

**IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA  
BUSINESS COURT DIVISION**

**MAPLE LAKE CLUB, INC.,  
Plaintiff,**

**v.**

**CIVIL ACTION NO. 23-C-44  
Presiding Judge: Shawn D. Nines  
Resolution Judge: David M. Hammer**

**BENEDUM AIRPORT AUTHORITY,  
WOLFE'S EXCAVATING, LLC, and  
THE THRASHER GROUP, INC.,  
Defendants**

**and**

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

**v.**

**CIVIL ACTION NO. 23-C-167  
Presiding Judge: Shawn D. Nines  
Resolution Judge: David M. Hammer**

**BENEDUM AIRPORT AUTHORITY,  
WOLFE'S EXCAVATING, LLC,  
THE THRASHER GROUP, INC., and  
JOHN DOE PERSONS and/or ENTITIES,  
Defendants**

**and**

**JAMES D. MILLER, MELISSA DAWN MILLER,  
and MILLER HOME REPAIR, LLC,  
Plaintiffs,**

**v.**

**CIVIL ACTION NO. 23-C-168  
Presiding Judge: Shawn D. Nines  
Resolution Judge: David M. Hammer**

**BENEDUM AIRPORT AUTHORITY,  
WOLFE'S EXCAVATING, LLC,  
THE THRASHER GROUP, INC., and  
JOHN DOE PERSONS and/or ENTITIES,  
Defendants**

**and**

**ALL ABOUT DOGS, LLC,  
BRENDA SCOTCHIE, and  
JOHN SCOTCHIE,  
Plaintiffs,**

**v.**

**CIVIL ACTION NO. 23-C-251  
Presiding Judge: Shawn D. Nines  
Resolution Judge: David M. Hammer**

**BENEDUM AIRPORT AUTHORITY,  
WOLFE'S EXCAVATING, LLC, and  
THE THRASHER GROUP, INC.,  
Defendants**

**and**

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

**v.**

**CIVIL ACTION NO. 23-C-267  
Presiding Judge: Shawn D. Nines  
Resolution Judge: David M. Hammer**

**BENEDUM AIRPORT AUTHORITY,  
WOLFE'S EXCAVATING, LLC,  
THE THRASHER GROUP, INC., and  
JOHN DOE PERSONS and/or ENTITIES,  
Defendants**

**Agreed Order Consolidating Cases for Discovery Purposes**

On a prior date came the parties, by their respective counsel, pursuant to Rule 42(a) of the West Virginia Rules of Civil Procedure, and moved this Court for entry of an Order consolidating the above-captioned cases for discovery purposes. The parties jointly presented their motion on the grounds that all five of these civil actions are based upon the same transaction or occurrence and involve all of the same witnesses, and most of the same parties and party representatives. As a result, the parties believe that judicial economy is best served through the consolidation of the issues into a single action and this Court agrees.

The Defendants indicated a desire to have the cases consolidated for both

discovery and trial purposes, but the Plaintiffs object, at this time, to consolidation for trial purposes. As a result of the Plaintiffs' objection, the Defendants consented to postponing the Court's decision on whether or not the trials of these two cases should be consolidated and agreed to have the cases consolidated for discovery purposes only at this time. The Defendants reserve the right to seek a consolidation of the trials upon filing of a proper motion after the conclusion of discovery.

### **FINDINGS OF FACT**

1. These are civil actions against the Airport, Thrasher, and Wolfe's claiming that the Storm Water Pollution Prevention Plan ("SWPPP") for the new terminal and AeroTech Park and other design features of the "Move the Mountain" project at the North Central West Virginia Airport were performed negligently and resulted in sediment-laden water flooding the properties owned by the Plaintiffs and impacting Maple Lake and its residents.

2. All five of the cases were originally filed in the Circuit Court of Harrison County.

3. All of the named Defendants have appeared in all cases, by counsel.

4. All of the cases have been transferred to the Business Court Division with Judge Nines assigned as the Presiding Judge and Judge Hammer assigned as the Resolution Judge.

5. Westfield Insurance Company has filed an Intervenor Complaint for Declaratory Relief in only the first-filed case, Civil Action No. 23-C-44, but the issues raised therein apply to the General Liability Insurance policy issued to Defendant Wolfe's Excavating, LLC, which policy is providing a defense to Wolfe's in all five cases and is therefore relevant to the allegations plead by the Plaintiffs in all five cases.

## CONCLUSIONS OF LAW

6. It is within the sound discretion of the Circuit Court to decide whether to consolidate certain civil actions pursuant to Rule 42(a) of the West Virginia Rules of Civil Procedure. *State ex rel. Appalachian Power Co. v. Ranson*, 438 S.E.2d 609, 190 W.Va. 429 (1993).

