

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

**JANIS LECKENBUSCH, individually and on
behalf of all others similarly situated,**

Plaintiff,

v.

CIVIL ACTION NO.:

**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, Janis Leckenbusch, who brings this action individually and on behalf of all others similarly situated for damages as a result of flooding and water runoff from the "Move the Mountain" project at the Benedum Airport, and for her Complaint states as follows:

1. Plaintiff, Janis Leckenbusch, is a resident of Bridgeport, West Virginia, and brings this lawsuit on behalf of herself and all other similarly situated, concerning the Defendants' acts and omissions which constitute a private nuisance, negligence, and interference with their interest and right of enjoying the flow of a natural watercourse without disturbance, interference, or material diminution. The Plaintiff lives at 202 Maple Lake Road in the Maple Lake Community and is a member of the Maple Lake Club.

2. 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.

3. 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.

4. 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.

5. Benedum Airport, also known as North Central West Virginia Airport, is located northeast of Bridgeport and six miles east of Clarksburg in Harrison County, West Virginia. The Benedum Airport Authority owns and operates the North Central West Virginia Airport.

6. Defendants Thrasher and Wolfe contracted to perform work for Benedum Airport Authority as part of Benedum's "Move the Mountain" project.

7. In June 2021, North Central Airport celebrated the groundbreaking of the "Move the Mountain" project and informed the public 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.

8. 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 is responsible for preventing, protecting, and ensuring compliance with rules, regulations, and industry standards related to: 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.

9. Defendant, Wolfe, contracted to perform excavation for 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.

10. Defendants have a duty to comply with rules, regulations, and industry standards related to work performed for the Move the Mountain project. Defendants are prohibited from violating rules, regulations, and industry standards which create substantial and

unreasonable interference with the private use and enjoyment of Plaintiff's land, shareholder, and club membership interests.

11. Defendants are prohibited from violating rules, regulations, and industry standards in the Move the Mountain project and causing injury and damages to Plaintiff and others similarly situated.

12. Defendants are prohibited from violating rules, regulations, and industry standards resulting in the Plaintiff's interest and right to enjoy the flow of Maple Lake's natural watercourse flow without disturbance, interference, or material diminution.

13. 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. Maple Lake has been adversely impacted by the acts and omissions of Defendants, including their violation of rules, regulations, and industry standards in the contracting, planning, implementation, and work associated with the Move the Mountain project.

14. 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.

15. 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 to install 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 and industry standards as well.

16. 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.

17. Sometime in the Spring of 2022, Bentonite drained into Maple Lake from the Move the Mountain Project. Apparently, the Defendants used this material to try to plug a leak in one of the drainage ponds that were constructed on the Move the Mountain property. This Bentonite has caused the lake to take on a murky appearance and must be removed.

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

19. 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.

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

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

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

23. 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 associated 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.

24. 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.

25. 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 insufficiencies were discussed with Thrasher representatives and advised 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 it was undermined and not 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 the 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.

26. 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. There have been flooding incidents periodically since that time caused by the Defendants' acts and omissions.

27. 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 unreasonably interfering with Plaintiff's use, interests, rights, by causing sedimentation and other material deposits in Maple Lake, causing flooding, loss of use, property damage, diminution in property rights, among other damages and injuries.

28. The Plaintiff brings this action individually and on behalf of all persons who are residents, members, and/or shareholders of Maple Lake and have rights and interests in Maple Lake. The Plaintiff seeks to represent a class of persons preliminarily defined as all owners/occupants and renters of residential property located in the Maple Lake Community at any time from June, 2021 to the present.

29. The Plaintiff and all homeowners have the right to use and enjoy the lake. The Plaintiff must contribute to the maintenance, upkeep, and repair of the lake and dam. Moreover, the Defendants' acts have affected the Plaintiff's property value, caused an increase in monthly dues and homeowner's assessments, and caused significant annoyance and inconvenience.

30. Several hundred people have been damaged by the Defendants' acts. Families reside within each of the homes on the lake, and the lake is a large part of the value of

their real property. Accordingly, members of the class are so numerous that joining all parties is not practical.

