19-1692

IN THE

United States Court of Appeals

FOR THE THIRD CIRCUIT

ROBIN BAPTISTE; DEXTER BAPTISTE, On Behalf of Themselves and All Others Similarly Situated,

Plaintiffs-Appellants,

—v.—

BETHLEHEM LANDFILL COMPANY, A Delaware Corporation doing business as IESI PA BETHLEHEM LANDFILL,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRIEF FOR PLAINTIFFS-APPELLANTS
AND JOINT APPENDIX
VOLUME I OF II
(Pages A1 to A18)

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INTRODUCTION

This appeal arises from the dismissal of a class action complaint for public nuisance, private nuisance, and negligence. Plaintiffs-Appellants ("Plaintiffs") are homeowners residing in the vicinity of Defendant-Appellee's ("Defendant's") municipal solid waste landfill. Plaintiffs brought their claims on the basis of Defendant's failure to properly operate and maintain the landfill, which has caused and continues to cause severe noxious odors to substantially impact their ability to use and enjoy their home.

Defendant responded to the Complaint with a Motion to Dismiss. The district court dismissed Plaintiffs' Complaint in its entirety, imposing new restrictions on their nuisance causes of action in contravention of a long line of Pennsylvania precedent. That precedent holds that real property damage, including lost use and enjoyment, is sufficient to support claims for both public and private nuisance without regard to the number of impacted persons. The district court's ruling has the perverse effect of immunizing any actor from nuisance liability so long as they ensure that the nuisance impacts a large number of persons. Further, the district court eschewed longstanding Pennsylvania law which establishes that a person who undertakes affirmative acts has a resulting duty of care.

The dismissal should be reversed and the case remanded.

JURISDICTIONAL STATEMENT

The Complaint filed by Plaintiffs individually and on behalf of a proposed class asserts claims under Pennsylvania common law against Defendant, which is organized under the laws of Delaware and has its principal place of business in Texas. A28-29.

The district court had subject-matter jurisdiction under 28 U.S.C. § 1332(d)(2)(a), because this is a putative class action and the amount in controversy exceeds $5,000,000. A29.

The district court's Opinion and Order dismissed the Complaint in its entirety on March 13, 2019. A3-18.

Plaintiffs filed a Notice of Appeal on March 28, 2019. A1. This appeal is timely under Fed. R. App. P. 4(a)(1)(A).

This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the district court erred in concluding that Plaintiffs did not state a claim for private nuisance because the alleged nuisance impacted too many people. A12-13.

2. Whether the district court erred in concluding that Plaintiffs did not state a claim for private nuisance because it found that their homes are not "neighboring" properties to the nuisance. A13.

3. Whether the district court erred in concluding that Plaintiffs did not state a claim for public nuisance because they had not alleged a "special injury." A8-12.

4. Whether the district court erred in concluding that Plaintiffs did not state a claim for negligence because Defendant owed them no duty. A13-16.

STATEMENT OF RELATED CASES

There are no related cases. This case has not previously been before the Third Circuit.

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

Plaintiffs Robin Baptiste and Dexter Baptiste filed this action on behalf of a class of their neighbors against Defendant, the owner-operator of a 224 acre waste disposal facility ("landfill"). Defendant's landfill is located in Lower Saucon Township, Pennsylvania and is permitted to accept up to 1,375 tons of waste for disposal on a daily basis. (Complaint, A25-40, ¶¶ 6-7). Landfills, like Defendant's, inherently generate odors when the waste they bury in the landfill decomposes, creating odorous landfill gas, leachate and other byproducts. (*Id.* ¶ 8). Defendant, like similar operators who profit from the disposal of waste, has the legal duty and

responsibility to control the landfill's odorous emissions by capturing and destroying them to prevent them from traveling offsite and impacting the landfill's neighbors. (*Id.* ¶ 9). Unfortunately for Plaintiffs and the putative Class, Defendant has failed miserably to satisfy that duty. In response, Defendant now asserts that it has no such duty in the first place.

The evidence of Defendant's failures is overwhelming. State regulators, local authorities, and area residents have all sounded the alarm about the impacts the landfill has on the surrounding area. People living near the landfill have made countless odor complaints to PADEP. (*Id.* ¶ 15). PADEP, in turn, has issued Defendant numerous citations related to odor emissions, including for failing to apply proper cover, failing to implement a proper landfill gas control and monitoring plan, and failure to utilize proper waste management practice in reducing the potential for offsite odor emissions. (*Id.* ¶ 16). The Township of Lower Saucon has repeatedly notified Defendant of the impacts its foul emissions have on township residents. (*Id.* ¶ 14). Several dozen of these area residents have already reached out to Plaintiffs' counsel, detailing the deleterious impact that the landfill has had on their ability to use and enjoy their homes. (*Id.* ¶ 19).

As a direct and foreseeable result of Defendant's failure to control the landfill's odorous emissions, those emissions are routinely emitted and transported onto Plaintiffs' property. (*Id.* ¶ 18). This occurs on occasions too numerous to

recount individually. (*Id.* ¶ 19). These odors have been described as obnoxious, foul, and nauseating. (*Id.* ¶ 20). Members of the putative class note, among other things, their inability to use outdoor areas of their homes, their inability to host guests due to embarrassment, and even an inability to walk their dogs. (*Id.* ¶ 21). The stench sometimes becomes so pungent that it actually permeates the inside of Class members' homes, despite having closed their doors and windows and remaining trapped indoors. (*Id.* ¶ 22).

II. PROCEDURAL HISTORY

Plaintiffs' Complaint was filed on June 26, 2018, and it asserts claims for private nuisance, public nuisance, and negligence. A25-40. Plaintiffs seek compensatory, injunctive, and punitive relief. A38-39. Defendant filed a Motion to Dismiss under Fed. R. 12(b)(6), asserting that the nuisance alleged by Plaintiffs is too large to be private and lacks the "special injury" necessary to be actionable under a public nuisance theory. It claimed that Defendant owes no duty to Plaintiffs, and that their negligence claim is duplicative of their nuisance claims. It also asserted that neither injunctive nor punitive relief was available to Plaintiffs under Pennsylvania law.[1]

[1] The district court did not reach these arguments, having dismissed Plaintiffs' complaint in its entirety. Plaintiffs submit that these issues are appropriately addressed only on remand, but to the extent that the Court may consider them, Plaintiffs rely on the arguments made in their brief to the district court.

