



THE LITIGATION PROCESS: **INSIDE A RAILS-TO-TRAILS LAWSUIT**

PRESENTED TO YOU BY
STEWART, WALD & MCCULLEY

Welcome Message

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Landowners whose property is taken for recreational trails rely on Stewart, Wald & McCulley to recover money for them from the government. We have recovered more money in Rails-to-Trails litigation than any other law firm: \$380 Million and counting.

We encourage you to review our listing of successful cases and compare it with other firms. Our specialized experience and skills have driven our unparalleled success, involving land in 26 states. Visit us online at www.swm.legal

We have put together this booklet to provide you with information in an educational way on the litigation process during a rails-to-trails lawsuit.

As always, you are welcome to call us at 314-720-0220 or 816-303-1500.

What is the process during a Rails-to-Trails case?



So, you've decided to hire a law firm to pursue your claim for just compensation based on the taking of your land in an abandoned rail corridor for trail use. That's excellent, but what will the litigation process actually look like?

This guide provides a brief rundown of the process, so you know what to expect after your claim is filed.

STEP ONE

Filing the Lawsuit

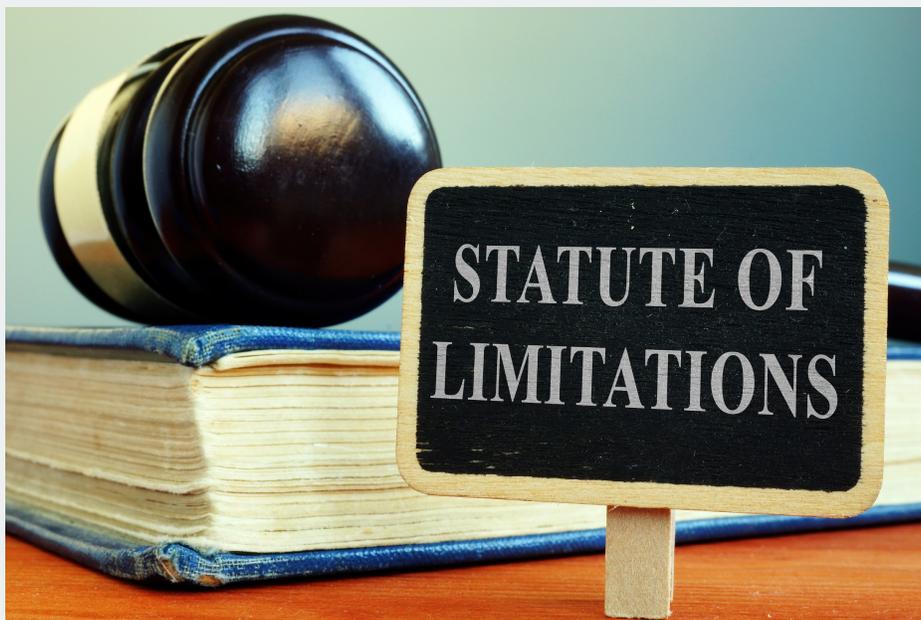
In The United States Court of Federal Claims

The first thing is to file the lawsuit in the United States Court of Federal Claims (the “CFC”). If you want full compensation for your takings claim, the CFC is the only place to file, as your claim is a Constitutional claim based on the Fifth Amendment. When you choose an attorney to pursue your claim, make sure they have extensive experience not only in rails-to-trails litigation but also specifically in the CFC, as it is a unique court in which experience is necessary.

The triggering event to file a rails-to-trails case is the United States Surface Transportation Board’s (the “STB”) issuance of a Notice of Interim Trail Use (“NITU”). The NITU triggers the taking because it authorizes the abandoning railroad to negotiate with a potential trail user for trail use. You own the land in the corridor, and the NITU’s authorization prevents that land from returning to you.

The law firm files a rails-to-trails case on behalf of all landowners who have signed up for representation. However, the case is not a class action. Rather, it is a collective individual action, which means that the law firm represents each landowner, and each parcel, separately. The claims are brought together because of their obvious similarities, but the law firm represents each landowner individually.

If you do not sign up before the firm files the lawsuit, it is not a problem. You have six years from the date of the NITU to bring your claim, so you can always join after the first suit is filed. They will join you either through an amendment to the existing case or through a new case with additional landowners like you.



