

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

**MAPLE LAKE CLUB, INC.,
a West Virginia corporation,**

Plaintiff,

v.

CIVIL ACTION NO.: _____

Judge: _____

**BENEDUM AIRPORT AUTHORITY,
a West Virginia corporation,
WOLFE'S EXCAVATING, LLC, a
West Virginia corporation, and
THE THRASHER GROUP, INC.,
a West Virginia Corporation.**

Defendants.

COMPLAINT

Now comes the Plaintiff, Maple Lake Club, Inc., for its Complaint and states as follows:

1. Maple Lake Club, Inc. ("Maple Lake Club"), is a homeowners association corporation organized and existing under the laws of the State of West Virginia and owning real property in Harrison County, West Virginia, at all times as alleged herein.

2. Maple Lake Club is the landowner of the property on which Maple Lake is located. Maple Lake Club, as the landowner, has riparian rights with regard to the water flowing into its premises.

3. Defendant, Benedum Airport Authority ("Benedum Airport"), is a domestic non-profit corporation organized and existing under the laws of the State of West

Virginia and engaged in the business of transporting and warehousing and scheduled air transportation operating in Harrison County, West Virginia, at all times as alleged herein.

4. Defendant, Wolfe’s Excavating, LLC (“Wolfe”), is a corporation organized and existing under the laws of the State of West Virginia, with its principal place of business in Harrison County, West Virginia.

5. Defendant, The Thrasher Group, Inc. (“Thrasher”), is a corporation organized and existing under the laws of the State of West Virginia, doing business in Harrison County, West Virginia, at all times as alleged herein.

6. Benedum Airport, also known as North Central West Virginia Airport, is a public/military airport located northeast of Bridgeport and six miles east of Clarksburg in Harrison County, West Virginia. The North Central West Virginia Airport is owned by Benedum Airport Authority.

7. Under West Virginia law, landowners are required to take reasonable steps to control the flow of surface water coming off their property. *Morris Associates, Inc. v. Priddy*, 21 W.Va. 588 (1989).

8. In June 2021, North Central Airport celebrated the groundbreaking of the “Move the Mountain” project and informed the public that the authority would move 3,000,000 cubic feet of dirt to produce flatland to build a new terminal and be home to an AeroTech park providing an additional 1,000,000 square feet of runway accessible building space.

9. Defendant, Thrasher, was responsible for the Storm Water Pollution Prevention Plan (“SWPPP”) for the terminal and AeroTech park and other design features of the “Move the Mountain” project. Construction activity with potential pollutants and sources were identified as follows:

Construction Activity and/or Material	Potential Pollutant
<ul style="list-style-type: none"> • Pesticides (insecticides, fungicides, herbicides, rodenticides) 	<ul style="list-style-type: none"> • Chlorinated hydrocarbons, organophosphates, carbamates, arsenic
<ul style="list-style-type: none"> • Fertilizer 	<ul style="list-style-type: none"> • Nitrogen, phosphorous
<ul style="list-style-type: none"> • Wastewater from construction equipment washing 	<ul style="list-style-type: none"> • Soil, oil & grease, solids
<ul style="list-style-type: none"> • Hydraulic oil/fluids 	<ul style="list-style-type: none"> • Mineral Oil
<ul style="list-style-type: none"> • Gasoline 	<ul style="list-style-type: none"> • Benzene, ethyl benzene, toluene, xylene, MTBE
<ul style="list-style-type: none"> • Diesel Fuel 	<ul style="list-style-type: none"> • Petroleum distillate, oil & grease, naphthalene, xylenes
<ul style="list-style-type: none"> • Antifreeze/coolant 	<ul style="list-style-type: none"> • Ethylene glycol, propylene glycol, heavy metals (copper, lead, zinc)
<ul style="list-style-type: none"> • Erosion 	<ul style="list-style-type: none"> • Soil, sediment

Thrasher was responsible for erosion and settlement controls, including perimeter controls, waddles, sediment basins, rock underdrains, rock check dams, divergent ditches, collection ditches, outlet protection, and erosion and control matting, among other responsibilities.

