

IN THE ATHENS COUNTY COURT OF COMMON PLEAS

ATHENS, OHIO

Robert Madej and Cynthia Madej,

Plaintiffs,

v.

Athens Co. Engineer Jeff Maiden,

Defendant.

Case No. 15CI179

TRANSCRIPT OF HEARING ON
PRELIMINARY INJUNCTION

Date Held:
September 21, 2015

Before:

Hon. Patrick Lang, Judge
Athens County Court of Common Pleas

Appearances:

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Athens County Court of Common

Yes, your Honor.

Yes, your Honor.

Okay. Mr. Pettey, please go

Thank you, your Honor. I would

The record will note your

objections.

BY MR. PETTEY:

Thank you,, your Honor. We are here today for the hearing on the preliminary injunction. We do believe that we will be able to meet the elements that are necessary to prove a preliminary injunction, including the likelihood of success on the merits. I believe that the evidence today will show that the unrebutted medical testimony of Dr. Barbara Singer will be that, to the effect of that if this chip and seal project goes forward Ms. Madej will suffer serious physical harm and possibly death as a result, that a few days notice is not sufficient that she needs, that the effects from the substances in the chip and seal product will continue to effect her for months afterwards. And, your Honor, I anticipate that that testimony will be unrebutted. We will also present testimony regarding alternatives for dust control for chip and seal. The primary concern that I've seen expressed about not chip and sealing this road is dust. And there are numerous other alternatives. I also believe the record will show that no reasonable effort was made to accommodate Ms. Madej in terms of timing, that in fact Ms. Madej was told in the Spring that this project would not occur. Notice was provided around August 27th or 28th that the project may go fowrad. A letter of September 3rd from the County Engineer's office then said that the project would be stopped

again and a meeting would be held. That meeting was held on September 10th. Notice was then given to the Madejs that the project would proceed on September 11th and that the project would proceed starting - that was a Friday, September 11th - and the project would proceed on Monday, September 14th. And that's all the notice that the Madejs have had that this project was going to go forward. Overall we do intend to show, and I believe the evidence will show, that they have, the Madejs have a likelihood of succeeding on the merits with regard to their complaint for injunctive relief and with regard to their claims for assault and battery and wrongful death. In an injunctive situation the law is that you may plead prospectively, that you need not wait to die and plead your wrongful death claim, that if you can show a likelihood that this will cause your death that you can ask for injunctive relief before you die. And so we believe we will show a likelihood of success on both the assault and battery claim and the wrongful death claim. Your Honor, the political subdivision immunity statute contains an exception in situations, gives a general grant of immunity for the discretionary use of materials in projects, but then provides an exception to that in circumstances where the actions taken by the political subdivision are reckless or wanton or malicious. And I think this situation fits right into the recklessness exception on all

BY THE JUDGE: Okay. Very good. Please approach. And you're asked to please raise your right hand. Do you swear or affirm that the testimony you give this Court will be the truth, the whole truth, and nothing but the truth?

BY MR. MADEJ: Yes.

BY THE JUDGE: Okay. Thank you. Please have a seat. Mr. Pettey, you may begin your questioning when you're ready.

ROBERT MADEJ, first being duly sworn, testifies and says as follows:

DIRECT EXAMINATION BY MR. PETTEY:

Q. Thank you, your Honor. Bob, would you state your name for the record, please?

A. Bob Madej, Robert Madej.

Q. And where do you live?

A. 13152 Dutch Creek Road.

Q. And you live there with your wife, Cynthia?

A. Yes.

Q. Bob, let's start with a discussion about how you live in order to accommodate Cindy's medical issues, including primarily her chemical sensitivity and environmental illness.

A. We moved to Athens County for health reasons. We searched for nearly or over five years for the home

that we have now. It was a home constructed by Habitat For Humanity for another person who had an environmental illness. And we knew of the home. It was owned by woman named Jean Hixson. And it only became available to us because she died. And so we purchased the home and made modifications to it that kind of dealt with some of my wife's specific sensitivities. For example, we had to remove all of the poplar doors and trim because she was sensitive to that wood, as well as a lot of other cleaning and things like that. My wife when we tried to move into the home was unable to sleep in it at all. And so to try to provide a place where we knew she could tolerate the materials and have someplace to sleep I constructed a ten by ten what we call our cottage. It's lined with glass on the floor, the ceiling, and the walls. And it's framed with hard maple and has a metal roof. And it's, that's where my wife sleeps. Inside of it it only has an old recliner that she tolerates and a shelf for her clothing. It has no real heat or air conditioning. We have a, later we developed a stainless steel hydronic heat system that will keep it warm when it's not too cold. Last year when it was, when we were into the, you know, the

lower teens and zeros we had to also put hot water bottles out there every hour for that ten day stretch that we had really cold temperatures. I got up every hour and gave Cindy a new hot water bottle to try to keep her warm. It was about forty two degrees in her cottage I think. But, you know, on a daily basis Cindy has sensitivities to a lot of foods so she has a very limited diet. She eats what she can, what she, what doesn't make her sick basically. So pretty much she eats the same thing every day. And she's been disabled since 1997 and unable to work. And that was from a toxic exposure to a pesticide that was used in our home in Cincinnati. Cindy and I both have graduate degrees and masters degrees in biology. She was second in her high school class. She graduated college with a 3.67. She graduated or her graduate GPA was something like a 3.92. She was a functional person in society. She was working full time in molecular biology at the time that she started to get ill.

- Q. In terms of water, how do you deal with getting water for her?
- A. She's had a lot of problems with water lately. She can't drink the (inaudible) water despite the three

—
thousand dollar water treatment system we have. She only tolerates distilled water that I have to drive to Cleveland to get. That's the only place it's available in the state of Ohio right now. We, she also occasionally drinks spring water that we get from the old spring house at Strouds Run State Park. And then we have to boil that and filter it through filtering charcoal filtered through a carbon block filter and then (inaudible) to make it something that's safe and tolerable for her. But the process takes us eight to ten hours to get her enough water to drink for a day.

- Q. Now when you come home from having been in town and around other people tell me what you have to do in order to enter the house again.
- A. So I go through a process of cleaning up when I get home. And this is Spring, Summer, Winter, or Fall. I need to take all my clothes and leave them outside. I wipe my whole body down with alcohol and go right to the shower and clean with a couple different products, baking soda, things that are fairly harsh on the skin and hair. And if Cindy can tolerate me I can stay in the house. If she can't then I go through the process again. Sometimes it takes, you

know, the last time I was in this courtroom it took me over three hours to where she could have me in the same room with her.

Q. In terms of moving to some other location, can you explain the difficulties involved in, you know, we've heard people talk about why don't you just go away for a little while and come back. What's the response to that? Why can't she do that?

A. Well first of all, I've never seen her as ill as she is right now. She's very weak. We don't have the ability to camp somewhere. Cindy doesn't any longer tolerate our tent or her sleeping bag. We don't even have beds or blankets. I sleep on the floor and Cindy sleeps in her old recliner. We cover with whatever old clothes we have available and use the same for a pillow of sorts. We don't have any heat in our home. We heat our home in the wintertime with incandescent lightbulbs because that's the only thing we've found that Cindy can tolerate. We spent, when we first purchased the home we spent six months at least researching every type of possible heat and ventilation system. Ken Dean was on the phone with us for hours and hours and he did a lot of research to try to find something we might be able to use. We

looked at package units that would be, that the furnace would actually all be outside. But we couldn't resolve some of the duct work and fan issues with air flowing through the motors and things like that. And so, you know, we tried to modify air conditioners to work. Cindy's really sensitive to plastics, vinyl, rubber. So we tried to cover wiring with foil and remove rubber grommets and things like that and replace them with silicon which she tolerates a little bit better and disassemble everything and clean all the oil off of it.

Q. And so in terms of an alternative residence for her to move to explain to me the reason why she can't just go to the Holiday Inn or to a hospital for that matter. Why can't, why can't she go to some other location like that, as you understand it?

A. Right. She's intolerant to most cleaning chemicals, even things that are hypoallergenic or made for sensitive people. We oftentimes have to go through numerous products to find one that she does okay with. There's only one bar soap that we know of that she tolerates. We have to mail order that. It costs eight dollars a bar. I can't even stay in hotels because the fragrance that I absorb in my skin it

literally takes three or four days to dissipate before Cindy can be in the same room with me. And the laundry products that are used on the bedding and things like that all absorb into my skin.

Q. What, in order for you to move her to a new location and set up a new residence for her tell me what that would involve.

A. Well, I mean we basically would have to re-create the environment that we have for her now. I mean for her to, we would consider a month or two, if she's able to tolerate something in that length of time, as being something that she can quickly tolerate. Cindy obviously doesn't go shopping or anything like that. Toilet paper, paper towels, we have to air those things outside for weeks before she can tolerate them in the house. And sometimes they've absorbed enough stuff from the store that they never do become tolerable and we have to (inaudible) somebody else and buy some new stuff and air that out for a couple of weeks before she can tolerate it. She's unable to eat any kind of food from a restaurant or anything like that. And like I said, she has one old recliner that she tolerates to sleep in. And if we took that to another location there would be a high risk of

that getting, absorbing something and she wouldn't tolerate it anymore. She's literally gone, you know, days without food because we couldn't find anything for her to eat. When we lived in Columbus I used to drive down here every Saturday to the Farmers Market because, you know, at least at that time we had less of that available in Columbus. But even after that there were still things that we couldn't find in Columbus and I came down here every Saturday morning to get for her. I remember a time when it was wintertime and there wasn't a lot of food available, fresh produce and things, and literally we couldn't find anything for her to eat and I drove down here on a Saturday morning to buy a pound of spinach from Ed Perkins, which, you know, with gas and the cost of the spinach that was about fifty dollars a pound. But that was all Cindy had to eat for two days was one pound of spinach.

- Q. Now and so tell me in terms of a location for her to move. If she were going to move somewhere for her house what kind of qualities would you be looking for in a location. Is it just anywhere? You could set up the glass lined house anywhere you want and that's good? Or what kind of considerations do you have to

think about in terms of moving?

A. Well things that we have to be concerned about would be proximity to roadways because she's highly sensitive to exhaust as well as, you know, asphalt materials, herbicides. So we couldn't be on a or too near a major highway or anything like that. Power lines are a concern. Gas pipelines. She's highly sensitive to natural gas and propane. So if somebody else has a home that has (inaudible). I have talked to the people that we knew that had, you know, that lived the purest ways that we know of and some of them have natural gas stoves or propane stoves and that more or less renders the house intolerable for Cindy.

Q. Are you aware of any other houses that have been built to design specifications that she could tolerate?

A. Not in this area at all, no.

Q. Let's talk about your experience with the way other governmental entities have accommodated Cindy. In what ways have other governmental entities accommodated Cindy's chemical sensitivity and environmental illness?

A. When we lived in Columbus of course we notified the

City of Gahanna that she had special health issues and the City Engineer there was understanding and they were careful about doing work on our cul-de-sac in the vicinity of our home. They did not use a pave-ment sealer on our road to accommodate her at one point. The Franklin County Board of Health gave us, and I don't remember what the radius exactly was that they would not do any mosquito spraying around our home, but it was a lot further than the typical distance they allow or accommodate other people because we explained to them her extreme sensitivity. The Ohio Department of Transportation just this past year did not apply herbicides or they had their contractor not apply herbicides on State Route 550 between Kerns Road and McDougall. So they understood what our concerns were and were --

BY MR. SAUNDERS: I'm going to object, your Honor. I don't know what this spokesperson for ODOT, the reason as to why they didn't do the road.

BY THE JUDGE: Mr. Pettey?

BY MR. PETTEY: He hasn't testified. All he's testified to is that they were accommodated that way. I can't see anything objectionable.

A. I asked them not to spray herbicide because it could

put my wife at risk because it would allow winds from
the north --

BY THE JUDGE: The testimony is just based on
his personal experience with ODOT and with the spraying. I'll
allow the answer.

Q. And then to your understanding they didn't spray?

A. Correct.

Q. From Kerns Road to McDougall Road?

A. The dead vegetation everywhere else was quite obvious. But it was obvious that they had not sprayed there.

Q. Tell me about Cindy's medical condition as you see it. I'm not asking for a medical diagnosis. But compared to the past what do you see in terms of her medical condition right now?

A. We invest every bit of our time, energy, and money in trying to find a way to get my wife well. Over the last few years her health has continued to decline. It's my understanding that one reason for that is that her detoxification pathways are disrupted or disfunctional and the chemicals that she was exposed to basically continue to eat away at her organs.

BY MR. SAUNDERS: I'm going to object, your Honor. This sounds like not a personal experience but an

actual diagnosis.

BY MR. PETTEY: He said he was testifying to his understanding. And that's all he's testifying to. He's not claiming to be a medical expert.

BY THE JUDGE: Okay. Mr. Pettey, if you could try to limit the questions more in terms of personal observation and not necessarily things that he may understand from second, from second or third parties.

BY MR. PETTEY: Thank you, your Honor.

Q. Could you describe more in terms of what you've personally observed with Cindy?

A. Sure. You know, we never know on a day to day basis whether something she eats or drinks is going to make her ill. So often she, she gets up and we prepare a meal for her and within a reasonable amount of time it makes her ill. She feels really lousy for a long time. She has a lot of, complains of a lot of muscle pain.

Q. Has she had weight loss recently?

A. Recently she's lost over twenty pounds. She's five foot seven. She was down to about ninety eight or so pounds. She's really, really frail looking.

Q. Let's move to the history of how you learned about the Athens County Engineer's plans to chip and seal

Dutch Creek Road. Back in the Spring, starting in the Spring of 2015, would you just tell me about the history of how you learned about these plans?

A. If I may I'd like to I guess make a statement about kind of the vigilance that we monitor everything around us. When we moved to Athens County I contacted the County Engineer's office, the Township, AEP, ODOT, anybody we could think of, the Forest Service, that might be using chemicals that would be a concern.

Q. And you said back when you moved to Athens County. When was that approximately?

A. 2008 or 9. I moved in several months before Cindy moved because I was modifying the house.

Q. And so you were saying that you'd given notifications to various governmental entities?

A. Right. Or at least, you know, questioning them as to what, you know, kinds of things they were doing where so that we had some understanding of where we might need to be concerned, where we might need to be vigilant about monitoring things. With regard to the Athens County Engineer, I arranged a meeting with Archie Stanley to discuss my wife's health issues and what our concerns would be and describe to him what

activities that would be of concern to us, you know, things like pothole filling and mowing and grading, snow plowing even. Those are all things that could have potential effects on my wife because of the diesel exhaust and things like that. And it helps for us to have notification so that she's not outside and would get exposure. And then I also discussed with Archie, you know, activities that if there was any way to avoid, that there may be certain things that could be life threatening to her. At that time she was much stronger than she is now. But when Mr. Maiden took office I was concerned because I had an agreement, an understanding, with Archie Stanley.

And so --

BY MR. SAUNDERS: Objection.

BY THE JUDGE: Mr. Pettey?

BY MR. PETTEY: He's only testifying to his understanding. He hasn't testified to any hearsay statements from Archie Stanley at this point. I can't see an objection here.

BY MR. SAUNDERS: He's just discussing rumor.

BY THE JUDGE: He can testify as to things that he told Archie or just the general conversations. But I will sustain the objection insofar as it goes to the existence of an

agreement without any further evidence on that point.

A. At any rate, I attempted to meet with Mr. Maiden when he was elected Engineer so that I could, as I did with Mr. Stanley, express what our health concerns are. So I called the County Engineer's office and asked for a meeting. I received a call back from, from another individual. I don't remember who that was. But they told me at that time that they were aware of our concerns and that they didn't feel a meeting with Mr. Maiden was necessary.

Q. I'm sorry. I didn't catch when you said that was.

A. Shortly after he took office. I don't remember exactly. As a matter of practice for us, you know, as soon as we get into the warmer months, the potential construction season, we've called the County Engineer's office to see if there were any plans to do anything, with particular concern to chip and seal. And I did that in the Spring and spoke with the receptionist there and told her that particularly now my wife is in a very frail health state and that certain activities, I don't remember if I specifically said chip and seal, but I did say that she could be put in a life threatening situation. And at that time we were told that there

were no plans to do anything, mainly because of budget, on Dutch Creek Road. Again as a matter of course a couple of months later we checked back with the Engineer's office to see if they had any plans, again expressing the importance of our knowing what might happen and were told again that there were no plans to chip and seal or do anything else.

Q. And so now you're talking late Spring, early Summer?

A. Probably early Summer. And then probably sometime around late June or early July I called again. And that was, and that phone call was precipitated by a conversation that I had with one of our neighbors, Sue Greeney, who told me at that time - I had called her to ask if she had any knowledge of springs in the area because I was searching for a new source of water - and she told me at that time that there was a petition that had been submitted to the Commissioners' office to chip and seal our road. And I expressed to her at that time as well that that would be really a concern for us and a life threatening situation for Cindy. That was the first that we were aware of a petition. We can't read the paper because it's toxic to Cindy basically. We, you know, the truth is we're just so overwhelmed with trying to

keep up with everything that we don't have very much time for watching tv or recreational reading or watching the news or anything like that. So we were unaware that other people in our neighborhood had the level of concern that they did about the road.

Q. And so this March petition that you heard about was not something that you knew about in March?

A. No. I didn't know about it. I still have never seen it.

Q. As far as you knew in March no plans to chip and seal Dutch Creek Road?

A. Well, it was after March sometime the first time that we called the Engineer's office and were told that there were no plans.

Q. And as far as you knew in early Summer no plans to chip and seal Dutch Creek Road. When was it that you did first hear about plans to chip and seal Dutch Creek Road?

A. As far as a real plan I guess when Lyle Fuller called our house on August 27th and indicated that they were going to be doing some chip and seal on Dutch Creek Road starting at 690, and also some work near our house. The message was worded something like that. When we received that message I was not at home. M

wife called the Engineer's office to get some more information and spoke with Mr. Fuller.

Q. And what, what did you do in response to this learning of a plan to chip and seal on Dutch Creek Road?

A. Well I immediately drove over to the Engineer's office. I was in town. And Jeff Maiden happened to be in Lyle Fuller's office and I expressed our concerns and indicated that it could put Cindy into a life threatening situation. And Mr. Maiden told me that they would not do it. And to my knowledge the work was stopped or the plan was stopped.

Q. Alright. And then after you were told by Mr. Maiden in late August that the plan would not go forward what was the next that you heard about any plans to chip and seal or just any not necessarily plans to chip and seal the road but just anything about chip and seal, about the road? What was the next thing you heard about chip and seal on Dutch Creek Road?

A. Well, Mr. Maiden asked me to give him a call the following day, which I did, and we had a discussion and he reiterated. I guess he did say when I met with him on August 27th that it would be helpful to have a meeting with the neighborhood and explain to

them what our concerns were. And so we discussed that possibility of a meeting the following day. And I guess we received a letter at some point indicating that, actually we received a phone call first from Mike Sheets that there was going to be a meeting on September 10th. And I returned the call and told them that I would be attending. But then I think we received a letter the next day or the day after that announced the meeting.

Q. And at that point no one had told you yes we're going forward with the project, we're just having this meeting in order to let people vent, but we're going forward with the project. Right?

A. My understanding was that it was an opportunity for me to express what our concerns were to the neighborhood. And I appreciated that opportunity.

Q. And so your understanding at that point was that plans to stop, plans to chip and seal were stopped?

A. Prior to the meeting yes.

Q. Okay. And so when did you learn that the chip and seal was actually going to go forward?

A. At the meeting Mr. Maiden gave a presentation regarding the issues surrounding our road. And he gave me the opportunity to express my concern. Some of the

other residents started to basically badger me about different issues. And I was given one minute to conclude my statements of concern. After that some of the other residents expressed themselves and Mr. Maiden stated that he was going to chip and seal Dutch Creek Road.

Q. Did you feel like you had an adequate opportunity to explain all of the things that people would need to know if they were to understand Cindy's situation?

A. No.

Q. Did people interrupt you at the meeting?

A. Yes.

Q. When was it that you learned when this chip and seal project would go forward, a specific schedule for the chip and seal?

A. The following day, which would have been I guess Friday, September 11th, I called Mr. Maiden because he had asked me to call him because he said that he wanted to speak with Cindy's doctors. At that time he told me he was going to be sending me a letter. Actually he told me he was going to hand deliver a letter to our mailbox. It had the schedule of activities, that they were going to proceed chip and sealing the entire road, and the first phase was

going to be on the 690 end, the second phase was going to be on our end of the road towards State Route 550. We looked for the letter all night. It didn't arrive. The following morning when I was in town at the Farmers Market, which was a Saturday, we received a notice from the post office that a certified letter was not delivered and that we needed to pick it up at the post office by noon. I got home at about 12:30. And so it wasn't until 9:00 a.m. on Monday that that letter was then made available to us.

Q. And that was a letter that contained a schedule?
I'll hand you what's been marked as, this is actually marked as Defense Exhibit B but we'll call it Plaintiff's Exhibit 1 as well.

BY THE JUDGE: Go ahead and approach.

Q. Do you recognize that document?

A. Yes.

Q. And what is that?

A. This is the letter sent to us on September 11th that indicated the schedule. It said that they would - may I read it?

Q. Yes. Would you read the schedule, please?

A. Just the schedule?

Q. Well if you, yeah, if you want to read the whole thing go ahead, Bob.

A. It says thank you for attending the public meeting at my office last night. (Inaudible) with your wife's health issues but it was clear that the current dusty road condition is causing potential safety and health issues for other residents that live on Dutch Creek Road. The only reasonable solution is to proceed with the plan to chip and seal resurfacing of Dutch Creek Road. I have separated our planned road maintenance activities into two different areas of work as follows. Dutch Creek Road between 690 and Stanley Road, Monday begin grading operations and base preparations. Tuesday begin chip and seal. Wednesday complete chip and seal. And Dutch Creek Road between Stanley Road and State Route 550 Thursday begin grading, 9/17 begin grading. Friday 9/18 begin chip and seal. Monday 9/21 complete chip and seal. We received this letter on September 14th I think was the Monday. And then I delivered a copy of it to Sky's office. On my way home they were grading our section of the road. I called the Engineer's office and asked them why they were doing what they were doing. And somebody drove out and

asked the grader operator to stop. By that time they had already been grading for a couple hours I would guess.

Q. And the reason that's significant is that that does not comport with the plan that's contained in that letter? Is that correct?

A. Right. We were told the grading would begin on Thursday on that section.

Q. And in fact it began on Monday? If I may approach?

BY THE JUDGE: Yes please.

