

STATE OF SOUTH DAKOTA )  
 ) SS.  
COUNTY OF MEADE )

IN CIRCUIT COURT  
FOURTH JUDICIAL CIRCUIT

JOHN TRUDO, ERIKA TRUDO, WILLIAM )  
CHAPMAN JR, AMY BARBER, NATHAN )  
OLIVER, AMANDA OLIVER, WILLIAM WIMP, )  
PAULA WIMP, CHRIS TAYLOR, WENDI )  
TAYLOR, CONSTANCE MING, MATT SCOTT, )  
KENDRA SCOTT, CLYDE THOMPSON, )  
JANET THOMPSON, ZACHARY BADER, )  
LAUREN BADER, TERRY GILBERTSON, )  
JAKE DOWLING, JAMIE DOWLING, KARA )  
TAYLOR, CHAD BLODGETT, PAMELA )  
BLODGETT, JEREMY GOULDIN, SARA )  
GOULDIN, SCOTT PERRY, HANNA KRAFT, )  
NATHAN CHERRY, MELINDA CHERRY, )  
JOHN SAMUEL, CAITLIN SAMUEL, JOSEPH )  
DAVIS, STEPHANY FISCHER, LOREN )  
WERMERS, ANGELA WERMERS, RANDY )  
NELSON, SANDY NELSON, ADAM GERDES, )  
VALLENE MORRIS, DANIEL CROUSE, JANET )  
BACKES, JEROME HARDY, MELISSA )  
CROUCH, WILLIAM BERRY III, JOHN )  
OSBURN, CAROL OSBURN, DOMINIC )  
BRADFORD, KATELYN BRADFORD, )  
CHRISTOPHER BURNS, KATHERINE BURNS, )  
KYLE PFEIFLE, NICOLE JENSEN, BRANDON )  
JENSEN, JARED RUNDELL, SARA RUNDELL, )  
WILLIAM BERRY, AMBER BERRY, CORY )  
KALISZEWSKI, LONALD SCHNITTGRUND, )  
LESA SUMNERS, KYLE KIENZLE, BALEIGH )  
KIENZLE, MARIE KELLER, COLE SMITH, )  
VALERIE SMITH, BRADY ROTHSCHADL, )  
KATELYNN ROTHSCHADL, RANDALL )  
JANSSEN, TIMOTHY MEFFORD, )  
ALEXANDRIA MEFFORD, KATHY )  
BAUMBERGER, TORI PERCELL, ANN )  
WILEY, DANIEL DROWN, SHEILA DROWN, )

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**COMPLAINT**

ASHLEY WAGNER, TREVER WAGNER, )  
REBEKAH WOJAHN, BRADLEY WOJAHN, )  
JAMIE NELSON, CHRIS NELSON, MEGAN )  
SALISBURY, BRYCE SALISBURY, ADAM )  
GEIGLE, NATASHA GEIGLE, MICHAEL )  
SOUZA, JEREMIAH SUTTON, HEATHER )  
HEINERT, SARAH NAVA, BLAKE HALLERT, )  
JAMES LITTLE, MISTY LITTLE, JASON )  
SCHUTZ, NICOLE MOORE, MICHAEL )  
MOORE, MIKE ESPOSTO, JAMES RADENIC, )  
DEBORAH RADENIC, KOREY SCHULTZ, )  
KELLY SCHULTZ, LORI KIEHN, JOHNATHAN )  
CINA, KRISTIN CINA, MATTHEW WAGNER, )  
WENDY WAGNER, CARISA GERVING, )  
ROBERT GERVING, ANDREA FISCHER, )  
SCOTT SMITH, SAMANTHA SMITH, )  
MICHAEL LORGE, CAROLYN LORGE, )  
MARK WIRKUS, CATHERINE WIRKUS )  
COURTNEY AHRENDT, EZRA AHRENDT )  
SANDRA RAUE, JASON HANSON, )  
CHRIS CONNERS, DIEDRA CONNERS )  
residents of Meade County, South Dakota )

Plaintiffs, )

v. )

STATE OF SOUTH DAKOTA, a state )  
government agency, SOUTH DAKOTA )  
HOUSING DEVELOPMENT AUTHORITY, a )  
South Dakota Public Authority, MEADE )  
COUNTY, a local government agency and )  
WAYNE GUTZMER, CARL BRUCH, BOB )  
POWLES, DAYLE HAMMOCK, BOB )  
MALLOW, CURTIS NUPEN, JIM SCHROEDER, )  
DEAN WINK, ROD BRADLEY, DOREEN )  
CREED, TALBOT WIECZOREK, TED SEAMAN, )  
RICHARD LIGGETT, the duly elected, )  
qualified, and acting Members of the Meade )  
County Commission, individual and in their )