10. Defendant, Wolfe, contracted for excavation of the “Move the Mountain” project, including clearing, grubbing, seeding, and mulching, erosion control, rock line ditches, dumped rock gutter, outlet protection, culvert installation and extension, smart fencing, pipe smoke drains, and other responsibilities related to SWPPP.

11. Maple Lake sits below the “Move the Mountain” project. The Lake is fed by several tributaries which flow around the Benedum Airport. Some of these tributaries drain directly into Maple Lake. The Lake itself and all property surrounding the Lake, including the homeowners, have been adversely impacted by the conduct of Defendants alleged in this Complaint.

12. According to records from the West Virginia Department of Environmental Protection (“WVDEP”), numerous violations have been issued to Benedum

Airport due to the activities of Wolfe and Thrasher. On November 9, 2021, an inspection by the WVDEP at Benedum Airport found Benedum Airport failed to modify the SWPPP when it proved to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with construction activities. Benedum Airport further failed to comply with the approved SWPPP, as several erosion control devices were not in place as detailed by the plan. Benedum Airport also failed to prevent sediment-laden water from leaving the site without going through an appropriate device and caused sediment and other material deposits.

13. A subsequent inspection on January 26, 2022, demonstrated the same type of failings regarding stormwater runoff. On February 3, 2022, WVDEP personnel conducted another inspection of the facility. They noted numerous instances where Benedum Airport failed to comply with the SWPPP by failing to control pollutants and stormwater discharges, failing to provide inlet and outlet protection for sediment control structures, failing to properly operate and maintain all activities, and failing installed Best Management Practices (“BMP”). There were several areas on the project where the silt fence was undercut, allowing sediment-laden water to discharge off-site. There was another section of clean water diversion that was discharging sediment-laden water into Sediment Basin 3 due to a maintenance issue. Benedum Airport failed to properly operate a sediment basin as the water was actively discharging underneath the pipe out of the basin. Benedum Airport failed to comply with SWPPP. Several corrosion devices were not in place, as detailed by the SWPPP. There was no significant water being diverted into Sediment Basins 2 or 3. Benedum Airport further failed to modify the SWPPP when it proved to be ineffective in achieving its general objectives of controlling pollutants and stormwater discharges associated with construction activities. Benedum Airport failed to stabilize clean

water diversions prior to becoming functional. This caused sediment-laden water to bypass all of the controls and discharge off-site. Benedum Airport failed to provide inlet and outlet protection for sediment control structures as there were no dump rock gutters installed to Sediment Basin 2, causing field slope erosion and an unstable inlet for Sediment Basin 2. Benedum Airport caused conditions not allowable in waters of the state by creating distinctly visible settleable solids in the tributaries of Peddler Run and Ann Run. The Defendant violated other state regulations as well.

14. On February 28, 2022, WVDEP personnel conducted an extensive inspection of the Benedum Airport facility. During that inspection, violations included failing to properly operate and maintain all activities, install BMP's, and violations similar to those cited during the previous inspections.

15. On May 4, 2022, Benedum Airport was issued another Notice of Violations essentially similar to the previous one.

16. On May 13, 2022, WVDEP personnel conducted a compliance investigation. During the follow up investigation, another violation was observed and documented relating to allowing sediment-laden water to enter an unnamed tributary to the left fork of Peddler Run.

