RIGHT-OF-WAY RIGHTS, WRONGS AND REMEDIES: STATUS REPORT, EMERGING ISSUES, AND OPPORTUNITIES

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I. INTRODUCTION

Right-of-way litigation that has swept across the country in the past decade centers on legal issues as ancient as the origins of the common law of real property and as contemporary as class action procedure and the law of the Internet. It also involves many very human stories. As all trial lawyers know, litigation is much more than merely application of the law to the proof of facts. Litigation involves conflicts that have important and sometimes profound economic or human consequences for the litigants. Right-of-way litigation often involves the homes, farms, ranches, and business real estate of persons who care deeply about the results. This litigation involves corridors that form the backbone of the telecommunications industry and the Internet real estate that contributes to the generation of billions of dollars in revenue annually. In addition to its human and economic impact, right-of-way litigation has resulted in significant precedents that, in some cases, may result in changes in the legal system and the legal profession, as well as in the practices of the industries involved.

On two earlier occasions I have spoken to the American Agricultural Law Association about ongoing right-of-way litigation. Each time it has been a hard choice for me to decide what issues are most important to address. Today the choices include substantive real estate law; various federal and state statutory schemes in telecommunications, railroad, and land use law; the limits of federal pre-emption; newly revived state constitutional issues governing takings and

eminent domain; state land use initiatives; federal and state rails-to-trails laws; class action developments; federal/state jurisdictional issues; and judicial sanctions for abusive trial tactics in right-of-way litigation. Other issues of interest arise from our class action settlements, particularly those with our nationwide class action settlement with AT&T, which has now been completed in six statewide settlements, five preliminarily approved class action settlements,[1] and with the telecommunications affiliate of Norfolk Southern Railroad, called Thoroughbred Technology & Telecommunications, Inc. ("T-Cubed"), in multiple states.[2] For example, in the *T-Cubed* litigation, a limited liability company was formed as part of the settlement.[3] The fifty-eight thousand landowners in the sixteen-state settlement class who chose to participate will own all of the shares of Class Corridor, LLC, which will own a 1,500 mile network of real estate, fiber optic cable, or conduits.[4] Finally, issues that have forced us into still more areas of law are the bankruptcies of several defendants such as WorldCom, Global Crossing, and 360 Networks. Those huge bankruptcies present new issues affecting the rights of persons whose land is being used for telecommunications purposes, including not only damages for past occupancies, but also the terms under which the unlawful occupancies may continue during and after the conclusion of bankruptcy proceedings.

I cannot cover all of those issues here. What I have chosen to present here includes a brief history of the common law and of both United States and state constitutional law on this subject, a summary of the some seventy right-of-way class action cases and related cases across the country in which my co-counsel and I are involved, and some twenty additional cases that have been filed by others. I also will discuss emerging issues that have arisen from this litigation and the opportunities that landowners and agricultural lawyers have in this area.

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1. Six statewide class actions have been settled where AT&T installed fiber optic cable on abandoned railroad lines, and five statewide class actions have received preliminary approval where AT&T installed fiber optic cable on active railroad lines. *See In re* AT&T Fiber Optic Cable Installation Litig., No. IP99-C-9313-H/G (S.D. Ind. filed Sept. 10, 2001), *available at* http://www.right-of-way-law.com/Documents/AT&T/. For a description of the abandoned line class action settlements, see Official "Telecommunication Cable" Class Settlement Home Page, *available at* http://att.fsiwebs.net/settlements.

2. *See* Uhl v. Thoroughbred Tech. & Telecomm., Inc., No. IP00-1232-C-B/S, 2001 WL 987840, at *1 (S.D. Ind. Aug. 28, 2001), *aff'd*, 309 F.3d 978 (7th Cir. 2002).

3. *See* First Amended and Restated Class Settlement Agreement at 22, Uhl v. Thoroughbred Tech. & Telecomm., Inc., 2001 WL 987840 (S.D. Ind. filed Apr. 24, 2001) (No. IP00-1232-C-B/S), *available at* http://www.fiberopticfundi.com/adobe/SettlementAgreementForWeb.pdf.

4. *See Uhl*, 2001 WL 987840, at *3.

II. HISTORICAL CONTEXT: LANDOWNERS' RIGHTS IN LAND BURDENED BY EASEMENTS

Before turning to the current cases, I will give a short summary of the historical context of these issues. The history of rights-of-way for roads, canals, and water systems reaches back at least to the Roman Empire. Legal issues *Class Actions Abuses and Sanctions* surrounding rights-of-way, such as the creation of the concepts of easements, dominant estates, servient estates, easement use limitations, and extinguishment of easements upon abandonment, were well developed in the British common law long before the birth of the United States.

