Sprint, CenturyLink, WilTel Communications and Level 3 Communications (Defendants) agreed on January 27, 2017 in Arizona federal court to pay an estimated $3 million to Plaintiffs to settle claims over their contracts with railroad companies to use their rights of way to lay cable lines. The settlement includes $1.3 million in payments to landowners who claim the telecommunications companies improperly obtained authorization to install fiber-optic cable along railroad rights of way, from rail companies that did not have the authority to approve the activity. This was litigated under Case Number 4:16-cv-00624 in the Arizona Court of Judge Rosemary Marquez.

There have been several other lawsuits in this matter in most other states. Beginning in the 1980s, the Defendants or their predecessors buried fiber-optic cable and installed related telecommunications equipment within railroad rights of way across the United States. Defendants did so with the consent of the railroads. Calls to Level 3 for comment went unreturned.

The Plaintiffs claim that the Defendants were also required to get consent from adjoining landowners before installing Telecommunications Facilities (such as fiber-optic, copper, or coaxial cables for the transmission of voice or data) in the railroad rights of way.
Railroads have differing levels of property rights in connection with the rights of way. The issue in this litigation is whether the railroads have enough rights to permit the Defendants to put Telecommunications Facilities in the rights of way without getting permission from owners of land next to or under the rights of way.

The Defendants claim the railroads had the right to allow them to install Telecommunications Facilities without the need for further permission from landowners. The Defendants deny they did anything wrong.

Although holders of commercial easements can assign or divide their interests to other parties, the subsequent conveyance is traditionally limited to uses foreseen when the original easement was created.

**Easement History**

Initially, railroads acquired much of the land required for the construction of trackage through state or federal condemnation proceedings, in which legislatures granted railroad companies condemnation authority for the purpose of acquiring right-of-ways. In those cases, railroads were rarely required to limit their use of the right-of-ways to railroad uses, and sometimes the legislature explicitly required concurrent use of the right-of-way by public utilities. Acts of Congress in the nineteenth Century required railroads that been granted right-of-way passage through United States lands to make their telegraph facilities broadly available for governmental, commercial and all other purposes.

The present day conflict concerning use of right-of-ways largely concerns private acquisitions of right-of-ways. These subsequent acquisitions were necessitated by railroad expansion and the cessation of federal condemnation authority. Congress ceased granting the railroads federal condemnation authority with the General Rights of Way Grant of 1875. Future railroad expansion occurred through private negotiation for right of way easements. Private entities negotiated deeds across the nation, therein creating the present dilemma. A lack of national uniform treatment in interpreting the scope of these deeds exists. The absence of uniformity has complicated modern disputes concerning the interpretation of both the scope of easements and the viability of apportionment.
Rail Easements for Fiber Optic Cables Continue to be Challenged
Wednesday, 01 February 2017 06:13

One difficulty facing courts as they ascertain the intentions of parties is the lack of uniformity in the usage of the term “right-of-way.” The term in the legal context denotes an easement, whereas its general meaning in the railroad parlance signifies a possessory interest in the land on which track is constructed.

A “right-of-way” in its legal and generally accepted meaning with respect to the interest of a railroad company in land is a mere easement for railroad purposes in the land of others; and therefore, as a general rule, where land obtained by purchase or agreement is conveyed by an instrument which purports to convey a right of way only, it does not convey title to the land itself, but the railroad company acquires a mere easement in the land for right-of-way purposes, leaving the fee subject to such servitude in the owner, particularly where the deed provides for reversion to the grantor if the land is not used for such purposes.

Settlements

Class Counsel for current and former owners of land next to or under railroad Rights of Way have announced preliminary approval of multiple class action Settlements involving fiber-optic cable and related telecommunications equipment that has been installed in railroad Rights of Way. These Settlements resolve lawsuits in a number of states across the country, and will provide cash benefits to those affected.

Sprint, Qwest, Level 3, CenturyLink and WilTel Communications, the Defendants, are telecommunications companies, or their predecessors, buried fiber-optic cable and installed related telecommunications equipment within railroad Rights of Way nationwide. A railroad Right of Way is a strip of land on which a railroad company builds and operates a railroad. The Defendants entered into agreements with the railroads that own and occupy the Rights of Way, and under those agreements paid the railroads for the rights to install the fiber-optic cable and related telecommunications equipment within the Rights of Way.

 Plaintiffs allege that, before installing the fiber optic cable and related telecommunications equipment, the Defendants also were required to obtain consent from those landowners who owned the land under the Rights of Way. The Defendants contend that the railroads had the right to allow them to use the Rights of Way without the need for further permission from the adjoining landowners and deny any wrongdoing.
Plaintiffs alleged that Defendants installed or maintained fiber optic cables on their land without compensation or consent. Defendants installed the cables on railroad and utility right-of-ways pursuant to agreements with railroad companies in 1991, and Plaintiffs' contention was that the easements owned by the railroad and utility companies did not include the right to allow Defendants to install the cables. Plaintiffs' suit included claims for trespass, slander of title, unjust enrichment, and declaratory relief.

Settlements involving land next to or under railroad rights of way in 46 states and the District of Columbia where Sprint, Qwest, Level 3 and WilTel Communications have installed Telecommunications Facilities, such as fiber-optic cables.

- Settlements in Alabama, Idaho, Illinois, Montana, and North Dakota have been finalized previously.
- Settlements in Arizona, the District of Columbia, and Maine have not been finalized.
- The Settling Defendants have no Telecommunications Facilities in railroad rights of way in Alaska or Hawaii.
- In Louisiana, there was a separate Settlement involving Sprint that was finally approved in 2007. It has been fully implemented and no further information is available on this website.
- In Tennessee, there were separate Settlements involving Qwest and Sprint.

Proposed settlements in several states will provide cash payments to qualifying class members based on various factors that include:

- the length of the Right of Way where the cable is installed,
- the length of time they owned the property, and
- whether the Right of Way was created by a federal land grant.

The Proposed Settlements will also provide the Defendants with a permanent Telecommunications Easement, which gives them the right to use the railroad Rights of Way for their fiber-optic cable and related telecommunications equipment, if they don't already have that right.

The lawsuit are about whether Defendants received from the railroads sufficient rights to use the railroad right of way next to a property for Telecommunications Facilities. That issue has not been resolved. The Easement will grant any rights the Defendants don't already have to
use the right of way for Telecommunications Facilities. It will be granted to the Defendants that have already placed Telecommunications Facilities in the applicable right of way. The right of way usually extends a significant distance on either side of the railroad tracks. The Easement will:

- Cover a portion of the right of way adjoining property, encompassing where the existing Telecommunications Facilities are buried or located;
- Allow the Defendants, if they don’t already have the right to do so, to maintain, operate, repair, and relocate existing Telecommunications Facilities and to install additional Telecommunications Facilities within the Easement area;
- Allow the Defendants access to the right of way by using existing private roads when access from public or railroad roads or the adjoining right of way is not practical;
- Not allow the Defendants to add or substantially expand buildings on the right of way; and
- Not allow the Defendants to add microwave or cell towers.