

**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

**Order Denying Motion to Continue**

On the 3<sup>rd</sup> day of December 2023, the Plaintiff filed a motion to continue the damages hearing set for December 15, 2023, wherein the Court is to determine the amount of damages owed by Ambit to Horizon pursuant to the determinations of the Bench Trial in this matter and set forth in the findings of fact and conclusions of law contained in the order of October 31, 2023. Horizon has responded and the matter is now ripe for decision.

This matter arises from a decades long dispute between the parties giving rise to several lawsuits. This cause of action has been pending for five years and has been the subject of an appeal and two writs of prohibition, one of which is now pending. This matter had been set for trial in February 2023. However, on or about January 27, 2023, Horizon filed a writ of prohibition. The issue was whether the court rightly denied Horizon additional discovery prior to the trial on the issues outlined in the Supreme Court's order of April 18, 2022. Each party appeared at pretrial on February 17, 2023, and the court continued the trial on its own motion. A portion of the reasoning expressed by the court is quoted in Plaintiff's motion to continue the December 15, 2023 damages hearing. The reasoning is also memorialized in this Court's Day Order

from the February 17, 2023 Pretrial Conference.

At that time, the Supreme Court of Appeals had set a Scheduling Order on Horizon's writ of prohibition, directing a response be filed with it by February 27, 2023, which is the date the Bench Trial in this Court was set to begin. This Court, in respect to its superior court, and in not undermining its authority, found that this timing necessitated a brief continuance of the Bench Trial. Subsequently, the Supreme Court of Appeals entered an order on April 26, 2023, asking the parties to supplement their briefs to advise of the outcome of the trial set February 27, 2023. Clearly, the high court took a different view than that expressed by this court in proceeding with the February 2023 trial while the writ of prohibition was pending.

Another important consideration was that if the Supreme Court declined to refuse Horizon's writ after considering the briefing it ordered, and if the Supreme Court found in Horizon's favor, the parties would be entitled to additional discovery, which would impact the trial in this matter.

Further, weighing the equities, the court further notes from the procedural history of this matter, Horizon is aggrieved by the length of time Ambit has refused to honor its rent obligation on the subject property and contends that Ambit has taken advantage of the stay agreed to for the appeal well beyond its intended and agreed upon terms. The court's hope, in rejecting efforts and interim relief was to get to the heart of it and make a final decision. The Court also notes that the parties agreed, at the July 2023 Pretrial Conference in this matter, that judicial economy would be served by having the Bench Trial in October 2023, and holding a separate damages hearing at a later date, to determine the calculation of rent after the bench trial's determinations were set forth in an Order containing findings of fact and conclusions of law.

Ambit, who opposed Horizon's continuance request when Horizon filed its writ,

asks why this writ and the associated delay should be treated any differently than the proceedings of February through May of this year. The difference is this: The court has now heard the evidence the Supreme Court was looking for in the interpretation of the agreements and settlements which bear upon Ambit's ongoing relationship. The result of the Bench Trial was that the Court credited Horizon's interpretation and import of the stipulations of fact reached in the 1996 agreement and honored for 16 years and that Ambit has failed to pay the rent it agreed to for over a decade. Permitting Ambit to persist in its conduct is unjust. The court intends to make a final and appealable judgment from which the parties may then seek such remedies as they deem necessary and appropriate. This would unquestionably give the appellate court the jurisdiction to hear the appeal. To do otherwise would condemn this dispute to its sixth year of needlessly prolonged litigation.

The motion to continue is therefore denied.

**/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.courtswwv.gov/e-file/](http://www.courtswwv.gov/e-file/) for more details.