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## **EMINENT DOMAIN - FEDERAL**

### [Barlow v. United States](#)

**United States Court of Appeals, Federal Circuit - November 22, 2023 - F.4th - 2023 WL 8102421**

In rails-to-trails case, owners of property abutting railroad line filed suit against United States, seeking compensation for alleged Fifth Amendment taking effected by Surface Transportation Board (STB) issuing notice of interim trail use (NITU) for railroad line, pursuant to National Trails System Act, thereby allowing railroad and Illinois Department of Natural Resources (DNR) to negotiate railbanking and interim trail use agreement for railroad line.

The Court of Federal Claims granted government summary judgment. Property owners appealed.

The Court of Appeals held that:

- Right-of-way agreements conveyed easements to railroad limited to railroad purposes;
- Deeds that included words “for railroad purposes” conveyed easements to railroad;
- Railroad at most held easements on property for which deeds were lost; and
- Owners held fee simple interests to centerline of property for which deeds were lost.

Under Illinois law, right-of-way agreements conveyed easements to railroad, rather than fee simple estates, thus supporting takings claims by owners of parcels abutting railroad line converted to trail use, pursuant to National Trails System Act; right-of-way agreements rebutted statutory presumption that fee simple estate was conveyed to railroad, by expressly conveying “RIGHT OF WAY” as object of grant in granting clause, agreements were titled “RIGHT OF WAY” and granted right of way for railway “over or across” and “on or across” parcels, consistent with intent to convey easement, and agreements promised to “make all proper and necessary deeds to convey in fee simple to said Company, said RIGHT OF WAY,” meaning railroad acquired a fee in the easement or right-of-way.

Under Illinois law, deeds that included words “for railroad purposes” conveyed easements to railroad, rather than fee simple estates, in property conveyed for railroad line, thus supporting takings claims by owners of parcels abutting railroad line that was converted to trail use, pursuant to National Trails System Act, since deeds rebutted statutory presumption, under Illinois Conveyances Act, that fee simple estate was conveyed to railroad, by language in granting clause of deeds that restricted right of conveyance to lesser estate, in other words, “for railroad purposes.”

Under Illinois law, owners of property abutting railroad line established that written instruments conveying property to railroad for railroad line, if such instruments ever existed, were lost or destroyed, thus shifting burden to government to establish contents of those instruments in defending against owners’ claims seeking just compensation for alleged taking effected by Surface Transportation Board (STB) issuing notice of interim trail use (NITU) for railroad line, pursuant to National Trails System Act, since owners produced evidence of diligent search, including valuation schedules, written requests, and subpoenas to acquire documents related to railroad’s acquisition of use rights, but owners were unable to locate conveyance instruments.

Under Illinois law, government failed to demonstrate, with clear and convincing evidence, content of lost or destroyed deeds conveying property to railroad for railroad line, and thus, deeds were presumed to be void, in evaluating property owners' claims seeking just compensation for alleged taking of their property abutting railroad line effected by Surface Transportation Board (STB) issuing notice of interim trail use (NITU) for railroad line, pursuant to National Trails System Act, even though government pointed to valuation schedules in attempt to establish that specific instruments existed as to conveyance of property for railroad line, since valuation schedules did not specify interests acquired by railroad and instead merely noted type of instrument as contract or deed memo.

In Illinois, railroad could have at most obtained prescriptive easements on property conveyed to railroad for railroad line, pursuant to Illinois Constitution, providing that fee of land taken for railroad tracks, without consent of owners, was required to remain in such owners, subject to use for which it was taken, thus supporting takings claims by owners of property abutting railroad line after Surface Transportation Board (STB) issued notice of interim trail use (NITU) for railroad line, pursuant to National Trails System Act, since there were no valid conveyance instruments expressly conveying property to railroad, as lost or destroyed deeds were presumed to be void due to government's failure to establish their contents.

Under Illinois law, owners of property abutting railroad line held fee simple interests to centerline of railroad corridor, thus supporting their claims seeking just compensation for alleged taking of their property effected by Surface Transportation Board (STB) issuing notice of interim trail use (NITU) for railroad line, pursuant to National Trails System Act, since presumption that owners had fee simple interests to centerline of railroad corridor was un rebutted because railroad could at most obtain easements, not fees, due to voided lost instruments of conveyance.