The district court dismissed Plaintiffs' Complaint in its entirety, finding that they had failed to state claims for public nuisance, private nuisance, or negligence. A3-18. The district court broke new legal ground with respect to its basis for dismissal of each of the three causes of action, despite well-established precedent contravening its holdings.

Private Nuisance

The district court found that Plaintiffs failed to state a claim for private nuisance because it asserted that the nuisance was public, and therefore could not be private. A12-13. It also found that at a distance of approximately 1.6 miles from the landfill, Plaintiffs could not satisfy a "neighboring" element of the private nuisance cause of action that the court determined exists under Pennsylvania law. A13.

Public Nuisance

The district court found that Plaintiffs failed to state a claim for public nuisance because too many people were impacted by the type of harm suffered by Plaintiffs for that harm to be considered as the sort of "special injury" necessary to support this cause of action. A8-12.

Negligence

The district court found that Plaintiffs failed to state a claim for negligence because they had not identified any duty that Defendant owed to them under

Pennsylvania law, since there could be no duty to prevent odors from entering one's neighbors property. A13-16.

Plaintiffs timely filed a Notice of Appeal on March 28, 2019. A1.

SUMMARY OF ARGUMENT

1. The district court erred in concluding that Plaintiffs did not state a claim for private nuisance because the alleged nuisance impacted too many people.

The district court appeared to assume that if the nuisance was public, it could not also be private. Pennsylvania law makes clear that a nuisance can be both public and private, and that any nuisance that impacts people's ability to use and enjoy their homes is necessarily a private nuisance. The district court ffunctionally imposed a limitation on the number of people who can be impacted by a private nuisance, but no such limitation exists under Pennsylvania law.

2. The district court erred in concluding that Plaintiffs did not state a claim for public nuisance because it found that their homes are not "neighboring" properties to the nuisance.

The district court concluded that at a distance of 1.6 miles, Plaintiffs' home is located too far from Defendant's landfill to assert a private nuisance claim against it. The district court imposed a "neighboring" limitation on the property that does not exist under Pennsylvania law, and was based on a misapplication of caselaw

limiting nuisance actions to instances involving discordant, contemporaneous land uses.

3. The district court erred in concluding that Plaintiffs did not state a claim for public nuisance because they had not alleged a "special injury."

In similar fashion to its ruling on Plaintiffs' private nuisance claim, the district court concluded that Plaintiffs alleged a nuisance which impacted too many people for the impacts to themselves to constitute the special injury necessary to support their public nuisance claims. Here again, there is no upper limit on the number of people who can be impacted in this way, and the salient consideration is the impact to the Plaintiffs' home and property. In combination with the court's ruling on Plaintiffs' private nuisance claims, if this is allowed to stand it would have the perverse impact of immunizing any actor from nuisance liability so long as the actor ensures that the nuisance impacts a sufficiently large number of persons.

4. The district court erred in concluding that Plaintiffs did not state a claim for negligence because Defendant owed them no duty.

The district court cited a single case in which the plaintiffs failed to *identify* a duty owed to them by the defendants in a case that involved odors and particulate in support of the notion that there can *never* be a duty to refrain from emitting airborne pollutants onto one's neighbors. A long line of Pennsylvania caselaw reveals this interpretation to be clearly erroneous. Plaintiffs have alleged duties arising from

Defendant's affirmative acts in operating a landfill which comport with duties long established under the law of the Commonwealth.

ARGUMENT

I. Standard of Review

A district court's decision on a motion to dismiss under Rule 12(b)(6) is subject to de novo review. *McTernan v. City of York, Pa.*, 577 F.3d 521, 526 (3d Cir. 2009). "[A]ll well-pleaded allegations of the complaint must be taken as true and interpreted in the light most favorable to the plaintiffs, and all [reasonable] inferences must be drawn in favor of them." *Id.; see Fellner v. Tri-Union Seafoods, L.L.C.*, 539 F.3d 237, 242 (3d Cir. 2008). This Court's role in reviewing dismissal on a Rule 12(b)(6) motion is to "determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Phillips v. Cty. Of Allegheny*, 515 F.3d 224, 231 (3d Cir. 2008) (internal quotation marks omitted).

II. The District Court Erred in Determining that the Complaint Fails to State a Claim for Private Nuisance

The district court dismissed Plaintiffs' private nuisance claims because it concluded that (1) their allegations constituted a public nuisance (albeit one that it determined was not actionable), and therefore not a private nuisance; and (2) the location of their home, 1.6 miles away from the landfill, renders it too far to be considered a "neighboring" property. A12-13. The district court ignored that (1) a nuisance can be both public and private, and (2) there is absolutely no distance

limitation in the law of private nuisance. The "neighboring" requirement refers only to the character of a private nuisance action.

A. There is no upper limit on the number of people who may be impacted by a private nuisance.

The number of persons impacted is simply not a threshold issue for the existence of a private nuisance. Pennsylvania has acknowledged the Restatement of Torts (Second) section 822 for private nuisance.

> The section declares:
> One is subject to liability for a private nuisance if, but only if, his conduct is a legal cause of an invasion of another's interest in the private use and enjoyment of land, and the invasion is either
> (a) intentional and unreasonable, or
> (b) unintentional and otherwise actionable under the rules controlling liability for negligent or reckless conduct, or for abnormally dangerous conditions or activities.

Youst, 94 A.3d at 1072 (citing Restatement (Second) of Torts § 822). The Restatement, as recognized by Pennsylvania courts, contains definitions for "intentional invasion" and "unreasonable." *Id.* It does not place a limitation on the number of persons who may be impacted. Rather, in a section entitled "Who Can Recover for Private Nuisance[,]" the restatement provides:

> For a private nuisance there is liability only to those who have property rights and privileges in respect to the use and enjoyment of the land affected, including
> (a) possessors of the land,
> (b) owners of easements and profits in the land, and
> (c) owners of nonpossessory estates in the land that are detrimentally affected by interferences with its use and enjoyment.

Restatement (Second) of Torts, § 821E. Plaintiffs clearly fall into the first category and are such may bring claims for private nuisance. There is no element that involves consideration of the number of impacted plaintiffs. The district court developed this element from its erroneous determination that if a nuisance is public, it must therefore not be private. A12-13.