31. Numerous common questions of law and facts dominate over any individual questions affecting class members, including, but not limited to, the following:

- Whether Defendants violated rules, regulations, or industry standards through their acts and omissions related to the Move the Mountain project.
- Whether it was foreseeable that the Defendants' failure to control water flowing from the Move the Mountain Project would result in interference with the private use and enjoyment of another's land.
- Whether the Defendants owed duties to the Plaintiff and putative class members as shareholders and interest holders in Maple Lake.
- Whether Defendants negligently, intentionally, recklessly, willfully, wantonly, maliciously failed to control water flowing from the Move the Mountain Project.
- Whether Defendants' acts and omissions disturbed, interfered with, or materially altered the flow of a natural watercourse through or into Maple Lake.
- Whether Defendants' acts constitute a private nuisance.
- Whether Defendants' acts and omissions caused obstruction or diversion of the natural watercourse or the introduction into the watercourse of sediment, sludge, refuse, or other material which corrupts the quality and flow of the water by an upper owner or user infringing on the rights and interests of a lower owner or user.

- Whether Maple Lake property owners, residents, and members have suffered a diminution in property value, increased assessment fees and costs, and loss of use of Maple Lake in the past, present, and future.

32. Plaintiff has the same interests in this matter as all other members of the class, and her claims are typical of all class members. If brought and prosecuted individually, the claims of each class member would require proof of many of the same material and substantive facts, rely on the same theories, and seek the same type of relief.

33. The claims of the Plaintiff and other class members have a common origin and share a common basis. The claims are related to Defendants' acts and omissions in causing flooding, watercourse obstruction, and the failure to control water coming and sediment, refuse, and other material from the Move the Mountain Project.

34. All class members have suffered an injury, resulting in the loss of property value, loss of use, increase in dues and assessments, and significant annoyance and inconvenience from Defendants' acts and omissions.

35. The Plaintiff is an adequate representative of the class because her interests are the same and do not conflict with other class members. Each class member is entitled to damages reflecting a similar type of damages. The Plaintiff will fully and adequately represent the interests of the class.

36. The Plaintiff has retained the services of counsel who are experienced in complex matters and class action. The Plaintiff's counsel will adequately prosecute the action and will otherwise protect and fairly and adequately represent Plaintiff and all absent class members.

37. The class action is superior to other methods for fair and efficient adjudication of the controversies raised in the Complaint because the joinder of all class members is impractical, and the amount at stake for each owner, resident, or member, while significant, such individual litigation would be inefficient and cost prohibitive. However, the adjudication of the controversy with respect to individual class members would be dispositive of the interests of other class members or would substantially impair their ability to protect their interests.

38. The Plaintiff can direct a court approved notice to potential class members informing them of their rights.

COUNT I

Negligence

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

40. 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 and continue to be negligent, as set forth herein above, and are causing damages and injuries to Plaintiff. The Defendants' conduct, acts, and omissions violate duties owed to Plaintiff as a fee simple owner, resident, and member of Maple Lake. Defendants were on notice for many months of their violations of rules, regulations, and industry standards, causing sediment runoff and other materials to drain directly into the tributaries of Maple Lake.

41. 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 interests and rights if Defendants failed to make provision for the passage of sediment and other materials through surface waters running from the Benedum Airport property to Maple Lake.

42. Nevertheless, Defendants failed and continue to fail to make provisions to ensure sediment and other materials do not escape the Benedum Airport, causing injury to Maple Lake and Plaintiff's property, interests, and rights.

43. Even when Defendants were specifically advised their acts and omissions violate statutes, regulations, and standard industry practices and were causing harm and damage to surface waters flowing from the Benedum Airport, Defendants have failed to make timely provisions to stop the harm they are causing, and Defendants' conduct continues to cause injury to Plaintiff.

44. 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 the SWPPP was not being properly followed and 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. Defendant Thrasher discussed these deficiencies with the WVDEP but did not correct these deficiencies. Defendant Wolfe was responsible for the construction on the project and was responsible for following the SWPPP but failed to do so.

45. 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 Maple Lake. Defendants' acts and omissions have caused flooding, loss of use, increased fees and assessments, and diminution in property value to Maple Lake and Plaintiff and putative class members, and Plaintiff requests all damages allowable under West Virginia law.

