

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

4023 SAWYER ROAD I, LLC, *et al.*,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

No. 19-757L

Judge Edward H. Meyers

**PLAINTIFFS' RENEWED MOTION TO SEVER
THE HONORÉ CONVEYANCE LANDOWNERS' CLAIMS
UNDER RULES 20(b) AND 21**

Forty-seven of the plaintiffs in this case own forty-nine properties. These forty-seven owners are the successors-in-title to Adrian Honoré, the landowner who granted Seaboard Air Line Railway an easement for a railroad right-of-way line across his land in 1910. Because the government's liability to pay the successors-in-title to Adrian Honoré is not in dispute, these plaintiffs ask this Court to sever their claims for "just compensation" from those claims of the plaintiffs for whom the government disputes the government's liability and direct the Honoré Plaintiffs' claims to proceed to a determination of the compensation the government must pay these plaintiffs. In support of this motion the plaintiffs state the following.

A. Background.

1. On May 14, 2019, the federal Surface Transportation Board (the Board) issued an order invoking Section 8(d) of the Trails Act, 16 U.S.C. §1247(d).
2. The Board's May 14, 2019, order extended the Legacy Trail across a strip of land in Sarasota County, Florida including the 222 properties owned by the plaintiffs bringing this action.
3. The creation of this public rail-trail corridor across these owners' land is a taking

of private property for which the Fifth Amendment to our Constitution requires the federal government to justly compensate the owner. See U.S. Const. Amend. V, *Preseault v. Interstate Commerce Comm'n*, 494 U.S. 1 (1990) (*Preseault I*), and *Preseault v. United States*, 100 F.3d 1525 (Fed. Cir. 1996 (*en banc*)) (*Preseault II*). See also, ECF 34 (fourth amended complaint), and ECF No. 111 (motion and memorandum of law in support of summary judgment).

4. The plaintiffs filed this lawsuit on May 21, 2019, seeking that “just compensation” the government must pay these owners. ECF No. 1 and ECF No. 34. This consolidated action is brought by a total of 214 plaintiffs who own 222 parcels of property. *Id.*
5. The government’s liability for a Trails Act taking turns upon whether (a) the landowners’ predecessor-in-title granted the railroad an easement for a right-of-way across the strip of land the railroad used for a railway line, or (b) the railroad actually acquired title to the fee simple absolute estate in the strip of land. See, *Preseault I*, *Preseault II*, *Toews v. United States*, 376 F.3d 1371 (Fed. Cir. 2004), *Ellamae Phillips Co. v. United States*, 564 F.3d 1367 (Fed. Cir. 2009), *Behrens v. United States*, 59 F.4th 1339 (Fed. Cir. 2023), *Barlow v. United States*, 86 F.4th 1347 (2023), and *Castillo v. United States*, 952 F.3d 1311 (Fed. Cir. 2020).
6. The railroad’s interest in the land used for the railway line across these plaintiffs’ property was established by: (a) nine written conveyances from the early 1900s¹, (b) a prescriptive easement created by the railroad building and operating a railway

¹ The nine written conveyances are from (1) Adrian Honoré, (2) Sarasota Land Company, (3) A.C. Clough, (4) O.A. Burton, (5) Florida Mortgage and Investment Company, (6) Moses Neihardt, (7) Charles Ringling, (8) Honoré Palmer and (9) O.H. Pendley.

line across a strip of land without any recorded conveyance from the landowner, and (c) a Condemnation Decree issued in 1926. See ECF No. 34 (Fourth Amended Complaint), and ECF No. 111 (Motion for Summary Judgment).

7. **Exhibit 1** lists each plaintiff in this case for which the source of the railroad's interest in the strip of land used for the railway line was established by the 1910 conveyance from Adrian Honoré to Seaboard Air Line Railway (the "**Honoré Conveyance Landowners**" or the "**Honoré Plaintiffs**").
8. **Exhibit 2** lists each plaintiff in this case for which the railroad's interest was established by (1) the 1926 Condemnation Decree, or written conveyances from (2) O.A. Burton, (3) Sarasota Land Company, (4) A.C. Clough, or (5) Moses Neihardt. These same five documents are the basis for this Court's *Barron* Opinion and Judgment (*Barron v. United States*, Case No. 21-2181, ECF Nos. 59 and 61). *Barron* is now on appeal before the Federal Circuit. (The "**Disputed Barron Conveyance Landowners**").
9. **Exhibit 3** lists each plaintiff in this case for which the railroad's interest was established by a document from (1) Florida Mortgage Company, (2) Honoré Palmer, (3) O.H. Pendley, (4) Charles Ringling or by (5) the railroad simply using the strip of land for a railroad right-of-way without the benefit of any recorded conveyance. The railroad's interest in the plaintiffs' property listed in **Exhibit 3** is not addressed in this Court's Opinion and Judgment in *Barron*. (The "**Non-Barron Conveyance Landowners**").
10. This Court held, "the parties in this case [*Barron*] have stipulated that the Honoré deed conveyed only an easement that was not broad enough to include recreational

trail use.” *Barron*, ECF No. 59, p. 9. The government acknowledged this point.

