

**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 SCHEDULING ORDER

On a prior day came the parties by their respective counsel and presented the following agreed Scheduling Order.

JOINDER AND AMENDMENTS

Motions to join additional parties, motions to amend pleadings, and any cross-claim or counterclaim and the reply thereto, as well as any similar motions, shall be fully effected by **November 29, 2024.**

CLASS DISCOVERY AND CLASS MOTIONS

Class-related discovery regarding the Leckenbusch case shall be completed on or before **February 28, 2025**.

Deadline for Motions to Certify Class shall be filed on or before **March 31, 2025**. Responses to Motion to Certify Class shall be filed on or before **April 15, 2025** (or 30 days following the filing of the Motion to Certify Class) and any Replies shall be filed on or before **April 30, 2025** (or 15 days following the filing of any Response to Motion to Certify Class).

EXPERT WITNESSES

Plaintiff's Rule 26 expert witnesses and Rule 26(b)(4) information shall be identified on or before **June 30, 2025**; Defendants' Rule 26 expert witnesses and Rule 26(b)(4) information shall be identified on or before **August 29, 2025**. Plaintiffs' rebuttal experts and Rule 26(b)(4) information regarding same shall be identified on or before **September 30, 2025**.

All inspection of property, if applicable, shall be completed on or before **June 30, 2025**.

DISCOVERY COMPLETION

Discovery shall be completed by **January 30, 2026**. For the purposes of this Order, "completed" means that any discovery requiring a response or action shall be filed in sufficient time to permit such response or activity by the above date.

ELECTRONICALLY STORED INFORMATION DISCOVERY

All parties and counsel shall cooperate and work diligently to agree upon the methods and conduct for discovery of electronically stored information.

All counsel are required to be informed of and understand to a reasonable degree of their client's information management systems and electronically stored information processes including how information is stored and retrieved. An attorney's lack of knowledge will not be considered as an excuse by this Court in ruling upon a motion to compel or a motion for discovery sanctions.

A party has an obligation to take reasonable and proportional steps to preserve discoverable information in the party's possession, custody, or control. The Court may issue sanctions for spoliation, the intentional or negligent destruction, or failure to preserve relevant electronically stored information. A party may move for an order to preserve electronically stored information upon a showing that the continuing existence and integrity of the information is threatened.

All requests made pursuant to Rule 34 of the West Virginia Rules of Civil Procedure shall be construed to include information contained or stored in an electronic medium, regardless of format, unless otherwise stated.

Unless otherwise agreed upon, all production of electronically stored information shall be produced electronically through a sharefile or on a flash drive. If the parties are unable to agree upon a format, the Court will rule upon the type of format to be used for a particular category or all discovery of electronically stored information.

If any party intends to utilize an electronic search of another party's electronically stored information or if any other issue regarding electronically stored information arises between the parties, then all counsel and pro se parties shall hold a conference. The requesting party shall give reasonable notice to all parties, and all counsel and pro se parties shall be present. The conference must be held at least **forty (40) days prior to the completion of discovery**.

At the conference, all counsel and pro se parties shall use their best efforts to reach an agreement as to the method of search, the scope of the search, the amount of searching, and the words, terms, or phrases to be used. All counsel and pro se parties shall utilize this conference to resolve all remaining electronic discovery issues such as the allocation of discovery costs for material not readily accessible, form of production, etcetera.

If, during a search or otherwise, electronically stored information that contains privileged information or attorney work product is inadvertently released in whole or in part, then:

- a. If the information, document or material, on its fact, appears to be privileged or attorney work product, it shall be immediately returned and/or deleted; and
- b. If notice of the inadvertent disclosure is given, it shall be returned and/or deleted as soon as practicable, and in no case later than ten (10) days.

Upon returning and/or deleting the privileged or attorney work product material, any person to whom it has been disclosed, must destroy any copies, notes, or information derived from the material. The filing of a motion for protective order or to compel or other similarly related motion shall not affect this Order.

FINAL LISTS OF WITNESSES AND EXHIBITS

On or before **March 2, 2026**, (at least four (4) weeks prior to the Final Pretrial Conference herein), the parties shall e-file with the Clerk of this Court and send an email copy sent to Andrea.Chambers@courtsv.gov, Business.Court@courtsv.gov, Tessa.Bowers@courtsv.gov, and Carol.Miller@courtsv.gov, a list containing their proposed witnesses and exhibits and shall serve a copy of the same upon all counsel of record. **ONLY** those witnesses and exhibits actually to be called or utilized at trial are to be disclosed. Witnesses shall be identified as to whether they will be called in the parties' case-in-chief or as rebuttal witnesses. All exhibits shall be appropriately marked in sequence.

