

A Trail Runs Through It

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Between 1880 and 1882, the Indiana Southwestern Railway company acquired rights-of-way across privately owned land for use as railroad lines. In 2010, the successor-in-interest railroad company decided that it no longer needed the railroad lines and submitted a notice of exemption to abandon the lines to the town of Poseyville, Indiana and on May 23, 2011, the Surface Transportation Board issued a Notice of Interim Trail Use or Abandonment to the railroad company. The Indiana Trails Funds, Inc. filed a request for interim use of the railroad lines as a recreational trail under the National Trails System Act. However, the railway company and the recreational trails fund never finalized an agreement, and the Notice of Interim Trail Use expired on its own terms.

During the course of the negotiations between the railroad company, the third-party recreational group, and the town, the owners of the land on which the easements are located, filed a takings suit in the U.S. Court of Federal Claims, alleging that if the railroad company abandoned its easements for railway use, then any new use of the easement authorized under federal law required payment of just compensation.

Both plaintiffs and defendant moved for partial summary judgment on liability.

The Government argued that since a trail use agreement was never finalized, at the best the taking was temporary but Plaintiffs had failed to establish that a temporary taking had occurred. The Court disagreed, holding that under a decision by the Federal Circuit in *Ladd*, “a takings claim accrues on the date that a NITU (Notice of Interim Trail Use) issues. . . .” Therefore, events arising after that date are irrelevant to whether a taking has occurred and goes only to damages, not liability.

Read full decision [here](#).