11. Of the 222 properties owned by the plaintiffs in this consolidated case, forty-nine properties (owned by forty-seven plaintiffs) involve land across which the railroad’s interest was established by the Honoré conveyance. See **Exhibit 1**.
12. Under the Supreme Court’s and the Federal Circuit’s holdings in *Preseault I*, *Preseault II*, *Toews*, *Ellamea Phillips*, *Barlow*, *Behrens*, and this Court’s holdings in *Rogers v. United States*, 90 Fed.Cl. 418 (2009), *McCann Holdings, Ltd. v. United States*, 111 Fed. Cl. 608 (2013), and *Childers v. United States*, 116 Fed. Cl. 486 (2013), the government is liable for a Trails Act taking of the property owned by Adrian Honoré’s successors-in-title and must pay these plaintiffs’ “just compensation.”
13. Because the nature of the railroad’s interest in the strip of land now owned by Adrian Honoré’s successors-in-title was established to be an easement in *Rogers*, *McCann Holdings*, and *Childers*, from the moment the Board issued its order on May 14, 2019. The government knew (or should have known) it had taken private property from the Honoré Plaintiffs in violation of the Constitution. Thus, before this case was filed, the government knew, or should have known, The government has still not paid the Honoré Plaintiffs any compensation.

B. For a half-decade the Honoré Plaintiffs have requested their claims be bifurcated or severed so the compensation due these plaintiffs could be determined and these owners could be paid.

14. For almost a half-decade the plaintiffs in this consolidated case that are successors-in-title to Adrian Honoré have asked that their claims be severed or bifurcated to determine the compensation they are owed.

1. The plaintiffs' first October 2020 request to have the Honoré Plaintiffs' claims bifurcated.

15. On October 16, 2020, the plaintiffs filed a motion asking this Court to bifurcate their claims so the Honoré Plaintiffs could proceed to a determination of the compensation they are owed. ECF No. 40.
16. The government opposed bifurcating the Honoré Plaintiffs' claims. ECF No. 43. The government said the parties were still resolving title issues and argued that allowing the Honoré Plaintiffs to proceed separately would be "inefficient" and lead to "chaos." *Id.* The government did not mention the fact that interest on the compensation the government must pay the Honoré Plaintiffs was continuing to accrue.
17. The plaintiffs replied to the government's opposition and objected to their constitutional right to compensation being delayed. ECF No. 45. The plaintiffs said:

The government has stipulated that [the Honoré Plaintiffs] hold title to the fee estate in that land the federal Surface Transportation Board took for a new public rail[1]-trail corridor easement. This Court has already held that Seaboard Air Line Railway held only an easement to operate a railroad across a strip of these owners' land. We ask this Court to bifurcate these [Honoré Plaintiffs] from the claims of the remaining ... owners in this consolidated case so that these [Honoré Plaintiffs] and the government may proceed to valuation and payment of just compensation to these [Honoré Plaintiffs].

18. This Court denied the Honoré Plaintiffs' motion to bifurcate this case and held that to allow the Honoré Plaintiffs' claims to proceed to a determination of compensation separate from the resolution of the other plaintiffs for which the government disputes its liability would be "inefficient." ECF No. 48. This Court wrote:

This Court has developed a standard procedure for efficiently resolving rails-to-trails cases that has been developed and refined over many cases. In this case, the Court finds no reason to embark on a trail less travelled. Because the Court finds no reason to deviate from the standard rails-to-trails process agreed to by the Parties in this case, and “to secure the just, speedy, and inexpensive determination” of this case, RCFC 1...

19. On December 16, 2021, the parties resolved title issues and stipulated to the “relevant source conveyance of the railroad[’s]” establishing the railroad’s interest in the land used for the railway line. This stipulation listed all those plaintiffs for whom the railroad’s interest was established by the easement Adrian Honoré granted the Seaboard Air Line Railway.
20. On April 27, 2022, the plaintiffs filed a motion for partial summary judgment that included the claims of the Honoré Plaintiffs. ECF 82.
 2. **The plaintiffs’ second request in May 2022 to have the Honoré Plaintiffs’ claims bifurcated.**
21. One week later on May 3, 2022, the plaintiffs filed a motion to bifurcate the Honoré Plaintiffs’ claims allowing these plaintiffs’ claims to proceed to a determination of compensation and payment. ECF No. 84.
22. The government again opposed this motion to bifurcate the Honoré Plaintiffs’ claims. ECF No. 88. The government again claimed that to allow the Honoré Plaintiffs to proceed to judgment separately would be “inefficient.” *Id.* The government acknowledged that the government must pay the Honoré Plaintiffs interest for the government’s continuing delay in paying the Honoré Plaintiffs’ compensation. (“As this Court has recognized, plaintiffs who are successful in the title and liability phases will be entitled to recover interest on their claims from the date of accrual.” ECF No. 88, P. 3.

