

# Tracks of My Tires

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In May 2011, the United States Army Corps of Engineers used explosives to breach the Birds Point Levee located on the Mississippi River in Mississippi County, Missouri, to prevent flooding. Afterwards, to fix the levee, the Army Corps transported truckloads of sand and clay across roads owned by Mississippi County. The County claimed that the roads used by the Army Corps were not intended to bear the heavy loads of the Corps' equipment and, as a result, the Corps caused significant damage to the County's roads including large tire ruts, crevasses, and disintegration of portions of the pavement. The County filed suit in the U.S. Court of Federal Claims, contending that the Corps' actions resulted in a physical taking of its roads in violation of the Fifth Amendment, entitling the County to just compensation.

The Government moved to dismiss, arguing that the County's complaint failed to state a claim upon which relief could be granted under Rule 12(b)(6). The Court, applying the Federal Circuit's two-prong test for evaluating taking claims, agreed. The Court held that although the County had a cognizable property interest in the roads it alleged were damaged, the County had failed to show that the government's actions constituted a taking of that property interest. The Court accepted as true that the Army Corps' trucks "caused large crevasses," "huge depressions," and "large ruts" in the roadways, but reasoned that even if the trucks did damage the road, the road was public and therefore the County could not convincingly claim that its roads were physically invaded. The Court also found that the Corps' use of County roads never rendered those roads impassable. The Court therefore held that the County's allegations did not rise to the level required to state a claim for a taking.

In dismissing the County's complaint, the Court noted that its ruling had no bearing on the issue of whether the Government may or may not be liable in tort, but that a tort claim was beyond the limited jurisdiction of the Court of Federal Claims.

Read Judge Campbell-Smith's full opinion [here](#)