

<p>COURT OF APPEALS, STATE OF COLORADO  101 West Colfax Avenue, Suite 800  Denver, CO 80202  Telephone: 303-837-3785</p>	<p style="text-align: right;">DATE FILED: July 9, 2015 9:51 PM  FILING ID: CCECB81735469  CASE NUMBER: 2013CV31563</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Trial Court:  COUNTY OF BOULDER, COLORADO  District Court, Boulder County, State of Colorado  1777 Sixth Street, Boulder, Colorado 80302  The Honorable Judith L. LaBuda  Case No. 2013 CV 31563</p>	
<p><b>Appellants:</b> CITIZENS FOR QUIET SKIES,  KIMBERLY GIBBS, TIMOTHY LIM, SUZANNE  WEBEL, JOHN BEHRENS, CARLA BEHRENS, and  RICHARD DAUER</p> <p><b>v.</b></p> <p><b>Appellee:</b> MILE-HI SKYDIVING CENTER, INC.</p>	<p style="text-align: center;">Court of Appeals  Case Number:</p>
<p><b>Attorneys for Appellants:</b>  Matthew B. Osofsky, #34075  The Law Office of Matthew B. Osofsky, Esq.  3100 Arapahoe, Suite #202  Boulder, Colorado 80303  phone: 303-800-5159  email: <a href="mailto:mosofsky@live.com">mosofsky@live.com</a></p> <p>Randall M. Weiner, #23871  Law Offices of Randall M. Weiner, P.C.  3100 Arapahoe Avenue, Suite 202  Boulder, Colorado 80303  Phone Number: 303-440-3321  Fax Number: 866-816-5197  <a href="mailto:randall@randallweiner.com">randall@randallweiner.com</a></p>	
<p><b>NOTICE OF APPEAL</b></p>	

COMES NOW, Plaintiffs-Appellants, Citizens For Quiet Skies, Kimberly Gibbs, Timothy Lim, Suzanne Webel, John Behrens, Carla Behrens, and Richard Dauer, by and through their attorney, Matthew B. Osofsky, Esq., as for their Notice of Appeal, state as follows:

## **I. NATURE OF THE CASE**

### **A. General Statement of the Nature of the Controversy**

The case below was a civil action concerning noise from the operations of the Defendant. The Defendant leases aircraft and conducts parachuting operations for the general public out of the Longmont Municipal Airport. The Plaintiffs are individuals who own property within the general vicinity of the airport and a citizens group representing the interest of property owners within the general vicinity of the airport. Plaintiffs brought claims for negligence, negligence per se, nuisance, respondeat superior, trespass, and unjust enrichment. Based on these theories, the individual Plaintiffs sought monetary damages for the loss in value of their properties as a result of the noise created by the aircraft operated by the Defendant. Also, the individual Plaintiffs and Citizens for Quiet Skies sought injunctive relief to limit the operations of the Defendant in the future.

### **B. The Order Being Appealed and Basis for Jurisdiction**

Plaintiffs appeal the following Orders:

1. Order Re: Defendant's Motion For Summary Judgment Regarding Claims By Plaintiff Citizens For Quiet Skies, Inc., entered November 24, 2014.
2. Order Re: Defendant's Motion For Summary Judgment Regarding Preemption Of State And Local Laws, entered December 31, 2014.

3. Order Re: Defendant's Motion For Summary Judgment Regarding Plaintiffs' Remaining Claims, entered January 5, 2015.

4. Order: Defendant's Motion In Limine Regarding Evidence Of The Plaintiff's Damages, entered March 24, 2015.

5. Order Re: Plaintiffs' Motion In Limine To Preclude Introduction Of The "Terracon Report," entered March 30, 2015.

6. Order Re: Plaintiffs' Motion In Limine To Preclude Defense Witness From Offering Expert Opinions Which Were Not Disclosed, entered March 31, 2015.

7. Order: Plaintiffs' Motion In Limine To Preclude Evidence In Violation of CRE 402 and CRE 403, entered March 31, 2015.

8. Order: Defendant's Motion To Strike Plaintiffs' Late Endorsement Of Trial Witness Theresa Foster, entered March 31, 2015.

9. Order Re: Bench Trial, entered May 21, 2015.

10. Order Re: Defendant's Bill of Costs, entered June 24, 2015

A Judgement entered on May 21, 2015 was a final judgment disposing of all issues. This Court has jurisdiction over this appeal under C.A.R. 1(a)(1) and (3).

**C. The Order Resolved All Issues Then Pending Before the Trial Court**

The Judgment entered on May 21, 2015 resolved all issues pending between the parties.

**D. Finality of Order**

The Judgment entered on May 21, 2015 was a final order.

**E. Date of Entry**

May 21, 2015.

**F. No Extensions Were Granted to File Motions for Post Trial Relief**

There were no extensions sought or granted to file motions regarding post-judgment relief.

