

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Cynthia Madej : Case No. 2:16-cv-658
and : JUDGE EDMUND A. SARGUS, JR.
Robert Madej : Magistrate Judge Vascura
Plaintiffs, :
vs. :
Athens County Engineer Jeff Maiden :
Defendant. :

SUUPLEMENTAL AFFIDAVIT OF CYNTHIA MADEJ

STATE OF OHIO)
) ss:
COUNTY OF ATHENS)

Now comes Cynthia Madej, and being first duly sworn on oath, deposes and states as follows based on her own personal knowledge:

1. Bob Madej and I, who both have Masters degrees in Biology from Indiana University, have known for a long time that I am highly sensitive to certain chemicals, including the chemicals contained in asphalt products. Many times, I would start having symptoms out of the blue that I did not normally have. Sometimes, the symptoms were noticed before identifying the related situation or material. Other times the source of the reaction was observed and the symptoms immediately followed (such as I got behind a bus spewing out black smoke and immediately had difficulty breathing). Through many observations, symptoms and materials association pairs were determined. As the frequency and

severity of my symptoms increased, these temporal associations were easier to identify. I would have a reaction every time I was confronted with a particular material. My reactions were also cumulative. Often, the more exposure or the more frequently I was exposed to a particular material, the more sensitive I became. That is, my reactions to that material were more severe, lasted longer, and were provoked by smaller amounts of the substances. When I avoided those items, I typically did not have those symptoms. As I became more impacted by environmental factors, Bob and I began to monitor the environment around us more carefully. This allowed us to begin to reduce my exposure to materials that caused reactions.

2. I began having reactions to asphalt products in the late 1990s. When exposed to asphalt in construction areas, I experienced symptoms that were of increased severity and duration dependent on relative exposure time. Symptoms included shortness of breath (sometimes severe), chest tightness, severe headache, throat and eye burning, palpitations, and neurological impacts such as dizziness and impairments in coordination. Symptoms increased in severity and number in areas where active asphalt application was occurring. Even relatively short exposures caused symptoms that could persist for days. Symptoms of shortness of breath, chest tightness, nausea, headaches and in some cases throat and eye burning, were most persistent. Measures taken to service our vehicle to reduce outdoor air intake decreased the severity of my symptoms minimally.
3. One day in 2014, while in the house with the windows open, I developed symptoms of chest tightness, shortness of breath, headache, nausea, and eye and throat burning. I also was less stable on my feet and weaker. Shortly thereafter, I detected a strong asphalt odor. Bob then located a small new asphalt patch on the road near the bottom of our

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**AFFIDAVIT OF CYNTHIA MADEJ IN SUPPORT OF PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

STATE OF OHIO)
) ss.
COUNTY OF ATHENS)

Now comes Cynthia Madej, and being first duly sworn on oath, deposes and states as follows based on her own personal knowledge:

1. I am a resident of Athens County, Ohio, residing at 13152 Dutch Creek Road with my husband, Robert Madej ("Bob").
2. I met Bob in our Ecology class during our sophomore years at The Ohio State University.
3. Bob and I both majored in Zoology, and we both graduated with a Bachelor of Science degree in 1987.
4. I was on a partial scholarship, so I worked multiple jobs while I went to school to

dizzy when I went through it.

57. My throat and eyes burned each time I was in the backyard and neighbors were running their mowers.

58. A little later, when Bob and I stopped at a public rest area, I noticed a very strong cleaning chemical smell as I entered the building.

59. By the time I finished using the restroom and walked out the ladies' room door, I was short of breath and collapsed onto the floor.

60. Unable to walk, Bob had to carry me to the car.

61. On future trips when we avoided those types of rest areas, I did not collapse.

62. Over a period of several years, continuing to the present, I also noticed an association between particular symptoms and exposure to asphalt.

63. When my exposures were brief (such as passing some newly filled potholes), my symptoms were both more mild and of shorter duration.

64. When exposures were more significant (such as being stuck in construction zone traffic), my symptoms were more severe and lasted for days, or weeks, and my symptoms worsened with repeated exposures.

65. I have experienced severe headaches with light and sound sensitivity, significant chest tightness, shortness of breath/difficulty breathing even with oxygen, palpitations/heart racing, burning eyes and throat, nausea, dizziness, instability, difficulty walking and pain (sometimes sharp) and in recent years have had increased duration of symptoms including headaches, throat and eye burning, and chest tightness that have continued daily for approximately 3 months following the application of asphalt.