Those common law issues were applied to plank roads, toll roads, and canals in the 1700s and 1800s and were extended to railroads in the middle 1800s. Later, the same common law precedents were applied to petroleum pipelines, electric utility rights-of-way, and telecommunications rights-of-way. Aerial and subsurface rights of various kinds, including landing pattern rights near airports, have been based on the same precedents. In some states and federal law, the common law has been incorporated in codified statutory schemes.

In many ways—both legal and economic—the creation and expansion of the nation's railroads in the middle and late 1800s were parallel to the creation and expansion of the fiber optic cable corridors and networks of the past two decades. Railroads were perceived to be the engine of the new economy in the 1800s, generating extravagant dreams and spurring both real and imagined economic growth. The promise of great gains was a sufficient excuse for many railroads to ignore the real estate rights of landowners and simply build their railroads right through private land without any pretense of legal right and without any serious attempt to obtain consent. This process became known by those in the railroad's path as "being railroaded." These ambitious and aggressive railroad practices led to overbuilding, fraudulent accounting and financial practices, and ultimately to many railroad bankruptcies and scandals. The parallels to today's events in the telecom industry are apparent.

Legal disputes emerged from the rapid railroad expansion and subsequent scandals and collapses. For example, in Indiana, scandals in the railroad industry were a factor leading the state of Indiana to convene a constitutional convention in 1850.[5] The result of that convention was a new state constitution which limits the exercise of the power of eminent domain by railroads and other private companies, preventing them from taking land even for a legitimate pur-

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5. *See* CHARLES KETTLEBOROUGH, CONSTITUTION MAKING IN INDIANA, at clviii-clix (1916).

pose, without first paying fair value to the landowner.[6] Unlike governmental entities, which can condemn and take land and pay for it later, private utilities, such as railroads, electric utilities, and telecom companies, must pay first.[7]

Within a week of the convening of Indiana's Constitutional Convention in 1850, the following resolution was offered:

> *Resolved*, That the committee on the rights and privileges of the Inhabitants of this State be instructed to inquire into the expediency of placing in the bill of rights a provision prohibiting the Legislature of the State from the enacting of laws authorizing incorporated companies taking the property of any person without his or her consent, and without a just compensation therefor, to be paid before the using of it.[8]

The debates on this resolution show the kind of conduct that the framers sought to prevent. Delegate Bascom spoke directly to the issue:

> In my county we have had some difficulty with corporations contending with individuals for the right of way. I believe it is the desire of the people there, that this principle should be settled. We believe that the landholder should be first compensated for his property, and I think it would be well to adopt some such section as this. It is not the interest of the State nor the interest of these soulless corporations that we should be most careful to guard. These corporations have no regard for the rights of the individuals, if, by oppressing them, they can put money in their own pockets. On the contrary, it is my wish to guard the rights of the individual citizen. I hold that, in most cases, where corporations are organized for the construction of splendid works of improvement, their first object is not for the benefit of the public generally, so much as for filling the pockets of the corporators. I hold, also, that corporate bodies can have no just right to claim the land of an individual citizen, or take his property of any description, without first making him a just compensation therefor.[9]

Clearly, the comments of these and many other delegates carried the day, defeating the proposition that subsequent payment of damages was sufficient to protect the public interest in property that had been permitted under the 1816 Constitution.[10] As Delegate Owen reported to the Committee on February 8,

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6. *See id.* at 405.
7. *See id.*
8. *See id.* at 235.
9. REPORT OF THE DEBATES AND PROCEEDINGS OF THE CONVENTION FOR THE REVISION OF THE CONSTITUTION OF THE STATE OF INDIANA 367-68 (1850) (statement of Mr. Boscom), *available at* http://moa.umdl.umich.edu (available under "Go to MoA Books" link) (last visited May 18, 2003).
10. *See generally id.*

1851, in the address to be submitted to the people for ratification of the Constitution:

> The provision in the new Constitution is, that when property is taken (except in case of the State) compensation shall be "first assessed and tendered." This is an important change. As the law now stands, an incorporated company, constructing a railroad or other public improvement, may take a man's property first, and pay for it afterwards. The change proposed requires, that, before taking any property, a tender should first be made of its assessed value.[11]

Only after these heated debates did the delegates adopt the present language of Article I, Section 21, requiring that ". . . [n]o man's property shall be taken by law, without just compensation; nor, except in case of the State, without such compensation first assessed and tendered."[12]