official capacities, and KIRK CHAFFEE, the )  
duly appointed, qualified and acting )  
Equalization Director of Meade County, )  
HIGH PLAINS TITLE SERVICE, INC D.B.A. )  
MEADE COUNTY TITLE COMPANY, BLACK )  
HILLS TITLE, INC, a South Dakota )  
Corporation, BLACK HILLS TITLE, INC, D.B.A. )  
BLACK HILLS TITLE COMPANY, )  
PENNINGTON TITLE COMPANY, a South )  
Dakota Corporation, FIRST AMERICAN )  
TITLE COMPANY, a California Corporation, )  
FIRST AMERICAN TITLE COMPANY OF )  
SOUTH DAKOTA, LLC, a South Dakota )  
Limited Liability Company, DAKOTA TITLE, )  
LLC, D.B.A. FIRST AMERICAN TITLE )  
COMPANY OF THE BLACK HILLS, STEWART )  
TITLE COMPANY, a Texas Corporation., )  
RENNER AND SPERLICH ENGINEERING )  
COMPANY., a South Dakota Corporation, )  
SPERLICH CONSULTING, INC., a South )  
Dakota Corporation, LONGBRANCH CIVIL )  
ENGINEERING, INC, a South Dakota )  
Corporation, KALE MCNABOE, an employee )  
of SPERLICH CONSULTING, INC and the )  
registered agent of LONGBRANCH CIVIL )  
ENGINEERING, INC, JOHN OGDON, an )  
employee of SPERLICH CONSULTING, INC., )  
and TETON COALITION, INC, a South )  
Dakota Nonprofit Corporation, RAYMOND )  
FUSS, Developer of Fuss Subdivision, )  
LARRY FUSS, Developer of Fuss Subdivision, )  
ADELAIDE FUSS, Developer of Fuss )  
Subdivision, KEITH KUCHENBECKER, )  
Developer of Hideaway Hills Subdivision, )  
LINDA KUCHENBECKER, Developer of )  
Hideaway Hills Subdivision, THE REAL )  
ESTATE GROUP, a South Dakota )  
Corporation, RONALD SJODIN, Agent of )  
THE REAL ESTATE GROUP, VIVIAN SJODIN, )

Agent of THE REAL ESTATE GROUP, )  
 FOUST CONSTRUCTION, INC, a South )  
 Dakota Corporation, NEIL FOUST, an )  
 employee of FOUST CONSTRUCTION, INC )  
 and the registered agent of FOUST )  
 CONSTRUCTION, INC., HARVEY HOMES, )  
 INC, a South Dakota Corporation, ED )  
 HARVEY, an employee of HARVEY HOMES, )  
 INC, CANYON CONSTRUCTION COMPANY, )  
 INC., a South Dakota Corporation, G & P )  
 BUILDERS, INC., a South Dakota )  
 Corporation, TRIPLE J CONSTRUCTION )  
 CORPORATION, a South Dakota )  
 Corporation, GERALD FINES, an employee )  
 of TRIPLE J CONSTRUCTION CORPORATION )  
 and the registered agent of TRIPLE J )  
 CONSTRUCTION CORPORATION, MELVIN )  
 LAMKE, a professional surveyor, BLACK )  
 HILLS COUNCIL OF LOCAL GOVERNMENTS, )  
 an organization formed by a joint )  
 cooperative agreement authorized under )  
 South Dakota joint powers statutes, ESTES )  
 CAMPBELL LAW FIRM, LLC, A South )  
 Dakota Limited Liability Corporation, )  
 DOYLE ESTES, a professional attorney )  
 registered in the State of South Dakota, )  
 DALE HANSEN, a professional attorney )  
 registered in the State of South Dakota. )  
 )  
 Defendants. )

COME NOW The Plaintiffs and for their complaint state and allege as follows:

## THE PARTIES

1.

The Plaintiffs are all owners of real estate in Meade County, South Dakota and have suffered damages.

2.

The State of South Dakota is a government body tasked with, among other things, managing and conducting itself to provide for the best interests of all South Dakotans.

3.

The South Dakota Housing Development Authority is a government agency tasked with providing affordable housing within the State of South Dakota.

4.

Meade County is a government body tasked with, among other things, managing and conducting itself to provide for the best interests of all residents, including, but not limited to the decision making authority to approve or disapprove of the improvements of real estate located in Meade County, South Dakota.

5.

Wayne Gutzmer was a commissioner on the Meade County Commission at the time plats of the Hideaway Hills Subdivision were approved.

6.

Carl Bruch was a commissioner on the Meade County Commission at the time plats of the Hideaway Hills Subdivision were approved.

7.

Curtis Nupen was a commissioner on the Meade County Commission at the time plats of the Hideaway Hills Subdivision were approved.

8.

Jim Schroeder was a commissioner on the Meade County Commission at the time plats of the Hideaway Hills Subdivision were approved.

9.

Dean Wink was a commissioner on the Meade County Commission at the time plats of the Hideaway Hills Subdivision were approved.

10.

Rod Bradley is a current seated commissioner on the Meade County Commission.

11.

Doreen Creed is a current seated commissioner on the Meade County Commission.

12.

Talbot Wieczorek is a current seated commissioner on the Meade County Commission.

13.

Ted Seaman is a current seated commissioner on the Meade County Commission.

14.

Richard Liggett is a current seated commissioner on the Meade County Commission.

15.

Kirk Chaffee was the Meade County Equalization Director at the time the Hideaway Hills Subdivision was platted.

16.

High Plains Title Service, Inc is a company, licensee, and or franchisee which offers insurance policies that guarantee the merchantability, soundness and warranty of legal title to real estate in Meade County and in surrounding counties in South Dakota. Its principal place of business and nexus of decision making occurs in Sturgis, South Dakota. High Plains Title Service is an exclusive retailer of Stewart Title Insurance.

17.

