

TENTH CIRCUIT COURT OF APPEALS AFFIRMS TRIAL COURT'S ORDER OF CONDEMNATION

Burlington Northern Santa Fe Railway Company v. a 50-Foot Wide Easement, 2009 U.S. App. LEXIS 19997 (September 4, 2009)

BNSF had filed suit to condemn a strip of property for railroad operations. The owner, Gallatin Fuels, Inc., objected and asserted numerous objections. After a trial to the court and entry of judgment for BNSF, the owner appealed. The Tenth Circuit affirmed and held:

1. The owner had no right to a jury trial in an action for condemnation despite asserting a counterclaim for lack of access under state statute, since the only relief requested was injunctive in nature.
2. The owner had failed to demonstrate harm sufficient to justify a mistrial based on claims that the trial judge had been inattentive during portions of the proceedings.
3. The trial court had properly received evidence of settlement negotiations as relevant to the issue of good faith.
4. The trial court properly allowed BNSF to amend its complaint to include a corrected legal description.
5. The trial court's determinations that BNSF had proven all factors necessary to support its claim for condemnation, that BNSF had negotiated in good faith and that BNSF had provided adequate means of crossing the tracks in question were all supported by sufficient evidence.

John Sundahl and Kristin Nuss handled this case