

# **Bond Case Briefs**

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## **EASEMENTS - MISSOURI**

### **Barfield v. Sho-Me Power Electric Cooperative**

**United States Court of Appeals, Eighth Circuit - March 29, 2017 - F.3d - 2017 WL 1160950**

Property owners brought putative class action against electric cooperative and its subsidiary, alleging trespass and unjust enrichment based on subsidiary's use of cooperative's fiber-optic cable for operation of commercial telecommunications network.

The United States District Court certified class, entered summary judgment in favor of owners on issue of liability, and following jury trial on damages, awarded owners over \$79 million.

Cooperative and its subsidiary appealed.

The Court of Appeals held that:

- Use of fiber-optic cable for operation of commercial telecommunications network was outside scope of cooperative's easement;
- Operation of commercial telecommunications network constituted trespass;
- Cooperative's status as an entity with eminent domain power precluded unjust enrichment claim; and
- District Court did not abuse its discretion in certifying class.

Under Missouri law, use of electric cooperative's fiber-optic cable for operation of commercial telecommunications network was outside scope of cooperative's easement to construct and operate electric transmission line, even if cooperative's use of cable to communicate with unattended power substations was within scope of easement, since use for commercial purposes was distinct from cooperative's electricity business, and assuming same general character test for public easements applied, it did not authorize such commercial use, in that commercial use was unauthorized purpose, despite being physically similar use.

Under Missouri law, as predicted by Court of Appeals, use of electric cooperative's fiber-optic cable for operation of commercial telecommunications network outside scope of cooperative's easement to construct and operate electric transmission line constituted trespass, since fiber-optic cable itself was physically on owners' properties, and commercial use of cable was unauthorized purpose under easement.

Under Missouri law, as predicted by Court of Appeals, electric cooperative's status as an entity with eminent domain power precluded property owners' unjust enrichment claim in connection with use of cooperative's fiber-optic cable for operation of commercial telecommunications network, even though such use was unauthorized purpose under cooperative's easement to construct and operate electric transmission line, since limited set of remedies that owners could elect from did not include action for unjust enrichment, and statute governing excessive use of easements authorized action for trespass or expanded use, but did not authorize unjust enrichment action.

District Court did not abuse its discretion in certifying class in action by property owners alleging

trespass under Missouri law based on use of electric cooperative's fiber-optic cable for operation of commercial telecommunications network, since cooperative failed to demonstrate how requiring proposed class members to file claim form with sworn statement identifying period of ownership and attaching deed was unmanageable process, and cooperative did not establish that there were individual consent questions, in that it did not show that even one proposed class member consented to challenged cable use.