Legal issues arising from the creation of new railroad rights-of-way also arose at the federal level. All high school students of United States history are familiar with the federal land grant legislation that offered land in a checkerboard pattern to railroad companies that agreed to build lines through much of the West and some of the South.[13] That legislation followed similar but earlier grants to companies that agreed to build plank roads and canals. Not so well known, however, is the fact that the land under the railroads themselves was not necessarily granted to the railroad.[14] Rather, the railroads often obtained easements limited to railroad purposes, creating an issue that became the source of many lawsuits.[15] In the last two decades of the nineteenth century and the first two decades of the twentieth century, one of the most frequent subjects to reach the United States Supreme Court was the scope of real estate rights on railroad corridors. Railroads were held to have rights to such additional uses as telegraph lines for their own communications purposes between stations[16]—the process that resulted in the adoption of "railroad time" and eventually led to today's time zones. However, railroads could not build telegraph lines for public use aside from railroad communications, that right being reserved to the underlying landowners who

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11. *See* KETTLEBOROUGH *supra* note 5, at 405.
12. *See id.* at 300 (reprinted copy of IND. CONST. of 1851, art. I, § 21 (1851)).
13. Merry J. Chavez, Note, *Public Access to Landlocked Public Lands*, 39 STAN. L. REV. 1373, 1376-78 (1987).
14. *See* Danaya C. Wright & Jeffrey M. Hester, *Pipes, Wires, and Bicycles: Rails-to-Trails, Utility Licenses, and the Shifting Scope of Railroad Easements from the Nineteenth to the Twenty-First Centuries*, 27 ECOLOGY L.Q. 351, 374, 380 (2000).
15. *See generally id.* at 414-34.
16. *See id.* at 414.

might grant to another company a telegraph easement or eventually a telephone or telecommunications easement.[17]

Despite the clarity of the law that was confirmed more than a century ago by the nation's highest court and many lower courts and state courts, practices did not always follow what was required by the law. Indeed, those in apparent possession of rights-of-way often exercised complete dominion over the real estate, whether or not their legal rights were more limited. The folk wisdom that possession is nine-tenths of the law may not be a correct statement of legal principles, but the practical reality is that mere possession has often prevailed over legal rights on railroad rights-of-way and on many other corridors created for limited purposes.

III. CURRENT CONTEXT: ENFORCEMENT OF HISTORICAL REAL ESTATE RIGHTS

A. *Growing Awareness of Landowner Rights*

Owners of right-of-way corridor land have become much more aware of their legal rights in recent years. They are not just the millions of small parcel owners whose land is traversed by power lines or pipe lines or who live or farm adjacently to railroads, although those landowners are becoming more sophisticated and better organized. Among the most active advocates now are some of the largest private landowners in the United States, such as International Paper Company and Weyerhaeuser. Other landowners who now are more aggressively asserting and defending their legal rights include public landowners seeking to protect the resources of taxpayers, such as the U.S. Forest Service, the Bureau of Land Management ("BLM"), and the National Oceanic and Atmospheric Administration ("NOAA").[18] Newly active corridor landowners also include city and state governments, quasi-public entities, and Indian tribes.[19] Finally, millions of

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17. *See id.* at 414-434.

18. One of the most comprehensive published studies of telecommunications corridor valuation was released by NOAA in August 2002, and is briefly discussed later in this article, under the heading "Corridor Valuation Issues." *See generally* NAT'L MARINE SANCTUARY PROGRAM, NAT'L OCEANIC & ATMOSPHERIC ADMIN., FINAL REPORT: FAIR MARKET VALUE ANALYSIS FOR A FIBER OPTIC CABLE PERMIT IN NATIONAL MARINE SANCTUARIES 1-28 (2002), *available at* http://www.sanctuaries.nos.noaa.gov/library/national/fmvfinalreport.pdf.

19. Among the governmental bodies that have been successful in negotiating contracts for fiber-optic cable occupancies on corridors are San Francisco ($350,000 per mile), Austin ($126,000 per mile), and the Massachusetts Turnpike Authority (percentage of revenue payments at maximum capacity valued at $83 million over 10 years along a 133-mile corridor). *See, e.g.*, *id.*;

landowners are members of organizations such as the American Farm Bureau Federation, state and national cattlemen's associations, organizations of mineral rights holders, and organizations of cities and towns. These organizations are more actively addressing right-of-way ownership issues as well.[20]

These newly energized landowners have found that the facts of how their land was taken and used often are not subject to dispute. Just as significantly, the applicable law has been on the side of the landowners for at least a century and on some issues much longer.