Q. And so effectively you had less than a week's notice in terms of you received this letter on Monday the 14th and the schedule indicated that chip and seal would begin on your section of Dutch Creek Road between Stanley Road and State Route 550 four days later, on Friday, September 18th. Is that correct?

A. That was my understanding.

Q. How long do you feel you actually need in order to be able to relocate Cindy?

A. We've been trying for, well since that time to figure out what we would need to do to plan to find a location. And as of yet we have not found any suitable location to move her or anything else. To relocate, to recreate the environment that she needs

to be able to sleep and get adequate therapy could take weeks to months. I mean the, her sleeping cottage is only one aspect. To find a suitable location that doesn't have the things that we don't have where we live now - our house has no plywood, no carpeting, no materials that contain formaldehyde, no oil based paint, no asphalt shingles, no pressure treated wood. It has aluminum siding, a metal roof. It has no soft wood trim or anything like that. Our kitchen cabinets are steel. There's no particle board or glues.

Q. Now have you attempted to provide the County Engineer's office with alternatives to chip and seal on Dutch Creek Road?

A. Yes I have. We did as much research as we could prior to the public meeting. I called the morning of September 10th and asked Mr. Maiden if he could meet with me a half hour before the meeting so that we could discuss what I had learned to that point. And I was told that he didn't have time to meet with me. I did not have the opportunity to present any of the alternatives that we had learned about at the meeting. Since then we've conducted a lot of research on the internet, calling experts in dust control. This

past week I believe I was told that I've spoken with the two most prominent experts in dust control in the country, David James at I think the University of Nevada, and David Jones at the University of California. Both provided me with information on various options for dust control working with --

BY MR. SAUNDERS: I'm going to object, your Honor. Hearsay.

BY THE JUDGE: I'm going to sustain the objection to the extent that you're talking about what their information said. You can say that you spoke to them, that they provided you information, but as to what the information was (inaudible).

A. I have a variety of publications, notes, and websites that describe alternatives to asphalt products, as well as even less volatile asphalt products. But there are I believe seven categories of different ways to deal with dust, and then within those categories numerous products and alternatives. And we're just beginning to try to understand, you know, what those things are and how they I guess (inaudible). Our place is to try to determine whether they, you know, what kind of potential health issues we might have with them. My understanding from the engineers and

product specialists that I've spoken with is that
they have the potential to --

BY MR. SAUNDERS: I'm going to object again.

BY THE JUDGE: Yeah. Mr. Pettey, I'm going to
ask you --

BY MR. PETTEY: He's only testifying as to his
understanding. He's not claiming that he's an expert.

BY THE JUDGE: That's beyond the scope of what
we're going to allow to be testified to today. He's not an
expert in dust control and so what he found in the course of
his research is not relevant for purposes of today's hearing.

Q. Mr. Maiden has never been willing to meet with you to
discuss alternatives, has he?

A. No.

Q. Has Mr. Maiden ever provided you with any information
indicating that he looked at any alternatives?

A. He's not.

Q. Has Mr. Maiden ever been willing to have a discussion
with you about how long it would take for you to get
Cindy moved somewhere else?

A. (Inaudible)

Q. Let's talk about what happens if this preliminary
injunction is not granted. What are the options as
you see them for, for Cindy, or lack of options?

A. We've literally been trying to think of everything we could do to find someplace else to go or to protect her. And I can't protect her where we live. And she's too fragile to be able to live out in the woods for months. And we don't have any place to go anyway. The way I, the way that she's reacted in the past to exposure to asphalt when we were traveling, you know, traveling to her dentist or her doctor, and when she was in a much better health state than she is now, she had extreme difficulty breathing, despite taking oxygen. And my fear is that I'll watch her suffocate or die of a heart attack.

Q. And you have personally witnessed her with breathing difficulties when she has been in the presence of asphalt?

A. Absolutely.

Q. Were the four days between September 10th when you first learned that the chip and seal project was going to go forward and Monday September 14th when the chip and seal project began enough for you to relocate Cindy?

A. Absolutely not.

Q. Have you made the Athens County Engineer's office aware that that's not sufficient time?

A. Yes.

Q. And what's your understanding about what the County Engineer is planning to do in terms of the project?

A. My understanding is that they will proceed with the asphalt chip and seal from Stanley Road to State Route 550, which would include the frontage of our property and would be no more than three hundred feet from Cindy.

Q. Have you ever witnessed or are you aware of any accidents ever occurring on Dutch Creek Road as a result of dust issues?

A. I've never witnessed nor am I aware of any.

Q. Do you feel safe driving along Dutch Creek Road even when it's dusty?

A. Yes.

Q. In your experience does the dust on Dutch Creek Road abate during the Winter and Spring months?

A. Yes. And any time after it's rainy.

Q. Those are all the questions I have, your Honor.

BY THE JUDGE: Okay. Thank you, Mr. Pettey.

Mr. Saunders?

BY MR. SAUNDERS: Thank you.

CROSS EXAMINATION BY MR. SAUNDERS:

Q. Mr. Madej, when did you move to Athens, Ohio?

A. Sometime I think in 2008.

Q. 2008? And where did you live previously?

A. Gahanna.

Q. In the city of Gahanna?

A. Yes.

Q. Okay. There's an airport near the city of Gahanna.
Correct?

A. It's Columbus.

Q. Yeah. But it's right next to the city of Gahanna?

A. It was a couple of miles from where we lived.

Q. Okay. A lot of airplanes that come out of that area.
Correct?

A. (Inaudible)

Q. Fuel from airplanes up in the air?

A. We moved out of the city because of a variety of
pollutants in the city. And I assume some of those
may have been from air quality, our understanding
from a variety of exhausts, from airplanes to traffic
on Interstate 270.

Q. She wasn't hospitalized because of all that, was she?

A. She was sealed in the house. Like I said, she was in
a much - the only place, the last few years that only
place that she went was to her doctor's office.

Q. You said she was sealed in --

- A. We had every window and door taped, sealed, in our house except for one.
- Q. Okay. And that's the same as the residence now with the addition of this, this room that you constructed for her. Is that correct?
- A. No.
- Q. The windows aren't sealed in the house you're currently living in?
- A. No, because we had fresh air here. And that was really important for us and one of the reasons that we moved here. Cindy wasn't getting adequate fresh air or sunshine.
- Q. So nothing has been done to seal up the house?
- A. No. We, we close the windows and we, you know, we seal them by stuffing paper towels or rags into the cracks and things like that. But we have the ability to open and close them on a daily basis.
- Q. How did you seal the old house in Gahanna? What did you do?
- A. Aluminum tape. All the windows were taped closed with aluminum tape.
- Q. Why can't you do that now?
- A. Because we want the ability to open and close our windows. We moved out of the city so that Cindy

could get fresh air. Her health was declining.

Q. But if you put, if you use this aluminum tape that would effectively seal off the house from --

A. The condition in Columbus was becoming no longer protective to her. She was getting paralyzed by lawn chemical treatments that were being done by our neighbors, and despite the fact that we had the house all sealed up. I mean if the house was completely sealed we'd suffocate. I mean it obviously is going to breathe somehow or another.

Q. But you haven't tried that alternative, the aluminum tape, in Athens?

A. She no longer tolerates the aluminum tape, the adhesive.

Q. Well what was the change? Why does her toleration just change?

A. Because she had so much exposure to it in our Columbus home that she became intolerant of it.

Q. You also indicated that the house in Athens was built by Habitat For Humanity. Correct?

A. That is my understanding.

Q. Your understanding. Okay. But it wasn't built to a certain specification for someone with multiple chemical sensitivity?

A. My understanding is that it was.

Q. But you made several changes? You indicated that you did several changes after the fact?

A. Right. But we, the house was built with hardwood trim for the previous owner. That hardwood was poplar and poplar is not a wood that my wife does well with. So I removed as much of the poplar doors and trims and casings as I could.

Q. So really you're not sure if this is built to specifications for someone with an environmental illness or multiple chemical sensitivity?

BY MR. PETTEY: Objection. Asked and answered.

BY THE JUDGE: I feel like we've gotten an answer to that question.

Q. Thank you. So there's no heat in your home?
Correct?

A. We have no heat.

Q. Okay. And how, how did you say in this last Winter you provided heat to your house?

A. The only thing that we found that my wife tolerated well enough was incandescent lightbulbs. So I had a little string of six porcelain sockets with an old lamp cord that we knew she tolerated. And we had six one hundred, well I mean, you know, halogen bulbs

that are like seventy two watt, equivalent of hundred watt lightbulbs. And we had all of our other lights turned off twenty four hours a day.

Q. I think you also testified that you used bottled water, heated bottled water?

A. We put hot water from the tub into glass bottles, gallon glass bottles.

Q. So she can tolerate glass bottles?

A. Glass bottles, yes, after they've been thoroughly cleaned.

Q. I think you also testified that Mr. Maiden didn't provide you any notice. But you also stated that he told you I believe on the 27th of August that they weren't going to chip and seal. Is that correct?

A. When I went in to their office on the 27th I believe it was the day he said they wouldn't, they would not chip and seal.

Q. Okay. And you received a letter shortly thereafter, is that correct, determining that there was going to be a public meeting on September 3rd?

A. Sometime, yes, shortly thereafter.

Q. May I approach, your Honor?

BY THE JUDGE: You may.

Q. I'm going to be handing you what's been marked as

Defendant's Exhibit A, also Plaintiff's Exhibit 1.

Can you take a look at that? Can you read the last sentence in paragraph number one?

A. I told my Superintendent, Mike Sheets, to stop our plans to chip and seal the road until we have an opportunity to investigate this further.

Q. So that doesn't indicate that he called off the chip and seal. Is that correct? He just wanted further time to investigate?

A. Yeah, I guess that's right. He told me that --

BY MR. PETTEY: I'll object. The exhibit speaks for itself.

BY MR. SAUNDERS: Well I think Mr. Madej also testified that the County Engineer said he had no, he'd stopped chip and seal and had no plans to go further. Here it's showing --

BY MR. PETTEY: That was during the conversation at the Engineer's office he was talking about.

BY THE JUDGE: The exhibit does speak for itself. To the extent that that corroborates or fails to corroborate other conversations which may have happened, again that kind of speaks for itself.

Q. Thank you. Were you at that public meeting on Thursday, September 10th?

A. Was I?

Q. Yes.

A. Yes.

Q. And you did have an opportunity to speak?

A. Yes.

Q. Did you ever speak to the County Engineer on the telephone about the chip and seal and the potential hazards?

A. Not prior to August 27th.

Q. I'm asking --

A. I never spoke to him on the telephone.

Q. You've never spoken to the County Engineer on the telephone?

A. After August 27th.

Q. Okay. When did you speak to the County Engineer?

A. On August 28th I think.

Q. Okay. Did you speak with him just one time or was there more than one occasion?

A. I don't recall.

Q. Okay. What did you guys talk about?

A. I expressed my concerns as far as I can recall. I only sleep about three hours a night so my memory is not really good.

Q. Okay.

A. To my best recollection on the 28th we would have spoken about my concerns for my wife's health and the need to discuss those things and inform the other residents on our road.

Q. So would you say that this telephone conversation was approximately forty minutes long?

A. I have no idea.

Q. So the County Engineer did take time out of his day to speak to you about your concerns. Is that correct?

A. He did.

Q. He did. And then he afforded you another opportunity at the public meeting to stand up and speak in front of all the residents of Dutch Creek Road. Is that correct?

A. Yes.

Q. So he's provided you at least two opportunities, not to mention everything that you provided him in terms of documentation. Is that correct?

A. Yes. I don't remember what I've given him in terms of documentation.

Q. Well I will provide you with two exhibits, starting with Defendant's Exhibit C. May I approach, your Honor?

BY THE JUDGE:

You may.

A. Letters from her doctor.

Q. That's correct. Can you tell me who that first letter is from?

A. It's from Dr. Alan Lieberman.

Q. Okay. And who is Dr. Lieberman?

A. He's one of Cindy's physicians.

Q. Where is he located out of?

A. South Carolina.

Q. South Carolina. When's the last time Cindy left the state of Ohio?

A. I don't remember the last time she left the state of Ohio. A few years probably.

Q. When's the last time that Dr. Lieberman has seen Cindy? Did he come to Ohio?

A. He did not.

Q. He did not. So would you say five years that he hasn't seen your wife?

A. More than five.

Q. More than five years. Okay. I also, looking through this letter he discusses an activity within one mile of a residence. How do you determine this?

A. He asked us what we felt was protective.

Q. What you felt?

A. That's correct.

Q. So he has no determination what's sufficient, a distance, a sufficient distance, does he?

A. I don't know.

BY MR. PETTEY: Objection.

BY THE JUDGE: I will sustain the objection to the extent that it's calling for conclusions from a third party.

Q. There was another exhibit as well, Defendant's Exhibit D. May I approach, your Honor?

BY THE JUDGE: You may.

Q. Can you tell me who that letter is from?

A. Barbara Singer.

Q. And who is Barbara Singer?

A. She's Cindy's local physician.

Q. Physician. Okay. And has she spoken to Dr. Lieberman, if you're aware?

A. Not that I'm aware of.

Q. Okay. I think also she recommended that construction or maintenance activities occur one mile from your home, of your home. Is that true?

A. That's true.

Q. And you provided her that you think one mile is sufficient?

A. She asked us what we thought would be protective.

Q. And going back to Exhibit C. Dr. Lieberman requested a minimum of three days before initiating any road construction occur within one mile of your residence. Do you remember that?

A. Yes.

Q. Why is it three days? Is it something you asked for?

A. We asked for at least three days.

Q. And then with Dr. Singer you asked for five days?

A. That's correct.

Q. Okay.

A. That's for activities that might not be life threatening or activities that we just need to protect Cindy from. Having knowledge of those activities is helpful so she's not outside or we don't have other things outside that would be exposed to unusual exhaust.

Q. And one way to provide that protection is to find aluminum tape to seal?

BY MR. PETTEY: Objection. Asked and answered. He's already said that doesn't work.

BY THE JUDGE: I'll sustain that.

Q. In terms of activities you say she can only tolerate certain activities?

A. We've said that there are activities, road maintenance activities, that we don't feel are threatening. They all cause potential issues. But, you know, we can protect her from temporary exhaust and low levels of small amount of things like asphalt. You know. We asked the Engineer's office to notify us of any of those kinds of activities. Honestly though we've never been notified of any of the regular maintenance activities.

Q. Have any activities occurred on Dutch Creek Road since you've lived there?

A. The potholes have been patched, grading has happened, mowing has happened repeatedly since we've lived there. And we were notified of a lot of those activities by the previous Engineer but not since Mr. Maiden has taken office.

Q. And none of those have resulted in any hospitalization, have they?

A. No.

Q. Okay. How close have some of these patches or other things been done to your house? How close?

A. The frontage in front of our home.

Q. So about three hundred feet?

A. Approximately.

Q. Okay. Where do you guys get your food from?

A. It comes from a variety of sources. Most of it comes from local farmers. We mail order some products.

Q. You indicated you also went to the Farmers Market.

A. I go to the Farmers Market?

Q. Well I think you testified that you went to the Farmers Market.

A. Cindy has never been to the Farmers Market with me.

Q. Okay. I think you were discussing also some alternatives that you found. Is that correct?

A. Alternatives to?

Q. Chip and seal.

A. Yes.

Q. Okay. And what is your educational background?

A. I have a masters degree in biology and I've worked as an environmental consultant for the last eighteen or nineteen years. And I worked on a lot of roadway projects doing environmental compliance, environmental permitting.

Q. Do you have any licensing in regards to being a civil engineer?

A. No.

Q. So you wouldn't be allowed to practice as a civil engineer. Is that correct?

A. That's correct.

Q. You would agree that the County Engineer probably has expertise in the area of chip and seal and construction and maintenance of roads?

A. I don't know what his expertise is.

Q. You would agree that part of his responsibility as County Engineer is to repair and maintain roads, County roadways. Is that correct?

A. Yes.

Q. Wouldn't you agree it would be prudent to rely on an individual with that experience?

A. I'm not aware of Mr. Maiden's experience.

Q. Okay. How many times have you personally met with Dr. Springer?

A. Dr. Singer?

Q. Singer. I'm sorry.

A. I don't know. Cindy's had a number of appointments over the past couple of years with Dr. Singer, more frequently recently because of her decreased health condition. At least three or four that I can remember in the last few months.

Q. What are Ms. Madej's other health conditions, any other diagnosis that you're aware of?

A. I'm not aware other than the anemia and severe

vitamin D deficiency and vitamin B12 deficiency. I guess I'm not aware of what her other diagnoses are.

Q. Okay. You know, you've discussed that you've done all this research and you've attempted to, to find alternatives. What have you done in terms of housing? It seems like all your research has gone into alternatives to chip and seal.

A. We've called just about everybody we can think of. I met with Peggy Gish, who owns a large parcel of property down the road from us, to see if, you know, we walked back to a spot in the woods that is actually now owned by or is under land contract by somebody else but she I guess still technically owns it, but we looked at a spot back in the woods last week. It was barely over a quarter mile from the road and it was extremely difficult to get to.

Q. You also indicated that she's very fragile at this moment. Correct?

A. Yes.

Q. Okay. Don't you think that maybe she should be under some more serious medical care rather than I guess your ability to care for her? I mean the severe weight loss is a little concerning, don't you agree?

A. Do I agree that the weight loss --

BY MR. PETTEY:

I'm going to object to the extent that he's asking Mr. Madej for a medical opinion on how she should be cared for.

BY THE JUDGE:

I'll sustain the objection.

Q. Are there any other roads within a one mile distance of your house?

A. Portions of State Route 550 and portions of Peach Ridge Road I believe would be within a mile of our house.

Q. Have you, are you aware of whether any chipping and sealing or other repair maintenances have been done to any of those roads since you've been (inaudible)?

A. Peach Ridge Road was chip and sealed a couple of years ago I think. One to two years. I don't remember if it was last year or the year before. They are currently doing work on Peach Ridge Road as we sit here today, as far as I know. There were vehicles there this morning when I came into town. State Route 550 was repaved sometime in the last year. Maybe two years, but somewhere around there. I don't remember exactly when.

Q. Okay. No heart attack from your wife?

A. She did not have a heart attack, no. But she was ill for some time when winds came from those directions.

Q. Did she receive any medical attention?

A. No.

Q. I have nothing further, your Honor.

BY THE JUDGE: Okay. Thank you, Mr. Saunders.

Mr. Pettey, do you have any re-direct?

BY MR. PETTEY: Yes, your Honor. Thank you.

BY THE JUDGE: Go ahead.

RE-DIRECT EXAMINATION BY MR. PETTEY:

Q. Now there have been, Mr. Saunders asked you when you lived in Gahanna whether Ms. Madej was ever hospitalized as a result of problems with chemical sensitivity. Can you describe why it is that, first of all do you avoid taking Cindy to hospitals if possible?

A. If possible, yes. She's extremely sensitive to plastics, vinyls, latex, disinfectants, cleaning compounds. The oxygen that we give her at home comes straight from the tank. She can't tolerate a plastic mask or tubing or regulator.

Q. So if she's having a reaction due to chemical sensitivity about the last thing you would do is take her to the hospital. Is that right?

A. She would have a lot of exposure to chemicals in the hospital.

- Q. Taking her to the hospital could actually make her worse. Is that rihgt?
- A. That would be my understanding.
- Q. When other road projects have been done within a mile of your home Cindy's gotten ill. Is that true?
- A. Yes.
- Q. Mr. Saunders asked you to look at the letter from Dr. Lieberman that had been provided to the Athens County Engineer's office. That letter indicates that remaining indoors with windows closed does not provide adequate protection against chemical stessors because of the level of her sensitivity. Does that comport with your personal experience?
- A. Yes.
- Q. She still has problems even when she's indoors?
- A. Yes.
- Q. He also indicates avoidance is the only viable protection. Does that comport with your experience as well?
- A. Yes.
- Q. Now Mr. Saunders indicated that you had had an opportunity to speak at the meeting. Do you feel that you had an adequate opportunity to speak at the meeting?

A. No.

Q. Were you limited in the amount of --

A. I was interrupted multiple times by the other people at the meeting. And then the energy of the meeting started to build and Mr. Maiden said I had one minute left.

Q. And so you didn't feel like you had an adequate opportunity to speak there. Is that correct?

A. I didn't have an opportunity to discuss anything about that there might be some alternative.

Q. And you've never had, and you spoke with Mr. Maiden you believe around August 28th on the telephone. Did he have any discussion with you about alternatives at that time?

A. No.

Q. So there's never been any discussions about alternatives with Mr. Maiden, has there?

A. No.

Q. And you've had times when you've called the office and asked to speak with him and were told that he didn't have time to speak with you. Is that correct?

A. Yes.

Q. Those are all the questions I have, your Honor.
Thank you.

BY THE JUDGE: Thank you, Mr. Pettey. Mr. Saunders, any re-cross on that?

BY MR. SAUNDERS: No, your Honor.

BY THE JUDGE: Okay. Thank you. Mr. Madej, you're free to step down. Thank you.

BY MR. PETTEY: Your Honor, the Plaintiffs will call Dr. Barbara Singer.

BY THE JUDGE: Okay. Thank you. Dr. Singer, please just go ahead and approach up here if you would, please. I'll ask you to raise your right hand. Do you swear or affirm that the testimony you'll give this Court will be the truth, the whole truth, and nothing but the truth?

BY MS. SINGER: I do.

BY THE JUDGE: Okay. Thank you, ma'am. Please have a seat right here. Mr. Pettey, you may proceed whenever you're ready.

BY MR. PETTEY: Thank you, your Honor.

BARBARA SINGER, first being duly sworn, testifies and says as follows:

DIRECT EXAMINATION BY MR. PETTEY:

Q. Dr. Singer, would you state your name for the record, please?

A. Barbara Singer.

Q. And could you tell me a little bit about your

educational background, please?

A. I did a bachelors in biochemistry completed at OU. I went to medical school at OU as well and did internship and residency in Athens. So this is very much my home. I did, my first practice was at Trillium Health Center, which was an integrated practice on primary care. And then I opened my own clinic and have a large primary care practice also in the Lancaster area.

Q. And how long have you been practicing medicine since you completed your education?

A. Ten years.

Q. Let's talk a little bit about Cynthia Madej. How long have you been, has she been a patient of yours?

A. I saw her first back in 2011. I saw her several times in 2011. And then I didn't see her again until May I believe of 2015.