17. On May 16, 2022, Benedum Airport was again cited for significantly similar violations as those cited previously.

18. On May 20, 2022, Benedum Airport was again cited for significantly similar violations as those cited previously.

19. On May 27, 2022, Benedum Airport was again cited for significantly similar violations as those cited previously.

20. On June 2, 2022, Benedum Airport was cited for nearly the exact same violations that it had been cited previously. On June 14, 2022, the WVDEP issued another violation to Benedum Airport for failing to modify the SWPPP whenever there was a change in design, construction, scope of operation, or maintenance of Best Management Practices, which had the potential to adversely affect the surface waters of the state, or which had a significant effect on the potential for discharge of pollutants to the waters of the state, or if the SWPPP proved to be ineffective in achieving the general objectives of controlling pollutants and stormwater discharges associates with the construction activities. This was discussed with Thrasher representatives, who were specifically advised the Practices set forth in their plan were not adequate, and the plan should have been modified, so that appropriate Best Management Practices were utilized in the area. These deficiencies caused sediment-laden water to leave the site without going through an appropriate device and created prohibited conditions, including distinctly visible settleable solids flowing into the tributaries of Maple Lake, including Peddler Run. The prohibited conditions were ongoing and caused repeated sediment and material deposits in water flowing into Maple Lake.

21. The Notice of Violation further cited Benedum Airport for failing to operate and maintain all activities in accordance with Best Management Practices. The smart fences on the project were being overwhelmed and not properly operated and maintained. There was a slip that had compromised a portion of the diversion ditch. It was noted as of May 4, 2020, but had not been corrected. Also evident on May 4, 2022, multiple slope interceptors were in need of maintenance. The Benedum Airport failed to operate sediment basins, and there was an obvious leak in the riser of the basin. As a result, the basin was not maintaining its 50% wet storage volume. These deficiencies were noted on previous inspections, and adequate action had

not been taken to address the deficiencies. Benedum Airport further failed to protect field slopes. It was also noted there were various erosion problems due to the concentrated flow of water going across a non-stabilized surface. Benedum Airport caused conditions not allowable in waters of the state by allowing distinctly visible settleable solids in the waters of the state. It was specifically noted that these deficiencies, as well as others, were causing sediment-laden waters to leave the construction site without going through an appropriate device and, as a result, conditions not allowable caused visible settleable solids to drain directly into tributaries of Maple Lake, including Peddler Run.

22. On June 28, 2022, Benedum Airport was cited for failing to monitor the SWPPP whenever there was a change in design, construction, scope of the operation, or maintenance of Best Management Practices which had the potential to adversely impact the surface waters of the state or have a significant impact on the potential for discharge of pollutants to the water of the state, or if the SWPPP proved to be ineffective in achieving its general objectives of controlling pollutants in its stormwater discharge associated with construction activities. The WVDEP specifically noted that insufficiencies were discussed with Thrasher representatives and that the installed Best Management Practices were inadequate, and the plan should be modified. The citation also included specific reference to the smart fence at the outlet of a rock core drain being overwhelmed and that it was undermined and not being properly operated or maintained. Moreover, a slip that had compromised a portion of a diversion disc upon the May 4, 2022, inspection had not been corrected. Numerous erosion problems were noted due to concentrated flow of water going across non-stabilized ground. The Benedum Airport was also cited for failing to prevent sediment-laden water from leaving the site without going through an appropriate device and failing to stabilize clean water diversions prior to

becoming functional. These deficiencies were causing sediment-laden water to leave the site and flow into the tributaries of Maple Lake.

23. On August 11, 2022, Benedum Airport was again cited for allowing sediment-laden water to leave their property without going through an appropriate device, among other violations for which they had been cited previously.

24. As a result of the ongoing acts, omissions, failures, and continued violations by Defendants in the design, plan, supervision, and execution of the Move the Mountain SSWPPP and construction activity associated with the plan, Defendants caused the introduction of sediment and other materials which corrupted the quality and flow of water infringing on Maple Lake, Inc.'s property rights, causing sedimentation and other material deposits in Maple Lake, causing flooding, property damage, loss of use of property, business interruption, and diminution in property rights, among other damages and injuries.