Landowners are becoming aware, often to their surprise, that telecommunications companies have taken and used their land with full knowledge that they had no legal rights to do so. The laws of real estate, trespass, and unjust enrichment have been established literally for centuries—and their central elements today remain consistent in all material respects from state to state.

Faced with legal challenges of such conduct, creative efforts have been taken by litigators to change or limit well-established standards of law, but those efforts have met with very limited success and have created only a few precedents adverse to landowners on the merits of their claims. It is disturbing, but not surprising in the telecom culture that now has become known to the public, that the companies' own files explain the taking and commercial use of property that does not belong to them as a competitive business necessity.[21] The need to grow rapidly was more important to them than respecting the law or the rights of the legitimate landowners. Telecommunications companies generally do not and cannot dispute the central claim of landowners that the companies knowingly entered upon and used land under the pretense of authority from railroads or other holders of limited corridor easement rights without having obtained any right

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EASEMENT AGREEMENT BY AND BETWEEN MASSACHUSETTS TURNPIKE AUTHORITY AND WILLIAMS TELECOMMUNICATIONS, INC., May 25, 1999 (on file with author). Some Indian tribes reportedly have negotiated comparably favorable contracts, while some states and cities have settled for far less.

20. *See, e.g.*, AM. FARM BUREAU FED'N, FARM BUREAU POLICIES FOR 2001, at 15-16 (2001) (adopting the following formal resolution on this subject: "Easement rights of way obtained by public or private sectors shall not be committed to any new or additional purpose either during their original usage or after abandonment without consent of the owner of the land underlying the easement. . . . We oppose permitting utility rights of way, including railroad rights of way, to be used for other purposes without permission of adjoining landowners and the holder of the underlying property interest. . . .") (on file with author).

21. *See, e.g.*, Hinshaw v. AT&T Corp., No. 29D01 9705-CP-000308, 1998 WL 1799019, ¶ 12 (Hamilton County, Ind. Super. Ct. Aug. 24, 1998) (citing an internal AT&T letter in the Findings of Fact and Conclusions of Law Regarding Class Certification).

to do so from the actual owners of the fee simple interests in the land. In fact, telecommunications company documents that have been produced in class action discovery, and now made public by various courts, establish that those companies knew when they used the land that they could not obtain proper authority to do so from railroads or other owners of limited corridor easement rights.[22] Documents from defendants' files, now public, disclose that telecommunications companies generally have known the status of the law. Indeed, they have described their positions as "far from sound" and "precarious."[23]

Railroads and other corridor operators, from whom telecommunications companies have purportedly obtained rights, would certainly have to concur. A 1983 study commissioned under the auspices of the American Association of Railroads concluded that railroad rights-of-way often are limited to surface rights or restricted to railroad purposes, and explained that "access for non-interfering uses like a transmission is controlled not by the railroad but by a reversionary or underlying rights holder—typically the adjacent landowner."[24]

Not only have telecommunications companies, railroads, and others known the law, they have acknowledged it in their dealings with each other. For example, the following exchange occurred in a deposition of one of the nation's four largest railroads' chief fiber-optic cable negotiator for CSX Transportation:

> Q: What authority did you believe that CSX had to authorize AT&T to install a subsurface fiber-optic cable on land that CSX did not own in fee?
>
> A: None.
>
> * * *
>
> Q: . . . So let me ask you first what was CSX's right in the subsurface that it could convey or authorize AT&T to exercise if CSX did not own the fee?
>
> A: We had no rights.
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> * * *

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22. *See, e.g., id.* ¶ 13.

23. *See id.* ¶ 15 (these were the words used by AT&T in describing its legal position in an internal memorandum in 1987).

24. DALE HATFIELD & ROLAND S. HOMET, JR., THE USE OR SALE OF RAILROAD RIGHTS-OF-WAY FOR FIBER-OPTICS COMMUNICATIONS, at vi (1983).

> Q: So on the land on this corridor . . . in which CSX did not own the fee, I believe you're stating that CSX did not authorize AT&T to install its fiber-optic cable; is that correct?
>
> A: That is correct.
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> * * *
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> Q: Who did, anyone?
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> A: It was AT&T's responsibility under the agreement to the extent they felt it necessary to go out and acquire additional rights to go out and acquire those rights. [25]

