conference held via Microsoft Teams, on August 30, 2022, commencing at 10:00 a.m.

Roberta F. Green, Esq. and John F. McCuskey, Esq. appeared for Plaintiff, American Bituminous Partners, L.P., and Mark A. Kepple, Esq. and Joseph G. Nogay, Esq. appeared for Defendant Horizon Ventures of West Virginia, Inc.


1. Conference was had regarding the remand and order of the West Virginia Supreme Court of Appeals, by its decision dated April 18, 2022. Counsel for Plaintiff proffered to the Court that there existed res judicata issues as referred to by the Supreme Court opinion in footnote 27 and at least one pending motion, which would need resolved before scheduling a trial.
2. Counsel for Defendant posited that given a finding in the Supreme Court opinion regarding a 1996 agreement, discovery would need to be re-opened for a period of 90 to

120 days to conduct discovery on that limited, particular issue. Counsel for Plaintiff took the position that discovery should only be re-opened if, and after, it were determined that res judicata did not apply.

3. Considering these issues, the undersigned ordered that the parties would have 30 days (specifically, the undersigned directed this would be September 30, 2022) to file both a response to the pending motion for a case management order, and for counsel for Defendant to file a motion for additional discovery.
4. Thereafter, counsel will have 15 days (specifically, the undersigned directed that taking into account the deadline falling on a weekend, this would be October 17, 2022), to file a reply to the response to the pending motion for a case management order, as well as to file a response to Defendant's motion for additional discovery.
5. A hearing was set for **November 14, 2022 at 2:00 p.m.** via Microsoft Teams. At that time, the undersigned will discuss with counsel scheduling monthly status conferences. The undersigned also directed counsel to be prepared at said November 14, 2022 hearing with the availability of their key trial witnesses, to be considered in scheduling this matter.
6. Conference was also had regarding the location of the trial. Counsel for Defendant asked the Court if the trial could be held in the courtroom of the undersigned in Berkeley County. The undersigned directed counsel to confer on this issue, as this request could be granted only upon the agreement of all counsel.
7. The Status Conference/Scheduling Conference was then adjourned.

The Court directs the Circuit Clerk to distribute attested copies of this order to all counsel of record, and to the Business Court Central Office at West Virginia Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

ENTER: August 30, 2022



JUDGE MICHAEL D. LORENSEN
JUDGE OF THE WEST VIRGINIA
BUSINESS COURT DIVISION