"The difference between a public and a private nuisance does not depend upon the nature of the thing done but upon the question whether it affects the general public or merely some private individual or individuals." *Phillips v. Donaldson*, 269 Pa. 244, 246, 112 A. 236, 238 (1920) (see also *Karpiak v. Russo*, 450 Pa. Super. 471, 676 A.2d 270, 272 (1996) ("a public nuisance does not exist unless a nuisance exists and affects the community at large and not merely the complaining parties.") While the number of people affected is relevant to determining the nature of a nuisance, public and private nuisances are not mutually exclusive. Any public nuisance can also be a private nuisance. This is because it is the nature of the injury that determines whether or not a private nuisance exists, including in the presence of a public nuisance.

The district court erred because a nuisance can be both public and private. *Youst v. Keck's Food Serv.*, 2014 PA Super 121, 94 A.3d 1057, 1071 ("A nuisance may be public, private, or both public and private.") (citing *Pa. Soc'y for the Prevention of Cruelty to Animals v. Bravo Enters., Inc.*,428 Pa. 350, 360, 237

A.2d 342 (Pa. 1968)); *accord Umphred v. VP Auto Sales & Salvage, Inc.*, No. 6062 OF 2014, 2014 Pa. Dist. & Cnty. Dec. LEXIS 332, at *16 (C.P. Oct. 27, 2014) affirmed at *Umphred v. VP Auto Sales & Salvage, Inc.*, 122 A.3d 1143, 2015 Pa. Super. Unpub. LEXIS 1904 (2015); see also *Marques v. Bunch,* 18 Pa. D. & C.3d 371, 380 (C.P. 1980). The number of impacted persons can determine if a particular nuisance rises to the level of a public nuisance, but property damage, including loss of use and enjoyment, suffices for actionability as either a private nuisance or a public nuisance that creates special injury.

Until this case, no court applying Pennsylvania law had set an upper limit on the number of persons who could be impacted by a private nuisance, whether or not it was also a public nuisance. If, beyond the impact to the public right, there are impacts to the plaintiff's use and enjoyment of their home, that alone is sufficient. *Umphred*, 2014 Pa. Dist & Cnty. Dec. LEXIS 332, at *24("[i]f a nuisance interferes with the public right and with the use and enjoyment of the plaintiffs land, it is also a private nuisance."). In *Umphred*, the plaintiffs proved that the defendant's "business operation is a private and a public nuisance." *Id.* at *27.

Plaintiffs' Complaint pleads each element of a private nuisance cause of action under both the Restatement and Pennsylvania law. That the nuisance impacted some number of people less than an unspecified threshold is not a required element. The district court's determination should be reversed.

B. There is no proximity requirement in the law of private nuisance.

The district court also determined that Plaintiffs' property was too far from the landfill to be impacted by a private nuisance. It reached this result by adopting an argument Defendant advanced which thoroughly misstated the "neighboring" property requirement. This mistaken position seizes upon caselaw which forecloses private nuisance actions by anything other than concurrent land users. *See, e.g., Phila. Elec. Co. v. Hercules, Inc.*, 762 F.2d 303, 314 (3d Cir. 1985) (description of contemporaneous "neighboring" property to explain why actions by purchaser of real estate against seller of that same real estate do not support private nuisance cause of action). "[T]he goal of nuisance law is to achieve efficient and equitable solutions to problems created by discordant land uses. In this light nuisance law can be seen as a complement to zoning regulations, (citation) and not as an additional type of consumer protection for purchasers of realty." *Id.*

The "neighboring" characterization merely describes private nuisance actions as those which arise from impacts caused to nearby properties. It does not impose some upper limit on what may constitute a neighboring property. Earlier this year in *Leety v. Keystone Sanitary Landfill* (Case No. 2018-CV-1159)(C.P. Jan 24, 2019), the Court of Common Pleas of Lackawannna County explicitly rejected this argument. ADD1-12. That case is a landfill odor nuisance class action which for all relevant purposes is functionally identical to the instant case. There, the defendant

asserted that the plaintiff's private nuisance claim should be dismissed because her property was not alleged to be near enough to the landfill at issue to be considered "neighboring." The court held that the defendant's

> contention that the putative class action representative must own or possess a "neighboring" property to assert an action for private nuisance is without merit. No such "neighboring" requirement exists in the law and Keystone's attempt to add the element of "neighboring" to Plaintiff's elements is rejected.

ADD6.

The court in *Leety* was correct in finding that there is no "neighboring" element in Pennsylvania's cause of action for private nuisance. The term has been used in numerous cases to describe the nature of a private nuisance, not what is necessary to prove it. By its very nature a private nuisance will impact persons within its vicinity, but there is no threshold distance limitation within the cause of action. For example, in *Noerr v. Lewistown Smelting & Refining, Inc.*, 60 Pa. D&C 2d 406, 414 (pa.Com.Pl. 1973) the plaintiffs prevailed in a bench trial on nuisance and negligence claims against a nuisance that was "approximately one and one-half miles northeast from plaintiffs' house and barn, approximately 3,000 feet east from farmland leased by plaintiffs and used in their farm operation, and approximately one and one half miles west from other land leased by plaintiffs and used in their farm operation." Similarly, in *Karpiak v. Russo,* a trial was held on claims by "home-owners who live near appellees' landscaping supply business." *Karpiak v. Russo,*

450 Pa. Super. 471, 473 (Pa. Super. Ct. 1996). And in *Tiongco v. Sw. Energy Prod. Co.*, 214 F. Supp. 3d 279, 285 (M.D. Pa. 2016), the court expressly noted that the plaintiff's home was a quarter mile from the nuisance. But again, the location of her home was not a threshold issue. This case is no different. Further, even if "neighboring" properties were an element of the cause of action, Plaintiffs' home is indeed a "neighboring" property of the landfill. "Neighbor" is not synonymous with "next door neighbor." Merriam-Webster dictionary defines "neighbor" as "one living or located near one another."[2] Plaintiffs and the class all reside *near* defendant's landfill.