23. But the government argued that the Honoré Plaintiffs entitled to interest does not support these plaintiffs' motion to "jump ahead in this litigation despite inefficiencies that their motion includes." ECF No. 88, P. 3. (Quoting this Court's prior order.)
24. The plaintiffs replied that the government had acknowledged its obligation to pay the Honoré Plaintiffs and noted,

The owners are now entering the fourth year since the government took their property without being paid that compensation the Constitution guarantees them. The efficient resolution of this case is served by severing the owners of the different properties into groups based upon the original right-of-way conveyance to the railroad. This is especially so for those owners whose title traces back to Adrian Honoré, where tis Court has already determined the government's liability and the government acknowledges its liability. Why should these owners not proceed expeditiously to a determination of compensation? Why should the government incur additional interest for a further delay in resolving these owners' claims? Why should this Court have to devote additional resources to the resolution of these owners' claims when the compensation these owners are due can be quickly resolved by severing these claims and determining the compensation? Why should the owners of twenty properties, where the government is disputing the property boundaries, delay the resolution of the other owners' claims where there is no dispute about the property boundaries?

ECF No. 91, P. 4 and 6.

- 3. The plaintiffs' third request in October 2022 to have the Honoré Plaintiffs' claims severed.**
25. On October 5, 2022, two years after the Honoré Plaintiffs first asked to have their claims severed and proceed to a determination of compensation, plaintiffs' filed another motion asking this Court to sever the Honoré Plaintiffs' claims and allow this group of plaintiffs to proceed to the valuation phase so that the specific compensation due each owner could be determined without having to wait for this Court to determine the railroad's interest in the segment of the right-of-way for

which the government disputed its liability. ECF No. 101.

26. The government again opposed severing the claims of the Honoré Plaintiffs. ECF No. 103. The government said it opposed severing the Honoré Plaintiffs because doing so would be “unnecessary and potentially significant increased costs in time and money.” *Id.* The government never explains how this would be so, nor does the government address the significant amount of interest that continues to accrue on the compensation the government must pay the Honoré Plaintiffs.
27. The plaintiffs replied to the government’s opposition to sever the Honoré landowners’ claims. ECF No. 104. The plaintiffs noted,

Why should the owners of the Group A Honoré properties have to sit and wait while the Government quarrels about its obligation to pay the owners of the Group B and Group C properties? Why should taxpayers have to continue paying interest on the obligation the Government admits it owes the owners of the Group A Honoré properties? The motion to sever will allow this lawsuit to be resolved more promptly and efficiently.

The Government’s conduct in this case, and Trails Act cases in general, is to delay resolution and payment as long as possible. These landowners are in critical need of relief, due not only to the Government’s taking of their property, but also due to the additional damage that taking has caused during Hurricane Ian. The Government’s creation of the Legacy Trail corridor greatly increased the damage to these owners’ property. This Court should allow the owners of the Honoré properties to proceed to the compensation phase despite any inconvenience or alleged “inefficiency” the Government now claims.

ECF No. 104, P. 12.

28. On December 7, 2022, this Court denied the Honoré landowners’ motion to bifurcate or to sever their claims. ECF No. 106. This Court held,

As explained before, this Court has developed a standard procedure for efficiently resolving rails-to-trails cases that has been developed and refined over many cases. In this case, the Court finds no reason to embark on trails less travelled. Because the Court finds no reason

to deviate from the standard rails-to-trails process agreed to by the Parties in this case, and “to secure the just, speedy, and inexpensive determination” of this case, Plaintiffs’ Motion to Bifurcate this Case, ECF No. 84, and Motion to Sever the Adrian Honoré Claims, ECF No. 101, are denied.

ECF No. 106, P. 4.

29. On August 17, 2023, plaintiffs filed a new and comprehensive motion for summary judgment that included every plaintiff’s claim, including the Honoré Plaintiffs, the Disputed *Barron* Conveyance Landowners, and the Non-*Barron* Conveyance Landowners. ECF No. 111, and **Exhibits 1, 2, and 3** to this motion.
30. The plaintiffs’ comprehensive motion for summary judgment was fully briefed almost a year ago on January 12, 2024, (ECF Nos. 111, 115, 122, and 127) and is currently set for oral argument on December 12, 2024. ECF No. 132.