On the first day of the trial, counsel shall tender to the presiding Judge two (2) binders of the exhibits. These exhibits should be indexed for easy reference and each exhibit should be individually tabbed. One (1) of these binders will be for the Court's use and the other is for the use by the witness. Counsel should have his or her own copy of each exhibit and should furnish opposing counsel(s) with a copy of each exhibit as well. If counsel desires each juror to have a

binder of exhibits to view as counsel examines witnesses, these should be prepared for presentation to each juror at the appropriate time with the Court's permission. Any objection to any proposed exhibit shall be filed, in writing, with the appropriate citations thereto as well as the attached exhibit on or before **March 16, 2026**, (at least two (2) weeks prior to the Final Pretrial Conference herein) with an email copy sent to Andrea.Chambers@courtswv.gov, Business.Court@courtswv.gov, Tessa.Bowers@courtswv.gov, and Carol.Miller@courtswv.gov. Failure to comply with this paragraph may constitute a waiver of objections or may result in the Court's denying the admission of the affected exhibits.

PRE-TRIAL MOTIONS

All motions *in limine*, and motions regarding trial consolidation or bifurcation (should any party desire a different trial configuration than contained in the Trial section below), and all other related pretrial motions, accompanied by memoranda of law, as needed, shall be e-filed with the Clerk of this Court an email copy sent to Andrea.Chambers@courtswv.gov, Business.Court@courtswv.gov, Tessa.Bowers@courtswv.gov, and Carol.Miller@courtswv.gov on or before **March 2, 2026**, (at least four (4) weeks prior to the Final Pretrial Conference herein).

Responses to such motions shall be e-filed by counsel with the Clerk of this Court and an email copy to Andrea.Chambers@courtswv.gov, Business.Court@courtswv.gov, Tessa.Bowers@courtswv.gov, and Carol.Miller@courtswv.gov on or before **March 16, 2026**, (at least two (2) weeks prior to the Final Pretrial Conference herein).

DISPOSITIVE MOTIONS SCHEDULE

All dispositive motions, supporting memorandums, and affidavits shall be e-filed with the Clerk of this Court and an email copy sent to Andrea.Chambers@courtswv.gov, Business.Court@courtswv.gov, Tessa.Bowers@courtswv.gov, and Carol.Miller@courtswv.gov on or before **February 16, 2026**, (at least six (6) weeks prior to the Final Pretrial Conference herein).

All responsive pleadings, supporting memorandums, and counter-affidavits shall be e-filed with the Clerk of this Court and an email copy sent to Andrea.Chambers@courtswv.gov, Business.Court@courtswv.gov, Tessa.Bowers@courtswv.gov, and Carol.Miller@courtswv.gov on or before **March 2, 2026**, (at least four (4) weeks prior to the Final Pretrial Conference herein).

All rebuttal pleadings, supporting memorandums, and counter-affidavits shall be e-filed with the Clerk of this Court and an email copy sent to Andrea.Chambers@courtswv.gov, Business.Court@courtswv.gov, Tessa.Bowers@courtswv.gov, and Carol.Miller@courtswv.gov on or before **March 9, 2026**, (at least three (3) weeks prior to the Final Pretrial Conference herein).

A hearing on all dispositive motions shall be scheduled by the Court, if the Court deems a hearing on the same necessary prior to the Final Pretrial Conference; otherwise, the same shall be set for hearing by counsel giving notice to the other side and the Court for the date and time of the Final Pretrial Conference.

All other motions may be filed and set for hearing based on case development.

PROPOSED JURY INSTRUCTIONS, SPECIAL INTERROGATORIES, VERDICT FORMS, AND VOIR DIRE

Proposed Jury Instructions or substantive theories of recovery or defense, on damages and no evidentiary matters peculiar to the case, together with pertinent statutory and case authority, special interrogatories, and verdict forms, as appropriate to the case, and all proposed voir dire questions requested by counsel for submission to the jury shall be exchanged by counsel and an email copy sent to Andrea.Chambers@courtswv.gov, Business.Court@courtswv.gov, Tessa.Bowers@courtswv.gov, and Carol.Miller@courtswv.gov in Microsoft Word on or before **March 2, 2026**, (at least four (4) weeks prior to the Final Pretrial Conference herein).

Within two (2) weeks thereafter, by **March 16, 2026**, the parties shall submit to the Court via an email copy sent to Andrea.Chambers@courtswv.gov, Business.Court@courtswv.gov, Tessa.Bowers@courtswv.gov, and Carol.Miller@courtswv.gov any objections which they may have to the proposed instructions, special interrogatories, verdict form, or voir dire of the other party(ies).

The Court reserves the right to refuse any proposed instructions or to refuse to consider any objections to the instructions not submitted in compliance herewith.

FILING OF DISCOVERY FOR USE AT TRIAL

On or before **March 2, 2026**, (at least four (4) weeks prior to the Final Pretrial Conference herein), the parties shall file with a copy to the Court via email sent to Andrea.Chambers@courtswv.gov, Business.Court@courtswv.gov, Tessa.Bowers@courtswv.gov, and Carol.Miller@courtswv.gov of any interrogatories, answers thereto, depositions, etc., specifying the appropriate portions thereto that the parties intend to offer in the case. Any objections(s) to the introduction of any of the foregoing shall be filed, in writing, with a copy to the Court via email sent to Andrea.Chambers@courtswv.gov, Business.Court@courtswv.gov, Tessa.Bowers@courtswv.gov, and Carol.Miller@courtswv.gov by each of the parties on or before **March 16, 2026**, (at least two (2) weeks prior to the Final Pretrial Conference herein), or such objection(s) shall be deemed to have been waived. **This paragraph is not to apply to discovery materials that will be used at trial solely in cross-examination or for impeachment.**

STIPULATIONS

Counsel are encouraged to meet with one another and enter into stipulations of fact in this case and any stipulation shall be reduced to writing, signed by all counsel of record, and filed with the Court and with opposing counsel on or before **March 23, 2026**, (at least four (4) weeks prior to Trial).