Q. And then after May of 2015 how many times did she --

A. I think it's been five or six times. She was very ill.

BY MR. PETTEY: Okay. I would move to qualify Dr. Barbara Singer as a medical expert, your Honor.

BY THE JUDGE: Any objection?

BY MR. SAUNDERS: No, your Honor.

BY THE JUDGE:

Okay. The record will reflect that she is so certified.

Q. Dr. Singer, could you first discuss with me what are the diagnoses that Cindy has?

A. She was diagnosed I believe it's fifteen years ago by an environmental doctor to have what was called multiple chemical sensitivity but now I think is called environmental illness. I believe that's the newer language around that. She's really had to, after a very I think healthy childhood, career, that was when she had multiple exposures that seemed to have contributed to it, from what I hear. But again I was not firsthand. But these come from Dr. Lieberman's records. She has become disabled and really has had a real compression of her life to a small existence because of this. In addition to that she also has multiple other things probably secondary to that. She's got vitamin D deficiency, vitamin B deficiencies because she doesn't seem to be able to tolerate a lot of foods because of food allergies. She's lost a vast amount of weight in the past couple years and recently really spiralled downward. She has protein deficiencies. And also some severe peripheral edema where she's (inaudible) because she

doesn't have enough protein in her body to maintain vascular sufficiency. Those are the major things going on for her that I'm aware of.

Q. Is anemia one of the concerns?

A. Yes that is. It's a huge concern. She's, she became increasingly anemic in the time that I saw her, including having lost probably fifteen, twenty pounds more in that time, so between May and now. I feel like her health really became compromised in that time. And I actually really kind of was like you've got to do something more, we've got to get you into a hospital or something because you're going to die. But then going to a hospital also for her poses such threats. So I mean she, she actually has been desperate for a long time. And, you know, I had to be very clear about that language that I felt even I think two appointments ago. This is something people die of, what's going on. And you're young to look this way, to be this sick.

Q. And so combined with her already frail condition how does her, how in your opinion would paving that road in front of her house with chip and seal effect her medically?

A. Well I guess that's why I'm here. Right? That's why

you, I got called here is that it's not good. It's very bad. And it's opening a can of worms we don't know the outcome of. And an outcome that could be possibly serious injury or potentially death. And, and, and I wouldn't want to go there personally. As my patient I don't want it going there. I don't want to travel there. If I can avoid it for her I would.

Q. And it's your understanding that one of the main problems with the chip and seal product is that it contains volatile organic compounds that would effect her chemical sensitivity negatively?

A. Absolutely. Absolutely. It's been her history to have a response to those as well.

Q. And do you recall what kind of responses she's had to those kind of substances?

A. I, you know, she's had dizziness, weakness. Is the anemia secondary to it? I don't know. But there is this suite of things that is associated with this environmental problem that Dr. Lieberman is the expert at. And I wish that he were here as well because I think he very eloquently with a bigger basis be able to testify to this. So headache. Emotional things. And I was just actually at a conference this weekend that was Dr. McCann, Kelly

McCann, who spoke of the emotional impact of it, that people became --

BY MR. SAUNDERS: I'm going to object to this doctor at the conference.

A. Okay.

BY THE JUDGE: I will sustain the objection only insofar as it's talking about the other doctor at this conference.

A. Okay.

Q. Is it your understanding that emotional issues can result from chemical sensitivity?

A. Absolutely.

Q. Is it your understanding that difficulty breathing, heart attack, paralysis, migraines, and neurologic stress and damage can result from chemical sensitivity?

A. Absolutely. That is my understanding from what I've read and experienced.

Q. And Dr. Singer, is it your opinion to a reasonable degree of medical certainty that Ms. Madej will suffer serious physical harm or possible death if this road project goes forward?

A. Yes.

Q. Let me show you an exhibit. I'll call this

Plaintiff's Exhibit 2.

BY MR. SAUNDERS: Oh yeah, that's fine.

Q. Do you recognize that document, Dr. Singer?

A. Yes.

Q. And that's your affidavit? Correct?

A. That is.

Q. And sitting here today you still agree with everything you've written in that affidavit?

A. Yes.

Q. Even small chemical stressors pose a serious hazard to her. Is that correct?

A. They have historically for her. And again that's from her, Dr. Lieberman, and also from the history I've obtained from her. And she's a gravely ill woman. I, I wish I could say otherwise. I wish so. But she's really fragile.

Q. And you've indicated in your affidavit that she's unable to relocate from her home due to the severity and breadth of her sensitivities and the specialized living environment she requires. Do you still feel that's true today?

A. I would feel it would take a lot of planning and arranging in order to accommodate that, and a lot of cost. So I, yeah, yes.

Q. Not something that could happen quickly.

A. I can't imagine how you would create that. It would take some doing.

Q. She's also limited in her ability to receive the administration of standard medical care?

A. Yes.

Q. And that's because her chemical sensitivities can be exacerbated by the very things that are in medical treatment facilities.

A. Correct.

Q. And so it would be unfair to say that because this woman hasn't been hospitalized that she's not severely ill. Is that fair to say?

A. That is fair to say. And those are the conversations we've had. This could be life threatening. This could progress to that and you need to be seeking a higher level of care. And that has been prohibited by this.

Q. She's in a, she's in a tough bind, isn't she?

A. It seems so, yes.

Q. Thank you. Your Honor, that's all I have.

BY THE JUDGE: Okay. Thank you, Mr. Pettey.

Mr. Saunders?

BY MR. SAUNDERS: Thank you, your Honor.

CROSS EXAMINATION BY MR. SAUNDERS:

Q. You said you obtained your license to practice medicine about ten years ago?

A. Yes. More.

Q. A little more?

A. Yeah.

Q. Ten, fifteen?

A. Yeah.

Q. Okay. And you have two offices?

A. Correct.

Q. Okay. And where? Is one in Athens, one in
Lancaster?

A. Yeah.

Q. And what do you specialize in?

A. Primary care.

Q. Okay. And do you specialize in anything else?

A. I, I'm hospice and palliative care certified as well.
And I do a lot of integrative medicine.

Q. Like holistic services?

A. That's a misnomer but yeah, I help people deal with
their problems with fewer medications. But I write
for mainstream medications as well. I try to get
people to have healthier lifestyles.

Q. And what would you say the percentage of your

practice is?

A. Of what?

Q. Your percentage of say general healthcare to the integrative approach?

A. Hmmm, boy that's a really hard one to say. And since there's a new focus on mainstream medicine on general lifestyle modification what is mainstream anymore. Right? I think I practice increasingly mainstream. I don't know how to answer that question. I'm sorry. I wish I could.

Q. That's okay. When did you meet Ms. Madej again?

A. Initially in 2011.

Q. Okay. Was she referred to you or did she voluntarily--

A. She came to me.

Q. She came to you?

A. Yeah.

Q. Okay. At that time were you aware that she, there was this diagnosis of MCS? I'm going to call it MCS if that's okay. I know it's now referred to I believe as environmental illness.

A. Yes.

Q. Okay. And at that time she was ill. Correct?

A. Yes.

Q. And you didn't see her for a period of how many years?

A. Four years.

Q. Four years?

A. She was with Dr. Lieberman in that interim several times I believe.

Q. Okay. And you've never spoken to Dr. Lieberman?

A. I read her charts from Dr. Lieberman and I read, you know, I read what he wrote about this.

Q. Okay. So you're not really familiar with MCS other than what Dr. Lieberman has told you?

A. I've learned about it in other settings. So that's not totally true. And I think there are many degrees of MCS. So again, you know, what I've read about it, the research I've read about it, when I've gone to conferences that it's come, you know, that there have been presentations on it from different researchers. But I'm not an, I'm not an expert. That's why he needed to be the one --

Q. So you're not an expert in this field.

A. Right. And I'll be the first to say that.

Q. Okay. I don't want to go too far but is this your only patient that has MCS?

A. She's my worst patient who has it. And I am more

then an expert on Cindy seeing the labs that I've been able to obtain and seeing her as a very fragile patient.

Q. Okay. So the first letter that you received from Dr. Lieberman in terms of this was, what, 2009, 2010 maybe?

A. I looked at her old charts that she brought with some information at that time that were from his office.

Q. Oh. She brought the information. You didn't get it directly from Dr. Lieberman?

A. I may have got - actually I don't know the answer to that. Okay? Very possible. It depends. Patients will bring in old charts either manually or they'll be sent directly.

Q. So you saw her in 2011 and then in 2015?

A. Yes.

Q. Okay. Are you aware that she didn't see Dr. Lieberman since 2010?

A. No.

Q. Okay. So you haven't received any updated information from Dr. Lieberman since?

A. I just got the old charts.

Q. Okay. So nothing from 2011, 12, 13, 14?

A. No. I've gotten no new.

Q. Okay. Are there any treatments available for this disease?

A. The mainstream doesn't have any treatments. The alternative world suggests things but so far nothing that has been able to be tolerated by the patients.

Q. You're aware of the American Medical Association. Correct?

A. Yes.

Q. Do you understand that the American Medical Association does not recognize this as a syndrome?

A. Yes.

Q. Okay. Are you aware of the World Health Organization?

A. Yes.

Q. Do you understand that they do not recognize this as a --

A. Right. But I do think the Disability and Social Security does as does the Department of Justice.

Q. Well I'm talking in terms of these.

A. But there's time too. I mean vitamin D deficiency wasn't recognized. It's mainstream now. Buy fish oil. There are many things that are --

Q. Right now it's just yes or no.

A. Yes.

Q. Okay. Thank you. And then lastly are you aware of, and I may butcher this, the Association For Asthma, Allergies and Immunology?

A. Yes.

Q. Are you familiar with that?

A. Yes.

Q. Do you understand that they do not recognize this?

A. Yes.

Q. Okay. Do you think there's a possibility that MCS is a mental disease?

A. I don't think that's likely.

Q. But there's a possibility? Because it seems--

A. Remote.

Q. But there is? It seems like depression is associated with MCS. Is that correct?

A. So chicken and egg. Which one causes which?

Q. But also anxiety? Is that also a symptom of MCS?

A. It's often the endpoint of many diseases, to have anxiety associated with them. So MCS is associated with symptoms that are neurological and present psychologically. But I don't know which one is coming (inaudible), you know. Or actually I think that the psychological component is subsequent to exposures.

Q. But you're not entirely sure?

A. As no one really is.

Q. But you don't specialize in this area.

A. Right.

Q. Okay.

A. And you don't get absolutes. Medicine is not an exact science.

Q. Did you submit a letter on behalf of Cindy Madej to the Engineer's office?

A. To whose office?

Q. The Engineer, the County Engineer.

A. I believe so.

Q. Okay. I'm going to be handing you Exhibit D.

BY THE JUDGE: What is it?

A. A letter to

Q. Exhibit D.

BY THE JUDGE: It's not been brought to the bench yet.

BY MR. SAUNDERS: Do you have an extra copy by chance?

BY MR. MAIDEN: Of the letter?

BY MR. SAUNDERS: Yes.

Q. When was this letter written?

A. Here it's not dated. I apologize for that. Several

weeks ago.

Q. Okay. So it was in 2015?

A. Yes.

Q. Okay. When you wrote this letter what did you base your recommendations off of?

A. Dr. Lieberman's recommendations.

Q. Okay. So not your own but Dr. Lieberman?

A. Well, and also the literature that I've read. But again, I don't propose to be a specialist. I propose to be her doctor and a specialist in her.

Q. Okay.

A. She was very vulnerable.

Q. I know that you (inaudible) includes several things. What other diagnoses does Ms. Madej have? I know you mentioned vitamin D, B, a protein deficiency.

A. Anemia.

Q. Anemia. So the vitamin B, D, and the protein deficiency, would those be food allergies?

A. Or metabolic dysfunction. It can be because of food allergies in the sense that you can't tolerate those foods. But they can also be secondary to. And what the literature points to is these subtle poisonings kind of. And that's really the, the terminology that they use.

Q. Is there any other diagnosis that we're not, that you haven't mentioned yet that she has?

A. She was hypotensive, low blood pressure. She had a lot of gastrointestinal stuff. We did a work up on abdominal pain.

Q. How did you do the work up?

A. She had a home - I wrote an order for a CT scan of the abdomen and also a right upper quadrant ultrasound. And she was able to get that at home I believe. So she had to do all sorts of things to get imaging done out of the office, out of any structured setting. She was able to get labs drawn, blood drawn.

Q. She was able to get blood drawn?

A. Mm-hmm.

Q. Okay. These food allergies, one potential hazard is a heart attack. Correct? Vitamin D deficiency? Is that true?

A. Potential of heart attack. I think --

Q. Heart attack, hypertension?

A. I think a heart attack risk is from, I think if she had anaphylaxis. I don't have a history of anaphylaxis in there. But I think heart attack would be more because she's really working with very poor

vascular tone because of low protein, because of, she's, she seems very vulnerable to me for someone who's decompensated cardiovascularly. And why would you --

Q. These deficiencies also could lead to migraines. Is that correct?

A. Vitamin D deficiency? I see migraines more, more as toxicant burdens typically. I really do. I mean people who have migraines will say they walk into a department store and the perfume counter will give them a headache. These are pretty common scenarios in the headache clinics, that people really do have chemical exposures that do that. And, and it must be miserable for them.

Q. In this letter you indicated that any potential construction or maintenance could potentially kill Ms. Madej. Is that correct?

A. Potentially, yes. I think it needs to be weighed.

Q. And how would you determine that? I mean potentially is a pretty vast term, don't you think?

A. Right. Right. So I think there has to be reason. I think, you know, again Dr. Lieberman's letter said a mile from her house. I didn't have that in there because I don't have that knowledge base. But I

think the difference in burden of a whole road being tarred supposedly versus patched or a surface that could be a little less challenging to her that could satisfy everyone's needs might be a compromise.

Q. Well let's talk about that mile.

A. Yeah.

Q. You didn't come up with that term.

A. That was his.

Q. That was his. So you're not sure if it could be a hundred feet or it could be .9 miles.

A. That's why he's the expert.

Q. Who is?

A. That's why Dr. Lieberman is the expert.

Q. Okay. Are you aware that Mr. Madej was the one that requested that mile to Dr. Lieberman?

A. I am not aware of that.

Q. Okay. So if you --

A. I think that he's probably the expert in his wife's condition.

Q. So if you knew that your patient, Ms. Madej, said a mile instead of what Dr. Lieberman said would you have changed your opinion?

BY MR. PETTEY: Objection. Assumes facts not in evidence. There was never any demonstration that Dr. Lieberman

didn't fully believe that one mile would be a problem.

A. Right. And since --

BY THE JUDGE: Hold on one second, ma'am, before you answer. What was the proposed question again?

BY MR. SAUNDERS: The proposed question was if the patient requested a different distance rather than Dr. Lieberman's opinion would she have gone with the patient rather than Dr. Lieberman.

BY THE JUDGE: I'm going to sustain that objection as being speculative.

Q. Have you ever been to the Madej's house?

A. No.

Q. You haven't? Okay. I want to go back to these migraines issue. You said a lot of it comes from toxins in the air.

A. Yeah.

Q. Bright lights? Would that be a cause?

A. Some people have that as their trigger.

Q. Okay. Could another trigger be sunlight even?

A. For some people.

Q. From outside a glass?

A. For some individuals that is. It's a really individual thing. I don't think that migraines are an exact science either.

Q. So really I just want to be clear here. You're not sure what a distance is that would relieve her of any symptoms. Is that correct?

A. Because I'm not an expert I would not testify to that.

Q. You would not. Okay.

A. That wouldn't make sense for me to do.

Q. Okay. I have nothing further, your Honor.

BY THE JUDGE: Okay. Thank you. Mr. Pettey, any re-direct?

BY MR. PETTEY: Yes. Thank you, your Honor.

RE-DIRECT EXAMINATION BY MR. PETTEY:

Q. Dr. Singer, is it common for family physicians, primary care physicians, to rely on information from specialists in forming their own opinions?

A. Absolutely. A patient comes to me and they're told by their oncologist that they have, you know, Hodgkins Lymphoma, I'm not going to to another work up for that. We are the general care and well being of an individual. And we have to rely to some extent. I mean an, you know, we have to not dismiss our brains because a specialist has said something totally. But we do rely heavily on specialists for a higher level of knowledge in a specific field.

- Q. And do you have any reason to believe that anything that Dr. Lieberman included in his letter to the County Engineer's office or in any of the paperwork that you've seen from him was incorrect or false?
- A. It seemed genuine. It seemed in keeping with what I've heard is similar. This is certainly, you know, a particularly dire situation for Cindy.
- Q. Now there was some talk about some organizations that did not recognize chemical sensitivity. Is it your understanding that the Social Security Administration recognizes chemical sensitivity for the purposes of
-
- Social Security disability?
- A. Yes.
- Q. Is it your understanding that the EPA recognizes chemical sensitivity as a diagnosis?
- A. Yes.
- Q. Is it your understanding that the Department of Justice recognizes chemical sensitivity as a diagnosis?
- A. Yes.
- Q. Do you have any personal qualms about her chemical sensitivity diagnosis? Or do you believe that that's a fair diagnosis?
- A. I think it's a fair diagnosis. I think it's a

devastating diagnosis. I think this whole situation is so sad. I, I ache for this neighborhood and I ache for Cindy. And I don't know what to do to make it easier for all.

Q. Now Mr. Saunders has asked you some questions about alternative causes for migraines and heart attacks and so forth. Has anything that Mr. Saunders asked you made you change your opinion expressed in your affidavit that these toxins from the road could cause her problems in terms of breathing problems, heart attack, migraines?

A. No. I wish they could. But no. No. It happens. I think that there are these individuals that are the canary in the coal mine. And I don't know why they are so sensitive, but they are. And I think she's very much that.

Q. Thank you. No further questions.

BY THE JUDGE: Thank you, Mr. Pettey. Mr. Saunders, any re-cross?

BY MR. SAUNDERS: No, your Honor.

BY THE JUDGE: Okay. Thank you. Dr. Singer, you're free to step down. Thank you for coming in.

A. Thank you very much.

BY THE JUDGE: Counsel please approach.

BENCH CONFERENCE

BY THE JUDGE: Is your only other witness Mrs. Madej?

BY MR. PETTEY: She's (inaudible).

BY THE JUDGE: Okay. And your witness is Mr. Maiden?

BY MR. SAUNDERS: Mr. Maiden and I have two (inaudible)

BY THE JUDGE: My preference would be to go ahead and just try to roll through and finish this thing up today even if it means we go a little past closing time. My next thought was a five minute recess. Is that sufficient? Okay.

END OF BENCH CONFERENCE

BY THE JUDGE: We've still got a few more witnesses to go it looks like so we're going to go ahead and stand in recess for five minutes.

BY THE JUDGE: Can we get her on the phone before we get started?

BY MR. PETTEY: Yes. She is ready and waiting for our call.

BY THE JUDGE: Okay. Just for the record we're back on the record in case 15CI0179, Cynthia and Robert Madej versus Athens County Engineer Jeff Maiden. We're going to

attempt to reach Mrs. Madej on the telephone here for her testimony. And both counsel have approached the bench. Just for purposes of being able to have everything pick up your voices I think it's best that we just go ahead if you wouldn't mind remaining up here during this round of questioning. And we'll go ahead and attempt to reach her on the phone. You go ahead and speak to her when she picks up and then I'll swear her in.

BY MRS. MADEJ: Hello.

BY MR. PETTEY: Hi, Cindy. This is Sky Pettey.

We have you on speaker phone here in the Athens County Common

Pleas Court with Judge Lang and Attorney Saunders and some various people here in the audience as well. And now I'm going to turn you over to Judge Lang.

BY MRS. MADEJ: Okay.

BY THE JUDGE: Okay. Mrs. Madej, before we begin the questioning here I need to have you placed under oath so I'm going to ask you do you swear or affirm that the testimony you'll give this Court is the truth, the whole truth, and nothing but the truth?

BY MRS. MADEJ: I do.

BY THE JUDGE: Okay. Thank you. Mr. Pettey, you may proceed with your questioning.

BY MR. PETTEY: Thank you, your Honor.

CYNTHIA MADEJ, first being duly sworn, testifies and says as follows:

DIRECT EXAMINATION BY MR. PETTEY:

Q. Cindy, if you would first please state your full name for the record?

A. Cynthia Woollock Madej.

Q. And what is your address?

A. 13152 Dutch Creek Road.

Q. Cindy, let me first ask you some questions about your environmental illness, which is also sometimes referred to as chemical sensitivity. What are some

of the ways that you have to live that are unusual in order to accommodate your illness?

A. Um, I cannot leave the house very often at all. When I do I have to wear protective measures such as masks and hats and things like that so that I can try to minimize any type of exposure, whether it's in my car or wherever I may be going, like a doctor's office. As far as our home itself is concerned we have to take incredible precautions about bringing anything into the home. It was specially built to be free of formaldehyde and a lot of other construction materials, chemicals, by the previous owner who also suffered with the same illness. When Bob comes home

from being out somewhere he has to shower and clean up before he can be anywhere near me, a procedure that, you know, often can take an hour or even longer. We have to re-package anything that has come from a store and, you know, live very, very carefully in terms of just anything that I may be exposed to, whether it's in our outside environment or our indoor environment.

Q. Cindy, you have both the main house that you referred to there that was specially built with precautions for another person with chemical sensitivity and environmental illness. There's a second structure out there that sometimes you refer to as the cottage. Can you describe that and why it's built the way it is?

A. Yes. It's a small structure, ten by ten by ten, that is made of carefully selected solid maple wood from a local lumberyard as opposed to a store. It was built by my husband and some other local people. It is lined with glass on all sides in the inside. So the floors, the walls, and the ceiling inside are all glass. And it was done that way because I was having reactions to almost every other building material that we were trying. And it is the only way that I

am able to sleep without having all kinds of reactions that cause, you know, a wide variety of symptoms, including insomnia and the ability to sleep. And the reason that we had to do it instead of just my being able to sleep in the bedroom in the house is that this house, while it was built for somebody who was chemically sensitive, they were far more mildly chemically sensitive. Because there is a range of sensitivities from mild to very extreme with this illness. They were on the more mild end. I'm on the very extreme end. And there are some things about the home that I still don't tolerate. And so I spend a moderate amount of time in what we call the cottage.

Q. Now --

A. Actually as well as outside to try to get fresh air as much as possible.

Q. And how is it that you originally began to have environmental illness? What's your understanding what the cause of your illness is?