**G. Post-Trial Filings**

1. Bill of Costs

- a. Defendant filed a Bill of Costs on June 2, 2015.
- b. Plaintiffs filed an Objection to Defendant's Bill of Costs on June 16, 2015.
- c. Defendant filed and a Supplement to Bill of Costs on June 18, 2015.
- d. Defendant filed a Reply in Support of Bill of Costs on June 19, 2015.
- e. Plaintiffs filed an Objection to the Supplement to Bill of Costs on June 19, 2015.
- f. Defendant filed a Reply in Support of Defendant's Supplement to Bill of Costs on June 22, 2015.

g. The Trial Court entered a final Order on Costs on June 24, 2015.

2. Motion for Attorney Fees

- a. Defendant's Motion for Attorney Fees was filed on June 11, 2015.
- b. Plaintiffs Response to Motion for Attorney Fees was filed on June 25, 2015.
- c. Defendant's Reply in Support of Motion for Attorney Fees was filed on July 1, 2015.
- d. The Trial Court has not ruled on this matter.

**H. Extension(s) to File Notice of Appeal**

No extensions were sought or granted to file a Notice of Appeal.

**II. ADVISORY LISTING OF ISSUES  
TO BE RAISED ON APPEAL**

A. DID THE TRIAL COURT ERR IN GRANTING A MOTION TO STRIKE PLAINTIFFS' WITNESS TERESA FOSTER?

B. DID THE TRIAL COURT ERR BY FAILING TO PRECLUDE INTRODUCTION OF AN EXPERT REPORT AUTHORED BY INDIVIDUALS WHO WERE NOT DISCLOSED AS POTENTIAL EXPERTS?

C. DID THE TRIAL COURT ERR BY ADMITTING EXPERT TESTIMONY FROM DEFENSE WITNESSES WHO WERE NOT DISCLOSED, ENDORSED OR ADMITTED AS EXPERTS?

D. DID THE TRIAL COURT ERR IN ENTERING SUMMARY JUDGMENT FOR THE DEFENDANT ON PLAINTIFFS' CLAIMS FOR TRESPASS?

E. DID THE TRIAL COURT ERR IN ENTERING SUMMARY JUDGMENT FOR THE DEFENDANT ON PLAINTIFFS' CLAIM FOR UNJUST ENRICHMENT?

F. DID THE TRIAL COURT ERR IN ITS DETERMINATION THAT FEDERAL LAW COMPLETELY PREEMPTS STATE AND LOCAL LAWS OR ACTS RESPECTING AIRCRAFT NOISE OR OPERATIONS?

G. DID THE TRIAL COURT ERR IN ITS CONCLUSION THAT FEDERAL REGULATIONS REGARDING AIRCRAFT NOISE ARE THE STANDARD BY WHICH PLAINTIFFS' CLAIMS FOR NEGLIGENCE AND NUISANCE MUST BE ANALYZED WHEN SUCH CLAIMS ARE BASED IN STATE LAW?

H. DID THE TRIAL COURT ERR IN ITS DETERMINATION THAT COMPLIANCE WITH FEDERAL REGULATIONS CAN BE PLED AS A DEFENSE TO TORTS WHICH ARISE UNDER STATE LAW?

I. DID THE TRIAL COURT ERR IN ITS DETERMINATION THAT THE LONGMONT MUNICIPAL CODE PROVISIONS REGARDING NOISE LIMITS IN RESIDENTIAL (AND OTHER) AREAS WERE NOT APPLICABLE TO AIRCRAFT NOISE?

J. DID THE TRIAL COURT ERR IN PRECLUDING TESTIMONY FROM WITNESSES FOR THE PLAINTIFFS' REGARDING THEIR EXPERIENCE SELLING HOMES IN THE LOCAL MARKET?

K. DID THE TRIAL COURT ERR IN ITS FINDING THAT THE DEFENDANT WAS THE PREVAILING PARTY FOR THE PURPOSE OF AWARDING LITIGATION COSTS?

L. DID THE TRIAL COURT ERR IN THE AMOUNT AWARDED TO THE DEFENDANT FOR REASONABLE COSTS INCURRED IN THE LITIGATION?

M. DID THE TRIAL COURT ERR IN ITS FINDING THAT PLAINTIFFS WERE MORE SENSITIVE TO NOISE THAN THE AVERAGE COMMUNITY MEMBER?

N. DID THE TRIAL COURT ERR BY USING THE SENSITIVITIES OF AN AVERAGE PERSON, RATHER THAN A NORMAL PERSON, IN THE

COMMUNITY AS THE STANDARD FOR EVALUATING PLAINTIFFS' CLAIMS OF NUISANCE?

O. DID THE TRIAL COURT ERR IN ITS FINDING THAT THE DEFENDANT'S OPERATIONS MAKE UP SIX PERCENT OF ALL FLIGHT OPERATIONS AT THE AIRPORT ANUALLY?