Meade County Title Company, DBA is a DBA authority of High Plains Title Service, Inc.

18.

Black Hills Title, Inc is a company, licensee, and or franchisee which offers insurance policies that guarantee the merchantability, soundness and warranty of legal title to real estate in Meade County and in surrounding counties in South Dakota. Its principal place of business and nexus of decision making occurs in Sturgis, South Dakota. Black Hills Title, Inc is an exclusive retailer of Stewart Title Insurance.

19.

Black Hills Title Company, Inc is a company, licensee, and or franchisee which offers insurance policies that guarantee the merchantability, soundness and warranty of legal title to real estate in Meade County and in surrounding counties in South Dakota. Its principal place of business and nexus of decision making occurs in Sturgis, South Dakota. Black Hills Title Company, Inc is an exclusive retailer of Stewart Title Insurance.

20.

Black Hills Title Company, DBA is a DBA authority of Black Hills Title Company, Inc.

21.

Pennington Title Company is a company, licensee, and or franchisee which offers insurance policies that guarantee the merchantability, soundness and warranty of legal title to real estate in Meade County and in surrounding counties in South Dakota. Its principal place of business and nexus of decision making occurs in Rapid City, South Dakota. Pennington Title Company is an exclusive retailer of Stewart Title Insurance.

22.

First American Title Company is a company, licensee, and or franchisee which offers insurance policies that guarantee the merchantability, soundness and warranty of legal title to real estate in Meade County and in surrounding counties in South Dakota. Its principal place of business and nexus of decision making occurs in Rapid City, South Dakota. First American Title Company is an exclusive retailer of Stewart Title Insurance.

23.

First American Title Company of South Dakota is a company, licensee, and or franchisee which offers insurance policies that guarantee the merchantability, soundness and warranty of legal title to real estate in Meade County and in surrounding counties in South Dakota. Its principal place of business and nexus of decision making occurs in Rapid City, South Dakota. First American Title Company of South Dakota is an exclusive retailer of Stewart Title Insurance.

24.

Dakota Title is a company, licensee, and or franchisee which offers insurance policies that guarantee the merchantability, soundness and warranty of legal title to real estate in Meade County and in surrounding counties in South Dakota. Its principal place of business and nexus of decision making occurs in Rapid City, South Dakota. Dakota Title Company is an exclusive retailer of Stewart Title Insurance.

25.

First American Title Company of the Black Hills, DBA is a DBA authority of Dakota Title, LLC.

26.

Stewart Title Company is the guarantor of the title insurance policies issued by High Plains Title Service, Black Hills Title, Inc, Black Hills Title Company, Pennington Title Company, First American Title Company, First American Title Company of South Dakota and Dakota Title.

27.

Renner and Sperlich Engineering Company is a professional civil engineering firm in Rapid City, South Dakota.

28.

Sperlich Consulting is a professional engineering consulting firm based in Rapid City, South Dakota.

29.

Longbranch Civil Engineering, previously known as Sperlich Consulting, is a professional engineering consulting firm based in Rapid City, South Dakota.

30.

Kale McNaboe is an employee of Sperlich Consulting and Longbranch Civil Engineering who prepared and represented the Hideaway Hills plat to the Meade County Commission.

31.

John Ogdon is an employee of Sperlich Consulting who prepared and represented the Hideaway Hills plat to the Meade County Commission.

32.

Teton Coalition, Inc is a nonprofit organization that makes available affordable housing solutions to qualified buyers.

33.

Raymond Fuss was the original developer of the Fuss Subdivision in Meade County, South Dakota.

34.

Larry Fuss was a co-developer of the Fuss Subdivision in Meade County, South Dakota.

35.

Adelaide Fuss was the spouse of Larry Fuss and co-developer of the Fuss Subdivision in Meade County, South Dakota.

36.

Keith Kuchenbecker was a co-developer of Hideaway Hills Subdivision in Meade County, South Dakota.

37.

Linda Kuchenbecker was the spouse of Keith Kuchenbecker and co-developer of the Hideaway Hills Subdivision in Meade County, South Dakota.

38.

The Real Estate Group is a professional real estate brokerage based in Rapid City, South Dakota.

39.

Ronald Sjodin is a realtor licensed in South Dakota who worked for The Real Estate Group to market and sell real estate within the Hideaway Hills Subdivision on behalf of the property developers.

40.

Vivian Sjodin is a realtor licensed in South Dakota who worked for The Real Estate Group to market and sell real estate within the Hideaway Hills Subdivision on behalf of the property developers.

41.

Foust Construction is a construction company based in Rapid City, South Dakota which constructed homes within the Hideaway Hills subdivision.

42.

Niel Foust is the owner and registered agent of Foust Construction.

43.

Harvey Homes, Inc is a construction company based in Rapid City, South Dakota which constructed homes within the Hideaway Hills subdivision.

44.

Ed Harvey is the owner and registered agent of Harvey Homes, Inc.

45.

Canyon Construction Company, Inc is a construction company based in Black Hawk, South Dakota which constructed homes within the Hideaway Hills subdivision.

46.

G & P Builders, Inc is a construction company based in Canton, South Dakota which constructed homes within the Hideaway Hills subdivision.

47.

Triple J Construction Corporation is a construction company based in Rapid City, South Dakota which constructed homes within the Hideaway Hills subdivision.

