

IN THE COURT OF COMMON PLEAS  
OTTAWA COUNTY, OHIO

JOHN C. KLAENN  
CLERK OF COURTS  
OTTAWA COUNTY, OHIO  
2025 JAN 13 P 3:23

STATE OF OHIO, by and through the )  
OHIO DEPARTMENT OF )  
TRANSPORTATION )  
1980 West Broad Street )  
Columbus, OH 43223 )  
  
Plaintiff )  
  
v. )  
  
UNITED STATES GYPSUM COMPANY )  
c/o CT Corporation System )  
4400 Easton Commons Way, Suite 125 )  
Columbus, OH 43219 )  
  
Defendant )

Case No. 25CVCD14  
Judge \_\_\_\_\_

STATE OF OHIO, OHIO DEPARTMENT OF TRANSPORTATION'S  
COMPLAINT AGAINST UNITED STATES GYPSUM COMPANY

**I. INTRODUCTION**

1. This lawsuit is brought by the State of Ohio, by and through the Ohio Department of Transportation ("ODOT") to recover the nearly seventeen million dollars that ODOT spent stabilizing United States Gypsum's ("USG") abandoned mine voids below State Route 2 ("S.R. 2") in Ottawa County for the safety of motorists using this highway.

**II. JURISDICTION AND VENUE**

2. Jurisdiction and venue are proper in Ottawa County because USG's abandoned mine voids which ODOT was forced to stabilize to protect S.R. 2 are within Ottawa County, and ODOT seeks \$16,770,000 which it spent in taxpayer dollars to fill-in these voids.

**III. THE PARTIES**

3. Plaintiff is the State of Ohio, by and through the Ohio Department of Transportation

which is the statutorily created entity within Ohio responsible for the design, construction, and maintenance of state roads throughout Ohio.

4. USG is a Corporation doing business within the State of Ohio, Ottawa County.

#### **IV. STATEMENT OF FACTS**

5. USG owns, owned, and operated an underground gypsum mine below what became S.R. 2 near Gypsum, Ohio in Ottawa County.

6. USG acquired severed mineral estates and mining rights by a variety of leases, assignments, and deeds.

7. Upon information and belief, none of these instruments of record included a waiver of the underground mine operator's absolute common law duty to maintain subjacent support of the surface.

8. In 1965, by General Warranty Deed recorded in Ottawa County, USG conveyed property rights to ODOT for the construction of S.R. 2 within Ottawa County.

9. At the time of the conveyance in 1965, USG's gypsum mine was still operating.

10. In the 1965 warranty deed conveyance, USG covenanted to provide vertical and lateral support for areas of its mine below S.R. 2, independent of its separate absolute common law duty to maintain support of the surface.

11. ODOT had no knowledge or reason to know of insufficient subjacent support until it was alerted to a nearby sinkhole.

12. ODOT engaged geotechnical experts to comprehensively evaluate the stability of USG's underground mine voids.

13. ODOT's experts determined for the first time a high risk for subsidence under S.R. 2 at the locations of USG's mine voids which were dangerous to the motoring public and

recommended injecting grout into the mine voids to provide sufficient support for the surface where S.R. 2 was located.

14. ODOT spent \$16,770,000 to stabilize USG's abandoned mine voids.

## **V. USG'S BREACH OF DUTY**

15. USG owed an Ohio common law absolute duty to surface estate owners and their successors, such as ODOT, including surface easement grantees, to leave sufficient subjacent support for the surface to prevent future subsidence of the surface land.

16. USG breached this duty by failing to leave sufficient subjacent support for the surface where S.R. 2 came to be located.

17. As a direct and proximate cause of USG's breach of this duty, ODOT was forced to spend \$16,770,000 to provide sufficient subjacent support for S.R. 2.

## **VI. USG'S BREACH OF DEED COVENANTS**

18. USG covenanted to provide vertical and lateral support for areas of its mine below S.R. 2.

19. Those covenants run with the land and are governed by Ohio law.

20. USG breached its covenants by failing to leave sufficient support under S.R. 2.

21. As a direct and proximate cause of USG's breach of its covenants, ODOT was forced to spend \$16,770,000 to stabilize subjacent support for S.R. 2.

## **VII. CONCLUSION**

WHEREFORE, the State of Ohio, by and through the Ohio Department of Transportation demands damages in excess of \$25,000, as well as pre- and post-judgment interest, costs and all other relief that it is entitled to as a matter of law.

**VIII. JURY DEMAND**

The Ohio Department of Transportation hereby demands a jury trial of this matter.

Respectfully submitted,

DAVE YOST  
Attorney General of Ohio

*/s/ William C. Becker*

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