B. *Class Actions Empower Landowners*

Telecommunications companies are not confessing liability—at least not often. Instead, they have aggressively asserted procedural defenses to class actions, which have proven to be a robust procedure for effectuating landowners' rights. The objectives of class actions are to avoid multiple claims and duplicative litigation and to level the playing field for plaintiffs whose individual claims may be too small to justify the costs of litigation. If properly invoked and managed, class actions should serve the interests of all litigants, both plaintiffs and defendants. "[T]he class action device saves the resources of both the courts and the parties by permitting an issue potentially affecting [every class member] to be litigated in an economical fashion. . . ."[26] Some telecommunications companies, such as AT&T and T-Cubed, have concluded at least after the effects of litigation have been brought to them, that class actions can be used efficiently to determine the rights of large numbers of landowners and to compensate rightful owners in a manner that is efficient for all parties.[27]

Nevertheless, most defendants still resist class certification in the hope that failure to get a class certified will effectively preclude claims from all but the largest landowners. While defendants in right-of-way class action litigation have focused most of their efforts on attempting to prevent class certification with mixed success, the overall record shows that class actions are being certified and

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25. Clark v. CSX Transp., Inc., No. 29DO3-9308-CP-404 (Hamilton County, Ind. Sup. Ct. May 1, 1996) (deposition of Ted Jackson) (on file with author).

26. Califano v. Yamasaki, 442 U.S. 682, 701 (1979).

27. *See, e.g.*, Transfer Order, *In re* AT&T Fiber Optic Cable Installation Litig., MDL No. 1313 (J.P.M.L. Dec. 7, 1999) (granting transfer to multi-district litigation).

that they are proving to be well-suited to this area. As will be shown later, the author is aware of thirty-six right-of-way class action certifications, most as litigation classes and some as settlement classes, by both state and federal courts.

C. *Class Actions Abuses and Sanctions*

The class action process for dealing with large-scale right-of-way controversies has proven to be a viable method both for resolution of such conflicts and for adding value to landowners and sometimes to all parties. Class action procedures, however, can be abused. One of the most offensive abuses occurs when a lawyer purporting to represent plaintiffs indicates to defendants a willingness to settle the class claims cheap in return for agreement by the defendant to pay a substantial attorney's fee to the settling attorney. The opportunity for unscrupulous plaintiffs' counsel to conspire with defendants for such a result is facilitated by the ease with which the lawyer may copy a complaint that is already on file and being prosecuted, file the copy on behalf of another purported class representative in another court and promptly enter into a settlement on terms favorable to the defendant. In fact, the entire process can be engineered by the defendant, who can provide the copycat complaint, seek out a compliant plaintiffs' counsel, and even name the court. Sweetheart settlements preceded by conduct of this kind have been attempted by others and resisted by us in several of the class actions in which we have been involved.

In one case, a state court sanctioned the defendant railroad for misrepresentations to the court after the defendant copied our complaint verbatim, persuaded a plaintiffs' lawyer to file it and settle it in another court on terms suggested by the defendant, all the while claiming in the original court that it was so unaware of the claims that it was not yet prepared to answer the complaint. The conduct resulted in multiple appeals and years of delay; ultimately, the court sanctioned the defendant, awarding $600,000 as attorneys' fees to the original attorneys, plus prejudgment interest on the ultimate damage judgment to the class to compensate for the delay.[28] In another case, a plaintiffs' attorney had filed cases parallel to ours shortly after we obtained a nationwide class certification and even attached the court order in our case as a substitute for a brief, then ultimately reached agreement with a group of telecommunication company defend-

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28. Firestone v. Penn Central Railroad, No. 29D03-9210-CP-500 (Ind. Super. Ct. ordered Jan. 21, 1999) (Order and Memorandum Opinion Imposing Sanctions) (on file with author). The sanction order ultimately was vacated as part of a settlement in which all class members were offered compensation, including the attorneys' fees.

ants to pay a multimillion dollar attorney's fee to the settling plaintiffs attorney while releasing all claims against the defendants for a fraction of the class compensation that we had negotiated in similar cases. When it appeared that the federal judge in Chicago to whom the proposed settlement had been submitted was unlikely to approve the deal, the plaintiffs' attorney and all defendants packed up and filed the same proposal in a federal court in Oregon and asked for prompt approval without explaining all that had transpired in the federal court in Chicago. The Oregon court ultimately dismissed the amended complaint before it as a sanction for "judge shopping."[29] These two instances of class action abuse are chronicled in cover stories of *The National Law Journal*[30] and *The American Lawyer*[31]. As is said of the price of democracy, eternal vigilance also is the price of justice in class action litigation.

