

IN THE CIRCUIT COURT OF HARRISON COUNTY WEST VIRGINIA

**ALL ABOUT DOGS, LLC, a
West Virginia Corporation, and
Brenda Scotchie and John Scotchie,
in their individual capacities,**

Plaintiffs,

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

COMES NOW, Plaintiffs, All About Dogs LLC, Brenda Scotchie, and John Scotchie, by and through counsel, Dayton C. Meadows V., of Meadows Law PLLC, Chirag Desai of Desai Law, and Patrick Crowe of Crowe Law and respectfully represent to this Court as follows:

PARTIES

1. Plaintiff, All About Dogs LLC ("All About Dogs") is a Limited Liability Corporation organized and existing under the laws of the State of West Virginia.
2. All About Dogs was the owner of the real property located at 189 County Line Road, Bridgeport WV 26330 from July 10th, 2020, to September 9, 2023, and as the landowner, All About Dogs had 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, six miles east of Clarksburg in Harrison County, West Virginia.
7. The North Central West Virginia Airport is owned and/or operated by Benedum Airport Authority.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this matter because the acts which formed the basis for the complaint occurred in whole or in part in Harrison, West Virginia.
9. Venue is proper in this Court because the cause of action arose in Harrison County, West Virginia.

BACKGROUND

10. Brenda and John Scotchie retired from the Harrison County Public School system to open All About Dogs, an all-inclusive dog boarding, daycare, and training facility.
11. All About Dogs, LLC purchased the property located at 189 County Line Road Bridgeport West Virginia 26330 (also referred to as “189 County Line Road”) for the particular purpose

of operating an indoor/outdoor kennel that offers a cage-free dog daycare center and training facility.

12. On the Northern border of the All About Dogs property is a drainage pipe that connects to a parcel of land owned by Benedum Airport.
13. Water enters the drainage pipe on Benedum Airport's parcel and flows to a ditch on the northern edge of the All About Dogs Property.
14. The connection between the two properties is recorded as Permanent Drainage Easement on the property owned by All About Dogs as described in Harrison County, West Virginia, Deed Book 1682 Page 682.
15. Prior to Project Move the Mountain the natural flow of water through the drainage pipe did not impact All About Dogs operations.

PROJECT MOVE THE MOUNTAIN

16. In June of 2021, North Central Airport announced "Move the Mountain," an expansion project to produce One Million (1,000,000) square feet of runway, accessible building space, and flatlands for a new terminal and AeroTech park.
17. This project included excavation and placement of over Three Million (3,000,000) cubic yards of material within an area of approximately One Hundred (100) acres.
18. Defendant Thrasher was responsible for the Storm Water Pollution Prevention Plan ("SWPPP"), including, but not limited to, designs pertaining to the drainage system, 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, and other responsibilities.
19. Thrasher's SWPPP identified two streams, Unnamed Tributary to Ann Run and Peddler Run Unnamed Tributary, as "Receiving Streams" that could be affected by project Move the Mountain's excavating operations.

20. All About Dogs facilities, located at 189 County Line Road, Bridgeport WV 26330, was downstream from Benedum Airport, and both Peddler Run and Peddler Run Unnamed Tributary merge behind the All About Dogs' facilities.
21. The construction plans identified pre-existing culverts, drainage pipes, and other water crossings that required modification to account for the increased water flow, and until the drainage system was complete, the excavation contractors were required to provide an alternative path for water to flow.
22. Defendant Wolfe was 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.
23. Significant excavation and modifications to the drainage system occurred on “Pad 2,” which is owned by Benedum Airport and is the same property referenced above with the drainage pipe that discharges water on the All About Dog’s property.
24. Errors and omissions in either the design or construction of the drainage system directly affected All About Dogs property from either: (1) construction activities impacting Pad 2’s drainage pipe; or (2) changes to the natural flow of water in Peddler Run and/or Peddler Run Unnamed Tributary.

DRAINAGE SYSTEM ERRORS AND OMISSIONS

25. The West Virginia Department of Environmental Protection (WVDEP) issued citations against Benedum Airport for Wolfe and Thrasher’s failure to implement and modify the SWPP.
26. In November 2021, WVDEP officials inspected and issued a citation against North Central West Virginia Airport for not having appropriate devices as described in the SWPPP and preventing sediment-latent water from leaving through the appropriate device.

