

In the Circuit Court of Marion County, West Virginia

**American Bituminous Power
Partners, LP,**
Plaintiff,

v.

Case No. CC-24-2018-C-130
Judge Michael Lorensen

**Horizon Ventures of West Virginia,
Inc.,**
Defendant

**DAY ORDER FROM JULY 28, 2023 PRETRIAL CONFERENCE AND ORDER
DENYING MOTION TO PROHIBIT SELF-HELP**

CAME the parties, in a Pre-Trial Conference on July 28, 2023, 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 held regarding the issues and structure for the bench trial.
2. Oral argument was heard on Plaintiff's Motion *in Limine* No. 1, titled "Motion *in limine* regarding Court Orders and Horizon's Counterclaim or other issues/claims between the parties, including the Agreement to Resolve Pending Litigation". See court file, 2/3/23. Arguments were heard regarding the applicability and effect of Judge Young's August 31, 2017 Order in Ohio County Civil Action No. 13-C-196, as well as that of the remand and order of the West Virginia Supreme Court of Appeals, by its decision dated April 18, 2022 in this civil action. After a brief recess, the undersigned ruled from the bench that Plaintiff's Motion *in Limine* No. 1 shall be denied, and the parties shall be entitled to present evidence on items, including the Admissions, in order to present their case-in-chief or

defense.

3. Counsel for Plaintiff then proffered that many of its other motions *in limine* were rendered moot by the conversion of the trial in this matter from a jury trial to a bench trial.
4. Oral argument was heard on Plaintiff's Motion *in Limine* – Waste Coal. See court file, 2/3/23. The Court granted this motion.
5. Regarding the structure of the bench trial, the parties agreed on the record that the issue to be decided is what is the appropriate rent calculation is for each period. Once the correct method is decided, after an Order with Findings of Fact and Conclusions of Law is entered, a hearing date will be scheduled on damages, wherein the rent payments amounts will be calculated based upon the calculations determined via the bench trial.
6. The undersigned ruled from the bench, denying Horizon's Motion to Prohibit AMBIT From Engaging in Self-Help and to Require AMBIT to Pay Agreed-Upon Amounts. Oral argument was heard on this motion on May 12, 2023. The court further concludes that the issue of Defendant's Supplement to its Motion to Prohibit AMBIT From Engaging in Self-Help and to Require AMBIT to Pay Agreed-Upon Amounts and AMBIT's Motion to Strike Supplemental Motion, filed July 24, 2023, are now disposed of as MOOT.
7. The hearing 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: July 28, 2023

/s/ Michael Lorensen

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.courtsww.gov/e-file/ for more details.