A. Chemical injury that was brought on primarily by an organo-phosphate pesticide that I was exposed to in a previous home that we had when we had a termite treatment done. And it was a chemical that at the

time was legal but within a couple years after that was banned for residential use by the EPA due to serious health problems that were being reported across the country. And as a result of that injury, you know, as well as chemical exposure that I was having at work when I was a biologist, a molecular biologist, and had my hands, you know, on chemicals every day, it did a great deal of damage to my nervous system from what I've been told by doctors. And it has rendered my body unable to respond the way most people's body do, you know, much like any, any-

body else who has had an unfortunate incident in their life and has had neurological damage and ended up paralyzed and disabled. I have also become disabled as a result of what I've been told is neurological damage from this chemical injury.

Q. And you do, are considered fully disabled permanently by the Social Security Administration?

A. I am. I was awarded disability in 1997.

Q. Now tell me what would be involved in finding another place for you to live.

A. Well, just to give you an example it took us over eight years to find this place to live because ninety nine percent of homes that are built are made with

materials that are typically, you know, with this illness, problematic. And that is the case with me as well. You know, OSB, plywood, you know, so many building materials, carpeting, even drywall, paint, most kinds of finishes, you know, polyurethanes, all of these types of materials are, you know, they contain formaldehyde and (inaudible) and all kinds of other chemicals that can really cause a wide array of reactions in people who have chemical sensitivity. And so in looking for a home trying to avoid those materials is really important. And like I said,

they're used to build almost all homes around. And in addition to that, if, you know, it's been a home that's already been occupied prior there are often a lot of fragrances and other residue, sometimes pesticides and sometimes mold issues, and all of those things come into play in causing all types of different reactions, whether they're physical reactions, physiological reactions, neurological reactions, from dizziness and really severe headaches, all kinds of pain, muscle problems, memory issues. And so, you know, relocating is not a simple thing. We are not rich at all. We are very limited in income. And so for me to relocate someplace, you

know, it's not like we can have a second home some-
place, especially one built like this. And to re-
locate the cottage is a feat in itself. As I said,
it's glass lined everywhere so all the glass would
have to be removed. It weighs a ton because it's
built with all hard maple. And moving it a distance
far enough away from the, the potential chip and seal
would require, you know, quite a lot of planning and
effort. Other reasons I, I, you know, struggle to go
anywhere else, you know, in a motel or a hotel, you
know, there are a lot of fragrance products used as
well as cleaning compounds, and like carpet and all
sorts of things like that, as well as almost always
pesticide use. So that just becomes not an option
either. And unfortunately, the family and friends
that we know have all the same issues with their
homes that I've already described. So relocating
just, it, it, for people with this illness becomes an
impossibility. And I wish I could do something like
camp. But again most, you know, tents and sleeping
bags and other camping gear are impregnated with
waterproofing compounds, mildew products, flame
retardants, and all those sorts of things that I
react to and do very poorly with.

Q. Now do you, so in order to relocate say the cottage, you would be thinking in terms of a matter of months not days or weeks? Would that be fair to say?

A. I would say at least a month. It would just depend on how far we were moving it and the type of terrain that it was going to be going up and down and stuff like that. I mean you can imagine if it were fairly hilly we would probably have to do a lot of extra stablization to keep it from twisting and torquing and things like that as we tried to move it. And just to protect it we would have to probably wrap it with something and either, you know, pull it with horses or do something where we try to protect it from whatever the vehicle is that's pulling it so that the exhaust fumes would not, you know, contaminate the, the wood of the structure and the insulation of the structure. So yes it probably would take quite a bit of planning and doing and probably at least a month, maybe more, to do that.

Q. And this is of course assuming that you have a suitable site.

A. Correct. Exactly. And that we can deal, you know, it really depends on things like do we need to deal with power lines and cutting all kinds of limbs and

trees and, you know, essentially sort of putting gravel down to pave sort of a temporary road so that it can travel on it, you know, and all those sorts of things. So it becomes far more complicated than just throwing it in the back of a pick up truck and, and driving it someplace. Or, you know, a couple of days. It definitely would take, you know, it's a decent size structure and very heavy. It's no easy feat ever to move, you know, something, something that is that significant a structure and needs additional protection on top of it.

Q. Cindy, let's turn to some of your own lived experience in terms of reactions to paving projects, asphalt, chip and seal. What kind of experiences have you had in terms of the health effects that are caused to you when you're exposed to those substances?

A. I've been, I have a history of being reactive to asphalt and tar, petrochemical products, that goes back at least fifteen years. And with this illness oftentimes symptoms continue to escalate over the years and become worse as well as more diverse, more diverse as well as increased intensity I guess would be the best way to say it. Early on, you know, I

probably, let's see, I have a record here that says I had headaches, dizziness, nausea. And those were some of the earlier symptoms I would have. As time has progressed my symptoms have started to escalate and increase to include instead of just headaches now I get very severe migraines with light and sound sensitivity and nausea. I have dizziness and instability. So it interferes with my ability to even walk. Really severe nausea. And I have started to have a lot more pain, sharp shooting pains as well as the most concerning have been significant chest tightness to a point where sometimes, you know, it's very difficult to breathe even with oxygen. Heart racing, heart palpitations and things along those lines. I also have a history for at least five years now of reacting to petrochemical products a mile away. There have been a number of incidents over the last five years or five and a half years since we've lived here where chip and seal was done on Peach Ridge Road roughly a mile or a little further yet than that away, as well as the recent paving that ended on Dutch Creek Road that stopped at Stanley Road. And multiple times I have had all the symptoms that I just described, not as intense from a mile

away. As you might imagine the VOC's and the chemicals are not as strong from that distance. But still I have all those symptoms even from a mile away. And in the occasions when I have been closer to petroleum products than that over the years the symptoms escalate dramatically with, with proximity. I've also been able to try to avoid as much of this as I can over the years. I have been allowed by the City of Gahanna to not be exposed to a paving project that they were doing when we were living in the Columbus area. They just did not pave our street at all. And just I think it was last year, or possibly the year before, the Ohio Department of Transportation was doing some road work on 550 and they also gave me a two or three mile radius where they did not do any work other than just mowing.

Q. Now has the chemical sensitivity, I think you briefly referred to this but I didn't want this to escape attention, the chemical sensitivity has increased over the years, is that correct, in severity and the breadth of the substances that cause you problems?

A. Yes. Yes. It definitely has. I not only become more symptomatic but I also, the number of symptoms and the type of symptoms I have has expanded

dramatically, as well as all the intensity of those symptoms as well. And that is not uncommon at all with this illness. I've been told there are, you know, a number of different mechanisms that cause that unexpected. And I definitely have the history of that. And currently my symptoms have, you know, gotten to be very scary at times when I just, I can't even catch my breath at all or my heart is pounding so much and my chest is so tight. It becomes quite uncomfortable, quite painful. And I have had instances where I have become paralyzed completely except for being able to blink my eyes from certain chemicals. So yes it definitely has worsened dramatically over the years.

Q. Cindy, let's talk about some of your other medical concerns that are going on right now other than chemical sensitivity. We've heard Dr. Singer talk about the fact that you're in a weakened sort of frail state. Can you tell me, you know, what your understanding is of why that is, why your health is in an unusually poor situation right now?

A. Yeah. Both Dr. Singer and Dr. Alan Lieberman, who have been monitoring my case, have explained to me that I have a form of anemia from a B12 deficiency.

And it is causing me to have low hemoglobin and increased carbon dioxide levels such that I do not have adequate oxygen. It also puts a, from what they said, a stress on my heart because it's having to work far harder to try to pump blood to get the oxygen to all the cells. And so it's not uncommon, and I have had a lot of symptoms where I am having, you know, what they describe to me as impacts on my cardiac system as well as my respiratory system. And I have become extremely weakened, very rundown and drained. My husband has had to increase the amount of caregiving because of this. I'm just not able to help very much at all with any type of just day to day activities. I've also become jaundiced and just utterly, utterly weak. And they told me that, you know, I needed to try to avoid stressors such as exposures and a lot of activity because, again, these things would put additional stress on areas that were already, areas and organs that were already stressed like the heart and lungs. And so they highly recommended that I essentially try to lay low and rest a lot and just try to recover and avoid as much exposure as possible. And Dr. Singer also shortly after my 50th birthday suggested to my husband and I

that we start proceeding with a living will and other end of life things that you would do to get your affairs in order.

Q. Cindy, what are some of the complications or concerns that you have to consider in terms of going to a hospital or seeking other medical care?

A. When you have this illness and you react to all kinds of chemicals the concerns are magnified an immense amount. Things to be considered about whether, you know, it be an ambulance, a nursing home, an out-patient medical facility, or a hospital, most

hospitals and other medical facilities routinely pesticide. And for people who have already been damaged by pesticides I've been told the impacts are very serious to get repeated exposures of the same type. And it would, I've been told that it would, you know, do even more damage to my nervous system since these chemicals are (inaudible). Other considerations are that, you know, almost everything these days is a plastic material, polyethylene, vinyl products, and those are known to outgas a wide variety of chemicals as well. There ere fragrances a lot of times and disinfecting products, cleaning products, and things like that. And all of those

things cause problems. Rubber products. It's, it's, there's such a huge number of things that would cause such an array of reactions. It just really becomes an impossibility for people with this condition to be able to go to a standard medical care facility.

Q. Tell me some of the precautions you take when you do go to see Dr. Singer.

A. Dr. Singer has been, has suggested as well as willing to see me outside so as to avoid a lot of the things I just described. She sees me only at her Athens office as opposed to the office that she has in

Carroll, Ohio because it is in an agricultural area.

She also --

Q. Excuse me, Cindy.

A. Is very cautious in terms of she will wash her hands with alcohol to remove residues from other fragrances and disinfecting products prior to treating me. And when I go I wear clothes that I never wear in the house because when I go places the clothing will pick up residues from anything that I've been exposed to. And so those clothes tend to harbor those residues. And so I have to pick very select clothes. I wear a hat to try to cover my hair to prevent absorption into my hair, much like if you went someplace and

(inaudible) cigarette smoke most people are familiar with how much you smell when you leave, both your clothes, your hair, your skin, all of that. So I pretty much cover up from head to toe as much as I can, hair and skin. And I also wear a carbon mask to help filter chemicals. And I take with me, you know, oxygen and alcohol and other things like that that become necessary with some exposures so that I can either clean with the alcohol or take oxygen to try to help reduce some of the impacts of exposures, although by far it's been my experience and it's pretty well documented by others with this illness that oxygen helps only some and that by far the thing that helps the most is to remove yourself from the area where you are getting exposures.

Q. Now despite all these efforts that you take when you do go to the doctor have you ever had or felt ill after you've gone to the doctor?

A. All the time. Almost all the time. Less so with Dr. Singer because she has been very helpful in taking a lot of precautions. But if I were to go to anybody, you know, other facilities or other doctors or medical places that didn't take as many precautions, or even I mean even with Dr. Singer's precautions

there have been quite a number of times when yes I still have come home and had to take, you know, many showers and try to clean with a lot of different types of products to try to remove residues that were on my skin and air my clothes out sometimes for a long period of time to try to make sure that they are also free of those residues. But then if I go to other types of facilities, be it a doctor, a dentist, wherever, the impacts are really profound and I almost always become very ill. And it just really depends on the exact facility and, and what they have in it. But, you know, the symptoms can be anything from very mild to very severe.

- Q. Cindy, let's, let's turn our attention a little bit towards the history of how you learned of the plans to chip and seal Dutch Creek Road. We've gone through some of this with Bob and I know Bob had a lot of these communications with the Engineer's office so I'm going to try to cut this a little shorter with you since we've done a bunch of this already with Bob. But back in March when other neighbors petitioned to have Dutch Creek Road resurfaced you were never made aware of that, were you?
- A. No. No we weren't. We were not made aware of the

petition that there was. We were not invited to any meetings about it. Nobody came that we were aware of and knocked on the door, left a note, put anything in our mailbox, called us and left a message, or tried to talk to us. We were not aware of it at all. And unfortunately because we live a pretty isolated life focused on health and isolated also because of my limitations we don't tend to, you can imagine with a chronic illness, to socialize like ever or have a lot of contact with, you know, a lot of our neighbors. And we don't tend to do things like read newspapers.

I can't tolerate all the ink and such. And our old computers aren't very good at loading those types of pages. So we're pretty uninformed a lot of times unfortunately. And both from media sources as well as just neighbor contact. We were not aware of it at all.

Q. And you were not aware throughout the Spring and most of the Summer that there were any plans to chip and seal Dutch Creek Road. Is that correct?

A. Yes that is correct. And as a matter of just precaution every year since we've moved here we tend to call the County Engineer's office throughout the year repeatedly to check in with them and just make

certain that they don't have plans for certain things, in addition to the documents we have on file asking for notification. So we received no notification at all that there were any plans for any type of projects at all on our road. Whether it was chip and seal or pothole filling or grading we got no notice on any of those. And we also had, you know, no reason to think that there were any plans for it because this year my husband called at least three maybe four different times between the Spring and August to the Engineer's office just to check and see

if they did have any plans for Dutch Creek Road at all for any types of, I believe for any types of plans including, and I know he specified each time, chip and sealing. And each time he called he was told that they had no plans at all for this entire year and they had no budget for it for this year at all. So we had no reason to think that there was any need to do, to take any kind of action whatsoever since we got repeated reassurances that they had no plans at all for the whole year.

Q. And since you've lived on Dutch Creek Road they've never chip and sealed it during the time you've been there? Is that correct?

A. That is correct. It's my understanding that they chip and sealed it I think the year before we bought the house. And they have not done any chip and sealing since we've been here. They have fixed, you know, very small potholes and done a lot of grading and adding of stone but never chip and sealing.

Q. Now when was it that you first learned that there actually were now plans to chip and seal Dutch Creek Road?

A. I believe it was either August 26th or 27th. We received a call from the Engineer's office stating that they were going to be chip and sealing the following day. And when they called, actually I can't remember for sure if it was, if they used the words chip and sealing. But they said that they were going to be doing road work that was going to start at the 690 end of Dutch Creek and that it was going to be for dust control. And in my conversation I tried very hard, as you can imagine for me the details are very important, to try to get additional information regarding okay if they're going to start on the 690 end are they only going to go a quarter mile, are they going to come all the way down here near our house, how far along were they going to do

it. And I also tried to get information about whether it was just filling a small patch of potholes or more extensive work. And I was told that they weren't sure yet, they didn't have all the information, and they would let us know. But it was very unclear what exactly was going to happen that next day.

Q. Cindy, I think since Bob has already testified to what happened after August 27th and the public meeting and he was the one to attend the public meeting that I won't ask you to go through your understanding of that. Let me just ask you instead when was it that you recall learning that yes indeed this project was going forward. Was that after the public meeting?

A. Yes. Yes. So as Bob probably testified, they called us on the 26th or the 27th of August and told us they were going to do the chip and sealing the next day, or, you know, road work the next day. And then that was postponed. And then there was the meeting. And it was the, it was probably around lunchtime the next day that we got a call saying that they were going to proceed with the chip and sealing and that they would put a note in our mailbox that same day with the

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schedule. Unfortunately we did not get that that day and we did not get the letter the next day. It wasn't until the following Monday that we got the letter detailing the schedule. But it was the day after the meeting that we were told they were going to proceed.

Q. And the schedule that you received on Monday said that the project would begin on Monday, the day that you received it. Is that correct?

A. Yes. And it was going to start between the Stanley and 690 end of the road and progress to our area as well. And I believe the schedule said they were going to start on the 690 end and not start on our end until a little bit, like Thursday. But actually they did start doing work on our end of the road that day as well, on that Monday.

Q. How did that make you feel?

A. Very threatened. Extremely threatened and uninformed since we were told that it was going to occur on Thursday and instead, you know. We had windows open. I was on occasion going outside to do things or walk between my cottage and the house. And I started getting very, very ill and realized that something was different than usual. And eventually my husband

was able to check out what was happening and saw that they were grading our whole stretch of the road, even though they had it on the schedule that they were not supposed to do that until Thursday. And I got quite sick from all the diesel fumes. So I definitely was feeling threatened and very sick from it. And that's, you know, nothing compared to what the tar and the asphalt products probably will do. Diesel fumes are quite bad but the asphalt in my experience has been far, far more threatening yet.

Q. What's your understanding about whether the County Engineer has been willing to dialogue with you about alternatives to chip and seal?

A. Since the time that we learned they were going to proceed with chip and seal we started doing research, my husband and I that is, on alternative products both for dust control as well as possibly road stabilization. Although I believe that my husband was told, or you know, everybody, the public was told at that meeting that our end of the road was stable. So for both dust control and possibly road stabilization we were doing research to try to work on alternative products. And that research has taken quite a lot of time because there actually are quite

a lot of products out there. And my husband on multiple occasions, at least three that I know of, attempted to try to talk to the County Engineer about these alternatives and the Engineer did not want to talk about them at all, at least two different times refused completely to talk about it, and one time started to talk about it but literally was yelling at my husband, so much so that I could hear him yelling at my husband on the phone across the room. And so there has not been any willingness on the Engineer's part to consider the alternatives at all or entertain even discussions about them. And he has told us that there are no alternatives that will work and therefore he doesn't even want to talk about it, when we've been told by quite a lot of experts that we've been checking into as we've been doing this research that there are a number of alternatives that seem like they would be quite applicable on the type of road that we're describing and that they use them on roads that have been chip and sealed all the time.

Q. Some of those alternatives were outlined in the exhibit to the complaint. Is that correct?

A. I believe so. And they include things like soybean oil, sugarbeet extract, molasses, bentonite clay,

polymer products that don't have odor and VOC's, magnesium chloride, calcium chloride. I mean there are just, there's a very wide array. And as you can imagine, it would take some research to try to sift through all those and figure out which ones would be the ones that, you know, might work to suit all the needs, be it, you know, safety issues for all the residents, cost, and applicability, duration of the product. And we've been working very hard to try to start getting all that information but it's just been, there's been no dialogue at all, no willingness at all on the Engineer's part to discuss any of this.

Q. Has the County Engineer been willing to give you time that you feel would be adequate to locate a place to move to and set up a residence there that you could tolerate?

A. No, not at all. As you know, the doctors recommended a mile radius and avoidance of, you know, of the chemicals that are found in asphalt. And it just, as I already described, to try to relocate is a huge feat. And it just, there has not been adequate time at all. And for them to have called, you know, and said we're going to pave the next morning, you know clearly that is not adequate time at all, especially

when you're relocating with the type of disability that I have. It just, it requires a great deal of effort.

Q. Cindy, if this preliminary injunction is not granted and the chip and seal goes forward on Dutch Creek Road what do you anticipate happening? What do you see as your options?

A. As I see it I have two options. One, to go against what my doctors are recommending and to try to stay here even though they've told me it would be life threatening. Or to try to gather what we can depending on, you know, the amount of time given and try to leave to go somewhere. Although, you know, we have been making incredible efforts to try to find somewhere to go, you know, anywhere to go that would be safe, whether it's a home that we could live in, a room in someone's house, a plot of land where maybe we could try to, I don't even know, put up a couple pieces of metal and call it a tent. And so I'm faced with the decision of going against my doctors' recommendations staying and risking having it take my life, or leaving my home and literally having nowhere to go, including my car which I don't tolerate anymore, and being homeless. Those are my choices.

Stay and risk dying or be homeless.

Q. Are you concerned that leaving your home could cause you ill health effects as well?

A. Absolutely. I mean we're going into the Fall and the Winter. It's clearly going to, it already is starting to get colder. I, I don't tolerate things like big heavy sleeping bags and, you know, big down coats and other things that are often used to stay warm when you stay outside. I don't tolerate camp fires. There are a lot of, you know, formaldehyde and other things in burning, combustion products.

And I'm already in such a weakened, very, very ill state that I've lost twenty five pounds. I'm down to like ninety eight pounds and I'm five foot seven. I am very weak, very ill, and in a very precarious state from what my doctors have told me. And anybody trying to camp or, you know, live in that type of situation can imagine how difficult that would be. And I can't imagine that most people would want their wives or their loved ones necessarily trying to camp out for months, particularly, you know, during the Winter. And when you compound that with the severity of my illness, yeah, I feel incredibly threatened and can't imagine that I won't decline.

Q. When a paving project goes in how long do you in your experience have problems from the substances that travel to you through the air?

A. Well most of the time I have tried to avoid a lot of those types of projects. But when I haven't been able to the impacts last months. An example is when they did chip and sealing last Summer on Peach Ridge Road, which I think the closest area is about a mile from us and then it goes further out than that, I had daily symptoms for at least three months, every single day, and both inside the house as well as

especially, you know, if I ever had to try to go outside, which I do just to try to walk between the structures that we have. But even in the house I was getting symptomatic. It's my understanding that these chemicals can make their way into the house and then they continue to outgas from within the house as well as adhere to, you know, everything in the house, clothing and drywall and all that, and continue to outgas. So you get repeated exposure that is pretty constant. And the duration of the chemicals and my reactions can last months and months. And that's from a mile away. And as I've stated, you know, the closer that you get to the material that is causing

the neurotoxic or, you know, physiological reactions the more intense your symptoms get. So for them to, you know, put something down here it just is extremely, extremely threatening. And my experience with it at a distance is concerning enough.

Q. Has any physician that you've seen ever suggested that your symptoms are merely psychological?

A. No. No, not at all. I have been evaluated on all levels. I've had a lot of testing done and there is a very, very extensive history with pesticides, and especially with the pesticide that was used in our previous house, that it causes these types of neurological health impacts. And no, I've never had the doctors ever say that it was psychological.

Q. Cindy, those are all the questions that I have for you. Is there anything else that I haven't asked you about that you feel the Court should be aware of?

A. Not other than the fact that, you know, I used to be a member, you know, a normal member of society. I went to college and graduate school. I was working and, you know, doing what most people do, going out, doing family events, going to church. And it got taken away from me because of the chemical injury that I had. And my life has been dramatically,

dramatically altered since then. And, you know, it's extremely unfortunate. It wasn't anything that I realized at the time. And the impacts have been so profound and so limiting and it's been a very, very difficult journey that can be extremely threatening. And I would just say that I would beg everybody involved to please, please help consider the alternatives that we've been researching so that everybody involved, the whole community, can work together and have something that will work for everybody. We've never wanted to deny the, you know, improvement of the road and have only this whole time sought for some time given that we didn't know about it to entertain the possibility of trying to find a solution that would work for the Engineer, for the other residents, and for me and my safety. And I just beg the Court to please consider that.

Q. Thank you, Cindy. I have no further questions.

BY THE JUDGE: Okay. Thank you, Mr. Pettey.

Mr. Saunders, do you have some questions?

BY MR. SAUNDERS: I do.