IV. EXAMPLE OF CLASS SETTLEMENT NOTICE, INCLUDING TERMS AND PROCEDURES

Notices of class action settlements have been sent to class members by U.S. mail, accompanied by publication and public awareness campaigns in the right-of-way class actions that we have settled. In some cases we have also posted notices in county courthouses, and in some cases we have purchased advertisements in general circulation newspapers. In all cases, we have obtained court appointment of a senior, well-experienced, and neutral claims administrator; established a claims office staffed with an experienced senior manager and support personnel; published dedicated toll-free telephone lines to handle class member questions; developed dedicated web sites to explain in detail the settlement terms and procedures; and, most importantly, as class counsel, we have continued to represent the class members' interests throughout the claims process.[32]

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29. Zografos v. Qwest Communications Corp., 225 F. Supp. 2d 1217 (D. Or. 2002) (stating, "Protecting the integrity of the judicial process mandates dismissal of the amended complaint.").

30. Elizabeth Amon, *Working on the RRS: Simple Property Case Sparks 25 Class Actions Against RRS, Telecoms*, NAT'L L.J., Aug. 16, 1999, at A1.

31. Alison Frankel, *Blood on the Tracks*, THE AM. LAW., June 2002, at 74.

32. For examples of our notices to class members, see http://www.fiberopticfundl.com (T-Cubed Settlement Website); http://att.fsiwebs.net/settlements/OH_Main.htm (AT&T-Ohio Settlement Website); http://www.clarkrightofway.com/explanation.html (CSX Settlement Website).

V. DESCRIPTION OF CLASS CORRIDOR, LLC

The class action settlement with T-Cubed included compensation to class members in three forms: (1) cash; (2) a percentage of gross revenues received from sales or leases of conduits for fiber optic cable; and (3) aggregation of parcels into telecommunications corridors together with transfers of fibers and/or conduits to a company owned by the landowners/class members. The company formed to receive this compensation is to be owned by the 58,000 class members who choose to participate, and is called Class Corridor, LLC. Following is the first page of the notice description of Class Corridor, LLC, which we provided to the shareholders in compliance with an exemption under Section 3(a)(10) of the Securities Act of 1933.

Information Statement[33]

CLASS CORRIDOR, LLC

Distribution of up to Approximately 1,450,000 Membership Shares: This information statement is being furnished in connection with Class Corridor's distribution of approximately 1,450,000 of its membership shares to members of the settlement class in connection with the final resolution of a lawsuit entitled Frederick A. Uhl and Timothy Elzinga v. Thoroughbred Technology and Telecommunications, Inc. The lawsuit is pending in the United States District Court for the Southern District of Indiana, Indianapolis Division.

The lawsuit is a class action brought by landowners whose property underlies or adjoins certain railroad corridors used by Norfolk Southern Company, certain of its subsidiaries and Pennsylvania Lines LLC. Thoroughbred Technology and Telecommunications, Inc ("T-Cubed"), a subsidiary of Norfolk Southern, has built and continues to build a telecommunications system through the railroad corridors. The lawsuit seeks compensation for the landowners.

T-Cubed and the plaintiffs have executed a settlement agreement. The court has preliminarily approved the settlement agreement. A fairness hearing has been scheduled for August 21, 2001. At that fairness hearing, the court will determine whether the settlement agreement is fair to the members of the settlement class. The settlement agreement provides for both cash and asset compensation. The cash compensation is set forth in the settlement agreement and is summarized in the notice to class members approved by the Court and mailed to class members on May 29,

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33. CLASS CORRIDOR, LLC, INFORMATION STATEMENT (May 29, 2001), *available at* http://www.classcorridorllc.com/adobe/informationstatementforweb.pdf.

2001. The asset compensation will be transferred to the Company. Subject to the court's determination of fairness, we will distribute to the members of the settlement class, up to approximately 1,450,000 of our membership shares.

We will distribute membership shares to each member of the settlement class who elects to participate in the settlement and provides certain required information. Participating class members will receive one membership share for each 10 linear feet of real estate owned by that member along the railroad corridors. Class members are not required to accept shares in the Company.

There is no trading market for our membership shares and we do not expect a market to develop after the distribution.

In reviewing this information statement, you should carefully consider the matters described under the caption "Risk Factors" beginning on page 12.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved these securities or determined if this information statement is truthful or complete. Any representation to the contrary is a criminal offense.

We are distributing our membership shares in reliance on the exemption from registration under Securities Act of 1933 contained in section 3(a)(10) of the Securities Act. We have not filed a registration statement covering our membership shares with the Securities and Exchange Commission.

The date of this information statement is May 29, 2001.

