

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

FILED

APR 24 2008

At
STEPHEN M. JOHNSON, Clerk

THE MAJESTIC STAR CASINO, LLC)
)
Plaintiff,)
)
v.)
)
UNITED STATES STEEL CORPORATION)
)
Defendant.)

CIVIL ACTION NO.

2 : 08 CV 126 WL

COMPLAINT

Plaintiff, The Majestic Star Casino, LLC, for its Complaint against Defendant, United States Steel Corporation, alleges and states:

Parties, Jurisdiction, and Venue

1. Plaintiff, The Majestic Star Casino, LLC ("Majestic"), is a corporation organized and existing under the laws of the state of Indiana with its principal place of business at One Buffington Harbor Drive, Gary, Indiana 46406.

2. Defendant, United States Steel Corporation ("U.S. Steel"), on information and belief, is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business at 600 Grant Street, Pittsburgh, Pennsylvania, 15219.

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 inasmuch as Majestic and U.S. Steel are citizens of different states and the amount in controversy in this matter, exclusive of interest and costs, exceeds the sum of \$75,000.

4. This Court has personal jurisdiction over U.S. Steel because it conducts business in the state of Indiana.

5. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(a)(2) because the property at issue is located in the Northern District of Indiana, Hammond Division.

Allegations Common to All Counts

1. Majestic is the owner in fee simple of certain property located at One Buffington Harbor Drive, Gary, Indiana 46406 ("Premises").

2. Majestic acquired the Premises from GNC Corporation, successor in title to Universal Atlas Cement Company ("Universal").

3. On or about August 16, 1954, Universal and U.S. Steel entered into an "Agreement" ("Agreement") whereby Universal granted an easement ("Easement") in favor of U.S. Steel to allow U.S. Steel to transmit electrical energy across the Premises ("Easement Premises") using certain equipment ("Equipment") as more fully described below. A true, correct, and authentic copy of the Agreement is attached hereto to and made a part hereof as

Exhibit A.

4. Paragraph 1 of the Agreement states, in relevant part:

Universal hereby grants to Corporation [U.S. Steel] permission and authority to install, maintain operate, repair, replace, renew and relocate towers, poles, wires, cables, and all other necessary and convenient equipment for the transmission of electrical energy over two electric power transmission lines . . . all of which lines, towers, poles and equipment therefore are hereinafter collectively termed "equipment", with right of ingress and egress over the adjoining premises of Universal

5. The Agreement Recitals provide, in pertinent part:

said line and facilities have been augmented so as to provide for the transmission of 69,000 volts of electrical energy, and Corporation [U.S. Steel] now owns and operates an additional power line with facilities for the transmission of 22,000 volts of electrical energy, over and across certain lands of Universal.

6. Majestic is successor to the interests of Universal.

7. Paragraph 9 of the Agreement states, in relevant part:

It is understood and agreed that if at any time after the installation of said equipment Corporation [U.S. Steel] shall fail to use said equipment for a period of five (5) consecutive years . . . then the rights herein granted, without further notice, immediately shall cease and terminate, and Corporation [U.S. Steel], upon the termination of said rights in the manner aforesaid, or in any other manner provided in this agreement, upon written demand of Universal immediately shall remove said equipment or such portion or portions thereof as Universal may require from the property of Universal, and shall restore said property to a condition equal to that which existed at the time of installation of said equipment, at the sole cost and expense of Corporation [U.S. Steel]

8. U.S. Steel has not used the Equipment for at least five (5) consecutive years.

9. On or about December 7, 2005, Majestic, by counsel, sent U.S. Steel a notice of Termination ("Termination Notice").

10. Despite the Termination Notice, U.S. Steel has failed to remove all Equipment from the Premises.

Count I – Declaratory Judgment

11. Majestic incorporates by reference the allegations contained in paragraphs 1 through 10 of the Complaint as if restated, in full, herein.

12. Majestic is entitled to a judgment from this Court declaring that the Easement terminated and that U.S. Steel must remove all Equipment from the Premises.