CROSS EXAMINATION BY MR. SAUNDERS:

Q. Cindy, do you go by Cindy or would you rather I call you Ms. Madej?

A. Cindy is fine.

Q. Okay. Cindy, you indicated that you left the house wearing protective measures. What are some of those protective measures again?

A. Typically I cover pretty much from head to toe with clothing so that I do not get any more skin exposure than need be. I will cover my hair with a bandana or a hat, or often both. I will wear a mask, a carbon filter mask that can help some with chemical exposures. And we take oxygen with me pretty much wherever we go.

Q. How many cars do you have at your residence?

A. Three.

Q. One for you, one for your husband, and then just an extra one?

A. Yes. And the extra one is one that we bought in hopes of being able to replace my car because it's over twenty years old and not in good repair. And it's also moldy. I don't tolerate it. So we bought another car in hopes of getting it suitable for me, although it does not appear that that is going to be achievable.

Q. When's the last time you drove a car?

A. The last time I drove my car. I can't even remember.

It's been at least a few months I would say.

Q. So you drove the car that you knew had mold in it?

A. I had a doctor's appointment and I tried. I went in the car but my husband tried to take precautions to close up the mold as much as possible to prevent exposure. The only way that I could get to the doctor.

Q. In the last year where else did you go in the car?

A. Nowhere.

Q. Never gone to the Farmers Market?

A. No.

Q. And when did you move to Athens, Ohio?

A. Five and a half years ago.

Q. Okay. I think you indicated that you see Dr. Singer. Is that correct?

A. Yes.

Q. And there was a previous doctor you saw before that. Who was that?

A. A doctor in Columbus, Dr. Everhart.

Q. Okay. Was there one in South Carolina?

A. Yes.

Q. And how long ago did you see him?

A. I've kept in contact with him by phone appointments in the last, every year repeatedly, three, four, five

times a year. The last time I physically saw him, I don't have my records in front of me, I would have to say--

Q. Does 2010 sound correct?

A. Maybe twelve years ago.

Q. You haven't seen him for twelve years?

A. I have not physically seen him for twelve years but I have had appointments with him routinely throughout the years, every single year.

Q. Just telephone appointments. You haven't had any in person face to face where he could examine you. Is that correct?

A. Not with that particular doctor. I have had many or some other appointments with some other physicians during that time as he's a specialist. And I also try to have a local doctor as much as I'm able.

Q. In terms of the specialist, he wrote a letter on your behalf. Are you aware of that?

A. I am.

Q. Okay. And he wrote this letter without seeing you for a period of it sounds like twelve years and determined what the appropriate distance should be from where the chip and seal should occur. Are you aware of that?

A. I am.

Q. Okay. Don't you find that a little odd?

A. No I don't. He was given a great deal of information regarding our residence and regarding, you know, Dr. Singer shared all my blood work with him and he is quite used to working with the limitations of his illness. And so no I don't find that odd at all.

Q. But that distance, you're the one that requested that, you or your husband. Isn't that true?

A. I'm sorry. I didn't hear the question.

Q. That distance, the mile, is what you requested.

Isn't that true?

A. He inquired and asked quite a number of questions about the circumstances and asked about the symptoms that I had from other projects and thought that given that I have reacted as much as a mile away or even more that that should be a minimum distance.

Q. In regards to Dr. Singer, when is the first time you saw her?

A. 2011 I believe.

Q. And you, you saw her in 2011 and you didn't see her for a period of about four years thereafter.
Correct?

A. No. I actually saw her in 2012 as well.

- Q. I think she indicated that she saw you in 2011 and didn't see you until 2015.
- A. That's not what my records indicate. I believe that I also saw her in 2012.
- Q. You also understand that she wrote you a letter or wrote the County Engineer a letter requesting a mile. Is that correct?
- A. Yes.
- Q. And you're saying that you didn't tell her that this mile was a sufficient distance? Is that correct?
- A. Again, she asked questions and we were, you know, discussing the reactions I've had and what symptoms I've had at different distances. And in describing the situation a mile is what typically has been causing me to have symptoms. And so through those discussions that is how the mile was generated.
- Q. These reactions or symptoms, what are some of these reactions that have happened?
- A. I explained a lot of them with Sky, but are you referring to any of my reactions or to the petrochemical asphalt products?
- A. Specifically those. That would be helpful.
- Q. I have a wide variety of reactions from a great deal of pain, neurological pain, sharp, shooting pains,

and muscle pain, very severe migraine headaches, nausea, stomach upset, sometimes paralysis, inability to walk, on occasion throwing up. And as my illness has worsened over the years I have started having a lot more chest tightness, shortness of breath, sometimes hyperventilating because I can't catch my breath, significant chest tightness where it feels like somebody is really pushing on my chest and compressing my lungs and my heart, very rapid heart beat, very, you know, hard pulsing in my neck. And a lot of those latter symptoms that I'm describing are ones that I have when I'm exposed to asphalt and petrochemical products.

Q. And how often do these reactions occur in your home?

A. I have more minor reactions fairly often. But because we try very hard to minimize anything that I could react to in my environment I don't have nearly as severe reactions here unless there are outside factors that come into play, like a roadway project. When those occur then I have far more severe symptoms.

Q. I also heard you say that you suffer from insomnia?

A. No. Actually that's not quite accurate.

Q. I believe you testified that you had insomnia.

A. That's, I don't believe that's what I said. I said that certain chemicals can cause insomnia because they activate the, I've been told they activate the neurological system and can impact serotonin and other brain chemicals. If I avoid a lot of chemicals then I don't have insomnia at all.

Q. And this chest tightness is the same thing? It just occurs when you believe that chemicals are in the air?

A. It used to be that I would get chest tightness only from exposures to chemicals in the air. However, in recent months, the last four or five months since I've had this severe life threatening anemia, I have also started having some chest tightness and shortness of breath and cardiac symptoms from that as well. And when I then additionally have exposures on top of that it makes the severity of the heart and respiratory symptoms that much more intense because I am having those symptoms both from, from what my doctor said, both from the anemia and from the chemical reactions and it becomes very, very severe.

Q. And I think your doctor also indicated that you have several food allergies. Is that correct?

A. Yes.

- Q. And this weight loss, you said this occurred in the last few months pertaining to the anemia?
- A. I don't think it's been identified why I've lost the weight. I don't think it's been identified why. But yes it has occurred over the course of the last three or maybe four months.
- Q. Are you, you're aware that the county road is in some disrepair. Correct?
- A. I've been told there are some potholes, although I've also been told that the roads were stable based on what the County Engineer said at the last public meeting.
- Q. You weren't at that public meeting, were you?
- A. I was not. But I know multiple people who were there.
- Q. Okay. You understand that the County Engineer has an obligation to repair and maintain roads, don't you?
- A. I do.
- Q. Okay. And you understand that this public roadway is public and it's not private. It's not yours. It's not any other citizen that lives on Dutch Creek Road. It's a County road. Correct?
- A. Yes.
- Q. You understand right now there's a lot of dust coming

off that road. Correct?

A. I'm sorry. There was some noise. I didn't hear that question.

Q. Some dust coming off that road that's effecting other residents.

A. There was a lot of dust coming off the road in August. It has improved quite a bit in the last few weeks.

Q. I think you earlier stated that you go outside from time to time. This dust doesn't effect you?

A. No it doesn't. Most particulate compounds like dust and pollen and things, those are, from what I've been told, impacting on the immune system. My problems are more neurological damage based instead. So I do not have more, very many more typical allergies. This is a neurological issue.

Q. Do you know dust is not an organic element? Right?

A. It can be.

Q. Do you know that there are several vehicles that go down this road in which tires dissipate (inaudible) go into that dust. Correct?

BY MR. PETTEY: I'm going to object. This witness hasn't been qualified as an expert into how tire products might infiltrate into dust.

BY MR. SAUNDERS: Let me rephrase the question.

Q. Do you understand that there's several vehicles that go down that road?

BY THE JUDGE: I'll allow the question as restated. You can go ahead and answer that, ma'am.

A. Yes.

Q. And a majority of these cars, now not all, run off of fuel which produce fumes. Corret?

A. Yes.

Q. Okay. So you're not sure whether these emissions reach the house or not?

BY MR. PETTEY: I'm sorry?

BY MR. SAUNDERS: She's talking about reactions.

BY MR. PETTEY: Which emissions?

BY MR. SAUNDERS: From vehicles.

BY MR. PETTEY: So you're not talking about dust anymore? You're talking about tailpipe emissions?

BY MR. SAUNDERS: Tailpipe emissions.

BY THE JUDGE: Your question is whether she understands that tailpipe emissions reach the house or not?

BY MR. SAUNDERS: Yes.

BY THE JUDGE: Okay. I will allow that question. Ma'am, you can answer that if you know the answer.

A. I am not somebody who has measured that. All I can

base it on is whether I become symptomatic. There probably are some times when it might reach the house. It just probably, you know, there are all kinds of factors that come into play, including wind direction, humidity, and other weather issues.

Q. In terms of this pesticide damage that you previously discussed, how was it determined that you had pesticide damage? Was it a definitive causation to this?

A. I'm not a medical doctor so I don't know all the ins and outs of how it was determined.

Q. I don't have any further questions.

BY THE JUDGE: Okay. Thank you. Mr. Pettey, do you have any re-direct?

BY MR. PETTEY: Thank you, your Honor. Yes.

RE-DIRECT EXAMINATION BY MR. PETTEY:

Q. Cindy, when you can tell that there have been diesel emissions, you know, tailpipe emissions from diesel vehicles that you can smell for instance, do you have reactions to those?

A. Yes, very bad ones. I have a lot of chest tightness and shortness of breath. I get very, very shaky, very nauseous. And there are different petrochemical products, you know, and I react more intensely to

some than others. But they all do impact me.

Q. Okay. That's all I have for you, Cindy. Thank you.

BY THE JUDGE: Thank you. Mr. Saunders, any re-cross?

BY MR. SAUNDERS: Just briefly.

RE-CROSS EXAMINATION BY MR. SAUNDERS:

Q. Cindy, it sounds like you have these, these migraines, chest pains, these symptoms, but it hasn't resulted in any extreme physical illness. You haven't been hospitalized by any of this. Is that correct?

A. I have not been hospitalized, although, you know, the doctors treating me realized that hospitals can be very dangerous for me as well. So they take that, from what I understand take that into consideration in making decisions and recommendations regarding what, what I do.

Q. But in the past you've been subjected to chip and seal, fumes from the airport in Gahanna, that's obviously quite a busy city, and there were no serious physical illnesses that resulted from that.

A. This is a physical illness.

Q. Have you been hospitalized because of this?

A. I have not.

Q. Has anybody seen you, has come to your house to provide you medical care because you're having an extreme reaction of this sort?

A. I'm trying to remember. Not that I can recall.

Q. So it's possible that this chip and seal could occur and you could suffer some, some, a headache or some chest tightness and that could be it. Is that correct?

A. No. My experience has been when I am anywhere near petrochemical products I get extremely serious symptoms, far worse than the headache and chest tightness that you just described.

Q. I have nothing further, your Honor.

BY THE JUDGE: Okay. Thank you. Mr. Pettey, any more re-direct?

BY MR. PETTEY: Yes. Thank you, your Honor.

RE-DIRECT EXAMINATION BY MR. PETTEY:

Q. The exposures you had to petrochemicals since you've been on Dutch Creek Road have been from a fair distance, approximately a mile away or more. Is that fair to say?

A. Yes. The closest has been a mile and beyond.

Q. So you haven't had an exposure from a road project that goes right past your house. Is that correct?

- A. No. That's correct. Yes.
- Q. And as you talked about earlier, when you did have those reactions from road projects even when they were about a mile or more away, that went on for months. Isn't that right?
- A. At least three months. Every day. And again, you know, because the chemicals were coming from such a distance I was reacting with symptoms that I described. My history has been with the vast majority of chemicals that are out there the closer you get to them, when you increase proximity, the symptoms and the dangers become far greater.
- Q. And Cindy, since you lived in Gahanna your sensitivities have increased. Is that correct?
- A. Yes. They've increased pretty steadily the entirety of the duration of this illness.
- Q. And part of the reason you moved from Gahanna was because you weren't tolerating the living situation there well. Is that correct?
- A. Yes. That is the reason we moved to Athens, because we were trying to remove me from a situation where, you know, we were surrounded by pollution and chemicals and the airport and, you know, lawn chemicals, you name it, as well as a house that was

not specially built that had all kinds of problems with it as well for chemical reasons. And so we, we definitely moved solely for health reasons.

Q. Thank you, Cindy. That's all I have right now.

BY THE JUDGE: Thank you. Mr. Saunders, any re-cross?

BY MR. SAUNDERS: No, your Honor.

BY THE JUDGE: Okay. Ms. Madej, I believe that's all the questions that we've got here so I'm going to go ahead and hang up now. And thank you for your time today. Mr. Pettey, did you have any further witnesses that you would like to present?

BY MR. PETTEY: Your Honor, I would like to make a proffer of the testimony of the two witnesses who were not allowed to testify by phone today.

BY THE JUDGE: And how would you propose to do that?

BY MR. PETTEY: For Dr. Thomas Didek I have an e-mail from him that spells out his qualifications, background information that he's aware of, his toxicological evaluation, other considerations, and his conclusion.

BY THE JUDGE: And for the other witness?

BY MR. PETTEY: For the other witness my proposal would be just to call her and put her testimony into the record

as a proffer that way.

BY THE JUDGE: Okay. Mr. Saunders, what's the,
what's Mr. Maiden's position on it?

BY MR. SAUNDERS: Our position is, your Honor, is solely on the testimony. You're going to present this and I have no opportunity to cross examine this witness. Essentially it's going to be his statement. He's not present in the courtroom and the Court already decided that if he's not available in person his testimony as a witness for telephone is not applicable and neither is his (inaudible). I feel this is another way just to get his testimony in without allowing me an opportunity to rightfully cross examine him. And at this point I think it's almost unjust and unfair to my client.

BY MR. PETTEY: I'd be willing to call Thomas Didek so that there would be an opportunity for cross examination in the proffer but this is merely in the nature of a proffer and not something that we would be suggesting that the Court would consider in deciding the matter here today but only as a matter of preserving the evidence for purposes of appeal.

BY THE JUDGE: I will take the motion for proffered testimony under advisement there and will allow, I'm not going to rule on that right at this moment however I will allow prior to the case being closed and having the case finally submitted to rule on that. But in addition to that was

there anything further that you wanted to present for evidence here today?

BY MR. PETTEY: No, your Honor.

BY THE JUDGE: Okay. Thank you. This is a scheduling matter here. The Court had to move around quite a bit of its schedule in order to accommodate the three hours this afternoon for this emergency hearing. There's not really a lot of great opportunity in the next coming days to continue this forward. However, if the parties wished I would be willing to continue this until 8:00. We have from 8:00 until 9:30 tomorrow morning. Or I'm more than happy to just continue through until we're done here today. But I'll leave that up to the parties. Mr. Saunders?

BY MR. SAUNDER: I would like to continue today if possible. My son is scheduled for surgery and Childrens at 8:00 tomorrow morning. I would like to be present. My client said he could stay.

BY THE JUDGE: Okay. Easy enough. We'll go ahead and proceed. Mr. Pettey, you don't have any grave objection to proceeding? Okay. Thank you. In that case Mr. Saunders you may proceed with your case.

BY MR. SAUNDERS: Thank you. Your Honor, I will save any argument for closing. My first witness would be Jeff Maiden.

BY THE JUDGE: Mr. Maiden, if you would please come forward and raise your right hand. Do you swear or affirm that the testimony you give the Court will be the truth, the whole truth, and nothing but the truth?

BY MR. MAIDEN: I do.

BY THE JUDGE: Okay. Thank you, sir. Please have a seat.

REX JEFFREY MAIDEN, first being duly sworn, testifies and says as follows:

DIRECT EXAMINATION BY MR. SAUNDERS:

Q. Jeff, can you please state your full name and spell your last name?

A. Rex Jeffrey Maiden. M-A-I-D-E-N.

Q. And what is your current occupation?

A. I'm a Civil Engineer and Land Surveyor, County Engineer for Athens County.

Q. When were you elected to the County seat?

A. The primary of March 6, 2012. I took office January 7, 2013.

Q. Okay. And prior to becoming the County Engineer can you provide the Court with some background?

A. Yes. My rather was a highway contractor so I started working construction when I was sixteen years old in 1974. I worked construction throughout my college

years. I graduated in March of '82. I worked summertimes as a land surveyor when I was eighteen years old. I joined his firm when I graduated from college in March of '82.

Q. Where did you graduate from?

A. Ohio University. I probably had more construction experience than most of the professors I had in college, to be honest, at that point in my life. And I worked as a project manager and design engineer and eventually the vice-president of Maiden-Jenkins Construction Company from 1982 until May of 1993.

And then I started my own engineering and design business in May of 1993. And I continued that until I sold the business in the Fall of 2012 before I became Athens County Engineer.

Q. Okay. In your opinion what is the purpose or what are the obligations of a County Engineer?

A. That's pretty lengthy actually. I was asked that in a debate with Archie Stanley. Archie pretty much had it memorized at that point. But the primary job is to take care of the roads and bridges in Athens County, process land surveys, and I guess a big part of our job too is ice and snow removal in the winter-time. That's actually a big part.

Q. And are you obligated pursuant to statute --

A. I am. And basically we take care of about three hundred and sixty three miles of road and three hundred and thirty three bridges. And so I can't quote the statute, but yeah that's my responsibility.

Q. And are you familiar with Dutch Creek Road?

A. I am. I've visited that road. I first looked at that road in 1995 maybe, something like that. Archie Stanley was the County Engineer. He had a lot of problems out there, didn't really know how to handle it and wanted a second opinion. He'd hired an

Engineer out of Meigs County to develop a set of drawings to fix that road and he wanted me to take a look at it. That was after I'd started my design business with a construction background as well. And the other guy didn't really have that. So I went out there and came up with a solution for part of that road. And it pretty much concurred with what the other Engineer had. So he proceeded with some of his plans basically.

Q. Okay. And fast forward. During your time as County Engineer have you (inaudible) to something dealing with Dutch Creek Road?

A. I've been out there every year numerous times for a

variety of different issues. We had a logging company that made a mess of the road out there a few years ago. I had to go out there. They were running heavy equipment up and down the road tearing the road up. A number of issues. But I've visited that road. Since Spring I've driven it, I don't know, probably twenty five times. I oftentimes go out and drive the roads. I drove two hundred miles of road about three weeks ago with my Superintendent. It took three full days. We drove pretty much all the chip and seal and gravel roads, primarily chip and seal roads, and we drove Dutch Creek as well, just to get a sense of where our road infrastructure is as we go into Winter because one of the problems we've had is we spend all of our road materials by the middle of August. We're about a hundred thousand dollars over budget right now on road materials. The day before our public meeting - Maria Smith is here, she's my financial business manager - we went through and added up all the expenditures that we'd spent out of our material budget so far plus our salt commitment to get ready for this Winter. And I've got those numbers right there. I presented them at that public meeting. But I think it's a seven hundred fifty thousand, seven

hundred twenty five thousand dollar budget for road materials. Right now we've hit eight fifty. And part of the reason of going out and driving all these roads was to determine what we need to do, how much of our carryover or our reserves I'm going to spend between now and Christmas to try to get a solid surface back on the roads because we've had two of the worst Winters in thirty years since I've been County Engineer, we've spent a million dollars on ice and snow removal the last two Winters out of a four million dollar annual budget. And so I'm trying to figure you, you know, I can solve all the construction problems, I can solve all the engineering problems, I could come up with all the alternatives to this dust control issue, but what I can't do is grow money on trees. And that's what I tried to emphasize that night at the meeting. I'm faced with not just 4.7 miles of Dutch Creek Road, we have approximately two hundred miles of gravel and chip and seal roads, and they're all in bad shape. And fifty percent of our bridges are either rated as structurally deficient or functionally obsolete by ODOT. More than any other county in the state of Ohio. We've got the worst bridges in the state of

Ohio. So the reality is I'm trying to deal with bridge issues, I'm trying to deal with road issues, landslides. We built eight FEMA projects this year that were part of Archie Stanley's regime from 2011 not done. So we've been busy all year long fixing landslides, building a bridge out on Linscott Run, doing everyday emergencies that come up. We'll get phone calls about holes in roads where culverts have collapsed and we have to go out and send an emergency crew in and rebuild a culvert. We do twenty of those a year probably. So I'm trying to balance all this out, keep enough money in reerve to deal with the emergencies, and plan it all out on a county-wide basis. This idea that I can tell somebody in May that we're going to chip and seal Dutch Creek Road on September the 10th is a joke. To determine whether we're going to do it this year or not is difficult enough. I didn't know if we'd have any money left at this point in the year. Through good management we've saved about a hundred thousand dollars on fuel, maybe seventy five thousand dollars on fuel this year, because of new trucks I bought last year. But we don't know how much fuel we're going to save until we get to this point in the year. So we can project

all that out through good financial management, good financial decisions. But the reality is it's a very complex county, a very dilapidated infrastructure. And I'm aware of a multitude of different dust control methods. There's not a lot of different surfaces. That's the only surface we can put on that road at any kind of reasonable cost. And so that's what I'm faced with.

Q. Okay. And I want to back up a little bit. I know you talked about that you had, or at least your office since you've been here, has been out to Dutch Creek Road every year?

A. I personally have been out there.

Q. For what reasons?

A. Well, in the course of driving different areas of the county it's a road I've looked at. The first year I went out there to look at a bridge. We were load rating all the bridges. We were in the fifth year of the load rating cycle. I had a bridge on that road out near Stanley Road that a consultant wanted to put a three ton load limit on it or something. And I've got overloaded log trucks running over that bridge carrying fifty ton of material. So I went out and personally looked at it and worked with a

construction engineer. I do bridge design work too. And so I went through his computations and they were ultra-conservative, what he was doing. So I had that conversation with him, re-rated that bridge, left it at a fifteen ton load limit. I felt like the way he was rating the bridge wasn't correct. Most County Engineers don't have that ability to do that. I did that. So that was one time I was out there, dealing with a logging company. I've been out there just looking at the road, anytime we get a multitude of complaints on a road. I set up a system. When I became County Engineer I had four years of complaints stacked this high that they hadn't dealt with. We decided to go back twelve months. We threw all the rest of them away. We went back and investigated twelve months of prior complaints. I set up a digital system to where people call with complaints. I can tell you exactly how many complaints we have. We have people that call in fifty times a year on one road. You know, we have chronic complainers. Some of them go to the Commissioners and complain. We do our best to deal with all of them. I make sure every complaint is followed up on by somebody in my office, my superintendent or one of his assistants. And when

--
the complaints are that many then I'll go out
personally and get involved myself. And if it's a
chronic complainer who absolutey wants to talk to me
or so vigilant or so angry then I'll deal with it.
Because of some of the problems with the prior
administration I will personally deal with them.
I'll go out and meet with them if it's a situation
like that.