46. 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 that Plaintiff is entitled to and hereby demands punitive damages.

COUNT II

Interference With Riparian Rights/Unreasonable Use of Land

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

48. Plaintiff, as a landowner in the Maple Lake Community, has covenants in her deed to use Maple Lake pursuant to her ownership interest and the by laws of Maple Lake to use the lake and all of the amenities of the property. Plaintiff has a property interest and rights associated with the natural flow of water into Maple Lake and the right to use that flow. In return, Plaintiff must pay dues for upkeep, repair, maintenance, and any special assessments.

49. Defendants engaged in acts and omissions as set forth herein, which caused disturbance, interference, flooding, and material diminution in the natural flow of the watercourse into Maple Lake. The Defendants also caused Bentonite to be diverted through Peddler's Run directly into Maple Lake

50. 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 altered the natural flow of watercourse and caused a corrupt quality and deprivation of the use of the flow. Defendants' acts and omissions introduced sediment, refuse, and other materials which corrupt the water quality and constitute an infringement on lower owners, interests, and users of Maple Lake.

51. 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 natural flow of watercourse, Defendants had specific knowledge that their conduct was causing ongoing harm, damage, and injuries to the flow and quality of water and infringing on lower landowners and users downstream, including the property of Maple Lake. Despite the specific knowledge of acts and omissions which were causing harm and injury, Defendants have failed to stop their improper acts and omissions and continued to cause ongoing harm, damage, and injuries to the flow of Plaintiff's water interest, rights, and property.

52. 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

constitutes infringement on Plaintiff's property rights, interests, and use and causes damage to Plaintiff.

53. Defendants' wrongful acts in the diversion of a natural watercourse and corruption of the quality of water infringes on Plaintiff's legal right, causes sediment and other material to be deposited into Maple Lake, requiring substantial increase in dues and assessments and causing a devaluing of Plaintiff's property, interests, rights and significant loss of use.

54. 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 and class members have 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

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

56. 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.

57. 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 Maple Lake outweighs the social value of Defendants' activities, which caused harm and constituted an interference with the private use and enjoyment of Plaintiff's property, rights and interest. Defendants had the means available to protect Maple Lake and Plaintiff's interests from harm but failed to effectively implement the means of protection available.

58. Defendants' repeated failure to comply with rules, regulations, and industry standards designed to protect the environment and downstream waters, including Maple Lake, when considering the unreasonableness of Defendants' acts and omissions.

59. 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.

60. As a result of the Defendants' wrongful acts and omissions, Plaintiff has suffered harm to property, interests, and rights, diminution in value, and imposition of fees and assessments. These acts were caused by acts and omissions of Defendants and the drainage of significant sediment-laden water into tributaries that drain directly into Maple Lake.

61. Defendants' wrongful, negligent, and then intentional acts are a substantial and unreasonable interference with the Plaintiffs' use and enjoyment of property which was sufficiently annoying and/or intolerable to Plaintiff so as to create a private nuisance. Maple Lake has suffered floods impacting Plaintiff's property rights and interest and caused Plaintiff loss of use of the property, diminution in value, assessment, fees and costs.

62. 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.

63. The Defendants' failure and negligence was malicious and was made with wanton and reckless disregard for the lives, safety, and property of the Plaintiff, which entitles the Plaintiff to a reward of punitive damages.

64. The conduct by the Defendants was carried out with actual malice toward the Plaintiff and the putative class members, along with a conscious, reckless, and outrageous indifference to the health, safety, and welfare of others.

WHEREFORE, the Plaintiff hereby demands the following relief: (a) that the matter be certified as a class action pursuant to Rule 23; (b) that the undersigned be designated as the class counsel; (c) judgment in favor of the Plaintiff; (d) equitable relief; (e) civil penalties; (f) monetary damages; (g) prejudgment and post judgment interest; (h) costs and reasonable attorney fees; (i) statutory interest; and (j) punitive damages; and all other relief this Court deems appropriate.

THE PLAINTIFF FURTHER DEMANDS A TRIAL BY JURY.

**JANIS LECKENBUSCH,
Individually And on Behalf of All
Others Similarly Situated**

By Counsel

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