

**In the Circuit Court of Marion County, West Virginia**

**American Bituminous Power Partners, LP,** )  
Plaintiff, )  
vs.) )  
**Horizon Ventures of West Virginia, Inc.,** )  
Defendant )

Case No. CC-24-2018-C-130

**Final Order**

Came the parties on August 5, 2020, on AMBIT's *Second Renewed Motion for Protective Order and Certification of Good Faith Effort to Confer* (7.16.20) ("Motion for Relief"), arising from particular discovery requests included in Horizon Ventures of West Virginia, Inc.'s (hereinafter Horizon) *Second Combined Set of Discovery Requests of the Defendant to Plaintiff American Bituminous Power Partners, L.P* (hereinafter "Second Set"). Horizon's discovery arose after entry of *Order Granting AMBIT's Renewed Motion for Summary Judgment* (7.30.20), which granted AMBIT's motion for summary judgment on Horizon's counterclaim. In pertinent part, in granting AMBIT's motion for summary judgment, the Court provided in its July 30 Order that "any resulting damages issues (rent calculations) will be accomplished at further hearing of this Court . . . with that final resolution to be reflected by subsequent Order of this Court." That damages hearing was slated to occur on August 17, 2020, and AMBIT produced voluminous financial information to Horizon and to the Court.in preparation for that calculation of rent, objecting only to limited requests identified in its Motion for Relief.[1]

In considering AMBIT's Motion for Relief, the Court reviewed prior Orders of this Court,the pleadings cited in and drawn upon in the same, the current motions practice and those that came before, and West Virginia law relative to all, and this Court recognized anew that

“Horizon’s declaratory action is limited to the calculation, not collection, of rent” and that, on Horizon’s counterclaim, the “sole claim to determine the amount of rent owed shall proceed pursuant to West Virginia Code § 55-13-1 et seq.” (Order at 2-3)

Whereupon, upon reconsideration of the initial claims and rulings, in consideration of the arguments of the parties throughout, upon mature reflection and for good cause shown in West Virginia law and generally, the Court hereby FINDS that by and through its prior Orders the rate of rent over time and the practical tools for calculating rent in arrears and forward were determined as matters of law. Therefore, hereby adopting and incorporating as if fully set forth herein the prior Orders themselves and the findings of fact, conclusions of law delivered by this Court from March 15, 2019, to the present, also preserving the objections and exceptions of any aggrieved parties, the Court does hereby ORDER, ADJUDGE and DECREE that the issues before it are fully, finally and fairly resolved.

WHEREFORE, for all of the reasons set forth herein, the Court dismisses the remaining portions of the claims and counterclaims, such that all matters between the parties are resolved by this and other Orders of this Court, issued previously.

The exceptions and objections of any aggrieved parties are noted and preserved.

All accordingly, which is ORDERED and DECREED.

[1] See Correspondence to Honorable James H. Young, Jr., forwarding *American Bituminous Power Partners, LP’s Responses and Objections to Horizon’s Second Combined Set (7.30.20)*, with thumb drive of financial materials.

**/s/ James H Young Jr.**  
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/](http://www.courtswv.gov/e-file/) for more details.