P. DID THE TRIAL COURT ERR IN ITS FINDING THAT THE NOISE FROM DEFENDANT'S OPERATIONS IS NOT OFFENSIVE, ANNOYING OR INCONVENIENT TO A DEGREE SIGNIFICANT ENOUGH THAT A NORMAL PERSON IN THE COMMUNITY WOULD CONSIDER IT UNREASONABLE?

Q. DID THE TRIAL COURT ERR IN THE MANNER IN WHICH IT APPLIED THE STATE LAW STANDARDS FOR NUISANCE?

R. DID THE TRIAL COURT ERR IN ITS FINDING THAT ALL PLANES OPERATED BY THE DEFENDANT COMPLY WITH FAA NOISE LIMITATIONS?

S. DID THE TRIAL COURT ERR BY FAILING TO EXCLUDE A PORTION OF PRESERVED TESTIMONY OF YANCY O'BARR?

T. DID THE TRIAL COURT ERR IN ACCEPTING PREJUDICIAL EVIDENCE FROM A SITE VISIT?

U. DID THE TRIAL COURT ERR IN ADMITTING OPINIONS OF DEFENDANT'S NOISE EXPERT WHICH WERE OUTSIDE HIS AREA OF EXPERTISE?

V. DID THE TRIAL COURT ERR IN IMPOSING LIMITATION OF THE TESTIMONY OF PLAINTIFFS' AVIATION EXPERT?

W. DID THE TRIAL COURT ERR IN ITS FINDING THAT THE DEFENDANTS' LOCAL OPERATIONS ARE PART OF INTERSTATE COMMERCE?

X. DID THE TRIAL COURT ERR IN ITS CONCLUSION THAT LOCAL GOVERNMENT OR AN AIRPORT OPERATOR CANNOT LIMIT THE OPERATIONS OF AIRCRAFT BASED UPON THE SPECIFIC NOISE GENERATED BY A PARTICULAR TYPE OF AIRCRAFT OR OPERATION?

Y. DID THE TRIAL COURT ERR IN ITS FINDING THAT PLAINTIFFS' COMPUTATION OF DAMAGES WAS SPECULATIVE?

### **III. TRANSCRIPT**

The following transcripts are necessary for this appeal:

1. A transcript of the trial held on April 13-17, 2015.
2. A transcript of closing arguments held on May 6, 2015.

### **IV. NO PRE-ARGUMENT CONFERENCE IS REQUESTED**

Plaintiffs-Appellants do not request a pre-argument conference.

### **V. COUNSEL INFORMATION**

Counsel for Plaintiffs-Appellants:

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## **VI. APPENDIX INFORMATION**

Plaintiffs-Appellants attach the following Orders upon which review is sought:

- Appendix A. Order Re: Defendant's Motion For Summary Judgment Regarding Claims By Plaintiff Citizens For Quiet Skies, Inc., entered November 24, 2014.
- Appendix B. Order Re: Defendant's Motion For Summary Judgment Regarding Preemption Of State And Local Laws, entered December 31, 2014.
- Appendix C. Order Re: Defendant's Motion For Summary Judgment Regarding Plaintiffs' Remaining Claims, entered January 5, 2015.
- Appendix D. Order: Defendant's Motion In Limine Regarding Evidence Of The Plaintiff's Damages, entered March 24, 2015.
- Appendix E. Order Re: Plaintiffs' Motion In Limine To Preclude Introduction Of The "Terracon Report," entered March 30, 2015.
- Appendix F. Order Re: Plaintiffs' Motion In Limine To Preclude Defense Witness From Offering Expert Opinions Which Were Not Disclosed, entered March 31, 2015.
- Appendix G. Order: Plaintiffs' Motion In Limine To Preclude Evidence In Violation Of Cre 402 And Cre 403, entered March 31, 2015.

- Appendix H. Order: Defendant's Motion To Strike Plaintiffs' Late Endorsement Of Trial Witness Theresa Foster, entered March 31, 2015.
- Appendix I. Order Re: Bench Trial, entered May 21, 2015.
- Appendix J. Order Re: Defendant's Bill of Costs, entered June 21, 2015

RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of July, 2015.

*//s// Matthew B Osofsky*

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Matthew B. Osofsky, Esq., # 34075  
*Attorney for Plaintiffs-Appellants*

### **CERTIFICATE OF SERVICE**

I certify that on this this July 9, 2015, the foregoing Notice of Appeal, with all attachments, was sent via ICCES, as follows:

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Clerk, Appeals Division  
Boulder County District Court

*//s// Matthew B. Osofsky*

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Matthew B. Osofsky

*This document was filed electronically pursuant to C.A.R. 30. The original signed pleading is on file and available for inspection at the Boulder offices of The Law Offices of Randall M. Weiner, P.C.*