

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

**PHILIP "MARK" FETTY and
PAULA N. FETTY,**

PLAINTIFFS,

VS.

CIVIL ACTION NO. _____

**BENEDUM AIRPORT AUTHORITY,
a West Virginia corporation;
WOLFE'S EXCAVATING, LLC, a
West Virginia limited liability company;
THE THRASHER GROUP, INC., a West Virginia
Corporation; and JOHN DOE PERSONS
AND/OR ENTITIES;**

DEFENDANTS.

**INTERROGATORIES AND
REQUESTS FOR PRODUCTION
SERVED WITH SUMMONS AND
COMPLAINT**

COMPLAINT

NOW COME, the plaintiffs, Philip "Mark" Fetty and Paula N. Fetty, who for their Complaint against defendants, Benedum Airport Authority, Wolfe's Excavating, LLC, The Thrasher Group, Inc., and John Doe Persons and/or Entities, hereby allege as follows:

1. The plaintiff, Philip "Mark" Fetty, is a resident of 1495 Maple Lake Road, Bridgeport, Harrison County, West Virginia 26330, and co-owner of the real property situated at said address.
2. The plaintiff, Paula N. Fetty, spouse of the plaintiff, Philip "Mark" Fetty, is a resident of 1495 Maple Lake Road, Bridgeport, Harrison County, West Virginia 26330, and co-owner of the real property situated at said address.
3. Upon information and belief, the defendant, Benedum Airport Authority, 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 scheduling air transportation operating in Harrison County, West Virginia, at all times material and relevant, and has registered with the West Virginia Secretary of State a principal office address of 2000 Aviation Way, Bridgeport, West Virginia 26330, and a service of process address of c/o Richard B. Rock, 2000 Aviation Way, Bridgeport, West Virginia 26330.

4. Upon information and belief, the defendant, Wolfe's Excavating, LLC, is a domestic for-profit limited liability company organized and existing under the laws of the State of West Virginia and which has a principal place of business in Harrison County, West Virginia, at all times material and relevant, and has registered with the West Virginia Secretary of State a principal office address of 70 Columbia Boulevard, Clarksburg, West Virginia 26301, and a service of process address of c/o Elizabeth Lamb, 70 Columbia Boulevard, Clarksburg, West Virginia 26301.
5. Upon information and belief, the defendant, The Thrasher Group, Inc., is a domestic corporation organized and existing under the laws of the State of West Virginia and which does business in Harrison County, West Virginia, at all times material and relevant, and has registered with the West Virginia Secretary of State a principal office address of 600 White Oaks Blvd., Bridgeport, West Virginia 26330, and a service of process address of c/o Lauren E. Lint, CFO, P.O. Box 940, Bridgeport, West Virginia 26330.
6. Upon information and belief, the defendants, John Doe Persons and/or Entities, are all persons and/or entities, if any, unknown to the plaintiffs, Philip "Mark" Fetty and Paula N. Fetty, who were involved in the Benedum Airport and/or "Move the

Mountain” project and who are responsible for the subject flooding events and/or damages to the plaintiffs’ property; who are/were contractors and/or subcontractors of the co-defendant(s); who are/were principals and/or agents of the co-defendants; who are/were engaged in a joint venture or enterprise with the co-defendants; who are otherwise vicariously liable for the conduct of the co-defendants; and/or who are otherwise directly or indirectly liable for the plaintiffs’ damages.

7. Upon information and belief, Benedum Airport, is also known at the North Central West Virginia Airport, is a public/military airport located northeast of Bridgeport, West Virginia, and is owned and/or operated by defendant, Benedum Airport Authority.
8. Under West Virginia law, landowners are required to take reasonable steps to control the flow of surface water coming off of their property. *Morris Associates, Inc., v. Priddy*, 215 W.Va. 588 (1989).
9. In or about June of 2021, the North Central West Virginia 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 earth to produce flat land for the construction of a new airport terminal AeroTech park which would expand the amount of runway accessible building space by approximately 1,000,000 square feet.
10. Upon information and belief, the defendant, The Thrasher Group, Inc. and/or John Doe Persons and/or Entities, was responsible for the Storm Water Pollution Prevention Plan (“SWPPP”) for the new terminal and AeroTech park, and other

design features of the “Move the Mountain” project. Defendant, The Thrasher Group, Inc. and/or John Doe Persons and/or Entities, 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.

11. Upon information and belief, defendant, Wolfe’s Excavating, LLC and/or John Doe Persons and/or Entities, 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 the SWPPP.