27. Furthermore, the WVDEP found the SWPPP to be ineffective in accomplishing its objective.
28. Benedum Airport further failed to comply with the approved SWPPP, as several erosion control devices were not in place as detailed by the plan.
29. 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.
30. Similar stormwater runoff issues were cited during an inspection on January 26, 2022.
31. A WVDEP citation issued on February 3, 2022, focused on the failure to maintain Storm Water Discharge and failing to properly operate and maintain all activities.
32. The WVDEP further explained that no significant water was being diverted into Sediment basin 2 and Sediment Basin 3, and several devices were not in place as detailed the SWPPP.
33. On May 27, 2022, after receiving citations for similar violations, the WVDEP issued a detailed report addressing SWPP violations, including but not limited to:
- a) The receiving streams are Peddler Run, Anne Run, and West Fork River.
 - b) Sediment basin 2 and 3 were not holding water due to an obvious leak,
 - c) The rock core drains failed to meet Best Management Practices (BMP) causing the drain to be overwhelmed and not operating.
 - d) Settlement Basin 1 was prematurely used as a detention pond causing unintended discharge.
 - e) A slip-on diversion ditch 2 that occurred on May 4, 2022, was not reported and still remains unrepaired, and as a result water is being diverted into diversion ditch 3.
 - f) The installed core drains and rock core dams are inadequate and overwhelmed causing discharge of stormwater.
 - g) Thrasher engineers agree that the installed BMP are inadequate.

34. 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.
35. 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.
36. The June 28, 2022, 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.
37. Moreover, a slip that had compromised a portion of a diversion ditch upon the May 4, 2022, inspection had not been corrected.
38. Numerous erosion problems were noted due to concentrated flow of water going across non-stabilized ground.
39. 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 Defendant, Benedum Airport Authority for violations of the West Virginia 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.

40. 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.

41. 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 Defendants, the West Virginia Department of Environmental Protection issued written warnings to 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.

42. Upon information and belief, due to the acts and/or omissions of Defendants, Defendant, Benedum Airport Authority, 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 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.

43. Upon information and belief, the cumulative effect of the Defendants' failures to follow the water pollution standards and requirements proximately and directly led to the severe flooding damage to the Plaintiffs' property and surrounding areas.

ALL ABOUT DOGS – CEASE OF OPERATIONS

44. In the summer of 2022, the peak flow rates and total stormwater volume from the drainage pipe and Peddler Run and/or Unnamed Peddler Run tributary increased.
45. Additionally, new channels of excess and unaccounted for water entered the All About Dogs property from Pad 2.
46. On July 29, 2022, and August 10, 2022, water flowing from Pad 2 through the drainage pipe rapidly increased, further increasing the already high-water levels in the drainage ditch on All About Dog's Property.
47. As a result, water surpassed the banks of the drainage ditch and a steady flow of water encompassing a significant portion of the property, including the outdoor kennels, and outdoor training area on All About Dog's Property.
48. This further increased the property damage, water erosion, and resulted in: (1) stream channel erosion; (2) soil erosion; including saturated and dilapidated soil; (3) new channels of water traversing the property; and (4) accumulation of ground water.
49. Due to safety concerns from the stormwater discharge, All About Dogs was forced to cease operations at 189 County Line Road and conduct business at off-site temporary locations and/or operate onsite in a limited capacity.
50. A preliminary erosion and drainage report assessed the storm water drainage directed from

the airport on to the property, and determined a potential flood zone encompassing a significant portion of All About Dog's property, including the outdoor kennels, overnight boarding, and training area.

LOSS OF INVESTMENT & BUSINESS INTERRUPTION

51. The cease of operations interrupted business activities causing All About Dogs to lose revenue, profits, and customers, including more than Forty (40) reoccurring clients.
52. In addition to this loss, All About Dog still had fixed monthly expenses at the property, including the increasing cost to maintain and/or restore the property.
53. Over the Thirteen (13) month period, they incurred over Forty Thousand Dollars (\$40,000.00) in losses from fixed monthly expenses and costs of maintaining the property.
54. During this time, Plaintiffs attempted to offset the costs; specifically: All About Dogs exhausted cash reserves and dedicated all revenue to the costs associated with the property; Brenda Scotchie worked without pay by offering group and individual training sessions at an off-site location; and John Scotchie was forced to leave retirement, shortly after a knee replacement and returned to the Harrison County public school system as a substitute teacher.
55. After the cease of operations, Plaintiffs attempted to mitigate their losses by selling and relocating, which required converting All About Dog's facilities to a residential property, a process that incurred additional costs and further limited operations.
56. However, even at a reduced price of two-hundred and seventy-five thousand dollars (\$275,000), all potential buyers were concerned of water related damage.
57. The only offer was for more than One-Hundred Thousand Dollars (\$100,000.00) less than the asking price and was ultimately rescinded by the potential buyer.
58. Prior to Defendants' project, the Scotchies' had no intention of closing their business and/or selling the property.