WHEREFORE, Majestic respectfully requests the Court enter a declaratory judgment against U.S. Steel pursuant to Indiana Code 34-14-1-1 et seq., declaring that the Easement terminated pursuant to the terms of the Agreement, U.S. Steel is required to remove all Equipment from the Premises, and for attorneys' fees, costs of this action, and for all other proper relief.

Count II – Claim for Damages

13. Majestic incorporates by reference the allegations contained in paragraphs 1 through 12 of the Complaint as if restated, in full, herein.

14. Pursuant to Paragraph 9 of the Agreement, the Easement terminated.

15. As a result of the Easement terminating, U.S. Steel no longer has an interest in the Premises.

16. Majestic notified U.S. Steel in writing that the Easement terminated and U.S. Steel must remove the Equipment from the Premises.

17. Despite demand, U.S. Steel has refused to vacate the Premises or remove the Equipment.

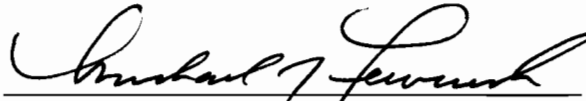
18. U.S. Steel's knowing exertion of unauthorized control over the Premises constitutes conversion.

19. As a direct and proximate result of U.S. Steel's conversion, Majestic has suffered and will continue to suffer damages, including but not limited to attorneys' fees and expenses incurred in prosecuting this action.

20. Pursuant to Indiana Code § 34-24-3-1, Majestic is entitled to treble damages for harm caused by U.S. Steel's conversion of Majestic's property.

WHEREFORE, Majestic respectfully requests a judgment against U.S. Steel in an amount proved by the evidence, for treble damages, cost of this action, attorneys' fees, other reasonable costs of collection pursuant to Indiana Code § 34-24-3-1, et seq, and all other relief that is just and proper.

Respectfully Submitted,



Michael J. Lewinski (#10434-49)
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Attorneys for Plaintiff,
The Majestic Star Casino, LLC

1/2090755.1

EXHIBIT A

INTER-ORGANIZATION CORRESPONDENCE

UNITED STATES STEEL CORPORATION

TO Mr. J. H. Vohr,
General Superintendent
GARY STEEL WORKS

DATE December 23, 1954

FROM E. L. Tindall
Chief Engineer-Steel

Attention: A. J. Beyer,
Chief Engineer

SUBJECT Easement for Power Lines Granted
by Universal-Atlas Cement Company
to United States Steel Corporation-
GARY STEEL WORKS

We are forwarding herewith for your files a photostatic copy of the subject easement dated August 16, 1954, covering two electric transmission lines, one of which should not exceed 69,000 volts, and the other not to exceed 22,000 volts, upon and across a strip of land owned by Universal-Atlas at Gary, Indiana.

This agreement cancels the previous agreement of June 8, 1939 between Universal-Atlas and U. S. Steel.

E. L. Tindall

Town 95-98

OFFICE OF
CHIEF ENGINEER
DEC 24 1954
GARY STEEL WORKS

FH:ms
Enc.

THIS AGREEMENT, made and entered into this 16th day of August, 1954 by and between UNIVERSAL ATLAS CEMENT COMPANY, an Indiana corporation (hereinafter termed "Universal"), and UNITED STATES STEEL CORPORATION, a New Jersey corporation authorized to transact business in the State of Indiana (hereinafter termed "Corporation");

W I T N E S S E T H:

WHEREAS, Universal on June 8, 1939 granted to Carnegie-Illinois Steel Corporation, predecessor of Corporation, the right to install, maintain, operate, repair, replace and renew an electric power transmission line and facilities therefor capable of carrying 66,000 volts of electrical energy, upon, over and across certain lands of Universal, which rights have been assigned to and are now held by Corporation; and

WHEREAS, said line and facilities have been augmented so as to provide for the transmission of 69,000 volts of electrical energy, and Corporation now owns and operates an additional power line with facilities for the transmission of 22,000 volts of electrical energy upon, over and across certain lands of Universal; and

WHEREAS, the parties hereto desire to define the rights of Corporation to operate upon said lands of Universal the aforesaid electric power transmission lines or such other line or lines as may be substituted therefor;