12. The plaintiffs’ property located at 1495 Maple Lake Road, Bridgeport, West Virginia, sits below the “Move the Mountain” project near the Maple Lake development and in the area of a tributary or stream that runs from the Benedum Airport. The plaintiffs’ property has been adversely affected by the acts and/or omissions of the defendants as alleged in the Complaint.

13. On July 29, 2022 and August 10, 2022, the real property of the plaintiffs, Philip “Mark” Fetty and Paula N. Fetty, was damaged and/or destroyed when the same was flooded by excessive storm water runoff from the Benedum Airport Authority construction site that entered a tributary of Peddlers Run near Bridgeport, West Virginia.

14. The plaintiffs' property was severely damaged by sediment-laden water that flooded their land, damaged their foundation, damaged the lower floors of their home and surrounding property, and caused other damages.

15. Upon information and belief, and due to the acts and/or omissions of the defendants herein, the West Virginia Department of Environmental Protection has issued more than thirty (30) notices of violation to the defendant, Benedum Airport Authority for violations of the W.Va. Water Pollution Control Act and Failure to Comply with the approved SWPPP for the subject project. Those citations and/or violations included, but may not be limited to:

- a. Failing to properly operate and maintain storm water and pollution control on the subject airport construction site, causing landslides to occur that engulfed the clear water diversion ditches, and which conditions failed to meet permit requirements and compliance with Best Management Practices required by the West Virginia Department of Environmental Protection;
- b. Failing to prevent erosion damage and to prevent sediment laden water from leaving the permit area, and/or to prevent downstream damage to tributaries of Peddlers Run;
- c. Failing to comply with the General Permit and approved SWPPP and/or to construct erosion control devices and/or to divert water into designated sediment basins;
- d. Failing to adequately maintain the entire erosion and sediment control system of diversion channels and sediment control ponds, failing to follow

the SWPPP throughout the entire construction areas at the subject site and/or overloading sediment control structures;

- e. Failing to stabilize clearwater diversions and rendering diversion channels nonfunctional thereby increasing downstream water damage;
- f. Failing to provide inlet and outlet protection for sediment control structures; and/or
- g. Repeated failing to prevent to sediment laden water from leaving the construction site and filling the stream channels on Peddlers Run and its tributaries.

16. Upon information and belief, due to the acts and/or omissions of the defendants herein, the West Virginia Department of Environmental Protection issued repeated warnings to defendant, Benedum Airport Authority, regarding improper construction methods being used at the construction site from 2020 to 2022.

17. Upon information and belief, in the months leading up to the devastating July and August 2022 flooding events as a result of the acts and/or omissions of the defendants, the West Virginia Department of Environmental Protection issued written warnings to the defendant, Benedum Airport Authority, regarding violating of the terms and conditions of the West Virginia National Pollution Discharge Elimination System General Water Pollution Control Permit Nos. WV0115924 and WVR110649.

18. Upon information and belief, due to the acts and/or omissions of the defendants, the defendant, Benedum Airport Authority and/or John Doe Persons and/or Entities,, was cited by the West Virginia Department of Environmental Protection

on May 4, 13, 14, 16, 24, and 27, June 1, 2, 14, and 28, and/or other potential dates in the weeks leading up to the subject flooding events, for allowing sediment-laden water to leave the permitted construction area causing stream channels on Peddlers Run and its tributaries to be filled with sediment and restricted the flow of water in the channels thereby increasing the probability of devastating flooding during rainfall periods.

19. Upon information and belief, the cumulative effect of the defendants' failures to follow the water pollution standards and requirements proximately and/or directly led to the severe flooding damage to the plaintiffs' property and surrounding areas.
20. Upon information and belief, the repeated violations of **Chapter 22, Article 11, Section 1 of the West Virginia Code and/or Title 47, Series 2 of the Code of State Regulations** indicate that the defendants did conduct construction activities at the subject airport construction site with actual malice and/or a conscious, outrageous and reckless indifference for the health, safety and welfare of the plaintiffs and/or other downstream and/or their property.

COUNT I

Negligence and/or Reckless Conduct

21. The plaintiffs incorporate by reference paragraphs one (1) through twenty (20) of the Complaint as if fully set forth herein.
22. Defendants, Benedum Airport Authority, Wolfe's Excavating, LLC, The Thrasher Group, Inc. and/or John Doe Persons and/or Entities, did owe a common law duty of ordinary and/or reasonable care to the plaintiffs, Philip "Mark" Fetty and Paula N. Fetty, and/or a duty to refrain from acts and/or omissions the defendants know

or reasonably should know are likely to cause harm to the persons and/or property of others.