59. The total loss investment includes the cost of remodeling the property to serve All About Dogs particular business purpose as an all-inclusive dog training facility.
60. Remodeling the property was an Eight (8) month process beginning in June 2020 and concluded when the facility became fully operational in February, 2021, including but not limited: substantial repairs to the pre-existing structures, designing and constructing an outdoor kennel system that allowed an entrance and exit without risk of interaction between the dogs, designing and constructing two (2) outdoor training facilities and free-play area, remodeling a garage to an indoor kennel, grooming station, and receptionist station.
61. A forensic accounting valued the total loss of direct investment to improve the property at a minimum of one Hundred Seventy Thousand Dollars (\$170,000.00).
62. During this time the Brenda and John Scotchie had already left the Harrison County Public School System and worked daily without pay.
63. The financial loss partially illustrates the initial financial investment opening a facility like All About Dogs.
64. Additionally, in preparation of operating All About Dogs, Brenda Scotchie spent years attending trainings, and educational courses that resulted in many certificates and accomplishments, such as:
- a) Establishing the West Virginia Service Dog Support Group, serving as an Expert Witness in the First Service Dog Litigation in West Virginia, and completion of West Virginia University course 276: Service Dog Training;
 - b) Professional certification by Professional Dog Trainers (CCPDT), including a rigorous written exam that focuses on the science behind dog behavior and the application of training techniques;
 - c) CPDT-KA certification providing an independent, scientifically valid measure of an individual's understanding of the field of dog training, including instruction skills, learning theory, ethology, equipment, and animal husbandry;
 - d) Certified Handler for the Hearts of Gold Service Dog Program in Morgantown, West Virginia and Completing behavior assessments of puppies and young dogs to place within the Hearts of Gold Program;

- e) Certification through the American Red Cross in feline and canine first aid and CPR and the American Kennel Club to administer the AKC S.T.A.R. (socialization, training activity, and responsibility), and the Good Citizens Tests.
- f) Attending Barkley's Pet Boarding and Daycare Exposition, a national convention offering education in topics such as animal health, training, facility design, and business.

65. During the cease of operations, Brenda Scotchie repeatedly contacted the Defendants and various state agencies regarding the drainage system, conditions of the water, and ability for All About Dogs to safely operate.

66. Despite multiple attempts to correspond through various modes, Defendants failed to adequately address concerns or remedy the damage.

67. Brenda Scotchie began to regularly attend therapy to cope with the immense financial pressure and sense of loss.

68. After Thirteen (13) months without response from Defendants, operating All About Dogs in a limited capacity, and incurring high costs from the property, the Scotchies' were forced to either file for bankruptcy or close All About Dogs and sell the property.

69. In September of 2023, Plaintiffs sold the property for Two Hundred and Twenty-Five Thousand Dollars (\$225,000.00), approximately Fifty Thousand Dollars (\$50,000.00) less than the market value after remodeling the facility, and significantly less than the total investment.

70. Due to this, All About Dogs is not able afford the cost of relocation, and will remain closed for the foreseeable future.

71. Upon information and belief, the harm and damages stated herein were the result of the 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 that led to water intrusion, erosion, risk of flash flooding.

72. Upon information and belief, the cumulative effect of these acts, omissions, failures, and continued violations by Defendants proximately and/or directly led to the severe flooding and diverted water that caused loss of use of property, diminution in property rights, business interruption, and significant pain and suffering

COUNT I
Negligence

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

74. The Defendants' conduct, acts, and/or omissions violated duties owed to Plaintiff as a landowner.

75. 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 and above, and caused damages and injuries to Plaintiff.

76. The Defendants, Benedum Airport Authority, Wolfe's Excavating, LLC, and The Thrasher Group, Inc. did owe a common law duty of ordinary and/or reasonable care to the plaintiffs, 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.

77. The Defendants, Benedum Airport Authority, Wolfe's Excavating, LLC, and The Thrasher Group, Inc. did owe a statutory and/or regulatory duty to the plaintiffs, 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.

78. The Defendants, Benedum Airport Authority, Wolfe's Excavating, LLC, and The Thrasher Group, Inc., 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.

79. Defendants were on notice for many months about the problems with the SWPP, including stormwater runoff, and discharge of sediment and other materials into receiving waters and discharge site that affected the flow of water on downstream properties, including Plaintiffs' property at 189 County Line Road.
80. Nevertheless, Defendants failed to make appropriate provisions for stormwater runoff, and discharge of sediment and other materials natural flow of water and increasing water levels in the pre-existing drainage system that flows from Benedum Airport to Plaintiffs' property at 189 County Line Road.
81. Even when Defendants were specifically advised that their acts and/or 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.
82. It was reasonably foreseeable to Defendants 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 would cause harm, damage and injury to Plaintiff's property if Defendants failed to make appropriate provisions for stormwater runoff, and discharge of sediment and other materials affecting downstream properties, including Plaintiffs' property at 189 County Line Road.
83. The Defendants, Benedum Airport Authority, Wolfe's Excavating, LLC, The Thrasher Group, Inc. did breach the aforementioned duties owed to the plaintiffs, 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, and/or violation of accepted industry standards;
- d) Violation of the West Virginia Water Pollution Control Act and/or other State and/or Federal code provisions and/or regulations;
- e) Failure to comply with repeated warnings and/or citations of the West Virginia Department of Environmental Protection and/or governmental authorities regarding said project;
- f) 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;
- g) 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;
- h) 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;
- i) 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;
- j) Failure to stabilize clearwater diversions and rendering diversion channels nonfunctional thereby increasing downstream water damage;
- k) Failure to properly install and/or repair inlet and outlet protection for sediment control structures thereby increasing downstream water damage;
- l) Failure to control stormwater discharge at a discharge point, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points.
- m) Failure to implement an alternate path for the flow of water during construction causing an erosion and excess water that damaged properties downstream from discharge points and/or receiving waters.
- n) Failure to properly design, implement, modify, and/or cure effects from Stormwater Discharge Activities on pre-existing drainage structures.