Nuisances that inherently affect many people over a large geographic area routinely give rise to private nuisance actions. In *Diehl v. CSX Transp., Inc.*, 349 F. Supp. 3d 487, 494-95 (W.D. Pa. 2018), the plaintiff brought private nuisance claims on behalf of a class of approximately 1,000 residents impacted by a trail derailment. Those claims were based in part on the fact that the Defendant "create[ed] noxious fumes and odors that Plaintiff could smell insider her home." *Id.* The court refused to dismiss the plaintiff's private nuisance claim for failure to state a claim, detailing the elements of the claim at length:

> Pennsylvania follows the Restatement (Second) of Torts definition of private nuisance. According to the Restatement:

[2] https://www.merriam-webster.com/dictionary/neighbor?utm_campaign=sd&utm_medium=serp&utm_source=jsonld (last accessed May 30, 2019).

> One is subject to liability for a private nuisance if, but only if, his conduct is a legal cause of an invasion of another's interest in the private use and enjoyment of land, and the invasion is either
>
> (a) intentional and unreasonable, or
> (b) unintentional and otherwise actionable under the rules controlling liability for negligent or reckless conduct, or for abnormally dangerous conditions or activities.
>
> When analyzing a private nuisance claim under the Restatement, 'the key question is whether one person has impaired another person's private right of use or enjoyment of their land.

Diehl v. CSX Transp., Inc., 349 F. Supp. 3d 487, 507-08 (W.D. Pa. 2018) (citations and internal quotation marks omitted). Despite the fact that the plaintiff asserted a private nuisance that impacted approximately 1,000 geographically dispersed people, the court made no mention of the number of class members or their proximity to the nuisance in its analysis of this claim.

Here, while the number of impacted persons is relatively large, Plaintiffs have stated claims for private nuisance because they have alleged the requisite interference with the use and enjoyment of their own property. See, e.g., *Maroz v. Arcelormittal Monessen LLC*, No. 15cv0770, 2015 U.S. Dist. LEXIS 140660, at *10-11 (W.D. Pa. Oct. 15, 2015) ("This Court concurs with Plaintiffs that they have asserted a valid claim for private nuisance, based solely upon their allegations claiming they have lost the use and enjoyment of their land and have borne decreased

property values.")[3]. There is simply no authority for the proposition that this additional unfounded element should be grafted onto Plaintiffs' cause of action and their private nuisance claims therefore dismissed. To the contrary, Pennsylvania law is replete with cases in which private nuisance causes of action were advanced despite the fact that the underlying conduct impacted a large number of people.

Plaintiffs have pled each element of a private nuisance cause of action. The distance between the nuisance and Plaintiffs' property is not such an element. The district court's determination should be reversed.

III. The District Court Erred in Finding that the Complaint Fails to State a Claim for Public Nuisance

The district court found that Plaintiffs failed to allege "special harm"[4] and therefore failed to state a claim for public nuisance. A11. It arrived at this conclusion by determining that "Plaintiffs allege no reason other than their proximity to the landfill to prove that they suffered a special harm[,]" despite Plaintiffs' repeated references to the impacts to their homes and property. (*Id.*). The court reasoned that if Plaintiffs suffered a special harm, all households within an equal or lesser distance

[3] Certain of the instant Plaintiffs' counsel were also involved in *Maroz.* That case, which involved allegations of air pollution from a coke manufacturing facility, claimed impacts to thousands of residents across a large geographic area, just like this one.

[4] This requirement is alternatively referred to in the opinion and in the caselaw as special injury, special harm, and harm over and above that suffered by the community.

of the landfill must have suffered a special harm, and that this necessarily resulted in a number of impacted persons so large ("thousands") that it could not constitute a special injury. A11-12.

The district court largely based its opinion in this regard upon its interpretation of *In re One Meridian Plaza Fire Litig.*, 820 F.Supp. 1460 (E.D. PA 1993), *rev'd on other grounds sub nom. Federal Ins. Co. v. Richard I. Rubin & Co., Inc.*, 12 F.3d 1270(3rd Cir. 1993), *cert. denied sub nom. Ejay Travel, Inc. v. Algemeen Burgerlijk Pensioenfonds*, 511 U.S. 1107 (1994). *One Meridian Plaza* is a roughly 26-year-old district court opinion which grappled with the outer limits of liability stemming from a fire in a commercial skyscraper, and it reads like a law school hypothetical fact pattern. The plaintiffs included people who were employed by tenants of the building and left behind personal effects which were destroyed, neighbors who were temporarily blocked from accessing their places of business, and salespeople who asserted that they were deprived of potential business by being unable to sell to tenants of the building because of the fire. There were numerous individual plaintiffs in addition to five putative classes and seventeen defendants. Among the claims alleged were negligence, negligence per se, public nuisance, and private nuisance.

The *One Meridian Plaza* Court asserted that "Pennsylvania courts have never explicitly considered the issue" of what constitutes special or peculiar harm. *In re One Meridian Plaza Fire Litig.*, 820 F. Supp. 1460, 1481 (E.D. Pa. 1993). It turned

to Section 821C of the Restatement, including the comments thereto. That section requires that:

> [i]n order to recover for damages in an individual action for public nuisance, one must have suffered a harm of kind different from that suffered by other members of the public exercising the right common to the general public that was the subject of interference.

Id. It then considered the "two underlying bases for [the plaintiffs'] assertion that they have suffered special harm: denial of access to land and pecuniary loss[,]" each of which was addressed by an official comment to Restatement § 821C. Considering only those categories of harm, the Court observed that "I believe that the above cited cases and the Restatement are all in agreement: where there are a large number of plaintiffs, the harm those plaintiffs suffered is not special." *One Meridian Plaza*, 820 F.Supp. at 1481. "As a matter of law I find that the only parties who may have suffered peculiar harm as a result of the closure of the streets due to the fire were those businesses who can show with reasonable certainty that they lost profits due to the closure of the streets and who suffered a substantial lack of access." *Id.*

Like other courts in Pennsylvania, *One Meridian Plaza* recognizes that the Restatement is authoritative on public and private nuisance under Pennsylvania law. *See Id; Diess v. Pa. DOT*, 935 A.2d 895, 904 (Pa. Commw. Ct. 2007); *Umphred v. VP Auto Sales & Salvage, Inc.*, No. 6062 OF 2014, 2014 Pa. Dist. & Cnty. Dec. LEXIS 332, at *24 (C.P. Oct. 27, 2014). What the *One Meridian Plaza* court did not

recite from the Restatement is comment *e* to Section 821C, which provides without qualification that

> when the nuisance, in addition to interfering with the public right, also interferes with the use and enjoyment of the plaintiff's land, it is a private nuisance as well as a public one. In this case the harm suffered by the plaintiff is of a different kind and he can maintain an action not only on the basis of the private nuisance itself, but also, if he chooses to do so, on the basis of the particular harm from the public nuisance.