23. Defendants, Benedum Airport Authority, Wolfe's Excavating, LLC, The Thrasher Group, Inc. and/or John Doe Persons and/or Entities,, did owe a statutory and/or regulatory duty to the plaintiffs, Philip "Mark" Fetty and Paula N. Fetty, to comply with requirements of the West Virginia Water Pollution Control Act, other State and/or Federal code provisions and/or regulations regarding their activities on the subject property, and/or accept industry standards while conducting construction activities at the subject property.

24. The defendants, Benedum Airport Authority, Wolfe's Excavating, LLC, The Thrasher Group, Inc. and/or John Doe Persons and/or Entities, did owe a common law duty of care not to collect and/or divert stormwater, pollutants, and/or debris and deposit the same onto the property of others and/or to negligently obstruct or divert water of a natural course and/or the flow of water to the injury of those downstream.

25. The defendants, Benedum Airport Authority, Wolfe's Excavating, LLC, The Thrasher Group, Inc. and/or John Doe Persons and/or Entities, did breach the aforementioned duties owed to the plaintiffs, Philip "Mark" Fetty and Paula N. Fetty, and are guilty of negligence and/or reckless conduct against them in one or more of the following particulars:

- a. Negligent and/or reckless diversion of stormwater, pollutants, and/or debris;
- b. Negligent and/or reckless diversion and/or obstruction of a natural course and/or the flow of stormwater;

- c. Failure to use due care;
- d. Violation of accepted industry standards;
- e. Violation of the West Virginia Water Pollution Control Act and/or other State and/or Federal code provisions and/or regulations;
- f. Willful disregard for the West Virginia Water Pollution Control Act, other State and/or Federal code provisions and/or regulations, and/or accepted industry standards;
- g. Failure to comply with repeated warnings and/or citations of the West Virginia Department of Environmental Protection and/or governmental authorities regarding said project;
- h. Failure to properly operate and maintain storm water and pollution control on the subject airport construction site, causing landslides to occur that engulfed the clear water diversion ditches, and which conditions failed to meet permit requirements and compliance with Best Management Practices required by the West Virginia Department of Environmental Protection;
- i. Failure to prevent erosion damage and to prevent sediment laden water from leaving the permit area, and/or to prevent downstream damage to tributaries of Peddlers Run;
- j. Failure to comply with the General Permit and approved SWPPP and/or to construct erosion control devices and/or to divert water into designated sediment basins;
- k. Failure to adequately maintain the entire erosion and sediment control system of diversion channels and sediment control ponds, failing to follow

the SWPPP throughout the entire construction areas at the subject site and/or overloading sediment control structures;

- l. Failure to stabilize clearwater diversions and rendering diversion channels nonfunctional thereby increasing downstream water damage;
- m. Failure to provide inlet and outlet protection for sediment control structures;
- n. Repeated failures to prevent to sediment laden water from leaving the construction site and filling the stream channels on Peddlers Run and its tributaries;
- o. Willful disregard of repeated warnings and/or citations of the West Virginia Department of Environmental Protection and/or other governmental authorities regarding said project;
- p. Failure to properly monitor and/or inspect;
- q. Failure to adequately design project and/or negligent design;
- r. Negligent hiring and/or supervision;
- s. Use of unsafe construction methods;
- t. Causing severe flooding downstream;
- u. Substantial encouragement and/or assistance in tortious conduct; and/or
- v. Other acts and/or omissions hereinafter discovered.

26. The plaintiffs, Philip “Mark” Fetty and Paula N. Fetty, are not comparatively at fault for their injuries and/or damages that are the subject of this Complaint.

27. As a direct and proximate result of the acts and/or omissions of the defendants, Benedum Airport Authority, Wolfe’s Excavating, LLC, The Thrasher Group, Inc. and/or John Doe Persons and/or Entities, the plaintiffs, Philip “Mark” Fetty and

Paula N. Fetty, did suffer damages for which they should be compensated, including, but certainly not limited to, damage to real and personal property, costs of repair, costs of remediation, costs of replacement of property, diminution of the value of property, loss of use, annoyance, inconvenience, business interruption, economic loss, emotional distress, and other general and/or special damages for which they should be compensated.

28. It is reasonably certain that the plaintiffs, Philip "Mark" Fetty and Paula N. Fetty, will suffer future injuries and/or damages as a result of the ongoing conduct of the defendants, Benedum Airport Authority, Wolfe's Excavating, LLC, The Thrasher Group, Inc. and/or John Doe Persons and/or Entities, for which they should be compensated, including, but certainly not limited to, damage to real and personal property, costs of repair, costs of remediation, costs of replacement of property, diminution of the value of property, loss of use, annoyance, inconvenience, business interruption, economic loss, emotional distress, and other general and/or special damages for which they should be compensated.