66. With no further recommendations available from various local doctors, Bob and I

many stressors in our modern home (such as plywood) and suburban neighborhood (such as chemical lawn treatments) continued to impact my health.

80. With repeated exposures, my sensitivities to certain substances that were unavoidable caused an increase in both the intensity and duration of my symptoms.

81. Unable to modify our living situation in Gahanna sufficiently to provide the level of avoidance recommended by my doctors, Bob and I searched for a better environment with fewer impacts.

82. Bob and I researched many areas of the country as well as Ohio and determined that the Athens, Ohio area best met our needs for clean air, lack of industries, lack of conventional agriculture, proximity to our aging parents, and didn't require distant travel that had become difficult for me.

83. Finding a suitable home and property, however, proved to be an extremely difficult task, as my sensitivities restricted our choices when necessary factors like building materials, pesticide used, proximity to farms, gas lines, and many others were considered.

84. For years, Bob and I searched housing ads and worked with realtors, evaluating more than 1300 property listings and homes in multiple counties.

85. A house that Bob and I rented in 2008 and hoped might work did not following months of effort to try to make it tolerable for me.

86. In 2009, Bob and I learned of an available country home built specifically for an individual with chemical sensitivity by Habitat for Humanity.

87. Unlike any other home we had investigated, this small home on Dutch Creek Road provided the unique opportunity and elements that I needed to escape the stressors that impacted my symptoms and my health.

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Defendant. :

SUUPLEMENTAL AFFIDAVIT OF ROBERT MADEJ

STATE OF OHIO)
) ss:
COUNTY OF ATHENS)

Now comes Robert Madej, and being first duly sworn on oath, deposes and states as follows based on his own personal knowledge: .

1. I have reviewed the Motion in Limine of Defendant Athens County Engineer to Exclude Plaintiffs' Purported Engineering Experts. In this Motion, Defendant states "Dr. Jones has no way of verifying the information that he was provided by Mr. Madej." (ECF108, Page ID# 5320). Attached as Exhibit A is a true and accurate copy of emails exchanged between Dr. Jones and me regarding instruction on sampling road materials as well as copies of the photographs (Exhibit B) sent to Dr. Jones at each sampling location.

County Engineer to apply the product and maintain the road for both the alternative product and chip seal." (ECF108 Page ID#5321) Information provided to Dr. Jones regarding costs of asphalt alternative products was obtained from suppliers of those products. Attached as Exhibit F is a true and accurate copy email transmittals from product representatives with respective cost estimates for products considered in Dr. Jones' opinion.

10. Information regarding the material, labor, and equipment costs of chip seal was obtained from the Defendant in discovery and was transmitted directly. A true and accurate copy of Defendant's "Force Account Project Assessment Form (Estimate)" is included as Exhibit G.

11. Additional information regarding the material, labor, and equipment costs was obtained from the Defendant in discovery and was transmitted directly. A true and accurate copy of Defendant's December 8, 2016 Engineer's Estimate indicating base rates and fringe benefits is included as Exhibit H.

12. Additional information provided to Dr. Jones that was produced by the defendant at our request was comprised of "Daily Crew Worksheet Detail Files", Annual Reports from 2014 and 2015, bids for aggregate received by the Defendant, and Daily Crew Worksheet Detail Files updated by the defendant (SUPPL000882-SUPPL0000883).

13. Cindi and I, who both have Masters degrees in Biology from Indiana University, have known for a long time that she is highly sensitive to certain chemicals, including the chemicals contained in asphalt products.

14. Over the years, beginning in the late 1990's, I have observed Cindi react to and become increasingly reactive to exposures to asphalt products. Observations of her reactions began with a noticeable heightened sensitivity to the odor of asphalt when we were traveling and encountered asphalt applications. She later began to have symptoms of headaches and eye, lips,

and throat burning, and sometimes nausea. As time progressed, when she had these encounters the severity of her symptoms increased and she was short of breath and had chest tightness. Her shortness of breath worsened to feelings of significant air hunger and we eventually always traveled with oxygen and Cindi would wear a charcoal mask.

15. One day in 2014, while in the house with the windows open, Cindi developed symptoms of chest tightness, shortness of breath, headache, nausea, and eye and throat burning. She also was less stable on her feet and weaker. Shortly thereafter, she detected a strong asphalt odor. I then located a small new asphalt patch on the road near the bottom of their driveway.