NOW, THEREFORE, in consideration of the premises and the sum of One Dollar (\$1.00) and other good and valuable consideration in

hand paid by Corporation to Universal, the receipt whereof is hereby acknowledged, and of the covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. Universal hereby grants to Corporation permission and authority to install, maintain, operate, repair, replace, renew and relocate towers, poles, wires, cables and all other necessary and convenient equipment for the transmission of electrical energy over two electric power transmission lines, one of which shall carry not to exceed 69,000 volts of electrical energy and the other of which shall carry not to exceed 22,000 volts of electrical energy, all of which lines, towers, poles and equipment therefor are hereinafter collectively termed "equipment", with right of ingress and egress over the adjoining premises of Universal for such purposes, in, upon, along, over and across a strip of land in the Southeast Quarter (SE 1/4) of Section Twenty-Three (23), the Northeast Quarter (NE 1/4) of Section Twenty-Six (26) and the Northwest Quarter (NW 1/4) of Section Twenty-Five (25), all in Township Thirty-Seven (37) North, Range Nine (9) West of the Second Principal Meridian, in the City of Gary, County of Lake, State of Indiana, which strip of land is more particularly described as follows:

Beginning at a point where the west line of Section Twenty-Five (25) Township Thirty-Seven (37) North, Range Nine (9) West of the Second Principal Meridian intersects the north property line of the Elgin, Joliet and Eastern Railway Company; thence north fifty-three degrees, seventeen minutes twenty-six seconds west (N 53° 17' 26" W) along said north property line of the Elgin, Joliet and Eastern Railway Company, a distance of two thousand three hundred forty-two and nine hundred ninety-one thousandths (2,342.991) feet to a point; thence south sixty degrees, thirty-seven minutes fifty-nine seconds east (S 60° 37' 59" E) a distance of six hundred sixty-five and ten hundredths (665.10) feet to a point; thence south fifty-three degrees, seventeen

minutes twenty-six seconds east (S 53° 17' 26" E) parallel and eighty-five (85) feet (measured at right angles) from the northeasterly property line of the Elgin, Joliet and Eastern Railway Company, a distance of three thousand eight hundred eighty-five and thirty-four hundredths (3,885.34) feet to a point on the west property line of Gary Steel Works; thence south thirty-six degrees, forty-two minutes thirty-four seconds west (S 36° 42' 34" W) on the west property line of Gary Steel Works, a distance of eighty-five (85) feet to a point on the northeasterly property line of the Elgin, Joliet and Eastern Railway Company; thence north fifty-three degrees, seventeen minutes twenty-six seconds west (N 53° 17' 26" W) along said northeasterly property line of the Elgin, Joliet and Eastern Railway Company, two thousand two hundred and two (2,202.0) feet to the said point of beginning, containing eight and two hundred twenty-five thousandths (8.225) acres, more or less.

The location of the strip of land above described is outlined in red upon the print attached hereto and made a part hereof.

2. Corporation covenants and agrees to pay Universal for all loss, damage or injury caused by, incident to, or connected with the installation, maintenance, operation, repair, replacement, renewal or relocation of said equipment upon said property of Universal.

3. It is understood and agreed that notwithstanding the grant herein made to Corporation, Universal shall have the right and it hereby expressly reserves the right at all times to use all or any portion of said property of Universal for any purpose or purposes which will not interfere materially with the maintenance or operation of said equipment, and Corporation covenants and agrees that nothing shall be done or permitted to be done by it upon said property of Universal that in any way shall interfere with such rights of Universal.

4. It is understood and agreed that the grant herein made is subject to any and all streets, alleys, highways, roadways, rail-

road rights-of-way, wires, conduits, pipes, and all other facilities now existing in, upon, over or across said property of Universal, or any part thereof, and that said grant is operative only to the extent that Universal has the legal right to make said grant.

5. Corporation shall procure and pay for all permits and shall comply with all laws, ordinances or other regulations of the proper public authorities, which may affect or relate to the installation, maintenance, operation, repair, replacement, renewal or relocation of said equipment, or part thereof, in any way, and said Corporation shall be responsible for any damages and shall indemnify and save harmless Universal from and against any liability for damages arising from the failure of Corporation to procure said permits or from the disregard by said Corporation of said laws, ordinances or other regulations.