Q. Has there been any work at all done on Dutch Creek
Road since you've been in office?

A. Yes. There's been a lot of work done out there. We

put more gravel on that road than probably - when I
went to the Commissioners meeting I took I think
fifteen thousand dollars - we've got an automated
system, Maria's a genius with that system, and she
can print out reports on every road, the type of
work. We log in off of our, our, our operators will
do daily log sheets on how much time they spend on
what road and how much gravel they put down and what
equipment they use. And before I went to the
Commissioners meeting I knew about the residents. I
don't go to all of them but this was a, this was one
I was particularly interested in because I've been
particularly interested in Dutch Creek. So when I

knew these guys were going to go to the Commissioners meeting I went there. And I brought with me a listing of all the money we spent just in the Spring out there. And it was five figures. It was ten, fifteen thousand dollars we spent just between January and March. But yeah, we spent a lot of money on that road.

Q. What are some of the specific things that you've done on Dutch Creek Road besides gravel?

A. There's a lot. It still needs stuff. There's a ditching that needs done. There's probably some culverts to be replaced. But mostly it's been grading and gravel. And patching.

Q. And patching.

A. And patching. And I went out there the day before I went to the Commissioners meeting and took photographs of all the patching we've done. We had all fresh patches out there. There were no potholes on the road at that time. I personally went out there the day before and photographed them all. I still have the photographs. I took them with me to the meeting.

Q. When you were patching did any of those patchings occur in front of the Madej residence?

A. Absolutely.

Q. How far away would you say they were from the residence?

A. You know, I didn't, at that time I didn't know Bob and I didn't know about the situation. In fact, I wasn't aware until August the 27th when Bob came into the office. He said that he met me and Lyle in Lyle's office. That's not true. I was back in my office working. Trisha came back to get me and tell me about the situation, or Lyle did, and I came out into the front area and I talked to Bob for a long time about this situation and told him that we would not chip and seal it the next day. I didn't say we weren't going to do it at all, the project was cancelled. And in fact, I told him, Bob told me that his neighbors were all on board with this, that they knew about his wife's illness and this was okay that we not do this work. And I said now wait a minute. I said I've got a petition signed by fifty or sixty residents out there, I went to the Commissioners meeting. And I confronted him directly about it. I said now that's not right. And I asked Trisha to go find it while he was there. And she couldn't find it. And I said okay, well I'm going to tell you

something, we're going to have to have a public meeting because you don't seem to understand there's other people out here and that I'm aware of that aren't happy with this road. And he led me to believe that that wasn't the case. And so, so I, I told him at the time we're going to have a public meeting. And it was about maybe three, four, or five days later we scheduled that meeting. And we had to advertise it in the paper. We had to send letters out to all the residents. We had to go through the GIS system and get an accurate address for every person that lived out there. We spent a lot of work on this. And then we went through the petition because some people own property out there but they weren't on the petition because they rent. So we, Maria did all that work and put all that together and sent all those out. We wanted everybody to be informed and we could have a public conversation about this. And Mr. Madej and I have talked about, we've talked about a lot of stuff. I have not been this insensitive, uncaring Engineer that's been described here. That's not been the case at all.

Q. What I'm going to be handing you is marked as Defendant's (inaudible). Can you tell the Court what

that is?

A. This is an exhibit that was a document that was presented to the Commissioners. And I was at this meeting. And it was complaints about Dutch Creek Road. And many of them are legitimate, legitimate complaints. And then associated with that are all the signatures of all the people that live there and signed this.

Q. In terms of this road, you indicated that you've driven it several times.

A. Many times.

Q. What are some of the things that concern you with that road?

A. Some of the things that concern me with the road are some of the things that concerned me in 1995. The section that parallels, that kind of runs along beside the creek down in the floodplain area as you approach the State Route 690 end of it, the road is essentially a floodway. The surrounding ground is three feet higher than the road. And there's essentially a dike between the creek and the road. The elevation of the road is only a few feet above the creek. It floods many times a year. As we put more and more gravel on it it washes away because it

becomes a floodway for the creek. The road is a floodway for the creek. It's not, it's not flooding on the higher ground, it's flooding where the road is. And I had discussed this with Archie Stanley twenty years ago. And I said the road needs to be elevated, it needs to be moved onto higher ground. You don't have to move it very far. But the only cost effective way to do it is to move the road up on higher ground and allow that to be the floodway for the creek. So that was the proposal. And they did part of that work back in the late 90's. And they relocated a section of it. One property owner would not cooperate so they only did perhaps less than half of it, of the section that needs to be done.

- Q. So in terms of today what did you notice, or in the last couple of months?
- A. Well there's, as I've been out there there are a number of issues. And we have some of these issues all over the county. There's ditching that needs to be done. Every road in Athens County needed ditch work when I became Engineer. When I got there all three graders were broken. The first thing I did in January of 2013 is get them all fixed. They didn't have anybody left who knew how to run a grader. And

then I had to train them on how to run graders and promote men to grader positions. And we went through the process of developing a ditching and culvert program to try to improve it because you've got to drain your road base.

Q. First what's a grader?

A. A grader is a piece of equipment that's long, it has four wheels, it has a blade in the center.

Q. What's it run on?

A. It runs on diesel fuel.

Q. Alright. Sorry to interrupt you. What else is going on with the road?

A. Okay. So basically after I went out and drove all the roads it became pretty obvious that one of the biggest problems we had was in the last twenty, twenty five years there was no ditching program, no drainage program. So you have two hundred miles of gravel and chip and seal road with no ditches and culverts that are rotted out. The entire bottom of these old corrugated metal culverts are gone. We've replaced hundreds of culverts since I've been County Engineer. We've ditched miles and miles and miles of road. This road still needs ditching. As I go out there and look at it, I was out there with my

Superintendent just a few weeks ago. We know we have work to do out there. We have work to do all over the county. I, I observed the bridge. (Inaudible) these bridges. I've got fifty top bridges, my top fifty bridges I call them, to replace. But they aren't on Dutch Creek. I don't have money to replace them all. I've got a plan to try to do them in-house as much as we can. We're building our first bridge out on Linscott Run right now with our own crews. I'm trying to teach them how to build bridges. I grew up building bridges. Where do I start? I mean-

Q. You determined that something needed to be done with the road. Correct?

A. Yeah.

Q. What did you determine?

A. Well, I went through this list at our public meeting. I said the road base looks good on Dutch Creek. I see a lot of road base, a lot of County roads where the base isn't good. And that's what Mrs. Madej was talking about. The road base looks good. I don't see a lot of the red and yellow clays that come up through it. It's a pretty solid base. Increase size and capacity of road ditches and drainage. I agree with that. That needs to be done. Maintain road

crowns and berms. I've looked at buying a stabilizer machine so I can rebuild the base on these roads and I can recreate crowns and berms. I've bid on some. Up to fifty thousand dollars I can go up. I bid on two different machines. Haven't been able to buy them. But that's the real long-term plan to rebuild these roads is rebuilding our crowns and berms and our base in the areas that we need it. Replace (inaudible) bridges. These are old bridges. Structurally I don't have any serious problems. I was out there the other day and we've got to get some guardrail up on one bridge I saw out by Mrs. Grainey's house. Channel Dutch Creek away from road-bed. It just can't be done today, re-channeling of the creek. I've dealt with the Corps of Engineers on permits on minor stuff. But something like that, it just would be impossible to do. Help and advise homeowners on improving driveway approaches. Driveway approaches are a huge problem all over the county. In the wintertime we go out and drive the roads and I've got water sheets draining off people's roads because they don't have any ditches, the culvert is plugged up, or they don't have a culvert where they need one, and they're mud roads and it

washes out and it freezes and creates icy spots. I've talked to the Hocking County Engineer. I talked to him two weeks, about a month ago. I talked to his Chief Lieutenant up there. They send people certified letters when their drive is like that. And if they don't fix them they go in and dig the culvert out. They dig a four foot hole right across somebody's driveway. And then they fix it. You know, they fix their driveway. But we, we don't have that process here. That's what they do in Hocking County. You won't see that in Hocking County. So I've got,

we've got a lot of catching up to do here. So we do have that problem. We've got driveway approach problems. Speed limits. That's, I don't see how that's going to happen out there. I've gotten into speed zone studies. We're looking at them on a couple different County roads. We're hiring a consultant to do one on Radford Road. We just got a grant approved for that for fifty thousand dollars to hire a consultant. And we're looking at one on Poston Road in The Plains. What I've learned about it, I've met with ODOT and looked at speed limit changes, and that's largely controlled, I've looked at all the variables, it's largely controlled by the

actual speed on the road. Ninety percent of it is how fast people are driving now. So we could do a speed zone study. I doubt it will change the speed limit. Improving the 550 intersection definitely needs done. I've personally looked at it. It needs done. We're going to do it. We haven't done it already. We've been doing some patching down on that end of the road now. At the very end of Dutch Creek Road where you turn onto it it's a very dangerous situation there. Right at 550 and, and it's not really Dutch Creek it's Peach Ridge, they merge together, there's problems with that. I've gone out there and personally told my Superintendent how I want it fixed. I'm an active County Engineer. I'm on the job. I'm doing my job. So that's how I addressed all these issues. Those are some of the things we need to do out there.

- Q. But now in the immediate future you determined that it would be chip and seal. Correct?
- A. Yeah. And really the one thing that's missing here is the dust issue because I've had more complaints on dust out there than anything else. And even though it's not on the sheet. I guess that's kind of covered under maintaining road crowns and berms and

improving the road base and stuff. But I was at the Neslonville Music Festival this year and I ran into an old friend that lives out there. I hadn't seen him in several years. And he said man Jeff, I supported you, but I've got to tell you the dust on Dutch Creek Road is horrible. I go out to eat and people come up and tell me about it. I hear it everywhere I go. So it's nothing that's not here. And sometimes I take my phone and I text messages to myself so that I won't forget about different situations around the county.

Q. So why did you choose chip and seal?

A. The reason I chose chip and seal, and I scratched out some notes on that yellow sheet of paper there - and I talked to Bob about alternative methods. I spent forty five minutes talking to Bob on the telephone. I really disagree about this. Now he hadn't done his research yet. And what he proposed to me is give me time to research. He said he called Debra McAvoy at Ohio University. I told him I know Shad Sargean who runs the, he was my professor thirty years ago, he runs the Transportation Research Department at Ohio University. He approached a group of county engineers two years ago about developing alternative

base issues, or alternative pavements. He wanted us to fund his research at Ohio University because there is no alternative to chip and seal. And he runs the Transportation Research Institute at Ohio University. He, he's the highest paid professor at OU. And --

BY MR. PETTEY: I'm going to object and ask that the hearsay statements from someone else be stricken from the record.

BY THE JUDGE: Mr. Saunders, if you could just kind of reign that in a litte.

BY MR. SAUNDERS: That's fine.

A. I'm sorry. I don't mean to get this excited. I guess I feel a little bit offended by all this because although Bob and I didn't specifically go through a list of all the new potentially environmental products, even the one that you sent me last week, I called the national sales manager last Thursday when I received that e-mail from you and left a message on his cell phone, he was on the road, and asked about this environmentally friendly chip seal product that Bob found. My point is that just normal dust control, if we chip and seal that with number eight I've got about fifty thousand dollars of material to do that. It should last four or five

years. It may not last that long because it really needs a double chip. It needs a sixty seven chip and a number eight chip on top of it. And then it has a better chance to last. That's the one thing I've learned in the last four years. We don't have the money to do that. That's about a hundred and twenty to thirty thousand dollars. Our whole budget for the whole year for materials is about seven fifty. And that's for we're talking about the whole county. That's culverts, that's bridges, that's roads, that's everything. And so to buy the cheapest dust control material I could find was about thirty five thousand dollars. And it's listed there, the name of it. It's a water based dust control. And it would have to be shot twice a year. That's seventy thousand dollars a year. And so to get another four or five years out of that I'm looking at spending three hundred thousand dollars. I could put a single chip down for fifty thousand and we'll provide the labor and the fuel and equipment. It's already in my budget. It's six times as much money for the cheapest dust control I could find by itself. And so it becomes a financial issue when I've got so many problems to deal with all over the county. This

isn't the biggest problem.

Q. Why don't you tell the Court what chip and seal actually is, what does it do?

A. Chip and seal for this particular application - and my concern about the environmental product that Bob sent me last week, and I haven't been able to reach this national sales manager, it doesn't have any VOC's in it which probably be, sounds promising for Mrs. Madej. VOC's, volatile organic compounds. It's got zero of those. Now the problem is with Dutch Creek it's predominantly dust and gravel. And it

looked to me like that product was used mostly on asphalt or a hard surface. We use two different emulsified asphalts. One for hard surface, which is a road that's already been chip and sealed. It's a NWS 90 is what it's called. And it has no fuel oil in it. But you don't need as much bond there because you've got a smooth, hard surface. We use NWS 150, it's got about five to six percent fuel oil in it because it's still not the old type but it will help create some bond with the gravel and the dust. Even then, I'm telling you even then it's going to be hard to hold it on a road like Dutch Creek. How long it's going to last I can't tell you. Three years, four

years? Five years at the most. And then when you compound that with all the flooding that goes on there maybe we'll get three years. I don't know. But the NWS 150 has enough tackiness to it to help create a bond. The material they're proposing, it might not last six months because it won't have that product in there to create that tacky bond that it needs. The old --

BY MR. PETTEY: I'm going to object. This is going on and on without a question. And he's now going into matters, he's speculating about a product that he's just testified he doesn't know anything about and he's contacted the company and hasn't heard anything back from them. And now he's saying that one's only going to last six months.

BY THE JUDGE: Mr. Saunders?

BY MR. SAUNDERS: That's fine. We'll stop there.

Q. So in your opinion for a chip and seal what would it do to Dutch Creek Road? What would it benefit?

A. Well we would get a dual benefit out of it.

Q. Okay.

A. I think we could get multi-year dust control out of it.

Q. Okay.

A. We could get a hard surface on it for people to drive

on. And so we would be a dual benefit out of it.

Q. Okay. And you stated that there was, you had some discussions with Mr. Madej. Is that correct?

A. I did.

Q. And you had one in person?

A. I did.

Q. Where at?

A. It was in the front area, the entrance area of my office when he came in to tell me about his wife's condition. I personally wasn't aware of it. My staff was. And so when he told me that she could die if we chip and sealed the next day I told him absolutely we're not going to do that, I won't do anything to hurt your wife or harm your wife, and so we'll put it off. And then he told me all of his neighbors were on board with this, that everybody understood his wife's condition. And I questioned him about that. And I had another witness there. Tricia Gail was there too overhearing this conversation. And, and so I told him we were going to have to have a public meeting. I told him at that time we were going to have to have a public meeting because there are concerned citizens. I told him about the petition, the Commissioners meeting I went to in April. I told

him about all that. And I confronted him directly about it. I said I, you know, this doesn't sound right. And then I asked Tricia to look for the petition. She couldn't find it. I said okay, we'll get back to you on that but we'll let you know about this meeting. I never said we were never going to do the work, even in my letter to him. One thing I learned in business over the years is I summarize conversations I have with people. And I summarized that conversation in the letter I sent to him. And I state in there, in that letter, that we'll have this meeting to discuss the road improvements on this road. I made it very clear in that letter, very clear in that letter, that this isn't over. And it's put in the second paragraph and the final paragraph. It's in two places in that letter. So I really, you know, I didn't mislead anybody and say we weren't going to do this work.

Q. You had the public meeting. Correct?

A. We had the public meeting.

Q. Was Mr. Madej present?

A. He was.

Q. Did he have an opportunity to speak?

A. He spoke for a long time. In fact, he spoke to the

point where I let him continue for twenty to thirty minutes. The purpose of the meeting was trying to explain to Mr. Madej about others' concerns on the road. And I felt like his perspective was there was no consideration for anybody else and there were no other solutions offered. Mrs. Madej couldn't go anywhere while we're doing this work. The only solution was that we find an alternative, that she couldn't go anywhere. And that came out in the meeting as well. So I felt like having a public meeting where everyone, the purpose wasn't, the purpose was not to make it difficult for Mr. and Mrs. Madej. I thought this is a community. And you could see the community nature of this meeting. I saw people rise up and offer to help move Mrs. Madej, can we move that, that module up on the hill, can you camp out. One lady stood up and said collectively we own thousands of acres here, can we move you away from the road. I offered. I once moved a house. I moved a house I owned once in 1992. I offered that at the meeting. Another lady offered to bring his wife food. You know? This was if she did have to camp out or something like that. And it was brought out in the meeting that she was oftentimes outside and she could

kind of prairie floodplain back to the woods. And as we drove down through there you can see the dust on that dry day in August rise twenty five feet in the air and blow all the way across the plain all the way over several hundred yards to where the woods are. And my Superintendent would say well we've got a lot of dusty roads. And I said Mike, we've driven them all. I've never seen a road as dusty as this road. I think this is like one of the worst situations we have.

Q. Why did that concern you? Why did the dust concern you?

A. Because when I was out there breathing the dust myself just along the road, I mean it's thick and it's heavy.

Q. And in terms of visibility?

A. You can't see a vehicle in front of you. The dust could be so heavy that, that I've been told - we had safety concerns expressed about the safety of the road, school busses with children. We had a complaint --

BY MR. PETTEY:

Objection. Hearsay.

A. We had a complaint filed.

Q. Let's just keep towards your opinion. When you see

the dust and the visibility where's the visibility at? You said a car in front of you you can't see?

A. Yeah.

Q. As County Engineer does that concern you?

A. Yes.

Q. Okay. So you ultimately decided that the chip and seal needed to be done after that public meeting.

Correct?

A. Yes.

Q. Okay. Did you notify Mr. Madej?

A. I did.

Q. Okay. You notified him it was going to happen?

A. I called him on the telephone.

Q. Why couldn't you wait to do the chip and seal two months down the road, a month down the road?

A. September 15th is the last date that our asphalt emulsion supplier will warranty the asphalt emulsion. We still do it later than that but it's typically our cut off date.

Q. Why is it a cut off date?

A. It's temperature sensitive in the evenings when it's getting down into the fifties. It needs to be warmer. Right now we still have warm weather so it's still possible. The leaves start coming down at the

end of September. So when the leaves cover the road it's not really possible to do it either. So we're fighting the end of September, early October, the leaf issue. The temperature issue is the big one. And the temperature is more of an issue with the NWS 90 than it is the NWS 150. So we have a little bit more latitude with the 150 on dusty and gravel roads than we do on the hard surface roads.

Q. Okay. So there's no way then waiting until the beginning of October or the end of October?

A. No. We're within a two week window.

Q. And if this chip and seal does not occur what do you foresee in terms of the road, particularly dust?

A. Well, in the Fall and Winter the dust I believe, I'm not out there a lot in the Fall and Winter, but I don't believe the dust is as bad as the rains come and the snow and so forth. I would say the peak for the dust is from early Spring until late Fall. And so there's less of an issue that way, to be honest.

Q. Is there any other concern that if the chip and seal isn't done and there is time (inaudible) in the Spring if it waits? Is there any concern?

A. I think that, as I said, the dust is probably the largest concern at this point. And I think I've said

my piece on that.

Q. And in your opinion as the County Engineer do you believe that this road needs to be chip and sealed before the end of September?

A. What I tried to reiterate to Mr. Madej in our conversation was that although there are so many different alternatives out there, I've watched the environmental movement in my career from 1982 to now, there are all kinds of products out there but the only real practical solution given all the factors for the County Engineer are budgets, our two hundred miles of road, our three hundred and thirty three bridges, three hundred and sixty three miles of road but our two hundred miles of gravel and chip and seal road, there's really no other realistic way to deal with this situation. There are all kind of alternative dust control products. But you're talking about multi-application year after year at thirty five grand. There's not one that's going to cost less than thirty five thousand dollars. That's my belief. So I believe it needs to be done. I believe it needs to be done. I am sensitive and sympathetic to Bob and Cindy's situation. I have been throughout this. The only reason I didn't meet with him the day

before that meeting is I was concerned about an incident that occurred about a month before that, and I talked to the Sheriff about it, and he pointed a high powered rifle at a police helicopter and I was concerned about my personal safety. I know how, how passionate he is. I admire his commitment to his wife to the point of almost being a martyr. I respect him completely. But I talked to the Sheriff about it. I was concerned about my personal safety over that incident. And so that's why I didn't meet with him. That's the only reason. And the only reason I didn't go back out, the only reason I didn't go out - and I also had a discussion about going out and putting that letter in his mailbox. And it's not just me. I had residents that called me that lived out there that were also concerned about this. That's why I had a Sheriff's Deputy at the public meeting. There's people out there that are concerned about that behavior.

- Q. But after the meeting you had an in-depth telephone conversation with Mr. Madej regarding --
- A. Absolutely. I talked to him for probably a half hour. And I told him I had to proceed with this. He told me that he was going to proceed with this court

process. I told him I respected him for that and that I honored his right to do that and it would cause no anger, animosity, or anything on my part, that I encouraged him to do it actually, but I had to do - I had advice from your office, I talked to the County Commissioners about it, I talked to a number of trusted advisors including my staff about it. I didn't make this decision lightly. And I came to the conclusion that my job as County Engineer was to, we had liability issues if it did present a safety problem. And so there were a lot of factors that went into this. And I guess not fully understanding, although Bob and I had talked quite a bit about it, I don't know what else to say. I guess that's all I've got to say.

BY MR. SAUNDERS: I have nothing further, your Honor.

BY THE JUDGE: Okay. Thank you, Mr. Saunders.
Mr. Pettey?

BY MR. PETTEY: Thank you, your Honor.

CROSS EXAMINATION BY MR. PETTEY:

Q. Jeff, of course we know each other. I'm here obviously representing the Madejs today. You've given some testimony here about dust control and

about dust concerns on Dutch Creek Road in particular and what you've said is that it's really not as bad a consideration through the Winter and Spring. Is that fair to say?

A. I also said I haven't been out there in the Winter and Spring but that would be my understanding, that as the rains come in the Fall, the snow in the Winter. But I don't live out there.

