

Bond Case Briefs

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EMINENT DOMAIN - ILLINOIS

Balagna v. United States

United States Court of Federal Claims - August 6, 2018 - Fed.Cl. - 2018 WL 3725495

After Surface Transportation Board (STB) issued a Notice of Interim Trail Use (NITU) based on railroad company's agreement to negotiate an interim trail use/rail banking agreement with city park district following company's application to abandon 14.5-mile right-of-way, opt-in class of plaintiffs, which included private landowners, filed separate complaints against the government, alleging a permanent taking of their property interests, even though no final trail use agreement was in place, and seeking just compensation based on issuance of NITU under methodology used in cases involving permanent takings.

Cases were consolidated, parties cross-moved for partial summary judgment, and government requested a stay.

The Court of Federal Claims held that:

- Plaintiffs suffered a taking of their property when STB issued the NITU;
- Plaintiffs were not entitled to computation of just compensation on the basis of the methodology that applied to permanent takings;
- Whether there was any diminution in value arising out of uncertainty regarding crossing rights following issuance of NITU was material fact issue precluding summary judgment in favor of government; and
- Government was not entitled to a stay.

In a rails-to-trails case, a taking occurs when the railroad and trail operator communicate to the Surface Transportation Board (STB) their intention to negotiate a trail use agreement and the agency issues a Notice of Interim Trail Use (NITU), for it is that action which operates to preclude abandonment of the railroad right-of-way, thereby blocking reversionary property interests and preventing the landowner from possessing their property unencumbered by the easement.

Private landowners were not entitled to computation of just compensation on the basis of the methodology that applied to permanent takings for taking of property that was subject to right-of-way easements for operation of railway when Surface Transportation Board (STB) issued a Notice of Interim Trail Use (NITU), since a trail use agreement had not been reached.