48.

Gerald Fines is the owner and registered agent of Triple J Construction Corporation.

49.

Melvin Lamke is a professional surveyor who surveyed the sites of the Hideaway Hills Subdivision. As a surveyor, Mr. Lamke has professional obligations and is subject to ethical standards.

50.

The Black Hills Council of Local Governments is an organization formed by a joint cooperative agreement authorized under South Dakota joint powers statutes. The agency develops recommendations for urban and incident planning for several counties in western South Dakota including Meade County, South Dakota.

51.

Estes Campbell Law Firm, LLC is a South Dakota Limited Liability Company.

52.

Doyle Estes is a licensed attorney in the State of South Dakota with professional and ethical obligations.

53.

Dale Hansen is a licensed attorney in the State of South Dakota with professional and ethical obligations.

#### **RECORD OF TITLE**

54.

The majority of the Hideaway Hills subdivision which is the real property subject to this action, is located in the East Half of the NW  $\frac{1}{4}$  of Section 8, Township

2 Range 7, Meade County, South Dakota. However most of the property mentioned in the below listed transactions also encompasses the SE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  and the NW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$ , Sec.8., Twn. 2, Range 7. Those parcels will not be specifically mentioned.

55.

The East Half of the NorthWest quarter section of Section 8, is composed of the NE $\frac{1}{4}$  and the SE $\frac{1}{4}$ .

56.

On or about July 2nd, 1891 the North East Quarter and the South East Quarter of the NW $\frac{1}{4}$ , Section 8, Township 2, Range 7, became patented by Olaf Olson and Wife, respectively, Book 11 Vol. 470 and Book 10 Vol. 32.

57.

On or about March 17, 1910 Olaf Olson and Wife, equitably sold those parcels by contract for Deed to Benjamin Alexander for \$8,000.00. Book 44, Vol. 28.

58.

On or about March 17, 1910, Benjamin Alexander assigned his interest in the Contract for Deed to the Dakota Plaster Company. Book 44, Vol. 33.

59.

On or about January 10, 1917, Benjamin Alexander satisfied the Contract for Deed and the property transferred by warranty deed, to the Dakota Plaster Company for the sale price of \$8,000.00. Book 91. Vol. 220.

60.

On or about April 7, 1927, the Dakota Plaster Company mortgaged the aforementioned parcels to the Security Savings Bank for the sum of \$10,000.00.

61.

The Dakota Plaster Company defaulted on its mortgage and on January 4, 1929, Security Savings Bank foreclosed on the property. Book 149. Vol 156.

62.

Security Savings Bank's license was suspended, (presumably due to the financial crisis) a receiver was appointed and on April 10, 1930 the land was purchased by George P. Bennet for \$5,000.00. Book 151. Vol. 509.

63.

George P. Bennet sold the land to the U.S. Gypsum Company on July 17, 1930 for \$10,000.00. Book 152 Vol. 227.

64.

On or about May 29, 1945 the U.S. Gypsum Company sold the property to one H.A. Biesman. Book 186. Vol. 525.

65.

On the same day Mr. Biesman sold the property to local developer Ed Stensaas. Book 186. Vol. 525.

66.

Mr. Stensaas had previously developed the "East Lawn, " Subdivision in Black Hawk, SD.

67.

On April 8, 1971 the Meade County Commissioners approved the plat submitted by Mr. Stensaas. This plat created Lots A, B, and C, and Tract 1, namely in the NE1/4 of the NW ¼ of Section 8, Township 2, Range 7,

68.

On or about September 5, 1974, the Meade County Commissioners approved the plat located in plat book 4, Page 27, re: portions of the NE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  Section 8, Township 2, Range 7. The property was owned by Alan R. Sutton and Patricia A. Sutton.

69.

The State Cement Plant by virtue of the State of South Dakota, purchased the property.

70.

At some time prior to the sale of the land to Raymond Fuss, the State of South Dakota conducted a "visual inspection," and "soils test." Its report concluded, "Based on initial visual observation, on-site soil appears suitable for the proposed development." .... "In the early 1900's an underground gyp mining operation took place on the NE corner of the property. Field boring operation may be required to identify any cavities that may be a safety hazard."

71.

On or about June 17, 1994, the State of South Dakota sold the land to Raymond C. Fuss and Carol M. Fuss of Rapid City, South Dakota. The State of South Dakota reserved all mineral interests in the property.

72.

Larry and Adelaide Fuss partnered with Keith Kuchenbecker and Linda Kuchenbecker. The partners caused to be surveyed and submitted a plat to the Meade County Commission for domestic housing development.

73.

Renner & Sperlich Engineering Company, a civil engineering company was contracted and did complete the engineering specifications for the plat.

74.

Melvin B. Lamke Professional Land Surveyor was contracted and did survey the plat.

75.

This plat contained Lots 1 through 11 of Block 1, Lots 1 through 12 of Block 2, Lots 1 through 12 of Block 3, Lot 1 of Block 4, and Lot 1 of Block 5. This plat contains the areas commonly known as, "West Daisy," Orchid Lane, Orchid Court and a portion of Meadow Rose Lane.

76.

On or about October 2, 2002 the Meade County Commission approved the said plat located in Plat Book 21 Page 28.

77.

Kuchenbecker and Fuss sold the lots to individual contractors who constructed homes and sold the homes to the public at large.