6. Universal and Corporation understand and agree that there shall be no lien upon said property of Universal and that no contractor, materialman, employee or other person shall assert any lien upon said property of Universal and that Corporation shall keep said property of Universal free and clear of all liens, claims and encumbrances which might attach to said property of Universal by reason of the installation, maintenance, operation, repair, replacement, renewal or relocation of said equipment.

7. Corporation covenants and agrees to pay promptly and before delinquency all taxes that may be levied or assessed upon said equipment or any of its appurtenances, or upon said property of Universal, or any part thereof, by reason of the installation, maintenance, operation, repair, replacement, renewal or relocation of said equipment thereon or of any property controlled or placed

by said Corporation thereon.

8. Corporation covenants and agrees to indemnify, save harmless and defend said Universal from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses and attorneys' fees in any manner caused by, arising from, incident to, connected with or growing out of the installation, maintenance, operation, repair, replacement, renewal or relocation of said equipment, or part thereof, upon said property of Universal, or the removal thereof from said property of Universal, as herein-after provided.

9. It is understood and agreed that if at any time after the installation of said equipment Corporation shall fail to use said equipment for a period of five (5) consecutive years, or if Corporation at any time, or from time to time, shall refuse or neglect to keep and perform any of the terms, covenants, conditions or agreements herein contained, on its part to be kept and performed, for a period of sixty (60) days after Universal shall have made written demand upon Corporation that it keep and perform said terms, covenants, conditions and agreements, then the rights herein granted, without further notice, immediately shall cease and terminate, and Corporation, upon the termination of said rights in the manner aforesaid, or in any other manner provided in this agreement, upon written demand of Universal immediately shall remove said equipment or such portion or portions thereof as Universal may require from the property of Universal, and shall restore said property to a condition equal to that which existed at the time of the installation of said equipment, at the sole cost and expense of Corporation, and said Corporation shall save Universal harmless from any damage, injury or

expense caused or occasioned by or incident to such removal. If Corporation shall fail to remove said equipment, or portion or portions thereof, as aforesaid, Universal shall have the right to perform such work of removal and to restore said premises as above mentioned, and the title to said equipment shall vest in Universal and may be disposed of by Universal in any manner which Universal may desire. All of the costs and expenses incurred by Universal in and by the performance of the work aforesaid shall be paid by Corporation to Universal. The termination of said rights in any way shall not release Corporation from any liability to Universal which has accrued or which may accrue thereafter by reason of the violation by Corporation of any of the covenants or agreements herein contained.

10. It is understood and agreed that any notice or demand in this agreement provided shall be deemed to have been given or made properly if and when placed in the United States mail, registered and addressed to Corporation at 525 William Penn Place, Pittsburgh 30, Pennsylvania.

11. It is understood and agreed that any failure of Universal at any time, or from time to time, to enforce or require the strict keeping and performance by Corporation of any of the terms or conditions of this agreement shall not constitute a waiver by Universal of such terms or conditions, and shall not affect or impair such terms or conditions in any way, or the right of Universal at any time to avail itself of such remedies as it may have for any breach or breaches of such terms or conditions.

12. It is understood and agreed that the aforesaid agreement of June 8, 1939 by and between Universal and Carnegie-Illinois Steel Corporation, predecessor to Corporation, and the covenants and

agreements therein contained be and each of them are hereby cancelled, revoked and terminated as of the date of this agreement.

13. It is understood and agreed that all of the terms, reservations, conditions, covenants and obligations of this agreement shall inure to the benefit of and shall be and remain binding upon the respective successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed and their seals to be hereunto affixed, in duplicate, by their respective duly authorized officers on the day and year first above written.

UNIVERSAL ATLAS CEMENT COMPANY

By *E.B. Huber* President
(Corporate seal)

ATTEST:

Edward O. Weyer Secretary

UNITED STATES STEEL CORPORATION

By *W.A. Walker* President
vice

ATTEST:

A. Y. Mulling Secretary
Asst.
(Corporate seal)