Q. And there's not a big concern for the road base on Dutch Creek Road particularly now that the half from 550, roughly half from 550 to Stanley Road is now chip and sealed. Is that fair to say?

A. That's fair to say.

Q. Oh. 690.

A. 690 to Stanley Road.

Q. From 690 to Stanley Road is the section being chip and sealed. Pardon me. Now you also said that when you drove it yourself the place where you saw the most dust problems was on the section from 690 to Stanley Road, which now has been chip and sealed. Correct?

A. What I said was it's most visible there. The other areas are wooded on both sides. So I guess what I failed to say was that area if you're going up the

hill where you have all that green foliage is no longer green. It's all brown. It's all gray. The dust is just as bad on both ends but where you really see the effect of it is down in the area where you have a wide floodplain and you can see the dust come up in the air and blow across. But it's just as bad. I took photographs when I was out there before the public meeting on how you have this green foliage on both sides of the road and it's not green anymore, it's brown from all the dust. So I would say it's equally bad throughout the entire road but where it's most visible is where it rises up thirty feet high and blows all the way across.

Q. And what you mean to say is where it was most visible because that section has now been chip and sealed.

A. Yeah. That's right.

Q. And is no longer a concern going forward, at least for a certain amount of time.

A. Right.

Q. Now chip and seal itself, you acknowledged this at the public meeting and again I believe here today in your testimony, is not a permanent solution for this road.

A. No. No.

- Q. And it's going to deteriorate over a period of three, four, five years anyway. Is that fair to say?
- A. Most likely, yeah.
- Q. Now I appreciate your office responding as quickly as it did to the subpoena on the short time frame that we had here. One of the things that was not produced in response to the subpoena was any documentation that there had ever been an accident on Dust Creek Road, or I'm sorry, on Dutch Creek Road. Are you personally aware of any accidents that have occurred on Dutch Creek Road as a result of dust issues?
- A. I think we just didn't have enough time. The only way to get accident information is to contact ODOT's accident people in Columbus. And we just didn't get to that.
- Q. And you're not personally aware of any accidents out there?
- A. No. I'm not really personally, I don't really follow. I hear about fatalities. We get notifications on fatalities. I know of no fatalities out there.
- Q. Now you said that at this public meeting you offered to move the Madej's house for them.
- A. I didn't offer to do that. I said other people here

suggested that they would be part of this, can we do that, can we help you do this, yeah. I said I've moved a house in the past. I talked about hiring a contractor to move the house.

Q. Okay. Are you still open to that option? If people could get together and move the Madej's house would you be willing to hold off the project until their house could be moved? Or did you just bring that up to make it sound like that meeting actually had some substance to it?

A. No. I was impressed by a group of people trying to help them solve this problem, looking for solutions. And there were no solutions offered. There was no flexibility. There was no that's a possibility even. There was no discussion about that.

Q. Would moving the house have been an option?

A. I'd have to look at the house I guess. It really depends on --

Q. And you'd have to have a site for it that would be appropriate.

A. Yeah. And I would guess, my guess would be, they talk about a module. And I heard Cindy talk about it. Sky, when I look at moving a house and where their house sets, no I don't think moving that house,

that particular house would be an option. I don't know about the module. Like I said, I moved a house once out State Route 13. I moved it about a quarter of a mile. And I moved it right up the middle of the road because I was building a bridge there at the time. So I surveyed a piece of land, I built a foundation under it. But I would say that moving Mr. Madej's house on the side of the hill the way it is you couldn't get axles under it, you couldn't pull it up and down that driveway. I'd say no, you couldn't really move that house. But the module, you know, I don't know what that is exactly. It sounds like it's a house within the house maybe. I'm not sure. And the point I was trying to illustrate I guess was that I didn't feel like - there were a lot of angry people at the meeting, that's true, but there were a lot of people that were sympathetic too. And there were people trying to figure out a way to help them outside of just I'll bring you food if you want to camp, we own the property on the other side of the hill, if you could camp we'd bring you food, we would help you do this, or whatever. And that's what I'm trying to say. It wasn't all about animosity. There was animosity there.

- Q. Now just because people suggested things at that meeting doesn't mean those suggestions were actually workable or viable alternatives for the Madejs.
- A. That's true. Yeah. It might not fit their situation at all.
- Q. And in fact, it sounded to me as if there were many suggestions that were based on an ignorance of the Madejs' true situation. For instance, I've been told that somebody at that meeting said why don't you just go to a nursing home if she's so sick.
- A. Yeah.
- Q. Now you've heard the testimony today that that's not really an option for her. So you would agree that there were suggestions provided but that not all those were, or perhaps none of those were even viable suggestions. Would that be fair to say?
- A. Yes.
- Q. Now there are dusty roads all over Athens County. You've already testified to that here today. Is that fair to say?
- A. Yes.
- Q. And that number probably gets up over a hundred miles. You said something along the lines of between chip and seal and gravel, chip and seal that's

deteriorated and gravel that it's something maybe like around two hundred miles?

- A. Yeah. When I first became the Engineer I sent out a guy, two guys to go out. I bought a VMI, I put them in a vehicle, and said let's go out and inventory everything we have. And they came back with just thirty miles of gravel road and a hundred and seventy miles of chip and seal. Well the problem is a lot of those chip and seal roads are fifty percent gravel and fifty percent chip and seal. And so it's hard to delineate what we really have. And even Dutch Creek is that way. Sections are chip and seal, sections are gravel. And it's intermixed. And the prior administration would take gravel to fix chip and seal when they should have used cold mix asphalt. And so they would use a sixty seven gravel to fill in holes on a hard chip and seal surface. And they did that all over the county. So now we have all these roads with this mixture. And that's my idea of taking the stabilization machine and grinding it all up and re-compacting it and then putting a new surface on it. And that's what we're going to have to eventually do.
- Q. So there are a lot more miles of roads in Athens County that have dust problems than just Dutch Creek

Road.

A. Yes.

Q. And all of those roads are being chip and sealed before the window of the temperature closes in September. Correct?

A. No. Of course not.

Q. It's a desperate emergency that must happen right now before the end of September. Why aren't they being chip and sealed?

A. I didn't say it was an emergency.

Q. Okay. So there's no emergency on Dutch Creek Road.

A. Did I say it was an emergency?

Q. Pardon me. I assumed it was. But you're saying there's no emergency on Dutch Creek Road.

A. No. I never, ever said it was an emergency. Don't put words in my mouth.

Q. Thank you. Then we're in agreement about that. So there's no emergency situation out at Dutch Creek Road.

BY MR. SAUNDERS: I think you've already asked and answered that question.

BY THE JUDGE: Yeah, we got that. Let's move on.

BY MR. PETTEY: Thank you.

Q. Now you testified earlier that the warranty has already expired on the chip and seal product that you would be applying to Dutch Creek Road if that were applied at this point because we're beyond September 15th. Is that correct?

A. I was told that in a conversation with my supplier. And we don't actually receive a written warranty on that. But I've had numerous conversations with John Kelly from Asphalt Materials Incorporated about a lot of different things. He's contacted his chemist in Chicago regarding this issue. We really, and that came up. I said what is a practical limitation. And he said well generally we establish September 15th as a cut off date. But in this particular case he said, he's the guy who mentioned the MWS 150 versus 90 and the cold temperature issues and he's kind of an expert really in this area --

Q. Mr. Maiden, my question was just whether the warranty had been expired.

A. No.

Q. And your answer is that it is expired at this point?

A. No it's not.

Q. It's not expired?

A. No.

- Q. You're changing your testimony now?
- A. Well I'm trying to explain to you what the man said to me.
- Q. Well you just testified that it had expired after September 15th.
- A. He said generally September 15th was the cut off date, but there are situations where temperature and the materials you're using allows it, will allow you to continue to do it. He said a lot of guys work into the first part of October. I had that conversation two days ago.
- Q. A lot of guys work into October. What about the warranty? That's what I'm asking. You told, on direct examination you said to Mr. Saunders that the warranty had been expired on September 15th.
- A. We have never received a warranty on anything from that company. I'm telling you what the man told me in a conversation two days ago.
- Q. Have you made the County Commissioners aware of the fact that a man told you a couple days ago that a warranty on these products might have expired on September 15th?
- A. No.
- Q. So to summarize we have no emergency situation on

Dutch Creek Road, we have no road stabilization concerns on Dutch Creek Road, we've got perhaps up to two hundred miles of other road in the county that also needs this same sort of solution in terms of chip and seal because you've got gravel roads, and yet we can't wait until next season to do this particular road when we've got someone who might die? Is that what you're telling us?

A. Can you rephrase that question?

Q. Can I have the question re-read, please?

BY THE JUDGE: You can re-ask it if that's what he's asking. We don't have that capability.

Q. Okay. Thank you.

BY THE JUDGE: You can re-ask the question if you'd like.

Q. You've testified there's no emergency on Dutch Creek Road. You've testified you're not aware of any accidents that have occurred on Dutch Creek Road. You've testified you've got almost two hundred miles of other gravel roads in Athens County that could be resurfaced.

A. I didn't testify to that. We resurfaced thirty five miles just two years ago. I said we have two hundred miles total. I didn't say it all-

Q. Tell me --

BY THE JUDGE: Hey, you know what, why don't we break down the question to -

Q. Tell me how many miles --

BY THE JUDGE: Mr. Pettey, Mr. Pettey. Mr. Pettey, break the question down into more managable pieces there.

Q. That's what I was trying to do. And I will. Thank you, your Honor. How many miles of road do we have in the county that need to be chip and sealed?

A. I can't give you an exact number. I don't have an exact number of what needs chip and sealed.

Q. Okay. How many are gravel, that are either gravel or deteriorated chip and seal?

A. Gravel or deteriorated chip and seal?

Q. Yes.

A. Because we're not going to chip and seal any gravel roads that's just pure gravel. (Inaudible) create new.

Q. Okay. Gravel roads have dust problems, don't they?

A. Mm-hmm.

Q. Especially in the dry season.

A. Mm-hmm.

Q. Not so much in the Winter and Spring. Is that

correct?

A. I would say Spring is an issue. Wintertime is probably the one time, with snow on the ground I don't think it's probably an issue. Rain, if it's after it rains it's not as much of an issue.

Q. So despite the fact that there's no emergency on Dutch Creek Road and that half of it's been chip and sealed anyway, we've got to do it right now rather than waiting until the next window in the Spring to do it, even though you've got plenty of other chip and seal roads that need to be done as well. Is that fair to say? Is that what you're testifying to?

A. I'm not testifying that we absolutely, that it's such a dire situation that it can't wait until Spring. I'm not saying that. I'm saying we had these plans to do it and --

Q. Thank you. And the plans to do it, you had testified earlier that somehow it was a crazy idea to think that in the Spring you could say we're going to chip and seal a road in the Fall, that that was somehow unthinkable. You just didn't know how much money you would have at the end of the year or something is what you're trying to say?

A. Absolutely. Absolutely. I have --

Q. So how far ahead do you plan a chip and seal project?

A. Well, the problem is it's like last year we brought in a million dollars in grants. It took two hundred thousand dollars to match those grants. So determining, as the grant process goes through and we determine how much state and federal money we get in grants we have to hold a certain amount of reserve to match those monies. And so the Winter, last year we spent, between January and the Fall we spent three hundred thousand dollars on salt. But if we don't have a bad Winter we won't spend anything on salt, we'll be completely stocked. So these variables aren't just ten and twenty thousand dollar variables. We're talking about half a million dollar type variables. We carry about nine hundred thousand dollars in carryover. We could spend, we could spend five hundred thousand dollars in a month. So the reality is if we had a bridge collapse, I had a partial bridge collapse, I've got to replace that bridge. It's going to cost twenty five thousand dollars. I had a landslide and had to close a road on New England Road this year. We designed it ourselves and saved fifty thousand dollars. And, you know, we had to match a, we were able to get

emergency money so we had to come up with another twenty five thousand. So the numbers, Sky, aren't that simple to know if we're going to have money to chip and seal a road or not. I had to get through all the FEMA projects. We built eight FEMA projects. We're doing a lot of stuff out there. I don't think you realize the complexity and the magnitude of it. I can project budgets. I can anticipate all that. But too many things come up. We had a culvert collapse. We've got to go out and replace a culvert and repave a road. There's all kind of things that--

- Q. When did you start planning this project? When did you start planning the Dutch Creek Road project?
- A. Start planning? It's been in my mind since I went to the Commissioners meeting in April. My goal was to get it done by the end of the year if we had the money to do it. I had to make decisions about spending down carryover. I'm a new Engineer. It's my third year. Archie Stanley made a big issue that I was going to bankrupt the county during my campaign. I'm trying to do everything I can to do responsible financial management. And we're doing three times as much work as he ever did as County Engineer.

- Q. After the Winter is over, toward the beginning of your fiscal year, if you decided to make a road a priority and say we're going to chip and seal this road in the early Spring once it gets warm enough to do that, could you do that?
- A. Sky, we didn't have the manpower or ability to do it then. There was no way.
- Q. Well I'm not asking back then. I'm asking next Spring. If you plan now to do a project next Spring and you wait through the Winter, it turns out you've got the money in the Spring --
- A. Oh yeah. Yeah. I could plan. Absolutely. There's no question.
- Q. You're saying there's no way to plan a chip and seal project a season ahead essentially. There's no way to plan in the --
- A. Oh no ,no, no. Absolutely. We can absolutely plan an aggregate amount of work to do each year. There's no question we can do that. But I've mentioned all the variables. It's really, it just depends on how much work you want to do. If you want to try to maximize your budget and your efficiency and everything else like we're doing then absolutely we can do that. We, the year we chip and sealed, one of the

big variables I've learned is the asphalt we use to level the road because all of our chip and seal roads have big --

Q. Pardon me for interrupting. You've answered my question.

A. Okay.

Q. You can plan something like this ahead.

A. Yeah.

Q. And so obviously this project itself could be planned ahead.

A. Sure.

Q. It's not something that you have to say we've got the money in the bank right now and so we've got to do it within the next week or else we won't have the money in the bank any more. It's something you could plan ahead. Is that fair to say?

A. Yes.

Q. Now you indicated that when Jeff Madej, I'm sorry, Bob Madej, brought this to your attention around August 27th that his wife could suffer serious health problems from this situation, that you didn't personally know of it but your staff was aware of it. How were your staff aware of it?

A. I'm assuming that Mr. Madej contacted somebody on my

staff and made them aware. My Superintendent was aware that we had an issue on that road and that his wife was, was, Mike Sheets absolutely knew and he's mentioned to me several times as we've driven out that road we had a woman on that road that was particularly sensitive to, to chemicals. And he's told me that. I knew that. I just didn't know Mr. and Mrs. Madej myself. We've driven that road many times. He's mentioned it to me more than once. As you drive their road there's probably, the last time I was out there I was chronicling houses that had no spraying in front of their mailbox and there's probably eight or nine houses out there that says no spraying there. And so we're aware that, that there's environmentally conscious people that live out there.

- Q. And so at the time when this, you know, on or about August 27th when the Madejs are learning about this project it would be fair to say that the Athens County Engineer's office had knowledge that there was somebody out there with chemical sensitivity.
- A. That's why we called them. I don't think we understood the degree. And I've also, I followed up with an engineer from the prior administration and he knew

nothing about this either. John Branner.

Q. I'm going to move to strike the non-responsive hearsay comment.

BY THE JUDGE: To the extent there was any hearsay in there that part will be stricken.

Q. Thank you, your Honor. Now you're aware of Dr. Singer's affidavit that was an exhibit to the complaint that says that in essence this project will cause serious physical harm or possibly death to Ms. Madej. Is that fair to say?

A. Yes.

Q. And you don't have any medical training yourself, do you?

A. No.

Q. And you don't have an expert medical witness here today that is saying anything contrary to what Dr. Singer has said. Is that fair to say?

A. No.

Q. That's not fair to say? Or you don't have that witness. Correct?

A. Yeah. That was a double negative. How can I answer that and be correct?

Q. Sorry. Is it correct that you have no medical expert here today?

A. Yes.

Q. And so you don't have any basis in any kind of medical opinion to contradict Mrs. Madej's doctors. Is that correct?

A. That's correct.

Q. And knowing that Mrs. Madej's doctors say that she'll suffer serious physical harm or death, and further knowing that you have no medical evidence to contradict that, you're nevertheless going forward with this project this Fall. Is that your intention?

A. Yes.

Q. You're also aware that the Madejs have made it clear to you that moving Mrs. Madej somewhere else is not a simple process. Is that fair to say?

A. Yes.

Q. That she needs a specialized living environment that isn't easily reproduced. Is that correct?

A. Yes.

Q. And you've said there's no emergency about getting this project done this year. Is that correct?

A. Yes.

Q. And despite all those facts your intention is still to go forward with this project as soon as the Court will allow you to do it. Is that right?

A. Yes.

Q. Have you looked at simply using water as a dust control alternative?

A. No.

Q. Have you run any cost analysis of dust control alternatives for this project?

A. Yes.

Q. Describe to me what those cost projections are.

A. They're on the spreadsheet there. There's a spreadsheet there by Zach.

BY MR. SAUNDERS: Let me make sure this is the correct one.

A. Water based and oil based.

BY MR. SAUNDERS: Oil based?

A. Yeah, that's it.

BY MR. SAUNDERS: I'm going to be handing him Defendant's Exhibit E.

Q. If I may approach?

BY THE JUDGE: You may.

Q. Okay. So the three alternatives listed on this sheet are the three that you've done cost projections on.

A. Yes.

Q. One of those is chip and seal.

A. Correct.

Q. One of those is an oil based product. Is that correct?

A. Yes.

Q. And that would likely contain VOC's. Is that correct?

A. They probably both do.

Q. Probably both the water --

A. The water based probably does too only in a lesser amount. But it would have to be applied maybe twice as often. It doesn't last very long.

Q. And so these aren't dust control methods that would be VOC and would work for Ms. Madej as you understand it. Would that be fair to say?

A. That's correct. Well I don't know that for sure but I believe that that's accurate.

Q. And you haven't done any cost projections on any other dust control alternatives for Dutch Creek Road. Is that correct?

A. That's correct.

Q. Now you had had some, you gave some testimony on direct examination about a non-VOC containing chip and seal product manufactured by, I don't think you actually said the name of the company, but by a company that you were looking into and hadn't gotten

a response back yet. That is potentially an alternative for the road that you haven't explored. Is that fair to say?

A. That's accurate. I've attempted to do that in the last week but haven't been able to make contact with him.

Q. If I could have just a minute to speak with my client? I'm near the end of my cross examination.

BY THE JUDGE: That would be fine. Actually let's take this opportunity to take a five minute recess.

BY THE JUDGE: Okay. Sky, go ahead.

BY MR. PETTEY: I'll thank the witness. I have no further questions.

BY THE JUDGE: Okay. Very well. Mr. Saunders?

BY MR. SAUNDERS: Don't go. I will be very brief.

A. Oh. Okay.

BY THE JUDGE: Okay. Mr. Saunders, go ahead.

RE-DIRECT EXAMINATION BY MR. SAUNDERS:

Q. Jeff, you talked about this not being an (inaudible) emergency. Correct?

A. Correct.

Q. Is there an emergency (inaudible) fix a road?

A. No.

Q. Okay.

A. Well I guess landslides are emergencies.

Q. Okay. Why do you think it's prudent to do the chip and seal now as opposed to the Spring of 2016?

A. The advantage of doing it now I guess would be to prepare the road for Winter. We have a lot of pot-holes and areas that need leveled and things like that. So that's the primary reason.

Q. Okay. Is there any other concern that you have if chip and seal is not to occur now instead of Spring? What other concerns do you have?

A. That would be the primary. Well, we have dust issues too. It's a combination of dust and road surface.

Q. And what will the dust issues do if you weren't allowed to chip and seal?

A. There's the potential safety issues that were raised at the public meeting.

Q. Like what?

A. Visibility for school busses was a big kind of overwhelming argument. The liability the County would have if --

BY MR. PETTEY: I'll object just to hearsay.

BY THE JUDGE: I didn't hear any directly attributable statements there. I think he was just giving a summary of generally what the sentiment was. I'll allow that.

Was there more? I'm sorry. You may have been done. I didn't mean to imply you had to have more.

Q. That's fine. I think I have the gist of it. So your main concern for dealing with chip and seal now instead of waiting is the dust control, and also not only with hazardous effects to visibility but to potential accidents. Is that correct?

A. And part of that is based on the letter I received from the Prosecutor's office that my job as County Engineer, if I'm aware of a safety issue and I don't do anything about it then the County, the citizens of Athens County are, it opens up a potential liability issue. So part of the factor in the decision to move forward now were some of the concerns for public safety issues that were made in that meeting that I was unaware of. And you attended that meeting, Zach. And so the letter I got from your office basically addressed some of those issues. And part of it is deciding my responsibility to the public, to the other citizens out there who also talked about safety issues or health issues. People testified at that hearing about health issues related to the dust and safety issues related to dust. So there's a number of factors here as well as the liability, trying to

do my job as County Engineer that way too. So there's like a lot of issues here.

Q. Do you feel that you had an obligation as County Engineer to repair Dutch Creek Road now instead of in Spring of 2016?

A. Yes.

Q. I have nothing further.

BY THE JUDGE: Thank you. Mr. Petty?

BY MR. PETTEY: Thank you, your Honor.

RE-CROSS EXAMINATION BY MR. PETTEY:

Q. These concerns that you're addressing in terms of doing Dutch Creek Road now rather than next Spring, those are all true of many other roads in Athens County as well. Isn't that fair to say?

A. Yes.

Q. In terms of potholes?

A. Yes that's true.

Q. And despite these concerns about safety that have been raised, again you're not aware of any accidents that have occurred on Dutch Creek Road?

A. No.

Q. And you don't consider Dutch Creek Road to be an emergency situation?

A. No.

BY MR. SAUNDERS: I think that, again, has been asked and answered quite a few times.

BY THE JUDGE: Okay.

BY MR. PETTEY: That's all I have, your Honor.

BY THE JUDGE: Okay. Thank you. Mr. Saunders, anything further?

BY MR. SAUNDERS: I have nothing further.

BY THE JUDGE: Okay. Thank you. Mr. Maiden, please step down.

BY MR. SAUNDERS; I will be very quick, your Honor.

I will call two Dutch Creek Road residents. I don't anticipate their testimony will last longer than five minutes.

BY THE JUDGE: Okay. Sir, please come up. And I'll ask you to raise your right hand, please. Do you swear or affirm that the testimony you give this Court will be the truth, the whole truth, and nothing but the truth?

BY MR. LINSKOTT: I do.