78.

On or about June 4th, 2004, developers Fuss and Kuchenbecker created the East Half of Daisy Street, Lots 15 through 25 in Block 2, and Lots 16 through 25 in Block 4.

79.

Sperlich Consulting, Inc., engineered this section of the subdivision for soundness and safety.

80.

Melvin B. Lamke surveyed this section of the subdivision.

81.

On or about August 8, 2004, the Meade County Commission approved the said plat and located it in plat book 21 pages 217-218.

82.

The lots were then sold by Fuss and Kuchenbecker to individual contractors.

83.

A half hearted attempt was made by the developers to warn contractors and realtors that they were buying and eventually selling a piece of real estate that possibly had zero value and which possibly presented a high risk of death or serious bodily injury to the eventual owners. This warning consisted of a simple piece of paper which stated:

*The BUYERS acknowledge that they have been made aware that the property being purchased hereunder, along with the adjoining property, was once mined on the surface and underground for gypsum. The SELLER is unaware as to the exact date that the underground mining ceased but believes it was sometime in the 1950's. The surface of the property was reclaimed to meet the requirements of the State of South Dakota after the surface mining operation was completed. The SELLER IS not making any warranty, express or implied, concerning any subsurface conditions that may exist on the property being purchased by the BUYER herein. It will be the BUYER'S responsibility to remediate any subsurface conditions that exist on the property including but not limited to, fissures or cavities that may be as a result of these mining operations. The BUYER has accepted the (illegible) subsurface of the property in an "as is" condition, without any warranty by the SELLER.*

84.

Neither the developers, the Meade County Commissioners, contractors, the respective title companies, Engineers, Realtors nor the surveyor believed this piece of paper should have been recorded in the Register of Deeds Office.

## STATUTE OF LIMITATIONS

85.

The statute of limitations for this matter is found in SDCL 15-2A. SDCL 15-2A-3 limits actions against those involved in the design[ing], planning, supervision, inspection, and observation of construction, or construction, of an improvement to real property...ten years after substantial completion [of the real property improvement].

86.

No statute bars the Plaintiffs' claims in this action as SDCL 15-2A-1 provides that the ten year limitation applies only to "actions under a general standard of care." Building on top of a gypsum mine would require a specific rather than general standard of care. Further no statute bars the Plaintiffs claims of negligence, when a defendant is guilty of "of fraud, fraudulent concealment, fraudulent misrepresentations, or willful or wanton misconduct.

## SPECIFIC STANDARD OF CARE

87.

It is common knowledge that underground mines, shafts or drifts of any nature are a hazardous feature to real estate. The location and or collapse of an underground drift may cause a complete loss of real estate value, personal property, serious bodily injury and or death. An underground gypsum mine is an ultrahazardous feature of real estate as most gypsum mines are relatively close to the surface and since gypsum is a soft mineral usually surrounded by other soft minerals.

88.

The placement of homes, roads and the use of heavy machinery in the construction of the subdivision places a heavy load on a fragile structure. Any conceivable and correct construction of a subdivision on top of a gypsum mine or the decision to do so would require a specific standard of care not demonstrated by any of the defendants.

COUNT 1  
NEGLIGENCE IN THE DESIGNING, PLANNING, ENGINEERING, SURVEYING,  
DECISION MAKING, CONSTRUCTION and SELLING OF REAL PROPERTY WITHIN THE  
SUBDIVISION

89.

Preceding paragraphs incorporated herein, developers Fuss and Kuchenbecker, the Meade County Commissioners, years 2002-2006, Renner & Sperlich Engineering, Sperlich Consulting, Inc., Lemke, contractors, Foust Construction, Inc., Neil Foust, Harvey Homes, Ed Harvey, Canyon Construction Company, G & P Builders Inc., Triple J. Construction, Gerald Fines, all knew the parcel of land had at one time been mined on its surface and underground for gypsum.

90.

Ordinarily gypsum mines are near the surface when compared to most if not all mineral mines. Gypsum is a soft mineral and it is water soluble thereby making it extremely susceptible to geological activity such as fracturing and cleaving.

91.

Building a residential housing development above a gypsum mine requires more than the general standard of care, rather it required a “specific standard of care.”

92.

The defendants, Meade County Commissioners decision to locate a housing development on top of a gypsum mine without the requisite specific standard of care and without any specialized knowledge falls below the requisite standard of care and specialization required. The Meade County Commissioners years 2002-2006 are thereby liable to the Plaintiffs in this action in the Tort of negligence.

93.

The professional firms, Renner & Sperlich Engineering, Sperlich Consulting, Inc., and Longbranch Engineering lacked the requisite specific standard of care and

fail to acquire the specialized knowledge required to build a housing development on top of a gypsum mine. Their lack of knowledge and lack of exercise of the specific standard of care required in the construction of a development above a gypsum mine makes the defendants liable to the Plaintiffs in this action in the Tort of negligence.

94.

Contractors, Foust Construction, Inc., Neil Foust, Harvey Homes, Ed Harvey, Canyon Construction Company, G & P Builders Inc., Triple J. Construction, Gerald Fines, lacked the required knowledge to construct a residential housing development above a gypsum mine. The defendants as well lack the ability to exercise the required specific standard of care in any such construction of homes above a gypsum mine. Therefore the above named defendants are liable to the Plaintiffs in the tort of negligence.