COUNT I

Negligence

25. The Plaintiff realleges all previous paragraphs as though set forth fully herein and further alleges as follows:

26. Benedum Airport as permit holder and landowner, Wolfe as the contractor in charge of excavation on the construction site, and Thrasher as the plan designer, supervisor, and entity in control of implementing the plan, were negligent, as set forth herein above, and caused damages and injuries to Plaintiff. The Defendants' conduct, acts, and omissions violated duties owed to Plaintiff as a landowner and residents of Maple Lake. Defendants were on notice

for many months about the problems with sediment runoff and other materials draining directly into the tributaries of Maple Lake.

27. It was reasonably foreseeable to Defendants that their acts and omissions in committing violations of statutes, regulations, and standard industry design, planning, construction, and excavation practices in the development, execution, and oversight of the Move the Mountain construction plan would cause harm, damage and injury to Plaintiff's property if Defendants failed to make provision for the passage of sediment and other materials through surface waters running from the Benedum Airport property to Plaintiff's property.

28. Nevertheless, Defendants failed to make provisions to ensure sediment and other materials did not escape the Benedum Airport, causing injury to Plaintiff's property.

29. Even when Defendants were specifically advised that their acts and omissions in violation of statutes, regulations, and standard industry practices were causing harm and damage to surface waters flowing from the Benedum Airport, Defendants failed to make timely provisions to stop the harm they were causing, and Defendants' conduct continued to cause injury to Plaintiff's property.

30. Benedum Airport violated its duty of reasonable care as a landowner by failing to monitor the activities of its contractors during the construction of the "Move the Mountain" project and is required to take reasonable steps to control the flow of water from its property. The collective Defendants knew that the SWPPP was not being properly followed and that sediment-laden water was draining directly into tributaries of Maple Lake. This violated state regulations and the permit which had been granted to the Airport Authority. Thrasher discussed these deficiencies with the WVDEP but did not correct these deficiencies. Wolfe was responsible for the construction on the project and was responsible for following the SWPPP.

31. The acts of the Defendants were negligent and violated statutes, regulations, and standard industry design and construction practices and, as a result, Maple Lake has had numerous days of sediment-laden water draining directly into its tributaries, causing a significant amount of sediment and other material to be deposited in the Lake. The acts and omissions of Defendants have obstructed the normal flow of water into Plaintiff's property. Defendants' acts and omissions have caused flooding, loss of use, and diminution in property value. The residents of Maple Lake have suffered significant emotional distress and diminution of property value. The acts of the Defendants further caused emotional distress and mental anguish, and Plaintiff requests all damages allowable under West Virginia law.

32. As a direct and proximate result of the willful, wanton, and intentional acts, and/or the willful and intentional failures to act of the Defendants and their agents and employees, the Plaintiff has suffered the aforesaid damages and injuries. Further, Defendants' conduct rises to the malicious and intentional statutory standard that Plaintiff is entitled to and hereby demands punitive damages.

COUNT II

Interference With Riparian Rights/Unreasonable Use of Land

33. The Plaintiff realleges all previous paragraphs as though set forth fully herein and further alleges as follows:

34. Plaintiff, as a riparian owner, had a right to the natural flow of water running to its property.

35. Defendants engaged in acts and omissions as set forth herein, which constitute the unreasonable use of the Benedum Airport land in dealing with surface waters running to Plaintiff's property.

36. It was reasonably foreseeable to Defendants that their acts and omissions in committing violations of statutes, regulations, and standard industry design, planning, construction, and excavation practices in the development, execution, and oversight of the Move the Mountain construction plan, which altered the flow of surface waters, would cause harm, damage, and injury to the flow of surface waters and property of landowners downstream, including the property of Maple Lake.

37. Following notices of violations relating to Defendants' acts and omissions in committing violations of statutes, regulations, and standard industry design, planning, construction, and excavation practices in the development, execution, and oversight of the Move the Mountain construction plan, which altered the flow of surface waters, Defendants had specific knowledge that their conduct was causing ongoing harm, damage, and injuries to the flow of surface waters and property of landowners downstream, including the property of Maple Lake. Despite the specific knowledge of acts and omissions which were causing harm and injury to Plaintiff, Defendants failed to stop their improper acts and omissions and continued to cause ongoing harm, damage, and injuries to the flow of Plaintiff's surface waters and property.