STEP TWO

Proving Government Liability

Once filed, the case is typically split into two parts:



Proving government liability

and



Valuing just compensation

The first part, proving liability, is all about showing that you do in fact own the land in the corridor and that the government's actions took that land. Primarily, this involves looking at the original instrument that granted the railroad the right to construct and operate its railroad on your land.

If the railroad only obtained an easement, i.e., the right to use the land to construct, operate and maintain its railroad, and that right only, then you have a valid claim for just compensation. In a world without federal jurisdiction and the Trails Act, if a railroad stops using its easement for railroad purposes and abandons its line, then state property law would operate to return that land to adjacent landowners. Instead, the Trails Act prevents that process from happening, in turn preventing your land from returning to you, which amounts to a taking under the Fifth Amendment.



There are other parts to proving liability, such as showing that the original railroad easement is not broad enough to include trail use, but usually, liability comes down to whether the railroad holds an easement. If the law is clear, the government may agree that certain instruments are easements, and that the government is liable. However, in close calls, or if the government thinks it has a good argument, the determination is up to the Court based on the parties' arguments.



STEP THREE

Valuing Just Compensation

The second part of a filed case is valuing just compensation. In other words, the government has admitted liability and definitely took your land, or the Court has come to that conclusion, but how much do they owe you for taking your land? “Just compensation” is an umbrella that contains four parts:



Land Value



Damages



Attorneys' Fees & Expenses



Interest

Land Value

Land value is the square footage value of your land in the corridor. Because you will never get use of the land back, the land is valued based on full fair market value. Your law firm will hire expert appraisers to determine land value using comparable sales in your area, and the government will typically hire its own to do the same. The parties compare appraisals and work to come to a reasonable number.

Damages

Damages include all damages to your adjacent property because there is now or will be a hiking and biking trail next to your property as opposed to a railroad easement. This bucket includes things like loss of privacy, loss of security, cost to build a fence, damage to the market value of your adjacent property, and anything else that causes damage particular to your property.



Attorneys' Fees & Expenses

Because this is a Fifth Amendment takings claim, you are entitled to recover your attorneys' fees and expenses incurred to pursue your winning claim. That is why Stewart, Wald & McCulley incurs all the risk to pursue its clients' claims, and why Stewart, Wald & McCulley never sends its clients a bill for expenses. Make sure you carefully read the agreement with your chosen law firm, as some firms do not incur the risk and end up charging their clients for expenses.

Interest

Finally, again because this is a Fifth Amendment takings claim, you are entitled to interest from the time of the taking all the way through when you are awarded your just compensation. This depends on the applicable interest rate.

Often, the parties will agree to a reasonable amount of just compensation and settle the claims without the Court's involvement. However, in some cases, the government will not agree to a reasonable amount, and valuation goes to trial for the Court's determination.



STEP FOUR

Payment

Even though you've won your case, or the parties have agreed to, or the Court has determined, a proper amount of just compensation, there are a few more steps before you are paid.

The government must approve the overall award, which involves sending the amount and judgment up through Department of Justice management to check certain boxes. Part of this process is checking in with the Treasury's Judgment Fund, a federal program that checks each judgment for debts owed to the United States. Once the government fully approves the award, the Treasury transfers the funds to your attorneys' set-aside client account, and your attorneys will send you a check.



Importantly, the exact amount you receive is based on the agreement you originally signed to engage your law firm of choice to pursue your claim. So, before you sign up for representation, make sure you carefully review the agreement and fully understand how the money is divided. Stewart, Wald & McCulley will never send you a bill and incurs all risk to pursue your claim, but that is not the case with all law firms.



Conclusion

That is the process. Simple enough, but each part can run into its own unique obstacles. Typically, these cases average 3-5 years from the filing of the case to money in your pocket, but that can go much more quickly, or much more slowly, depending on the particulars of each case. When you engage a law firm, make sure you also ask about their communication with clients, as status updates throughout a case are crucial in keeping you informed and involved.

We hope this overview helped to explain the litigation process. If you desire further explanation, please do not hesitate to reach out to one of the attorneys at Stewart, Wald & McCulley, who are always happy to answer your questions.



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