95.

The Black Hills Council of Local Governments presented a disaster mitigation plan for Meade County that was approved by vote of the Meade County Commission on September 28, 2016. The plan provided mitigation strategies to the government body to respond to various disasters with the goals of:

- 1) *Protect the people and property, specifically stabilize erosion, subsidence and landslide hazard areas*
- 2) *Improve public awareness, specifically the development of educational programs targeted in citizens in high hazard vulnerability areas*
- 3) *Strengthen partnerships, specifically coordinate the implementation of the activities in the Hazard Mitigation Plan with other local planning efforts, such as the Local Emergency Management Plan, and City and County land use planning efforts*

96.

The report of the Black Hills Council of Local Governments recognizes the potential for geological hazards and specifically land subsidence; however it states, “Meade County’s vulnerability to future geological hazards is low.” The report limits

the extent of anticipated hazards by geological events as damage to roads and utilities. The report does not recognize potential for geological hazards to homes or public personal safety.

97.

The Real Estate Group, Ronald and Vivian Sjodin did sell many of lots in the Hideaway Hills Subdivision. It appears there was general knowledge during the inception and creation of the subdivision that it was located on top of a gypsum mine. The Sjodin realtors owed a duty to prospective clients not to list for sale property compromised by an ultrahazardous land condition. The failure to unlist or refuse to sell such lots constituted a breach in that duty thus the Sjodins are guilty of negligence. The Real Estate Group is responsible for compensating the Plaintiffs by virtue of the doctrine of *Respondeat Superior*.

**COUNT 2**  
**BREACH OF GOVERNMENTAL WARRANTY**

98.

Preceding paragraphs incorporated herein, the Meade County Commissioners approval of the plats subject to this action, i.e. the Hideaway Hills Subdivision, created an express and or implied warranty that the real estate was fit for human habitation for the foreseeable future of Meade County, subject to hazards undiscoverable by the exercise of reasonable governmental authority.

99.

The location, discovery and soundness for the construction of real estate on top of the gypsum mine was not without the ability of Meade County government to ascertain.

100.

Meade County government failed to ascertain for the residents of the Hideaway Hills subdivision, the location, discovery and soundness for construction of homes in the Hideaway Hills Subdivision.

COUNT 3  
FAILURE OF MEADE COUNTY GOVERNMENTAL AUTHORITY TO PROVIDE EXPRESS  
WARNINGS OF THE HAZARDS OF HABITABILITY OF HOMES IN THE HIDEAWAY  
HILLS SUBDIVISION

101.

Preceding paragraphs incorporated herein, the Meade County Commission is expressly authorized to make safety determinations as to the habitability of locations in Meade County within the reasonably discoverable means of the County.

102.

While Meade County does not have zoning laws regulating the construction of developments in unincorporated towns in the County. The Commission still has a duty to exercise judgment in the placement of homes on or off of ultrahazardous real estate features.

103.

It was not without the reasonable powers of the Meade County Commission to ascertain the relative safety of building a residential housing development on top of a gypsum mine. It is also not without the reasonable powers of the Commission to understand by at least some level of intelligence that the prospect of building such a subdivision safely would require competent experts with high levels of indemnity insurance.

104.

Making the decision to approve plats 21 Page 28 and plat 21 Pages 217-218 was unsupported by an expert or qualified expert and thus it was incumbent upon the Meade County Commission to make a clear erring that the subdivision posed serious risks of serious bodily injury or death to any of its residents. This power to ascertain and warn potential and existing Meade County residents that the Hideaway Hills Subdivision was dangerous and life threatening was not exercised to any degree and therefore the Meade County Commission and all its members from 2002 until present is guilty of failing to warn the public.

**COUNT 4**  
**BREACH OF WARRANTY BY A PROFESSIONAL CIVIL ENGINEERING COMPANY**

105.

Preceding paragraphs incorporated herein, Renner & Sperlich Engineering Company, Sperlich Consulting, Inc., and Longbranch Engineering, approval and stamp of the plats subject to this action, i.e. the Hideaway Hills Subdivision, created an express and or implied warranty that the real estate was fit for human habitation for the foreseeable future of Meade County, subject to hazards discoverable by the exercise of reasonable discovery by a professional engineering company.

106.

Renner & Sperlich Engineering Company, Sperlich Consulting, Inc., and Longbranch Engineering, breached the express and implied warranties of suitability and safety of human occupation when the companies and individuals rendered their professional services and placed their stamp of authority on the respective plats.

107.

The hazard of an underground gypsum mine was known to the professional engineering companies and by virtue of rendering their professional services with this knowledge, the companies breached their warranty of safety and fitness for human occupation.

**COUNT 5**  
**FAILURE OF PROFESSIONAL ENGINEERING COMPANIES TO WARN PURCHASER  
RESIDENTS OF THE RISK OF HUMAN SAFETY AND OCCUPATION**

108.

Preceding paragraphs incorporated herein, Renner & Sperlich Engineering Company, Sperlich Consulting, Inc., and Longbranch Engineering, are professional engineers subject to review by a board of ethics.

109.

The ethical requirements imposed by a board of ethics ensures the protection of the public against actions taken by engineers which pose a risk to the public.

110.

