

**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

**Order**

This matter came before the Court on the 24<sup>th</sup> day of June 2019, upon the Motion to Compel Discovery filed by American Bituminous Power Partners, LP (hereinafter AMBIT), through its attorney, Roberta Green, Esq., pursuant to West Virginia Rules of Civil Procedure Rules 33, 36, and 37. Upon hearing the evidence and arguments of the parties, the Court finds as follows:

Rule 37 of the West Virginia Rules of Civil Procedure permits a party to motion the Court to compel discovery and such motion may be granted upon the certification of the moving party that the moving party has in good faith conferred or attempted to confer with the party failing to make the discovery in an effort to secure the information or action without court action.

Rule 37(a)4(A) of the West Virginia Rules of Civil Procedure provides:

If the motion is granted, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the discovery without court action, or that the opposing party's answer, response, or objection was substantially justified, or that other circumstances make an award of expenses unjust.

Here, the Court finds that Horizon failed to comply with discovery as mandated by the West Virginia Rules of Civil Procedure. The Court further finds that AMBIT has certified that it made a good faith effort to attempt to confer with Horizon to resolve the discovery issues without Court action. Therefore, the Court grants AMBIT's Motion to Compel.

Further, after affording Horizon an opportunity to be heard, the Court finds that Horizon's failure to produce discovery was not substantially justified and that no other circumstances exists as to make an awarding of reasonable expenses unjust.

Upon granting AMBIT's Motion to Compel, the Court requested that AMBIT's counsel submit an affidavit detailing Counsel's expenses pursuing this matter. The Court received AMBIT's expense affidavit on the 2<sup>nd</sup> day of July, 2019. Horizon filed no response or objection to AMBIT's expense affidavit.

Upon reviewing AMBIT's expense affidavit, the Court concludes that AMBIT incurred reasonable expenses, including attorney fees, in the amount of \$1,500.00 pursuing this Order. Therefore, the Court **ORDERS** that Horizon is to pay AMBIT \$1,500.00.

All accordingly which is ORDERED and DECREED.

/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.