Restat 2d of Torts, § 821C, comment *e* (2nd 1979).

The district court seized upon the *One Meridian Plaza* court's assertion that "where there are a large number of plaintiffs, the harm those plaintiffs suffered is not special." A10. But this ignores the real test that applies under the Restatement and Pennsylvania law, including *One Meridian Plaza*. Property damage caused by a nuisance, including interference with use and enjoyment of land, is inherently sufficient to support causes of action for both public nuisance (as a special injury) or private nuisance. Restat 2d of Torts, § 821C, comment *e* (2nd 1979). The number of persons impacted is not a threshold issue. This is demonstrated by the fact that in the approximately 26 years since the case was decided, no Pennsylvania court appears to have ever imposed a numerical limitation on the number of persons who could be impacted by a special injury – until now. Nor was such a limitation imposed prior to the decision. Even in *One Meridian Plaza*, the court did not dismiss the claims of any plaintiffs who could "show with reasonable certainty" that they "lost profits" and "suffered a substantial lack of access[,]" independent of its general

reference to numerical limitations. The court recognized that the special injury requirement is, at bottom, about the nature and extent of the harm.

As one court in this circuit noted, the Supreme Court of Pennsylvania has held that "a private action for a public nuisance can be maintained only by one suffering a particular loss or damage beyond that suffered by all others affected by the nuisance" for more than 200 years. *Kuhns v. City of Allentown*, 636 F. Supp. 2d 418, 436 (E.D. Pa. 2009) (citing *Edmunds v. Duff*, 280 Pa. 355 (1924); *Hughes v. Heiser*, 1 Binn. 463, 468 (Pa. 1808) (additional citations omitted). But outside of the district court in this case, and arguably the *One Meridian Plaza*, no court appears to have ever imposed an upper limit on the number of persons such a "particular loss or damage" may impact. *See Id.* This includes numerous instances wherein "[t]he Third Circuit, following Pennsylvania decisions and the Restatement of Torts, has repeatedly reached the same result: 'In order to recover damages in a private action for public nuisance, a plaintiff must have suffered a harm of greater magnitude and of a different kind than that which the general public suffered.'" *Id*. (citing *Allegheny General Hospital v. Phillip Morris Inc.*, 228 F.3d 429, 446 (3d Cir. 2000); *Peco v. Hercules Inc.*, 762 F.2d 303, 315-16 (3d Cir. 1985)) (additional citations omitted).

Countless cases have recited the elements of a private cause of action for public nuisance, making no mention of any quantitative or qualitative numerical limitation on the number of impacted persons. And activities that inherently affect

many people routinely give rise to private rights of action for public nuisance. In fact, as the *One Meridian Plaza* Court observed and the district court quoted, "[p]ublic nuisances, by definition, affect many people." A9 (quoting *One Meridian Plaza*, 820 F. Supp. at 1481). None of those cases applied any ceiling to the number of persons who might be impacted by the special harm.

The *One Meridian Plaza* Court's observation is neither applicable here nor essential to that case's holding. The only way to reconcile it with Pennsylvania law is to view it as an effort to explain the limits on liability along the lines of the economic loss doctrine, but through a different avenue. In fact, it has been explicitly criticized for having done so. *Duquesne Light Co. v. Pa. Am. Water Co.*, 2004 PA Super 160, ¶ 18, 850 A.2d 701, 706; *Ricchiuti v. Home Depot Inc.*, 412 F. Supp. 2d 456, 459 n.2 (E.D. Pa. 2005) ("In *Duquesne Light*, the Pennsylvania Superior Court rejected the reasoning of *In re One Meridian Plaza Fire Litigation*, 820 F. Supp. 1460 (E.D. Pa. 1993), in which the district court found that economic losses are recoverable under a public nuisance claim. The superior court argued that the long-standing Pennsylvania public policy to bar economic damages for tortious conduct contradicts the reasoning of the district court that the requirement for a unique or peculiar harm ''serves the same purpose as the economic loss doctrine: to limit liability arising from an event.'"). This case is about a different sort of injury, property damage, which under the Restatement and interpreting caselaw is

independently sufficient to support a private right of action. *See, e.g., Umphred*, 2014 Pa. Dist & Cnty. Dec. LEXIS 332, at *24. But rather than following the clear path established by hundreds of years of precedent, the district court seized on *One Meridian Plaza*'s observation and extended it even further. In so doing, it became the first court applying Pennsylvania law to hold that there is an upper limit on the number of persons who may be impacted by a special injury, though it did not say what that limit might be.

Most other states also follow the Restatement view in requiring a special injury. Caselaw makes clear that the overwhelming view is that there is no numerical limitation on the number of impacted persons, and that property damage alone is sufficient to state such a claim.

> That more than one, or in fact a considerable number closer to it, had the use and enjoyment of their property curtailed and restricted in the manner described does not mean that each of them have not received injury which differed in kind and not merely in degree from the community generally.

Karpisek v. Cather & Sons Constr., Inc., 117 N.W.2d 322, 326 (Neb. 1962).

> The number of the persons who are specially injured by a nuisance does not affect the right of action for such injury or make their injury identical with that of the public at large, but any of such persons may maintain an action for the nuisance; and the fact that several persons join in a suit to abate a public nuisance does not show that each of them may not have sustained such special injury as entitles him to relief.