29. The damages caused to the plaintiffs, Philip "Mark" Fetty and Paula N. Fetty, by the defendants, Benedum Airport Authority, Wolfe's Excavating, LLC, The Thrasher Group, Inc. and/or John Doe Persons and/or Entities, were done with actual malice and/or a conscious, outrageous and reckless indifference for the health, safety and welfare of the plaintiffs and/or other downstream and/or their property such that an award of punitive and/or exemplary damages are proper to punish the defendants and/or dissuade the defendants and others similarly situated from acting in a like manner in the future.

COUNT II

Interference with Riparian Rights/Unreasonable Use of Land

30. The plaintiffs incorporate by reference paragraphs one (1) through twenty-nine (29) of the Complaint as if fully set forth herein.
31. The plaintiffs, Philip “Mark” Fetty and Paula N. Fetty, as riparian owners, had and have a right to the natural flow of water running on or to their property.
32. The acts and/or omissions of the defendants, Benedum Airport Authority, Wolfe’s Excavating, LLC, The Thrasher Group, Inc. and/or John Doe Persons and/or Entities, as described hereinbefore amount to the unreasonable use of land at the Benedum Airport in dealing with surface waters running to or across the plaintiffs’ property.
33. It was reasonable foreseeable to the defendants, Benedum Airport Authority, Wolfe’s Excavating, LLC, The Thrasher Group, Inc. and/or John Doe Persons and/or Entities, that their acts and/or 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 that of the plaintiffs.
34. Following notices of violations relating to the defendants’ acts and/or 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, Benedum Airport Authority, Wolfe's Excavating, LLC, The Thrasher Group, Inc. and/or John Doe Persons and/or Entities, had specific knowledge that their conduct was causing ongoing harm, damage, and injurie to the flow of surface waters and property of landowners downstream, including the plaintiffs..

35. Despite the specific knowledge of acts or omissions which were causing harm and injury to the plaintiffs and others, the defendants, Benedum Airport Authority, Wolfe's Excavating, LLC, The Thrasher Group, Inc. and/or John Doe Persons and/or Entities, failed to stop their improper acts or omissions and continued to cause ongoing harm, damage, and injuries to the flow of plaintiffs' surface waters and property.

36. Defendants, Benedum Airport Authority, Wolfe's Excavating, LLC, The Thrasher Group, Inc. and/or John Doe Persons and/or Entities, 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 plaintiffs' property rights, and caused damage to plaintiffs' property.

37. As a direction and proximate result of the acts and/or omissions of the defendants, Benedum Airport Authority, Wolfe's Excavating, LLC, The Thrasher Group, Inc. and/or John Doe Persons and/or Entities, the plaintiffs, Philip "Mark" Fetty and Paula N. Fetty, did suffer damages for which they should be compensated, including, but certainly not limited to, infringement of the plaintiffs' legal rights, damage to real and personal property, costs of repair, costs of remediation, costs of replacement of property, diminution of the value of property, loss of use,

annoyance, inconvenience, business interruption, economic loss, emotional distress, and other general and/or special damages for which they should be compensated.

38. It is reasonably certain that the plaintiffs, Philip "Mark" Fetty and Paula N. Fetty, will suffer future injuries and/or damages as a result of the ongoing conduct of the defendants, Benedum Airport Authority, Wolfe's Excavating, LLC, The Thrasher Group, Inc. and/or John Doe Persons and/or Entities, for which they should be compensated, including, but certainly not limited to, infringement of the plaintiffs' legal rights, damage to real and personal property, costs of repair, costs of remediation, costs of replacement of property, diminution of the value of property, loss of use, annoyance, inconvenience, business interruption, economic loss, emotional distress, and other general and/or special damages for which they should be compensated.

39. The damages caused to the plaintiffs, Philip "Mark" Fetty and Paula N. Fetty, by the defendants, Benedum Airport Authority, Wolfe's Excavating, LLC, The Thrasher Group, Inc. and/or John Doe Persons and/or Entities, were done with actual malice and/or a conscious, outrageous and reckless indifference for the health, safety and welfare of the plaintiffs and/or other downstream and/or their property such that an award of punitive and/or exemplary damages are proper to punish the defendants and/or dissuade the defendants and others similarly situated from acting in a like manner in the future.