BY THE JUDGE: Okay. Thank you, sir. Please come up and have a seat. That door swings open there. Mr. Saunders, you may proceed.

JEFFREY LINSKOTT, first being duly sworn, testifies and says as follows:

DIRECT EXAMINATION BY MR. SAUNDERS:

Q. First of all, sorry to keep you waiting. I'll be

very brief with you. Can you please state your first and last name and spell your last name?

A. Jeffrey Linscott. L-I-N-S-C-O-T-T.

Q. Okay. And where do you reside?

A. I live at the corner of Stanley Road and Dutch Creek.

Q. So obviously you live on Dutch Creek?

A. Yes.

Q. Okay. Are you familiar with the conditions of Dutch Creek?

A. Very.

Q. Okay. What are those conditions?

A. Which side?

Q. Both. Why don't we start --

A. Well one has been chip and sealed.

Q. Why don't we discuss what happened pre-chip and seal.

A. Oh, okay. Well, very dusty. Initially one of the issues, if I go back to the wintertime one of the issues we had was a lot of potholes, a lot of flat tires, etc., etc. Then they started trying to repair it with some road grading and stuff. And eventually we decided something needed to be done because for one, I am in an unusual situation in the fact that my wife has severe allergies and one of her allergies is to dust. And we have up until the time that section

of the road has been chip and sealed, which is almost past my house, you'd have dust clouds ten, fifteen, twenty feet in the air. And since my house is just slightly off the road it was pretty high and coming into the house. Furnace filters, ninety day furnace filters, expensive, changed every thirty days full. And, you know, I know that there is a feeling that dust is not a health hazard. Well it is when you have allergies.

Q. Is there any other concern besides allergies that you have or that you have had with Dutch Creek Road?

A. Well yeah. The visibility. Just the other day, it doesn't happen to be maybe an issue here, but there's some places in the road that if you happen to meet a bus or a truck and you don't see them there's going to be an accident. So to me that's a safety concern.

Q. And when the dust is at its worst how far do you believe that you could see? How far is the visibility?

A. When it's its worst?

Q. Yeah.

A. Twenty feet.

Q. And that concerns you because if you're driving down that road there's a possibility of --

A. Certainly it does.

Q. Okay. And has there been any other incidents, especially with you and your wife, in terms of flat tires or anything?

A. Well yeah. We're on the frequent flyer plan to Huddle. And what has happened is, and I will tell you it doesn't effect my truck tires very much I suppose because of the tread, it doesn't effect my Jeep tires because I drive a Jeep, probably also because of tread, but it's the passenger tires on my wife's Honda Pilot. And what we have found is the gravel that they have attempted to use to help with some of the roughness of the road I guess is it has a lot of flint, small pieces of flint, and they are small enough that they get into the tread and it's not an issue until you drive once again on hard surface roads and it works its way in and now you have a leak the next thing you know. So we have had about thirty in the last two years. And I think if you ask the rest of the neighborhood they could probably mulitply that too.

Q. So you just want the road fixed, to be chip and sealed.

A. Correct.

Q. Not only for your wife's health concerns but also for the safety and --

A. Safety concerns. It's expense. I mean, you know, I'm not a mechanic so you can't call this an expert witness but I sure spend a lot of time with my power washer trying to get the dust out of my brake systems, etc., etc., etc. because it's everywhere.

Q. Thank you. I have nothing further.

BY THE JUDGE: Thank you, Mr. Saunders. Mr. Pettey?

CROSS EXAMINATION BY MR. PETTEY:

Q. Thank you, Mr. Saunders, for being here today.

BY MR. SAUNDERS: You're welcome.

A. Mr. Linscott.

BY THE JUDGE: Mr. Linscott.

Q. I'm sorry.

A. It's okay. It's been a long day.

Q. I apologize. It has been a long day. Mr. Linscott, thank you for being here today. The allergy issues that your wife has, are they life threatening?

A. It could be.

Q. Has she ever had an incident that was life threatening as a result of dust on this road?

A. Life threatening? Maybe not. She certainly has had

times when she couldn't go outside.

Q. Are you aware of any accidents that have occurred on Dutch Creek Road?

A. No.

Q. Graveling the road without some gravel that has some little bits of flint in it would be helpful in terms of your flat tires, wouldn't you agree?

A. It may or may not. I don't know. You'd have to ask a tire expert.

Q. But the tire experts are telling you right now that it's the contents of the gravel that are causing the problem. Is that true?

A. Some of the issues, yes.

Q. In what way could your wife's medical issues be life threatening with the dust allergy?

A. Well initially, and I know this has been a few years ago, but I'm also not a medical doctor, but people tell me that dust is not a health hazard, but her father actually took a lesser job than he was qualified for to move her to Arizona to take care of the allergy issue. So I would say that was pretty severe. She takes two shots a week, one for outdoor, one for indoor. The outdoor is, has been, in my opinion, and I'm not a medical doctor either, but has

been exacerbated by the dust issue.

Q. Are the concerns that you have, the concerns that you have about Dutch Creek Road are now kind of cut in half because half of it is chip and sealed. Is that fair to say?

A. Not for me. Unless I want to go around Robin Hood's barn to get home I still have to do the half that isn't done.

Q. Sure.

A. And if you've ever seen it, where I live, when the people take the curve it may or may not, I'm not an expert, but it may or may not create as much dust as anywhere because they are coming around the curve. And part of that is done, yes. But you still have to travel, you have to get there.

Q. For people who are traveling on the other half of Dutch Creek Road this isn't a concern any more. Is that fair to say?

A. I don't know. You'd have to ask them.

Q. Okay. So you never travel that part of the road?

A. Very seldom.

Q. You never traveled it before it was chip and sealed either?

A. Oh, absolutely. Until I couldn't see.

- Q. So why did you stop traveling it once it had been chip and sealed?
- A. Because you couldn't see traveling that road. When it was --
- Q. Maybe we're misunderstanding each other.
- A. Yeah, maybe so.
- Q. I'm thinking you're saying you traveled it when it was not chip and sealed and then when they did chip and seal it you stopped traveling on it.
- A. I said I have traveled it. You asked me had I traveled it. I said yes, I have.
- Q. Okay.
- A. Have I traveled it both? Yes. I traveled it prior to chip and seal and I have traveled it after chip and seal.
- Q. And after chip and seal these concerns that you're expressing about the part that's not chip and sealed are no longer a concern. Is that correct?
- A. It seems to have helped.
- Q. It didn't completely fix it, did it?
- A. Pretty much. I wasn't traveling in a dust cloud anymore. I didn't notice any dust.
- Q. Okay. So then it did help a lot with the dust on that part is what you're saying?

A. Yeah.

Q. And so that part is no longer a big concern to you about dust?

A. I don't live on that part.

Q. But in terms of safety on that part of the road, visibility?

A. I'm saying it helped.

Q. It helped? But it didn't completely fix it?

A. I don't know. I don't live on the road. I've traveled it one time since it's been chip and sealed.

BY THE JUDGE: I feel like we're kind of going in circles. At this point I'm going to have to ask you to move past that particular point. I think it's been made.

Q. Okay. That's all I have for this witness.

BY THE JUDGE: Okay. Thank you. Mr. Saunders, any re-direct?

BY MR. SAUNDERS: No, your Honor.

BY THE JUDGE: Mr. Linscott, you're free to go. Thank you.

A. Thank you.

BY MR. SAUNDERS: I have one final witness, your Honor.

BY THE JUDGE: Come on up here sir, if you would please, and raise your right hand. Do you swear or affirm that

the testimony you give this Court will be the truth, the whole truth, and nothing but the truth?

BY MR.BROWN: Yes.

BY THE JUDGE: Okay. Thank you. Please have a seat right on up here.

KEVIN BROWN, first being duly sworn, testifies and says as follows:

DIRECT EXAMINATION BY MR. SAUNDERS:

Q. Will you please state your full name and spell your last name?

A. Kevin Mark Brown. B-R-O-W-N.

Q. Where do you reside?

A. 13330 Dutch Creek Road.

Q. Okay. And where is that in comparison to the Madej residence?

A. Probably three-fourths of a mile past their house from 550.

Q. Okay. Has your area been chip and sealed yet?

A. No.

Q. Okay. What do you do for a living?

A. I drive school busses for Athens City Schools.

Q. Okay. Any concerns that you have with the current state of the road?

A. Yeah. It's terrible.

Q. You drive past the Madej's house quite frequently, don't you?

A. Yeah. A couple times a day at least.

Q. Okay. Do they have trash that you ever go by?

A. Yes.

Q. Is there anything you notice odd about the trash?

A. Yeah. I've noticed in the past, I come by really early in the morning, and I've noticed that on occasion there will be trash bags that have been torn open, most likely by the raccoons and possums and stuff like that, and there have been at different times pizza boxes, liter bottles of pop, potato chip bags, cookie bags, and differnt things like that that have been scattered around in that area.

Q. In relation to other houses how far away are, how far is the, what's the next closest house to them?

A. Probably Teresa Perini will be the closest one. On my end of it would be the Stotts.

Q. Is there any way that that trash could come from someone else?

A. No. They've got their trash in their own driveways.

Q. I have nothing further, your Honor.

BY THE JUDGE: Okay. Thank you. Mr. Pettey?

CROSS EXAMINATION BY MR. PETTEY:

Q. Thank you for being here, Mr. Brown. You see this trash there. You don't know who is eating pizza at the Madej's house, do you?

A. No.

Q. You don't know that Cindy Madej is eating pizza at their house, do you?

A. I didn't say that, no.

Q. And you don't know whose drinking the pop at their house?

A. I didn't say that.

Q. You don't know whether that's Bob or Cindy. Is that correct?

A. I didn't say that. I did not say that.

Q. I know you're not saying that. I'm asking you do you know.

A. No I do not know.

Q. Okay. That's all I have, your Honor. Thank you.

BY THE JUDGE: Thank you. Mr. Saunders, any re-direct on that?

BY MR. SAUNDERS: No, your Honor.

BY THE JUDGE: Okay. Mr. Brown, you're free to step down. Thank you for coming in here and for waiting. You're all done. You can go. Alright. Is that all for witnesses?

However, your objection to that denial is noted for the record. Is there anything that needs to be addressed prior to closing argument from either party?

BY MR. PETTEY: Not from me.

BY MR. SAUNDERS: Not from us, your Honor.

BY THE JUDGE: Okay. Thank you. In that case we'll allow, since this is the Plaintiffs' motion Mr. Pettey we'll allow you to make a summary.

BY MR. PETTEY: Thank you, your Honor. Starting with the legal standard that's involved here, we're here on a hearing for a preliminary injunction. The standard involved is a four part standard. No one of these four factors is determinative in deciding whether to grant a preliminary injunction. All of the factors are meant to be balanced. And there's case law out there, and I'm looking at O.Jur. right now as a summary, that a determination that third parties will not be harmed by the issuance of a preliminary injunction is not essential to the issuance of a preliminary injunction. This is a balancing test. And the factors that are involved is whether there is a substantial likelihood that the Plaintiff will prevail on the merits. Number two, whether the Plaintiff will suffer irreparable injury if the injunction is not granted. Three, whether third parties will be unjustifiably harmed if the injunction is granted. And four, whether the public

interest will be served by the injunction. Your Honor, with regard to the first part of that balancing test, whether there's a substantial likelihood that the Plaintiff will prevail on the merits, Plaintiff has claims for civil assault and battery and a wrongful death, which in an injunctive situation are pled prior to the injury occurring. Obviously you don't wait until the person dies to file the injunction to prevent the person from dying. Political subdivisions have immunity. But there are exceptions to that immunity. And the exception that is relevant here is in Ohio Revised Code Section 2744.03 subsection (5). A political subdivision is liable in damages if its judgment or discretion in determining whether to acquire or how to use equipment, supplies, material, materials in this case, personnel, facilities, and resources is exercised in a wanton or reckless manner, or in bad faith. I'm focusing here on reckless. It must be wanton and reckless and bad faith. It's one of any of these alternatives. And the political subdivision is not immune. Recklessness is defined as knowingly disregarding a known risk that a particular outcome is likely to occur. We've had admissions to directly those points by Mr. Maiden here today. He testified he knows that this project will likely cause serious physical harm or death to Ms. Madej. He's testified he's got no contrary evidence. That's the only evidence before this Court on that

point. There is no contrary evidence. Obviously. And he's testified he's going to go forward regardless. So there it is. It's just square on all fours recklessness. We know we're going to cause the harm but we're going to do it anyway. This isn't even disregarding a known risk. The evidence before the Court is this will happen, not this may happen. Now maybe as far as her death it's more of a possibility. But in terms of serious physical harm Dr. Singer had no question that she would suffer from this, and for months. So we've got clearly disregarding a known risk that this will likely occur. Now the County is liable just like anybody else. Anybody else who did this to somebody would be liable under these claims. If they killed somebody knowingly they would be liable. So there's clearly been demonstrated a substantial likelihood that the Plaintiff will prevail on the merits. We believe that there are strong claims under the Americans With Disabilities Act and the Fair Housing Amendments Act but I won't address them today because the complaint has not been allowed to be amended that way. And you've noted my objection on that matter is preserved. And so moving on to the next prong of this balancing test, whether the Plaintiff will suffer irreparable injury if the injunction is not granted. Again we've got uncontradicted evidence that she will suffer serious physical harm or die. It doesn't get much more irreparable than that.

Obviously. There's unrefuted evidence that there will be irreparable harm if an injunction is not granted. Whether third parties will be unjustifiably harmed if the injunction is granted. We don't have, we have evidence of allergies. And I'm not going to contest that that's harm. But this is a balancing test. And when you're talking about killing somebody or somebody suffering from allergies for a short period of time until the Spring during the time period when we know, when Mr. Maiden has admitted dust problems are at their minimum, when you look at that balancing the difference between testimony about one person with allergies who may have to suffer them for a short while. Because if we get until the Spring the Madejs will figure out a way to get out of there, they will continue to try to dialogue with Jeff Maiden who I believe is fundamentally an honest, hard working County Engineer, and I believe he would continue to dialogue with them. I don't know that but that's my personal belief. When you balance Cindy's death with somebody suffering allergies through a limited amount of time, through the time period when dust is at its least concern, the balancing is not even close. It's not even close. It's someone's life. Whether the public interest will be served by the injunction. Your Honor, the public interest will be served by an injunction here. This dialogue is an important dialogue. There are other people in this county that

have chemical sensitivity. This issue is not going away. And we cannot continue to give people with chemical sensitivity one day's notice and say die or go out into the cold under the only blanket you have that you can tolerate and die. That's not serving the public interest. This injunction will serve the public interest because it will promote a dialogue. It will promote a dialogue and this project will get done anyway. This isn't an emergency. The only emergency that came out in the evidence today is that Cindy Madej might die if this injunction is not granted and the road gets chip and sealed. That's the emergency we're dealing with here. When you're talking about this balancing that you do of these factors, no one of these is determinative. The public interest is served by this. Yes there are some folks who on half of this road because this is all cut in half, all of the concern about dust and so forth is cut in half now as we go forward already. There's a public concern there too. But it's going to be temporary and this project will get done. So when you weigh all these factors together clearly the harm to Cindy Madej of losing her life predominates in this instance. There's been no evidence of any accident on that road. Not one accident. The section from Stanley Road to 550 has just been graded. I drove it myself. Not a pothole on it. I couldn't find one. It's just been graded. And a pothole next to somebody's life? When you get

into that balancing inquiry and really look at that it's very clear. Especially since there's nothing preventing this project from going forward in the Spring. We have an offer of judgment on the table that's been filed formally with the court saying that if the County Engineer's office will only have a good faith dialogue with us the Madejs will accept whatever decision they make about surfacing this road, dust control, if they'll give them until the Spring to make the arrangements that the unrefuted evidence demonstrates is critically necessary for her to be able to successfully weather this event. For us it's a chip and seal of a road. For her it's like being surrounded by a forest fire. They're having all these forest fires out west where people have to just grab their possessions and run. That's Cindy Madej right now today. She's in the house with the forest fire burning around her. This isn't who we are as a county. I apologize I'm getting emotional. But this is a life and death situation. This isn't who we are as a county. This isn't the county I grew up in. This isn't who we want to be. Having this dialogue does serve the public interest. And when you look at all these factors and balance them I pray that you will find that a preliminary injunction is necessary in this case. There's not been any realistic dialogue about alternatives. There's not been any realistic dialogue about figuring out a realistic way to get

Cindy Madej safe if the road project does go through. And so I hope and I pray that when you look at all the evidence you will agree and that you will find a preliminary injunction is necessary. Thank you.

BY THE JUDGE: Thank you, Mr. Pettey. Mr. Saunders?

BY MR. SAUNDERS: Thank you, your Honor. I do want the Court to focus on its entry for the temporary restraining order. What the Court states is that it does not foresee an outcome where it would permanently bar the County Engineer from improving Dutch Creek Road in a manner within its lawful discretion. As the Court is aware, Mr. Maiden has a duty to the County of Athens to repair and maintain the roads. Plaintiff is correct in those four factors. But also to establish a right to a preliminary injunction it must show by clear and convincing evidence that each element of this action has been proven. As for that first, substantial likelihood of prevailing on the merits, Plaintiff is correct that the County Engineer does have governmental immunity and there is that exception. However, I don't believe that there's been evidence to show recklessness. Here Jeff Maiden has had conversations with the Madejs. He has decided to go forward with a public meeting with all these residents to try to come up with a solution. He's also discussed and testified these other dust

control issues aren't sufficient. He's putting money, wasting the County's money when essentially he's going to be back out there again. His concern is budgetary, but it's also what's best for the County. He's taken time. He's done his research. He's talked to individuals. And I think that doesn't show that he's been reckless. I think that it shows that he's caring and taking his time. Two, whether Plaintiff will suffer irreparable injury if the injunction is granted. You know, I understand that Ms. Madej is not in the best medical condition. I think everybody understands that. What I find a little concerning is that the doctor that testified here today specifically stated this mile that couldn't be chip and sealed, when this mileage was determined by Mr. Madej and his wife. The doctor in South Carolina who did not testify here today, who Mr. Madej also admitted he provided him with that distance. It's a little concerning because I think it's an arbitrary distance. I don't know really what that, that true distance is that will effect her. She'll say close to a mile. But a doctor hasn't said that. There's been no testimony that says if it's within a mile it's going to happen. And I think thirdly that really is hitting on importance is third parties will be (inaudible) harmed if the injunction is granted. What you need to look at here is the sixty or so residents that petitioned the County Commissioners to get their road fixed.

It's not just dust control. It's not just these, these allergies. Their main focus is the potential for an accident. That's true there's been no accident. But do we want an accident with school busses which go down this road to occur and then say oh yeah now there's an accident, now we have to do something. This is being preventative on Mr. Maiden's part. And I think it's a smart idea. It's very concerning that all we need is one big accident. I don't think so. I think we need to act before the accident actually happens. And lastly, public interest will be served by the injunction. It may be. But also I think you look at the public interest that's served is the County of Athens and the residents on the petition. Some are here today. I would say about sixty or so were at this public meeting. People cared. They tried to give solutions. But they ultimately wanted what's best for them as a county. Not only is this dust harming vegetation, houses, people's allergies, but it's also harming the, the structure of going back and down the road. You have people that are going off the road not to be hit. You have someone who says visibility is no more than twenty feet when it's at its worst. That's concerning. All we're trying to do here is repair and maintain the road to protect citizens down the road. In the event that the injunction is granted we don't know. That could occur next week. It may not occur. That's true. But we also,

meeting was going to occur, who himself is not a civil engineer. You're going to come up with a new road solution that's never been used in Athens County in one public meeting? This wasn't a public meeting to come with solutions. This was a public meeting to let the neighbors vent at the Madejs and to justify going forward with the project. It wasn't a, there never in a million years would have come a resolution where, you know, an alternative solution was arrived at at this public meeting. The concerns, and the record amply shows that the concerns on Dutch Creek Road are the same concerns that are all over the county. Tens and tens and tens of miles, maybe hundreds of miles, same concerns. So to say that we can't even have a dialogue, we can't even wait through the least dusty part of the year when we know we'll have a resolution at the end of that least dusty part of the year, in a life or death situation, is recklessness. It's just reckless. There hadn't been one cost estimate done on a viable alternative. That's been admitted. Not one cost estimate on a viable alternative. So there's no evidence before the Court here saying that there's no viable alternative. The evidence before the Court is there's not really been any thorough discussion and venting of possible alternatives. This, this would be reckless to go forward with this product, this project and kill Cindy Madej. Thank you, your Honor.

BY MR. SAUNDERS: I'm going to be very brief.

BY THE JUDGE: Go ahead.

BY MR. SAUNDERS: Your Honor, it's very clear that the Engineer has, has by statute a duty to repair and maintain the roads. By granting this preliminary injunction it could create a dangerous precedent in terms of any other person that does not want their road repaired or maintained but others do, all they have to do is, is approach the Court. We don't want this to be a dangerous precedent in terms of every time that he's going to chip and seal is he going to have potential legal action against him. And for those reasons we ask that the Court deny the preliminary injunction. Thank you.

BY THE JUDGE: Thank you.

BY MR. PETTEY: I perhaps should have objected. I think I'm supposed to be able to speak last.

BY THE JUDGE: I was going to give you another opportunity if you wanted to respond to that.

BY MR. SAUNDERS: Go ahead. Sorry.

BY MR. PETTEY: This is only going to be a situation that's subject to repetition if you're about to kill somebody without giving them any notice again. This isn't something where a person with dust allergies is going to be able to come to you and get an injunction. You never would have granted the TRO on that. This is only the situation where

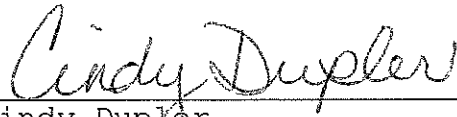
you do have somebody where it's a life or death situation.

BY THE JUDGE:

Thank you, Mr. Pettey. The Court has heard six hours of evidence and argument on this case and will consider this case to be submitted. I'll take it all under advisement and the Court will issue a written decision on this sometime in the near future. Thank you. We'll be off the record.

BY MR. PETTEY: Thank you, your Honor.

The undersigned court reporter hereby certifies that the foregoing is a true and accurate transcript of the hearing on preliminary injunction held September 21, 2015 in the case of Madej v. Maiden, case number 15CI179.

A handwritten signature in cursive script that reads "Cindy Dupler". The signature is written in dark ink and is positioned above a horizontal line.

Cindy Dupler
Court Reporter
Athens Co. Common Pleas Court