Id. at 327 (citing 66 C. J. S., Nuisances, § 79, p. 835). "Pleading a diminution in value of one's home and property qualifies as special damages for purposes of

establishing standing in a public nuisance suit." *Cangemi v. United States*, 939 F. Supp. 2d 188, 206 (E.D.N.Y 2013) (quoting *Black v. George Weston Bakeries, Inc*., No. 07–CV–0853, 2008 WL 4911791, at *7 (W.D.N.Y. Nov. 13, 2008). "[T]he public nuisance as to the person who is specially injured thereby in the enjoyment or value of his lands becomes a private nuisance also." *Baker v. Saint-Gobain Performance Plastics Corp.*, 232 F. Supp. 3d 233, 248 (N.D.N.Y. 2017)(quoting *Kavanagh v. Barber*, 131 N.Y. 211, 30 N.E. 235, 235 (N.Y. 1892)). "When the nuisance, in addition to interfering with the public right, also interferes with the use and enjoyment of the plaintiff's land, it is a private nuisance as well as a public one. In this case the harm suffered by the plaintiff is of a different kind and he can maintain an action not only on the basis of the private nuisance itself, but also, if he chooses to do so, on the basis of the particular harm from the public nuisance." *Willmschen v. Trinity Lakes Improvement Ass'n*, 362 Ill. App. 3d 546, 554, 298 Ill. Dec. 840, 847-48, 840 N.E.2d 1275, 1282-83 (2005) (quoting Restatement (Second) of Torts § 821C, Comment *e*)*; see also Frady v. Portland Gen. Elec. Co.*, 55 Or. App. 344, 349, 637 P.2d 1345, 1349 (1981) (same).

Another landfill owner recently raised the same "special injury" argument as Defendant in an Ohio federal court, where it was flatly rejected:

> Beck also alleges an injury distinct from that suffered by the public at large. The general public includes anyone who must suffer the consequences of being in the presence of the alleged odors—people

> who live in the area like Beck, but also people who work in the area or travel through the area. Beck's alleged injury as a property owner is distinct from the alleged injury suffered by the general public.

Beck v. Stony Hollow Landfill, Inc, No. 3:16-cv-455, 2017 U.S. Dist. LEXIS 65874, at *9 (S.D. Ohio May 1, 2017).

Again, the district court erroneously concluded that because it found the nuisance to be public, it must not be private. It bears repeating that a nuisance can be both public and private, and it should be noted that a private right of action for public nuisance is often conflated with a private nuisance in the caselaw. This further undermines the notion that there is an upper limit on the number of persons who can be impacted by a special injury or a private nuisance. For example, "[i]f a nuisance interferes with the public right and with the use and enjoyment of the plaintiffs land, it is also a private nuisance. 'In this case the harm suffered by the plaintiff is of a different kind and he can maintain an action not only on the basis of the private nuisance itself, but also, if he chooses to do so, on the basis of the particular harm from the public nuisance." *Umphred*, 2014 Pa. Dist & Cnty. Dec. LEXIS 332, at *23-24 (C.P. Oct. 27, 2014) (citing Restatement § 821C, Comment d). What this means is that (1) a plaintiff can state claims for both public and private nuisance; and (2) where there is interference with a public right, interference with the use and enjoyment of the plaintiff's land is sufficient to create a private right of action for public nuisance.

In *Marques v. Bunch*, the defendant's sludge dumping activities resulted in an odor that both interfered with the public and the use and enjoyment of landowners. 18 Pa. D & C.3d 371, 383-84 (C.P. 1980). The Court held that "Bunch's sludge dumping has resulted in a foul and obnoxious odor that constitutes a private nuisance to surrounding landowners, as well as constituting a private nuisance." *Id.*

Defendant also asserted below that Plaintiffs' public nuisance claims must fail because they "have not alleged a violation of the right of the general public." As an initial matter, the actual legal standard is not whether a right of the general public is violated but whether the nuisance "affects the community at large." *Karpiak v.* Russo, 676 A.2d 270, 274-75 (1996)[5]. But as discussed above, the nuisance does affect community at large, which includes more than just the putative class. For one, the putative class does not include occupants of homes in the Class Area who are neither owner-occupants nor renters. It also does not include those who have reason to travel in and through the area, to shop, work, visit friends or family, or for any other purpose. Since the odors are dispersed throughout the area, these other

[5] It cannot be seriously argued that the Defendant has not interfered with a right common to the general public. One need look no further than to Pennsylvania's constitution to determine that in the Commonwealth, "[t]he people have a right to clean air." Pa. Const. Art. I, § 27 (*see also Fisher v. Am. Reduction Co.*, 189 Pa. 419, 429, 42 A. 36, 39 (1899) ("The plaintiffs had a right to pure untainted, uncontaminated, inoffensive air, at least as pure as it may be consistent with the compact nature of the community in which they lived.")).

elements of the "community at large" are thereby affected, as noted by the court in *Beck*. Those suffering a special injury are only one subset of the community (property owners and renters); the community at large is generally affected by the nuisance.

Further, as the district court correctly observed, Article VI of the Solid Waste Management Act (1980 Act 97)[6] provides that:

> Any violation of any provision of this act, any rule or regulation of the department, any order of the department, or any term or condition of any permit, shall constitute a public nuisance. Any person or municipality committing such a violation shall be liable for the costs of abatement of any pollution and any public nuisance caused by such violation.

This provides an additional basis for finding the existence of a public nuisance, which combines with Plaintiffs' special injury to substantiate their cause of action.

IV. The District Court Erred in Finding that the Complaint Fails to State a Claim for Negligence

A. Defendant owes Plaintiffs a legal duty.

In dismissing Plaintiffs' negligence claim, the district court found that Plaintiffs did "not submit any legal argument to show that Defendant had a duty to

[6] "When the legislature validly pronounces a particular state of affairs to be a nuisance prejudicial to the public health, it is as much so as if the proscribed situation had been considered a nuisance… at common law, and may be prohibited by the same remedies." *Commonwealth ex rel. Shumaker v. N.Y. & Pa. Co.*, 367 Pa. 40, 49, 79 A.2d 439, 444 (1951) (quoting *Commonwealth v. Dietz,* 285 Pa. 511, 519, 132 A. 572 (1926)).

Plaintiffs other than that which is allegedly imposed by statute or regulation." A15. The court found that the Pennsylvania Solid Waste Management act could not be the basis for a duty, and therefore that Plaintiffs had failed to state a claim for negligence. (*Id.*) It also cast Plaintiffs' claims, to the extent that Defendant's duty might be predicated on statute, as negligence per se claims. (*Id.*)

Plaintiffs did indeed advance legal argument to show that Defendant owed Plaintiffs duties other than those imposed by statute or regulation. Plaintiffs' counsel argued that "this is…the run of the mill negligence duty that…one has when one undertakes an affirmative act[.]" (A74:4-6). Counsel noted that this standard was recently reaffirmed by the Supreme Court of Pennsylvania in *Dittman v. UPMC*, 196 A.3d 1036, 1046-47 (Pa. 2018); (A74:6-9).