7. When exercising its discretion pursuant to Rule 42(a), the Court should consider the following factors:

- (1) whether the risks of prejudice and possible confusion outweigh the considerations of judicial dispatch and economy;
- (2) what the burden would be on the parties, witnesses, and available judicial resources posed by multiple lawsuits;
- (3) the length of time required to conclude multiple lawsuits as compared to the time required to conclude a single lawsuit; and
- (4) the relative expense to all concerned of the single-trial, multiple-trial alternatives.

Syl. Pt. 2, *State ex rel. Appalachian Power Co. v. Ranson*, 438 S.E.2d 609, 190 W.Va. 429 (1993).

8. In addition, “[w]hen the trial court concludes in the exercise of its discretion whether to grant or deny consolidation, it should set forth in its order granting or denying consolidation sufficient grounds to establish for review why consolidation would or would not promote judicial economy and convenience of the parties, and avoid prejudice and confusion.” *Id.*

9. Rule 42(b) of the West Virginia Rules of Civil Procedure provides in pertinent part:

When two or more actions arising out of the same transaction or occurrence are pending before different courts or before a court and a magistrate, **the court in which the first such action was commenced shall order all the actions transferred to it or any other court in which any such action is pending.** The court to which the actions are transferred may order a joint hearing or trial of any or all the matters in issue in any of the actions; it may order

all the actions consolidated; and it may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(Emphasis added).

10. All five of the civil actions include common questions of law and fact. All claims presented by the Plaintiffs in Civil Action Nos. 23-C-44, 23-C-167, 23-C-168, 23-C-251, and 23-C-267 are based upon the same transaction or occurrence (i.e. the development, design, and construction of the SWPPP for the “Move the Mountain” project at the North Central West Virginia Airport). Therefore, judicial economy is best served through the consolidation of the issues into a single action.

11. The five actions also share all of the same witnesses and the same Defendants. Maintaining separate civil actions under these circumstances would place unnecessary and unjustifiable burdens on the Court, as well as the parties, party representatives, and witnesses who will be involved in the litigation of these matters.

12. The Court finds that the discovery of these cases can be achieved more cost-effectively and more efficiently through a single, consolidated action. All parties will benefit from the timely disposition of a consolidated action as opposed to incurring unnecessary expenses through the litigation of five separate actions where all of the same issues, facts, and evidence will be presented to the Court.

13. The Court is of the opinion that consolidation of these matters will not cause any confusion or prejudice to the parties. The same facts and legal theories will be developed in all of these actions by the same witnesses, evidence, and discovery. By eliminating the possible risk of duplication in discovery efforts of the parties, consolidation will promote a more efficient discovery process as a whole.

14. All of the named Defendants have appeared in all five cases by counsel.

15. There is no Scheduling Order in place in any of the cases at this time.

16. As a result, consolidation of Civil Action Nos. 23-C-44, 23-C-167, 23-C-168, 23-C-251, and 23-C-267 for discovery purposes at this time will further judicial economy and is in the best interest of the litigants.

WHEREFORE, the Court GRANTS the **Joint Motion to Consolidate Cases for Discovery Purposes** and ORDERS that the following cases shall be consolidated for discovery purposes:

- Civil Action No. 23-C-44, styled *Maple Lake Club, Inc., v. Benedum Airport Authority, Wolfe's Excavating, LLC, and The Thrasher Group, Inc.*;
- Civil Action No. 23-C-167, styled *Phillip "Mark" Fetty and Paula N. Fetty, v. Benedum Airport Authority, Wolfe's Excavating, LLC, The Thrasher Group, Inc., and John Doe Persons and/or Entities*;
- Civil Action No. 23-C-168, styled *James D. Miller and Melissa Dawn Miller, and Miller Home Repair, LLC, v. Benedum Airport Authority, Wolfe's Excavating, LLC, The Thrasher Group, Inc., and John Doe Persons and/or Entities*;
- Civil Action No. 23-C-251, styled *All About Dogs, LLC, Brenda Scotchie, and John Scotchie v. Benedum Airport Authority, Wolfe's Excavating, LLC, and The Thrasher Group, Inc.*; and
- Civil Action No. 23-C-267, styled *Janis Leckenbusch, individually and on behalf of all similarly situated individuals v. Benedum Airport Authority, Wolfe's Excavating, LLC, The Thrasher Group, Inc., and John Doe Persons and/or Entities*.

The Court will more fully address the issue of consolidation for trial purposes upon proper motion at a later time.

/s/ Shawn D. Nines  
Circuit Court Judge  
15th Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit [www.courtswv.gov/e-file/](http://www.courtswv.gov/e-file/) for more details.

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