FINAL PRETRIAL CONFERENCE/SETTLEMENT CONFERENCE

The Final Pretrial Conference/Settlement Conference in this matter shall be held on **March 30, 2026** at **10:00 a.m.** Said conference shall be attended by **LEAD TRIAL COUNSEL** for each represented part, all represented party(ies), and all unrepresented party(ies). Counsel and parties should be prepared to participate fully and to discuss all aspects of the case. Individuals with full authority to settle the case for each party shall be present in person or immediately available by telephone. The Court may reset the Settlement Conference for additional discussions as necessary.

TRIAL DATE

At this time, the Court is setting this case for a consolidated Jury Trial with the trial to begin on **April 20, 2026**. The trial is expected to last for **15 days**. *The Court will consider any motions raised by the parties regarding the consolidation or bifurcation of the trial based upon the deadlines set forth in the Pre-Trial Motions section above.*

MEDIATION

The Court finds that this is an appropriate case for mediation. Therefore, pursuant to Rule 25 of the West Virginia Trial Court Rules, this case is referred to mediation. By order of this Court, mediation shall be conducted by the Honorable David M. Hammer as Resolution Judge and shall be scheduled and concluded on or before **February 27, 2026**, unless such deadline is otherwise extended by the Presiding Judge for good cause shown. The Resolution Judge shall contact the parties for the purpose of scheduling mediation.

It is now **ORDERED** that this Agreed Scheduling Order shall control the courses of this action unless modified by the Court for good cause.

The Clerk is hereby directed to send a certified copy of this Order to all counsel of record.

ENTER: 10-23-2024


JUDGE SHAWN D. NINES

JOINTLY AGREED BY:

/s/ William M. Tiano
William M. Tiano, Esq.
TIANO O'DELL, PLLC
118 Capitol Street
Charleston, WV 25339
wtiano@tolawfirm.com
**Counsel for Maple Lake and
Leckenbusch Plaintiffs**

Thomas G. Dyer, Esq.
Zachary S. Dyer, Esq.
DYER LAW
P.O. Box 1332
Clarksburg, WV 26301
dyerlawof@aol.com
zachdyerlaw@gmail.com
**Counsel for Maple Lake and
Leckenbusch Plaintiffs**

/s/ John R. Angotti
John R. Angotti, Esq.
David J. Straface, Esq.
Chad C. Groome, Esq.
Angotti & Straface, L.C.
274 Spruce Street
Morgantown WV 26505
johnangotti@angottistrafacelaw.com
djstraface@frontier.com
chadgroome@angottistrafacelaw.com
Counsel for Fetty and Miller Plaintiffs

/s/ Chirag B. Desai
Dayton C. Meadows V, Esq.
Patrick Crowe, Esq.
Chirag B. Desai, Esq.
265 High Street, Suite 202
Morgantown, WV 26505
dayton@dcmvlaw.com
pcrowe@crowebarlaw.com
chirag@thedesaiifirm.com
**Counsel for All About Dogs and Scotchie
Plaintiffs**

/s/ George N. Stewart
George N. Stewart, Esq.
Matthew G. Breneman
ZIMMER KUNNZ, PLLC
310 Grant Street, Suite 3000
The Grant Building
Pittsburgh, PA 15219
stewart@zklaw.com
breneman@zklaw.com
Counsel for Benedum Airport Authority

/s/ J. Mark Adkins
J. Mark Adkins, Esq.
Unaiza R. Tyree, Esq.
Zachary J. Rosencrance, Esq.
Bowles Rice
600 Quarrier Street
Charleston, WV 25301
madkins@bowlesrice.com
utyree@bowlesrice.com
zrosencrance@bowlesrice.com
Counsel for Thrasher Group, Inc.

/s/ Teresa J. Dumire
Teresa J. Dumire, Esq.
Margaret E. Lewis, Esq.
KAY CASTO & CHANEY PLLC
150 Clay Street, Suite 100
Morgantown, WV 26501
tdumire@kaycasto.com
mlewis@kaycasto.com
Counsel for Wolfe's Excavating, LLC

/s/ Brent K. Kesner
Brent K. Kesner, Esq.
Tanya M. Kesner, Esq.
Ernest G. Hentschel, II
Kesner & Kesner, PLLC
112 Capitol Street
PO Box 2587
Charleston, WV 25329
bkesner@kesnerlaw.com
tkesner@kesnerlaw.com
ehentschel@kesnerlaw.com
**Counsel for Intervenor Westfield National
Insurance Company and Westfield
Insurance Company**