VI. CORRIDOR VALUATION ISSUES

The application of an appropriate and consistent methodology for appraisal or valuation of corridors is one of the most actively discussed issues in current appraisal literature. The emergence of this issue at this time indicates the enormous value that attaches to assemblages of parcels into corridors that connect important end points. There may be no more important economic issue in right-of-way litigation than this one. Nevertheless, any more than a cursory dis-

cussion of those issues is beyond the scope of this article.[34] A recently released report by the NOAA identifies numerous sources of corridor valuation information, suggests several valuation methodologies, and concludes that value of the right to install and maintain conduits for fiber optic cables is reasonably estimated between $40,000 and $100,000 per mile.[35]

Although corridor valuation is beyond the scope of my comments in this article, it is helpful to mention the general level of landowner compensation that has been achieved in our settlements of right-of-way class actions. In the class action settlements where AT&T has installed fiber optic cable on abandoned railroad rights-of-way, landowners have received compensation ranging from $126,700 per mile in Connecticut[36] to $5,300 per mile in Maine,[37] with the average compensation close to $45,000 per mile. Landowner compensation in settlements where AT&T has installed fiber optic cable on active railroad rights-of-way, which have been preliminarily approved as of this writing, range from $13,728 per mile in Connecticut[38] and Virginia[39] to $8,976 per mile in Ohio,[40] with the average compensation in excess of $10,500 per mile.

VII. EMERGING ISSUES AND OPPORTUNITIES

Many new and unrealized opportunities have appeared and are continuing to emerge in areas related to right-of-way litigation. Both private and public interests stand to gain. The benefits often are characterized as bridging the digital divide. Those who stand to gain from these developments include farmers,

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34. A summary of the issues involved can be found in Nels Ackerson, *Corridor Valuation: Law and Practice in a New Environment*, Power Point Presentation to the Corridor and Rights-of-Way Symposium in Washington, D.C., sponsored by The Appraisal Institute, the International Right of Way Association, and the Centre for Advanced Property Economics, in partnership with the Condemnation Committee of Real Property, Probate and Trust Law Section of the American Bar Association, and United Telecom Council (July 29-30, 2002) (on file with the author). A thoughtful analysis of the issues involved is also contained in Charles P. Bucaria & Robert G. Kuhs, *Fiber Optic Communication Corridor Right-of-Way Valuation Methodology: A Summary Resulting from Telecommunications Corridor Right-of-Way Market Observations*, 70 APPRAISAL J. 136, 136-147 (2002).

35. NAT'L MARINE SANCTUARY PROGRAM, *supra* note 18, at 24.

36. Peschell v. AT&T Corp., No. 399CV 1203-DJS (D. Conn. filed June 25, 1999).

37. Reynolds v. AT&T Corp., No. 2:00-CV-00058-GC (D. Me. filed Mar. 4, 2000).

38. *Peschell*, No. 399CV 1203-DJS.

39. Hill Pleasant Farm, Inc., v. AT&T Corp., No. 4:02CV00144 (E.D. Va. filed Nov. 25, 2002).

40. Billinovich v. AT&T Corp., No. 3:00CV7174 (N.D. Ohio filed Mar. 16, 2000).

ranchers, small businesses, hospitals, schools, police and fire departments, consumers, non-profits, and other producers of goods and providers of services.

Beyond bridging the digital divide, much value can be vested from methods to facilitate landowners' ability to create, preserve, and control both existing and new corridors. Several emerging areas of opportunity are discussed below.

A. *Class Action Procedures to Aggregate Corridors*

One area of opportunity is the application of class action procedures to additional rights-of-way uses. An example is the value that can be created through new business enterprises such as Class Corridor, LLC, which was mentioned earlier. The class action process can allow landowners with thousands of individual parcels to aggregate their parcels into contiguous corridors. The individual parcels may have very little value in the absence of aggregation. However, when aggregated into corridors connecting important end points for a specific purpose, the total value of the corridor parcels may enormously exceed the sum of the parts.

The destinations to be connected may be major cities, but they may also be smaller communities, schools, hospitals, branch offices of rural banks, or thousands of other entities that can benefit from being connected. Further, once established, corridor uses need not be confined to the most immediately visible need. For example, an established route that connects two destinations through aerial cables for transmission of electricity may also be valuable as a route for aerial or subsurface telecommunications transmission, or subsurface pipelines for water supply, petroleum, or other compatible uses. Often the corridor value is "super-additive," that is, the use of the land for a particular type of corridor function does not detract substantially from the continuing use of the same land for other site-specific or corridor purposes. For example, a buried fiber optic cable may not substantially limit surface use for farming or ranching, and it may not preclude parallel use for an irrigation system or pipeline.