C. This Court’s recent decision in *Barron* allowed the successors-in-title to Adrian Honoré in that case proceed to payment of compensation.

31. The related case, *Barron v. United States*, Case No. 21-2181, involves 20 properties owned by 19 plaintiffs. The properties at issue in *Barron* includes property owned by three plaintiffs whose predecessor-in-title was Adrian Honoré.
32. On October 31, this Court entered an order and opinion and judgment in *Barron* (*Barron* ECF Nos. 59 and 61).
33. This Court’s order and opinion in *Barron* directed that the three owners whose predecessor-in-title was Adrian Honoré proceed to discovery concerning the value of the property and determine the compensation these plaintiffs are owed. ECF Nos. 60 and 61. This Court dismissed the other *Barron* plaintiffs’ claims holding the railroad had originally acquired title to the fee simple estate in the strip of land

and entered judgment in favor of the government on this basis. ECF No. 61.²

34. The dismissed plaintiffs in *Barron* were those landowners whose predecessor-in-title were (1) Sarasota Land Company, (2) A.C. Clough, (3) Moses Neihardt, (4) O.A. Burton, and (5) Bonnie K. Tankersley and Mattie V. Davis, whose property the railroad acquired an interest in by the 1926 Condemnation Decree. *Barron* ECF Nos. 59 and 61.
35. On November 8, the dismissed plaintiffs in *Barron* filed a notice of appeal. *Barron* ECF No. 62. That appeal is now pending in the Federal Circuit, Case No. 2025-1179 and the opening brief is scheduled to be filed January 13.
36. The claims of the *Barron* plaintiffs who are successors to Adrian Honoré are now proceeding to determination of the compensation they are due with a discovery schedule that provides discovery shall be completed by June 6, 2025. *Barron*, ECF No. 64.

² In October 2022, the three *Barron* plaintiffs whose predecessor-in-title was Adrian Honoré had likewise sought to have their claims severed and proceed to a determination of compensation. *Barron*, ECF No. 20. The government opposed these *Barron* plaintiffs' motion to sever their claims. *Barron*, ECF NO. 22. This Court deferred ruling on the *Barron* plaintiffs' motion to sever the Honoré claims. See transcript of argument, June 29, 2023. *Barron*, ECF No. 48, Page 72.

MR. HEARNE: In terms of those claims that the government has acknowledged, which are part of this motion for summary judgment--

THE COURT: the Honorey [Honoré] people that have the pending motion to sever?

MR. HEARNE: Well, either to sever or just to, I think, grant the motion as to those owners and enter judgment as to the government's liability on those—

THE COURT: Well, I think the – whichever way summary judgment comes out, I think it's going to sort of overtake the motion to sever, because either all of them are going forward or some portion will go forward, but I think it's probably going to be the case that the resolution of the summary judgment will resolve the motion to sever effectively...

37. In the almost six years since the government took these Sarasota County, Florida landowners' property, these owners have endured three major hurricanes, most recently Milton and Helene, that devastated properties in Sarasota. Sarasota was declared a natural disaster area. One of the significant reasons why the flooding was so devastating to landowners living along the Legacy Trail was that the construction of this public rail-trail corridor changed the stormwater drainage and caused flooding of these owners' adjoining land.
38. Rule 20(b) provides "[t]he court may issue orders – including an order for separate trials – to protect a party against embarrassment, delay, expense, or other prejudice that arises from including a person against whom the party asserts no claim and who asserts no claim against the party."
39. Rule 21 provides, "On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party."
40. Plaintiffs' counsel advised the government's counsel, Mr. Chellis, that plaintiffs would be filing this renewed motion to sever the Honoré Plaintiffs' claims and asked whether the government would consent. Mr. Chellis said the government would not consent to severing the Honoré Plaintiffs' claims but would oppose the plaintiffs' motion to sever the Honoré Plaintiffs' claims.

ACCORDINGLY, in light of this Court's recent decision in *Barron*, judicial efficiency, the interest that continues to accrue on that compensation due the Honoré Plaintiffs and, most importantly, to finally fulfill the government's constitutional obligation to justly compensate the Honoré Plaintiffs, the plaintiffs, renew their motion to sever or bifurcate the Honoré Plaintiffs' claims and order the claims of these forty-seven plaintiffs who own the forty-nine properties listed

in **Exhibit 1** to proceed to a final determination of that compensation the government must pay each of these plaintiffs.

Respectfully submitted,

/s/ Mark F. (Thor) Hearne, II
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