

In the Circuit Court of Marion County, West Virginia

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

v.

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

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

Bench Trial Order Day One: October 10, 2023

On the 10th day of October, 2023, this matter came on before the Court for a bench trial. By prior agreement of the parties, the Court conducted the bench trial in Berkeley County, West Virginia. The Plaintiff, American Bituminous Partners, L.P., was present by its counsel Roberta F. Green, Esq. and John F. McCuskey, Esq., and by its representative, Steve Friend, and Defendant, Horizon Ventures of West Virginia, Inc., was present by its counsel Mark A. Kepple, Esq. and Joseph G. Nogay, Esq. and by its representatives, Stanley Sears and John Karras.

1. Ms. Green and Mr. Kepple presented opening statements.
2. Following opening statements, the Court took a brief break.
3. After the break, this matter proceeded with the Plaintiff's case-in-chief.
4. The following witness was called by the Plaintiff, by Ms. Green, duly sworn: Steve Friend. Following qualification questioning, the Court recognized Mr. Friend as an expert in fuels, energy production, business management, permitting, and operation of the plant, noting the objections of counsel for Horizon in some of the categories, which is more fully set forth on the record.
5. Following the direct examination of Mr. Friend, he was subject to cross-examination by

Mr. Kepple.

6. After the cross examination of Mr. Friend by Mr. Kepple, Mr. Friend was subject to redirect examination by Ms. Green, and re-cross examination by Mr. Kepple.

Thereafter, Mr. Friend was excused as a witness.

7. During Mr. Friend's testimony, AMBIT moved for the admission of Plaintiff's Exhibit 39 (Affidavit of Steve Friend), Plaintiff's Exhibit 37 (Statement of Qualifications), and Plaintiff's Exhibit 20 (Lease). The aforementioned exhibits were admitted by the undersigned and any objections are more fully set forth on the record.
8. After the examination of Mr. Friend, the Court recessed for a lunch break.
9. Following the lunch break, the following witness was called by the Plaintiff, by Ms. Green, duly sworn: Herb Thompson. Following qualification questioning, the Court recognized Mr. Thompson as an expert in mining, fuels, energy production, business management, permitting, and remediation, noting the objections of counsel for Horizon in some of the categories, which are more fully set forth on the record.
10. Following the direct examination of Mr. Thompson, the Court took a brief recess. After the break, Mr. Thompson was subject to cross-examination by Mr. Nogay. Thereafter, Mr. Thompson was subject to re-direct examination by Ms. Green. After the re-direct examination, Mr. Thompson was subject to re-cross examination by Mr. Nogay. Following this, Mr. Thompson was subject to another re-direct examination by Ms. Green. Thereafter, Mr. Thompson was subject to another re-cross examination by Mr. Nogay. Thereafter, Mr. Thompson was dismissed as a witness, and the Plaintiff rested. The Court took a brief recess.
11. During the testimony of Mr. Thompson, AMBIT moved for the admission of Plaintiff's Exhibit 2 (Comprehensive Mining Plan), and the Court deferred its decision on whether or not this exhibit shall be admitted. Also during the testimony of Mr. Thompson, AMBIT

moved for the admission of Plaintiff's Exhibit 3 (Mill Tech Report – Phase 1), and Plaintiff's Exhibit 5 (Mill Tech Report – Phase 2). The Court conditionally admitted these exhibits, subject to Mr. Nogay's cross-examination and Ms. Green's rehabilitation.

12. Horizon, by Mr. Kepple, called its first witness, duly-sworn: John Karras. Following the direct examination of Mr. Karras, he was subject to cross-examination by Mr. McCuskey. Thereafter, he was subject to re-direct examination.

13. The proceedings adjourned for the day.

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: October 16, 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.courtswv.gov/e-file/ for more details.