Engineers owe a duty to the public to protect the public against unreasonable risks relative to health safety and welfare of the general public. Renner & Sperlich Engineering Company, Sperlich Consulting, Inc., and Longbranch Engineering, owed a duty to warn the public that its engineering posed a significant risk to the health safety and welfare of the general public.

**COUNT 6**  
**BREACH OF WARRANTY OF A PROFESSIONAL LICENSE TO PRACTICE LAW**

111.

Preceding paragraphs incorporated herein, Doyle Estes, Attorney at Law, acted as the principal attorney for Bryon and Linda Kuchenbecker.

112.

Mr. Doyle Estes, Attorney at Law, drafted all or nearly all of the initial deeds warranting the property from Kuchenbeckers to the contractors that purchased the lots, i.e., Foust Construction, Inc., Neil Foust, Harvey Homes, Ed Harvey, Canyon Construction Company, G & P Builders Inc., Triple J. Construction and Gerald Fines.

113.

This license to practice law carries with it a warranty that use of that law license on a Warranty Deed, would make the deed free and clear of all known defects in the property which would pose a risk of total loss of the real estate, serious bodily injury and or death subject to the actual knowledge of the Attorney at the time the deeds were drafted.

114.

Doyle Estes knew the lots of the Hideaway Hills subdivision were atop of a gypsum mine and drafted the disclosure to the contractors who purchased the lots.

115.

As the lots were ultrahazardous, not stable in their real estate values Doyle Estes breached his warranty.

**COUNT 7**  
**FAILURE TO WARN BY A LICENSED ATTORNEY**

116.

Preceding paragraphs incorporated herein, Doyle Estes and Dale Hansen had duties as licensed attorneys at law to warn the public of the ultrahazardous condition that existed on the property subject to the ability of a professional attorney in a like capacity to discover the defect.

117.

As Doyle Estes had direct knowledge that the gypsum mine was beneath the deeds he was drafting that would transfer such real estate, he had a duty to notify and warn the public of the ultrahazardous condition within the text of the deed.

118.

Attorneys communications are not privileged when such disclosures exist in the public domain. The fact that Kuchenbeckers and Fuss openly disclosed the existence of the ultrahazardous condition obliged Doyle Estes to record the disclaimer he drafted regarding the condition of the mine and or to otherwise note the condition of the land in the deed.

119.

The failure of Attorney Doyle Estes to notify the public by including information about the gypsum mine within the context of the deed or in recording the document, he created purporting to disclaim liability of the mine to purchasers

of the real estate, constituted a breach in his professional duty as a licensed attorney at law to warn the public.

#### **COUNT 8**

#### **BREACH OF WARRANTY BY THE SJODINS AND THE REAL ESTATE GROUP**

120.

Preceding paragraphs incorporated herein, as professional realtors, Ronald and Vivian Sjodin by virtue of their acts in listing the parcels of real estate within the hideaway hills position warranted the real estate free from all ultra hazardous conditions on the real estate, known to the Sjodins or reasonably ascertainable.

121.

This warranty was created if within the ordinary inspection of the real estate by a Realtor, the facts could have been discovered that the real estate was built on top of an abandoned gypsum mine.

122.

While it is not directly known that the Sjodins knew of the ultrahazardous condition of the real estate, the Sjodins did act as the Kuchenbeckers' Attorneys in fact and transferred by Warranty Deed several of the real estate parcels to Foust construction while the Kuchenbeckers were residing in Mexico.

#### **COUNT 9**

#### **FAILURE TO WARN BY A LICENSED REALTORS**

123.

Preceding paragraphs incorporated herein, realtors are professionals subject to governing boards which regulate their professional statements and interactions with the public. These boards serve to protect the public from conduct by Realtors which is harmful to the public at large.

124.

If a realtor which has knowledge that property being offered for sale contains an ultrahazardous condition the Realtor has a duty to warn the public of the ultrahazardous condition.

125.

Since the Sjodins had at least a close business relationship with the Kuchenbeckers there is at least a colorable claim that the Sjodins knew of the condition. If the Sjodins knew of the ultrahazardous condition on the real estate they had a duty to warn. The Sjodins did not warn and thus breached their duty to warn the public.

**COUNT 10**  
**NEGLIGENT HOME CONSTRUCTION OF HOMES LOCATED ON MINE WASTE FILL**  
**REQUIRING SPECIFIC STANDARDS OF CARE**

126.

Preceding paragraphs incorporated herein, Foust Construction, Inc., Neil Foust, Harvey Homes, Ed Harvey, Canyon Construction Company, G & P Builders Inc., Triple J. Construction, Gerald Fines, all constructed homes on Pengra, Blue Bell Drive, Orchid Lane and Prairie Violet Lane.

127.

These homes were constructed on mine waste fill. The construction of homes located on mine waste fill requires a specific standard care.

128.

None of the aforementioned construction companies possessed the prerequisite knowledge and understanding to construct homes with this specific standard of care.

129.

Many of the homes on Pengra, Blue Bell Drive, Orchid Lane and Prairie Violet Lane have experienced extreme sinkage to the foundations of their homes, cracking walls, shifting floors and utility lines including but not limited to sewer lines that continually clog as the ground beneath them continues to shift.

130.

Since the builders constructed the home on mine waste rock without the requisite standard care, their actions were negligent of which no statute of limitation applies.