> This Court has observed that '[i]n scenarios involving an actor's affirmative conduct, he is generally 'under a duty to others to exercise the care of a reasonable man to protect them against an unreasonable risk of harm to them arising out of the act.' The *Seebold* Court explained that '[t]his duty appropriately undergirds the vast expanse of tort claims in which a defendant's affirmative, risk-causing conduct is in issue.' Indeed, this Court noted that 'many judicial opinions on the subject of negligence do not specifically address the duty element,' not because they 'fail to see duty as an element of negligence, but because they presume the existence of a duty where the defendant's conduct created a risk.'

Dittman, 196 A.3d at 1046-47 (citations omitted). In other words, Defendant, affirmatively engaging in landfilling conduct, is under a duty to Plaintiffs to exercise the care of a reasonable man to protect them against an unreasonable risk of harm

arising out of the act. Defendant's "affirmative, risk-causing conduct is in issue." *See Id.* It is axiomatic that there is generally a duty where it is the defendant's conduct that created a risk.[7] "Common-law duties stated in general terms are framed in such fashion for the very reason that they have broad-scale application." *Id.* (quoting *Alderwoods (Pennsylvania), Inc. v. Duquesne Light Co.*, 106 A.3d 27, 40 (Pa. 2014)). "Like any other cause of action at common law, negligence evolves through either directly applicable decisional law or by analogy, meaning that a defendant is not categorically exempt from liability simply because appellate decisional law has not specifically addressed a theory of liability in a particular context." *Id.* (quoting *Scampone v. Highland Park Care Center, LLC*, 618 Pa. 363, 57 A.3d 582, 599 (Pa. 2012)).

The same or similar duty has been found in the context of power plants, brass smelters, natural gas extraction, road construction, and more. See *Noerr v. Lewistown Smelting & Ref., Inc.*, 60 Pa. D. & C.2d 406, 453 (C.P. 1973) (negligence included failing to install and properly operate adequate pollution controls); *Kamuck v. Shell Energy Holdings GP, LLC*, No. 4:11-CV-1425, 2012 U.S. Dist. LEXIS

[7] "A basic principle of negligence law is that ordinarily everyone has a duty to refrain from affirmative acts that unreasonably expose others to a risk of harm." *Widdoss v. Huffman*, 62 Pa. D. & C.4th 251, 255 (C.P. 2003). "[W]here an injury is sustained to real property as a result of the negligence of another, the property owner is entitled to damages…" *Clark v. Fritz*, 151 A.3d 1139 n.22 (Pa. Super. Ct. 2016).

59113, at *32-33 (M.D. Pa. Mar. 19, 2012) ("[the] complaint outlines a duty of care owed by the Defendants arising out of their drilling and natural gas extraction activities); *Hartle v. FirstEnergy Generation Corp.*, Civil Action No. 08-1019, 2014 U.S. Dist. LEXIS 36509, at *2 (W.D. Pa. Mar. 20, 2014); *Butts v. Sw. Energy Prod. Co.*, No. 3:12-CV-1330, 2014 U.S. Dist. LEXIS 111637, at *22 (M.D. Pa. Aug. 12, 2014). Pennsylvania courts have long held that when it comes to the emission of offensive gasses from industrial operations, whether liability will attach depends on whether (as here) there is negligence, recklessness, or ultrahazardous conduct. *Waschak v. Moffat*, 379 Pa. 441, 455, 109 A.2d 310, 317-18 (1954).

There is no novel duty at issue here. Plaintiffs' Complaint alleges that a properly run landfill will capture and destroy odorous landfill gas, which Defendant has failed to do. The Defendant's duty is not to prevent all odors from reaching Plaintiffs' property, but to operate its landfill with due care to prevent harm to its neighbors. "Of course, it is not to be questioned that the defendant had the right to do its work…but all this could be done contemporaneously with the use of due care in protecting the property of the plaintiffs and, to the extent that the defendant failed in doing this, it is liable in damages." *Dussell v. Kaufman Constr. Co.*, 398 Pa. 369, 377, 157 A.2d 740, 744 (1960).

Gilbert v. Synagro Corp. does not support the district court's ruling. There, the court noted that "at no point in the Complaint, Plaintiffs' Response In Opposition,

or the support brief do Plaintiffs clarify what legal duty Defendants, as transporters, haulers, spreaders, marketers or users, owed to Plaintiffs to protect Plaintiffs against the alleged unreasonable risks and injuries." *Gilbert v. Synagro Cent., LLC*, No. 2008-SU-3249-01, 2012 Pa. Dist. & Cnty. Dec. LEXIS 323, at *37 (C.P. Dec. 28, 2012). *Gilbert* involved only the question of whether the plaintiffs in that case had put forth any duty that a "transporter, hauler, spreader, marketer, or user" of organic fertilizer, in general, owes his neighbors with respect to the spread of odors, particulates, and flies. *Id*. The case does not stand for the proposition that the spread of emissions of odor or particulate can never be violative of a legal duty. The court merely observed that the "Plaintiffs failed to allege a legally recognized duty and this Court cannot determine any duty or obligation recognized by the law requiring Defendants to conform to a certain standard of conduct for the protection of Plaintiffs against unreasonable risks." In contrast, Defendant's duties to Plaintiffs arise from specific affirmative acts, as specified above. Defendant is a major industrial operation whose affirmative acts create its emissions as well as its duties to its neighbors. Pennsylvania law has always imposed a duty of care in such situations, and *Gilbert* does not change that.

"Our case law affords great protection to property owners who suffer damage at the hands of a tortfeasor." *Welsh v. City of Phila.*, 16 Phila. 130, 143 (1987). Pennsylvania courts have long recognized the duty of care owed by industrial

operators, like Defendant, to nearby residents. It is true that this duty has not often been analyzed in judicial opinions, "because," as noted in *Dittman*, "[courts] presume the existence of a duty where the defendant's conduct created a risk." *Dittman,* 196 A.3d at 1047 (quoting *Seebold v. Prison Health Services, Inc.*, 618 Pa. 632, 57 A.3d 1241 n.21 (Pa. 2012)). Notably however, the court in *Leety* recently rejected the same argument Defendant makes here, finding that the plaintiff had adequately alleged the violation of a duty to adhere to landfill industry standards of care. ADD7.

