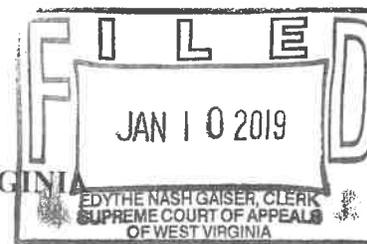


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IN THE CIRCUIT COURT OF MARION COUNTY, WEST VIRGINIA

**AMERICAN BITUMINOUS POWER
PARTNERS, L.P., a Delaware Limited
Partnership,**

Plaintiff,

v.

**Civil Action No. 18-C-130
Hon. David Janes, Judge**

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

Defendant.

**MOTION TO REFER CASE TO THE
BUSINESS COURT DIVISION**

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, American Bituminous Power Partners, LLP (AMBIT), by counsel, John F. McCuskey, Roberta F. Green, Dominick Pellegrin and Shuman McCuskey & Slicer, PLLC, respectfully requests the above-styled case be referred to the Business Court Division.

Whereas an additional litigation is pending between these parties in Marion County, Civil Action No. 18-C-76 (Wilson, J.), the two litigations arise from unrelated contracts. The instant matter arises from disputes relative to rents overpaid and/or due pursuant to the Amended and Restated Lease Agreement (Lease Agreement) between the parties. The instant matter is also an outgrowth of Ohio County Civil Action No. 13-C-196, which was pending in the Business Court Division (Young, J.) for five years prior to final order entered on or about May 29, 2018. Additionally, the instant matter involves the same counsel as engaged through much of the Business Court proceedings. Arguably at issue in this claim are *inter alia* breach of contract, terms of a commercial lease, commercial torts, and declaratory relief between commercial entities. While AMBIT denies any and all allegations of wrongdoing raised against it, AMBIT nonetheless avers

that the issues between these parties relative to the Lease Agreement are salient and perpetual. Beyond the fact that the parties allege mispayment or nonpayment of millions of dollars over decades of the lease term, the issues – and most especially, the voluminous documents – are complex, contentious and previously litigated for years before Judge James Young.

The matter pending before Judge Wilson involves a separate contract – a consulting agreement – and includes a heretofore uninvolved counsel on behalf of Horizon Ventures. While it is a contract claim, it is an unrelated contract, with unrelated documents and issues. In terms of the significant litigation history between the parties, the matter before Judge Wilson is an outlier.

In support of this motion, attached please find the docket sheet, the Complaint, Horizon's Answer and Counterclaim for Declaratory and Other Relief of the Defendant, Horizon Ventures of West Virginia, Inc., and Order (from Civil Action 13-C-196, from which the instant matter arises).¹

In regard to expedited review, the Movant requests that the Chief Justice grant this Motion to Refer with only minimal time for responses. Whereas TCR 29.06(a)(4) provides twenty (20) days for responses, AMBIT notes the parties' familiarity with Business Court and with these issues, avers that it has expeditiously provided Horizon's counsel with this motion setting out the plan for expediting resolution of the transfer issue, and asks that the response time be limited to ten days in order to allow this Honorable Court to reach a decision and, potentially, refer this matter prior to AMBIT's responsive pleading, due on January 24, 2019.

WHEREFORE, pursuant to West Virginia Trial Court Rule 29, the undersigned hereby MOVES the Chief Justice of the West Virginia Supreme Court of Appeals to refer this case to the Business Court Division.

¹See Order (8 31 17) at 12ff.

Respectfully submitted, this 10th day of January 2019.

**AMERICAN BITUMINOUS POWER
PARTNERS, L.P.,
By counsel.**



John F. McCuskey, Esquire (WVSB #2431)
Roberta F. Green, Esquire (WVSB #6598)
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CERTIFICATE OF SERVICE

I, John F. McCuskey/Roberta F. Green, hereby certify that on this 10th day of January, 2019, a true copy of the foregoing "**MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION**" was served on the following by Facsimile, E-mail and first-class U. S. Mail (exhibits by email and US mail only):

Gregory H. Schillace, Esquire
Schillace Law Office
P. O. Box 1526
Clarksburg WV 26302-1526
Counsel for Horizon Ventures of West Virginia, Inc.

A handwritten signature in black ink, appearing to read "Roberta F. Green", written over a horizontal line.

John F. McCuskey (WV Bar #2436)
Roberta F. Green (WV Bar # 6598)