- o) Failure to properly monitor and/or inspect;
- p) Failure to implement required maintenance or changes;
- q) Failure to adequately design project and/or negligent design;
- r) Negligent hiring and/or supervision;
- s) Use of unsafe construction methods;
- t) Willful disregard of repeated warnings and/or citations of the West Virginia Department of Environmental Protection and/or other governmental authorities regarding said project;

84. These acts and/or omissions violated state regulations and the permit which had been granted to the Airport Authority.

85. Thrasher discussed these deficiencies with the WVDEP but did not correct these deficiencies

86. Wolfe was responsible for the construction on the project and was responsible for following the SWPPP.

87. The collective Defendants knew that the SWPPP was not being properly followed and that water run-off and discharge of pollutants on neighboring properties, including Plaintiffs' Property at 189 county line road.

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

89. The damages caused by Defendants' conduct and repeated violations rises indicate that Defendants did conduct construction activities at the airport site with actual malice and/or a conscious, outrageous and reckless indifference for the health, safety, and welfare of the

plaintiff and/or other property owners such that an award of punitive damages is 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

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

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

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

93. It was reasonably foreseeable to Defendants 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 project "Move the Mountain" construction plan which altered the flow of surface waters and increased water levels, would cause harm, damage, and injury to the flow of surface waters and property of landowners downstream, including Plaintiffs' property.

94. Following notices of violations relating to 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 had specific knowledge that their conduct was causing ongoing harm, damage, and injuries to the flow of surface waters and property of landowners downstream.

95. 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.

96. Defendants wrongful acts caused obstruction to the natural flow of water and introduction of sediment and other materials that corrupted the water and increased water levels, which corrupted the quality and flow of water and constituted an infringement of Plaintiff's property rights and caused damage to Plaintiff's property.
97. 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 Plaintiffs 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, cost of relocation, diminution of the value of property, loss of use, loss of investment, loss of profits, annoyance, inconvenience, business interruption, economic loss, emotional distress, and other general and/or special damages for which they should be compensated.
98. The damages caused by Defendants' conduct and repeated violations rises indicate that Defendants did conduct construction activities at the airport site with actual malice and/or a conscious, outrageous and reckless indifference for the health, safety, and welfare of the plaintiff and/or other property owners such that an award of punitive damages is 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
Private Nuisance

99. The Plaintiff realleges all previous paragraphs as though set forth fully herein and further alleges as follows:
100. 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 an appropriate provision to protect the surface water flow from carrying excess water, sediment and other material to the property of others, including Plaintiff's property, is a substantial and unreasonable interference with the private use and enjoyment of Plaintiffs' land.

101. The gravity of harm caused by Defendants' failure to include effective protection against the discharge of water, and sediment and other material through surface waters from Benedum Airport land to 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.
102. Defendants had the means available to protect Plaintiffs' land from harm but failed to effectively implement the means of protection available.
103. As a result of the Defendants' wrongful acts and omissions, Plaintiffs have suffered significant harm to their property and these acts were caused by the failings of the Defendants and the drainage of significant sediment-laden water into the storm drain and tributaries that drain directly on Plaintiff's Property.
104. 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 Plaintiffs so as to create a private nuisance for which the Defendants are jointly and severally liable.
105. 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 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, cost of relocation, diminution of the value of property, loss of use, loss of investment, loss of profits, annoyance, inconvenience, business interruption, economic loss, emotional distress, and other general and/or special damages for which they should be compensated.
106. The damages caused by Defendants' conduct and repeated violations rises indicate that Defendants did conduct construction activities at the airport site with actual malice and/or a conscious, outrageous and reckless indifference for the health, safety, and welfare of the plaintiff and/or other property owners such that an award of punitive damages is 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, 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 Plaintiffs 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 PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL ISSUES.

Plaintiffs,
By Counsel

/s/ Dayton C. Meadows V.

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