Plaintiffs' claims are based on violations of the common law duties imposed upon all people, specifically including industrial operators, as a consequence of their own affirmative acts. However, at least one court has indicated that a comparable duty arises from the Pennsylvania Air Pollution Control Act ("APCA").[8] Another has indicated that provisions of the APCA and the SWMA provide support for the existence of duties. "[T]he reporting requirements of the APCA might not implicate any duty owed to plaintiffs. The court, however, cannot determine that no evidence of a violation of the APCA would be relevant to the standard of care applicable to a duty owed to plaintiffs…In line with the court's findings with respect to the APCA,

[8]"We are persuaded that the stated purpose of APCA brings that act within the scope of Restatement (Second) of Torts § 286 and that the duties set forth in section 4008 of APCA and section 123.31(b) of the code should, therefore, govern as the standard of care." *Goldsborough v. Columbia Borough*, 48 Pa. D. & C.3d 193, 197-98 (C.P. 1988).

the jury may consider evidence of the violation of the SWMA as evidence of negligence." *Hartle*, 2014 U.S. Dist. LEXIS 36509, at *17-20.

Further, even if Pennsylvania had not recognized similar or identical common law and statutory duties for decades, there would be ample basis for imposing such a duty on Defendant. "To assist us in identifying a previously unrecognized duty, we rely upon five factors: "(1) the relationship between the parties; (2) the social utility of the actor's conduct; (3) the nature of the risk imposed and foreseeability of the harm incurred; (4) the consequences of imposing a duty upon the actor; and (5) the overall public interest in the proposed solution." *Walters v. UPMC Presbyterian Shadyside*, 187 A.3d 214, 222 (Pa. 2018) (quoting *Althaus v. Cohen*, 562 Pa. 547, 553, 756 A.2d 1166, 1169 (2000)). Plaintiffs are residents of the community in which Defendant has undertaken to operate. While waste disposal obviously has social utility, there is much less social utility in doing it negligently. The nature of the risk is the depravation of public property rights, and it is plainly foreseeable in that the consequences of poorly managed landfill emissions are well known. The consequences of imposing this duty are to hold landfill operators to the appropriate industry standard and improve conditions for those residing near landfills. There is very clearly an overwhelming public interest in imposing such a duty, consistent with Pennsylvania public policy:

> [i]mplicit…is the right to protect one's property from harm, whether it be in the form of decreased valuation, insufficient water supply, excessive dust, noise, pollution, or some other cause. . . When the property at issue is someone's home, the owner's right to protect the viability of his property is even more personal. The purchase of a home is often considered to be one of, if not the, most significant investments an individual can make during his lifetime. **To deny an individual the right to protect his interest in the property he calls home would violate public policy.**

Markwest Liberty Midstream & Res., LLC v. Cecil Twp. Zoning Hearing Bd., 183 A.3d 516 (Pa. Commw. Ct. 2018).

Plaintiffs' claims do not raise a novel issue of duty. Defendant receives and buries waste at its landfill, and undertakes landfill management activities that are supposed to prevent odorous emissions from escaping. Affirmative acts like these have always been held to create duties. The district court erred in finding that Plaintiffs had not alleged any recognized duty, and that finding should be reversed.

B. Plaintiffs' Negligence Claims Rely on Facts Beyond Those at Issue in Their Nuisance Claims.

The district court did not reach Defendant's argument that Plaintiffs' negligence claims were impermissibly duplicative of their nuisance claims. In addition to the aforementioned legal duties, Plaintiffs' negligence claims rely on numerous allegations that are not necessary to their nuisance claims, rendering them legally distinct. In order to establish that Defendant created a nuisance, it is not necessary that Plaintiffs prove that Defendant breached any particular duty or acted

unlawfully. The nuisance claims focus on the harm to Plaintiff, the reasonableness of that harm, and whether Defendant caused it. Further, the nuisance claim stands on its own given the Solid Waste Management Act's establishment of a per se public nuisance for violations of that act. (1980 Act 97, Article VI).

Relying on *Horne v. Haladay*, 728 A.2d 954 (Pa. Super. 1999), Defendant contended below that Plaintiffs' negligence claims must be dismissed as a matter of law because it is purportedly duplicative of their private nuisance claims. *Horne* is inapposite. Plaintiffs' negligence claims are not limited to the facts that establish their nuisance claims. The negligence claims include allegations of Defendant's acts and conduct that are beyond what is necessary to prevail on Plaintiffs' private nuisance claims. (See, e.g., A29-32 ¶¶ 11; 18; 20; 21). Further, in *Horne*, the threshold issue was that "appellees' operation of their poultry farm is an infringement upon the use of appellant's property which "is not wrongful in itself, but only in the consequences which may flow from it and, thus, is properly a nuisance claim." *Horne*, 728 A.2d at 960. Here, Plaintiffs allege that Defendant's facility has indeed been operated in a wrongful, illegal manner in violation of its permits and applicable regulations, as demonstrated by its numerous citations for the very conduct here at issue. Plaintiffs' negligence claims therefore fall outside the scope of *Horne*'s holding.

CONCLUSION

The district court improperly required Plaintiffs to satisfy elements of private and public nuisance claims that do not actually exist. This outcome has the perverse effect of immunizing the creator of a nuisance from property damage liability so long as it ensures that the nuisance is sufficiently large. It further failed to recognize well-established duties that Defendant owed to Plaintiffs, and therefore improperly dismissed Plaintiffs' negligence claims. The district court's dismissal of each of Plaintiffs' claims should be reversed, and the case remanded to the district court.

Respectfully submitted,

Dated: June 23, 2019

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CERTIFICATE OF BAR MEMBERSHIP

Pursuant to 3d Cir. L.A.R. 28.3(d), I certify that I am a member in good standing of the bar of this Court.

Dated: June 24, 2019

/s/ Nicholas A. Coulson
Nicholas A. Coulson

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

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Dated: June 24, 2019

/s/ Nicholas A. Coulson
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I, Nicholas A. Coulson, hereby certify that:

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Detroit, Michigan

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CERTIFICATE OF SERVICE & CM/ECF FILING

I hereby certify that I electronically filed the foregoing Brief with the Clerk of the Court of the United States Court of Appeals for the Third Circuit via the Court's Electronic Filing System CM/ECF and served electronically upon all counsel of record through that system.

Dated: June 24, 2019

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