16. In the summer of 2014, Cindi detected the odor of asphalt at the same time that she developed dyspnea (not relieved with oxygen), chest tightness, a headache which became severe and included sensitivity to light and sound, nausea, palpitation, dizziness, instability, burning eyes and throat, and pain. I identified the source of the odor as a new asphalt application to Peach Ridge Rd., which is approximately 1-mile from our home.

17. Cindi was outside and began to feel sick one August day in 2015. She developed a headache, throat and eye burning, tight chest, mild dyspnea, weakness, unsteadiness, and generally a sense of not feeling well. Her symptoms persisted the following day. I later noticed that an area of approximately 40 feet in length on their road had been filled with asphalt. The patches were approximately 1/2 mile from our home.

18. Maintenance to widen a few road shoulder areas on the state route near our home also occurred in March 2018.

FURTHER AFFIANT SAYETH NAUGHT.

Exhibit A

When asphalt is present, Cindi's symptoms are much more severe, and the severity and duration are, in part, related to/correlated with the exposure time. Briefer exposures and earlier symptoms included headaches, dizziness, and nausea. When the Madejs have been in stop and go construction zone traffic with active or fresh asphalt application, Cindi has suffered from much more intense chest tightness, much worse difficulty breathing, pain, palpitations and racing heart, severe headache sometimes with light and sound sensitivity, dizziness and instability, difficulty walking (later when the Madejs get out of the car), and sometimes burning of eyes, lips, and throat. (Stop and go traffic in non-fresh asphalt areas produced fewer and more mild symptoms.) Depending on the length of the exposure to new/fresh asphalt, her symptoms from one exposure lasting less than 30 minutes persisted for hours to days. The symptoms that hang on the longest tend to be chest tightness, shortness of breath, bad headache, burning eyes, lips, throat, and sometimes nausea. To further reduce exposures during trips, Bob obtained a service manual for the Madej's car and located all the outside air vents which he then sealed. The cabin heating and cooling system was fixed such that it was on constant recirculate.

In September 2016, Cindi began feeling very shaky, much weaker and started getting a lot of chest tightness and shortness of breath. As time went on, she also became nauseous and began getting a sore throat, and later yet, developed pain in her wrist/arm. She told Bob repeatedly that she felt different than she normally did, weaker and a bit light headed too, although they were aware of no reason why she was experiencing these symptoms. Much later, Bob drove to town and discovered that Athens County had patched potholes on their road with asphalt. Unfortunately, the Madejs did not receive notice regarding the pothole patching, and Cindi had been outside some during the day (getting sun exposure for Vitamin D) as well as in the evening, plus the Madejs had their windows open all day. Her symptoms were consistent with those she's experienced in the past from exposure to asphalt, and the timing of the asphalt application (based in part on Bob's travels on the road) was consistent with the change in symptoms she experienced. Cindi does not typically have those symptoms from being in her house, being outside, or upon opening the windows. There was no warning that 38 potholes were going to be filled on the section of road nearest their home or that 248 potholes were to be filled in the section starting 1 mile from their home. Cindi's symptoms lasted for weeks. (See update letter to Dr. Weirs, 9-12-16)

In the summer of 2014, asphalt was applied to Peach Ridge Road approximately 1 mile west from their Athens home. Both Cindi and Bob could smell the odor of the asphalt, and Cindi had severe headaches with light and sound sensitivity, significant chest tightness, shortness of breath/difficulty breathing even with oxygen, palpitations/heart racing, burning eyes and throat, nausea, dizziness, instability, and pain (sometimes sharp). The symptoms gradually improved over days, weeks, and months. The headaches, throat and eye burning, and chest tightness occurred daily for approximately 3 months following the application of asphalt.

Peach Ridge Road was chip and sealed in September 2015 from Scatter Ridge Road to its intersection with Dutch Creek Road (a section approximately 1 mile long). This section is

approximately 1 mile west from their home. Cindi experienced severe headaches, chest tightness, shortness of breath, eye and throat burning, palpitations, nausea, dizziness, instability, and pain following the asphalt application. Over time, the symptoms gradually improved in intensity and number, however, a number of these symptoms (headache, chest tightness, shortness of breath, and throat/eye burning) persisted daily for a couple of months. The symptoms worsened in the evenings and when light winds were from the west and southwest.