COUNT III

Nuisance

40. The plaintiffs incorporate by reference paragraphs one (1) through thirty-nine (39) of the Complaint as if fully set forth herein.
41. The acts and/or omissions of the defendants, Benedum Airport Authority, Wolfe's Excavating, LLC, The Thrasher Group, Inc. and/or John Doe Persons and/or Entities, in violating 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 water, sediment and other material to the property of others, including the plaintiffs, amounted to a substantial and unreasonable interference with the private use and enjoyment of plaintiffs' land.
42. The gravity of harm caused by the failure to defendants, Benedum Airport Authority, Wolfe's Excavating, LLC, The Thrasher Group, Inc. and/or John Doe Persons and/or Entities, to include effective protection against the escape of excessive water, sediment, and other material through surface waters from Benedum Airport property to the plaintiffs' land outweighs the social value of defendants' activities which caused harm and constituted an interference with the private use and enjoyment of plaintiffs' land.
43. Defendants, Benedum Airport Authority, Wolfe's Excavating, LLC, The Thrasher Group, Inc. and/or John Doe Persons and/or Entities, had the means available to

protect plaintiffs' land from harm but failed to effectively implement the means of protection available.

44. The conduct of the defendants, Benedum Airport Authority, Wolfe's Excavating, LLC, The Thrasher Group, Inc. and/or John Doe Persons and/or Entities, was first negligent and reckless, and then when the defendants had specific knowledge of the harm they were causing, but failed to protect against ongoing harm, defendant's conduct became intentional, unreasonable, outrageous, and/or malicious.

45. As a result of the defendants' and/or their agents' and/or employees' wrongful acts or omissions, plaintiffs have suffered significant harm to their property. Said acts and/or omissions were caused by the failings of the defendants, Benedum Airport Authority, Wolfe's Excavating, LLC, The Thrasher Group, Inc. and/or John Doe Persons and/or Entities, and the drainage of sediment-laden water into the tributaries of Peddlers Run.

46. As a direct and proximate result of the defendants' wrongful, negligent, reckless, intentional, unreasonable, outrageous, and/or malicious failures to act, the plaintiffs, Philip "Mark" Fetty and Paula N. Fetty, did suffer damages for which they should be compensated, including, but certainly not limited to, flooding, damage to real and personal property, costs of repair, costs of remediation, costs of replacement of property, diminution of the value of property, loss of use, annoyance, inconvenience, business interruption, economic loss, emotional distress, and other general and/or special damages for which they should be compensated.

47. It is reasonably certain that the plaintiffs, Philip "Mark" Fetty and Paula N. Fetty, will suffer future injuries and/or damages as a result of the ongoing conduct of the defendants, Benedum Airport Authority, Wolfe's Excavating, LLC, The Thrasher Group, Inc. and/or John Doe Persons and/or Entities, for which they should be compensated, including, but certainly not limited to, flooding, damage to real and personal property, costs of repair, costs of remediation, costs of replacement of property, diminution of the value of property, loss of use, annoyance, inconvenience, business interruption, economic loss, emotional distress, and other general and/or special damages for which they should be compensated.

48. The damages caused to the plaintiffs, Philip "Mark" Fetty and Paula N. Fetty, by the defendants, Benedum Airport Authority, Wolfe's Excavating, LLC, The Thrasher Group, Inc. and/or John Doe Persons and/or Entities, were done with actual malice and/or a conscious, outrageous and reckless indifference for the health, safety and welfare of the plaintiffs and/or other downstream and/or their property such that an award of punitive and/or exemplary damages are proper to punish the defendants and/or dissuade the defendants and others similarly situated from acting in a like manner in the future.

WHEREFORE, the plaintiffs, Philip "Mark" Fetty and Paula N. Fetty, demand judgment against the defendants, Benedum Airport Authority, Wolfe's Excavating, LLC, The Thrasher Group, Inc. and/or John Doe Persons and/or Entities, jointly and severally where allowable by law, for compensatory damages in excess of the jurisdictional threshold of the Court in an amount sufficient to make the plaintiffs whole for their injuries and/or damages, for punitive damages in excess of the jurisdictional threshold of the

Court in an amount sufficient to punish the defendants for their acts and/or omissions and/or to dissuade the defendants and others from engaging in similar conduct in the future, for pre- and post-judgment interest where allowable by law, for attorney's fees and costs where allowable by law, and for such additional favorable relief as the Court deems just and appropriate.

A JURY TRIAL IS DEMANDED ON ALL ISSUES.

Respectfully Submitted
PHILIP "MARK" FETTY and PAULA N.
FETTY, Plaintiffs,

By Counsel,



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