**COUNT 11**  
**NEGLIGENT HOME CONSTRUCTION OF HOMES LOCATED ON MINE TAILING**  
**PONDS AND OR SEWAGE LAGOONS - SPECIAL DAMAGES**

131.

Preceding paragraphs incorporated herein, many of the homes on Glacier Court, Rainier Court, West Elmwood and Northdale Drive, have experienced extreme sinkage to the foundations of their homes, cracking walls, shifting floors.

132.

Further several of the residents in these areas of the subdivision have reported extreme and unexplainable health problems since purchasing their homes.

133.

One resident reported that health professionals had prescribed him 23 different medications and that doctors could give him no definitive explanation as to his diagnosis. Further his problems subsided when he left the house for extended periods of time.

134.

Other residents have reported losing multiple pet dogs to cancer.

135.

The construction of homes on sewage lagoons requires a specific standard of care not met by any of the contractors listed in the preceding paragraphs. Thusly the contractors who constructed homes on the sewage lagoons are guilty of negligence.

136.

The governmental approval of locating homes on sewage lagoons is an extreme risk to the health and safety of the residents of Meade County and constitutes willful or wanton misconduct.

**COUNT 12**  
**WILLFUL OR WANTON MISCONDUCT**

137.

Preceding paragraphs incorporated herein, defendants Fuss and Kuchenbecker, the Meade County Commissioners years 2002-2006 and present, Renner & Sperlich Engineering, Sperlich Consulting Inc., Foust Construction, Inc., Neil Foust, Harvey Homes, Ed Harvey, Canyon Construction Company, G & P Builders Inc., Triple J. Construction, the State of South Dakota and the South Dakota Department of Housing Development Authority, Fines, and Lamke all engaged in intentional acts which were in disregard of a known risk or a risk so obvious that it cannot be said to be unknown, and with the knowledge that it was highly probable that harm would follow. The decisions made by these defendants were in reckless disregard of the rights and safety of the residents of Hideaway Hills and are therefore guilty of willful or wanton misconduct.

**COUNT 13**  
**BREACH OF WARRANTY OF TITLE**

138.

Defendants High Plains Title Service, Black Hills Title, Inc, Black Hills Title Company, Pennington Title Company, First American Title Company, First American Title Company of South Dakota and Dakota Title are Title Insurance Companies.

With each title sold by Defendants warranted the title for the amount of the purchase price. The title is warranted against among other things:

*2. Any defect in or lien or encumbrance on the Title.*

*A defect in the Title caused by:*

*(iii) a document affecting Title not properly created, executed, witnessed sealed, acknowledge, notarized or delivered; and;*

*(vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or..*

*3. Unmarketable Title.*

139.

As stated previously, the developers made a half hearted attempt to disclaim warranties to the land when the land was sold to the contractors. This attempt was made with a small piece of paper. This piece of paper however, was never properly created, acknowledged and filed in the public records.

140.

Now that the disaster in the Hideaway Hills subdivision is widely known, titles to homes in the subdivision have become unmarketable.

**COUNT 14**  
**NEGLIGENCE IN THE ISSUANCE OF TITLE INSURANCE**

141.

Preceding paragraphs incorporated herein, while Meade County South Dakota is large in area, it is relatively small in population. Meade County has one title company and its business is strictly the searching, interpreting, curing and insuring marketable title to properties in Meade County and in some surrounding counties.

142.

While the business First American Title Insurance Company is not located in Sturgis, South Dakota, it is located approximately 30 miles away in Rapid City, South Dakota.

143.

Families in the area are closely connected, tight knit and often not separated by more than two or three degrees. In November of 2006, the Meade County Commissioners in public hearing dealt with the subject of part of Daisy Drive, collapsing into an underground mine. It was reported to the commission that the, "developers," wanted to close part of Daisy Drive. The Meade County Commissioners however refused the closure and instead insisted that Daisy Drive remain open. It is unfathomable that employees and directors of the area title companies did not hear, know and understand at least by 2006 that part of Daisy Drive was collapsing into an underground mine. Policies were issued by the title companies without reservation.

144.

It also appears the Kuchenbecker and Fuss disclosed the plan to build the Hideaway Hills Subdivision on top of the gypsum mine and in sewage lagoons possible as early as 2000.

145.

Title companies hold a unique position of trust and fidelity in the community. Purchasers and sellers rely on the companies to warranty the real estate they purchase. Along with the position of trust comes a duty to protect the public from defects in the title that the company is aware of outside of the record.

146.

The continued issuance of title insurance policies to homes in Hideaway Hills after November 2006 and before was negligent by the defendants and was the proximate cause of the loss of the Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE THE DEFENDANTS PRAY THE FOLLOWING RELIEF BE ENTERED:

147.

- A. Judgment in favor of the Plaintiffs and against the Defendants for compensatory damages in the amount of sum greater than \$35,485,000.00 [Thirty-Five Million Four Hundred and Eight-Five Thousand Dollars and Zero Cents].
- B. Exemplary damages in the amount of \$40,000,000.00 [Forty Million Dollars and Zero Cents.]
- C. Such other relief as the court deems equitable.

**TRIAL BY JURY IS DEMANDED**

This 24nd day of May, 2020.

FITZGERALD LAW FIRM, PLC  
A Professional Law Corporation

*/s/ John M. Fitzgerald*

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