When Dutch Creek Road was chip and sealed from Stanley Road to SR 690 (i.e., the eastern or non-injunction section) in September 2015 (the closest part being approximately 1 mile away to the south), Cindi became symptomatic with headaches, chest tightness, shortness of breath, and eye and throat burning. Her symptoms started within an hour of the asphalt application. Cindi, and even Bob, could smell the asphalt fairly early in the day. As the day continued, she had more intense chest tightness, much worse difficulty breathing, palpitations, pain, her headache worsened and she developed light and sound sensitivity, and she was less stable. Over time, her symptoms slowly improved, with some of them dissipating, but a number of symptoms lasted for months and tended to worsen in the evenings and when the winds were gently blowing from the south.

One day in 2014, Cindi became symptomatic with headaches, chest tightness, shortness of breath, and eye and throat burning while she was in the house (windows were open as they usually are). She developed some nausea and was weaker and less stable. Soon afterward, she smelled asphalt (as did Bob) and asked Bob if he would check the road to see if something had been done. The odor was really strong. Bob found that a small asphalt patch had been placed near the bottom of their driveway. The Madejs had no advance notice this would be done. Cindi was symptomatic for weeks and smelled the new asphalt for months.

On August 27, 2015, Cindi was outside and began to feel sick. She had a headache, her chest was tight, had throat and eye burning, and was a little short of breath. She told Bob she did not feel well and felt weaker, less steady, and nauseous but didn't understand why. These symptoms persisted throughout the day and throughout the next. The day after that, Bob was going to town and he discovered that 2 areas on the road had been leveled (a process where cold mix asphalt is used to fill depressions in the road) approximately 1/2 mile north of their home. The areas leveled were the width of the road and about 20 feet long. Cindi had been outside the day Bob discovered the patching as well as the previous days and their windows were open. The Madejs were not notified about this patching. Cindi's symptoms persisted for weeks.

In June 2017, the Athens County Engineer's counsel contacted the Madejs attorney to notify them of what they considered an emergency situation regarding the badly deteriorated intersection of SR550 and CR34/CR26. The Madejs and their attorney worked with the Engineer's counsel to agree on a solution for the repair of the intersection. Because the area was nearly a mile from their house and would be limited to 75 feet of pavement, the Madejs agreed to a solution for this area (within the preliminary injunction area) using cold mix asphalt.

The work was not completed until September 2017. While Cindi and Bob took what precautions they could to minimize Cindi's exposure, she still experienced headaches, chest tightness, shortness of breath, and burning in her eyes and throat. She was also weaker and less steady and had increased pain. These symptoms were a little less severe than other asphalt exposures (likely due to the distance, the amount of asphalt that was used and possibly the use of asphalt concrete as opposed to chip seal), but symptoms persisted for weeks and were worse during evening hours when light winds blew from the northwest.

The Madejs were informed by ODOT in March 2018 that they were going to be doing a bit of widening of the shoulders on SR550 using asphalt (which ended up being their adding approx 18" of asphalt to the edges of a few of the curves). The Madejs precautionarily kept their windows closed for 1-1/2 days following the work, but with the warm weather, the need to open the window(s) was increasing. The Madejs tried to monitor the wind direction and hoped to only keep the window open while the wind was coming from a favorable direction. The Madejs opened a kitchen window, and Cindi happened to leave the room but left the window open for about 30 minutes (she was in a different room where the air wasn't flowing from the kitchen). Upon re-entering the kitchen and without even thinking about the window being open, Cindi began to have symptoms of chest tightness, mild shortness of breath, and headache within about 3 minutes. When the Madejs looked at the wind direction, it had shifted and was blowing from the direction of the recent paving. The Madejs immediately closed the window, and over time, Cindi's symptoms waned but didn't completely go away. The Madejs kept the windows closed after that or opened one only when the wind was clearly from a favorable direction.

In early May 2018, ODOT conducted patch work on SR 550. Several areas within a mile of the intersection of SR550 and CR34 that were a hundred or more feet long, nearly the width of a lane and extended to the edge of the shoulder were patched with hot mix asphalt. These areas were approximately a mile and a half from Cindi and Bob's house as the crow flies. Cindi experienced mild headaches and chest tightness daily, particularly in evening hours when light winds were from the north.

SR550 was repaved in the summer of 2016 from US33 to at least Amesville. This was a hot mix asphalt overlay. Cindi had very bad headaches, chest tightness, shortness of breath/difficulty breathing, as well as light-headedness, nausea, unsteadiness, pain, and palpitations. The first 3 symptoms lasted for months following the paving. Her symptoms were more intense during evening hours when light winds blew from the north and west.