38. Defendants caused obstruction to the natural flow of water and introduction of sediment and other materials, which corrupted the quality and flow of water and constituted an infringement of Plaintiff's property rights, and caused damage to Plaintiff's property.

39. Defendants' wrongful acts in the diversion of a natural water course caused an infringement of Plaintiff's legal right, caused sediment and other material to be deposited into Maple Lake, requiring substantial sums to reclaim in the past and now required again as a result of continuing diversion, obstruction, and wrongful sediment introduction, caused flooding, caused loss of use, business interruption, and diminution in value.

40. As a direct and proximate result of the willful, wanton, and intentional acts, and/or the willful and intentional failures to act of the Defendants and their agents and employees, the Plaintiff has suffered the aforesaid damages and injuries. Further, Defendants' conduct rises to the malicious and intentional statutory standard that Plaintiff is entitled to and hereby demands punitive damages.

COUNT III

Private Nuisance

41. The Plaintiff realleges all previous paragraphs as though set forth fully herein and further alleges as follows:

42. The Defendants' acts and omissions in committing violations of statutes, regulations, and standard industry design, planning, construction, and excavation practices in the development, execution, and oversight of the Move the Mountain construction plan without a provision to protect the surface water flow from carrying excessive sediment and other material to the property of others, including Plaintiff, is a substantial and unreasonable interference with the private use and enjoyment of Plaintiff's land.

43. The gravity of harm caused by Defendants' failure to include effective protection against the escape of sediment and other material through surface waters from Benedum Airport land to Plaintiff's land outweighs the social value of Defendants' activities

which caused harm and constituted an interference with the private use and enjoyment of Plaintiff's land. Defendants had the means available to protect Plaintiff's land from harm but failed to effectively implement the means of protection available.

44. The conduct of Defendants was first negligent and reckless, and then when Defendants had specific knowledge of the harm they were causing but failed to protect against ongoing harm, Defendants' conduct was intentional and unreasonable.

45. As a result of the Defendants' wrongful acts and omissions, Plaintiff has suffered significant harm to its property and the property of adjoining landowners. These acts were caused by the failings of the Defendants and the drainage of significant sediment-laden water into tributaries that drain directly into Maple Lake.

46. As a result of the Defendants' wrongful, negligent, and then intentional acts, interference with the Plaintiffs' use and enjoyment of their property which was sufficiently annoying and/or intolerable to Plaintiff so as to create a private nuisance for which the Defendants are jointly and severally liable. Plaintiff has suffered floods, loss of use of the property, diminution in value, sediment reclamation, and ongoing reclamation.

47. As a direct and proximate result of the willful, wanton, and intentional acts, and/or the willful and intentional failures to act of the Defendants and their agents and employees, Plaintiff has suffered the aforesaid damages and injuries. Further, Defendants' conduct rises to the malicious and intentional statutory standard, and Plaintiff is entitled to and hereby demands punitive damages.

WHEREFORE, the Plaintiff, Maple Lake Club, Inc., hereby demands judgment of and from the Defendants, Benedum Airport Authority, Wolfe's Excavating, LLC, and The Thrasher Group, in such sums as will adequately compensate the Plaintiff for its injuries and claims, which said sums are far in excess of any sums necessary to confirm jurisdiction upon this Court, together with prejudgment and post-judgment interest, punitive damages, its costs expended in the prosecution of this lawsuit, including reasonable attorney fees, all damages allowable under West Virginia law, and further pray for such other and further general relief as this Court may deem proper.

THE PLAINTIFF FURTHER DEMANDS A TRIAL BY JURY.

Maple Lake Club, Inc.

By Counsel

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