Class actions need not be viewed as contentious battles between intransigent litigators. Obviously, advocates on both sides must be zealous in advancing their client's respective positions. However, it should also be obvious that owners of the fee simple interests in parcels that comprise a corridor and the owner of a right-of-way for a limited purpose on the same corridor can both greatly increase the value of all of their assets by reaching class-wide agreement rather than by perpetuating individual battles over ownership. The value that class actions can bring through aggregation is such that all parties can benefit greatly.

Areas in which class actions can bring such value and where classes are not presently being pursued include many utility lines, such as rural electric and rural telephone companies or cooperatives, many power lines and pipelines, shorter railroad lines, and both state and county roads in many jurisdictions. The body of knowledge that has been gained from other class actions can be made available to landowners and their counsel in these situations.

B. *Assemblage of Parcels into Corridors by Landowners*

To the author's knowledge, right-of-way class actions were the first instance in which landowners received the financial benefits (or at least shared significantly in the financial benefits) of aggregating parcels into corridors. In the past and still today, the beneficiaries usually are utilities with the power of eminent domain, governmental units with the same power, or occasionally speculators. They acquire parcels at parcel value, which typically is a small fraction of the corridor value that they realize once the assemblage is complete.

Class actions are not the only way in which landowners can participate in the aggregation of their parcels into corridors. During the course of our right-of-way litigation, we learned from patent counsel that the business method that we were establishing to facilitate assemblage of parcels by independent landowners was novel and should be qualified for patent protection as a business process patent.[41] A patent is pending on our process, which can be applied in the absence of a class action or as a complement to a class action where some parcels have been excluded or have been opted out. That process is available for broad use by interested parties.

C. *Government Actions to Facilitate Assemblage of Parcels into Corridors*

State and local governments can facilitate assemblage of parcel rights for a specific purpose or for general corridor purposes through the adoption of legislation or ordinances. For example, if a majority (or super-majority, if desired) of landowners along a corridor wish to aggregate their interests into a contiguous corridor, a method of complete assemblage can be legislated. Quasi-governmental entities can be created where necessary, and exercise of the power of eminent domain can be permitted to complete desirable corridors.

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41. *See* 35 U.S.C. § 101 (2002); *see generally* State St. Bank & Trust Co. v. Signature Fin. Group, 149 F.3d 1368, 1375-77 (Fed. Cir. 1998) (holding business methods to be patentable subject matter under § 101).

State and local governments can also facilitate the creation and preservation of corridors by setting standards for zoning classifications thereby specifically creating corridor use properties. In some states, land use restrictions, safety standards, tax classifications, and other exercises of governmental authority can or should be applied to encourage the appropriate development and use of corridors.

Counties or cities often are landowners themselves, and may benefit as both landowners and policy makers from such measures.

D. *Emerging Fiber Optic and Other Corridor Uses by Hospitals, Schools, Small Businesses, Etc.*

A friend who is the CEO of a county hospital recently reminded me of a news report about a delicate surgery in Europe in which surgeons located in the United States performed the surgical procedure from their facility in the United States using broadband connections and robots controlled by them from thousands of miles away. The robots with specialized operators thousands of miles away, using streaming video observations, could be more precise than surgeons performing alone on the site. The importance of this example to the county hospital CEO is that access to broadband communications can give rural and medium-sized hospitals, like his, many of the technological and related medical benefits and expertise that have been limited in the past to a few specialized hospitals possessing both the necessary specialists and the necessary technology for difficult diagnoses and uncommon procedures.

Schools, fire departments, police departments, and small businesses can gain similar benefits from broadband telecommunications and Internet connectivity.

The hospital example that I have given is timely, because the CEO was able to negotiate a transaction with a rural telephone company to extend fiber optic cable to his hospital and his community. He now is working to form a coalition of additional county or rural hospitals that will all be connected by a proprietary network of fiber optic cables. They hope to take advantage of the current weakness in the telecommunications industry to acquire the cable at a sharp discount from the original cost. Transactions such as these may be models for others around the country.

E. *Fair Financial Recoveries by Counties, Cities, and Towns*

Right-of-way litigation has uncovered a vast difference in the amounts that states, counties, cities, and towns are charging and collecting for the use of their streets, roads, and other public lands by commercial installers of fiber optic cable. Some states and municipalities charge the companies nothing at all. Others have recovered as much as $50,000 per cable per mile per year for multiple cables in the same corridors—worth a present value in excess of $1 million per mile. Still others have negotiated fees related to a percentage of the gross revenue derived from the commercial use of fiber optic cable.

The difference in treatment is sometimes related to the value of the corridors for telecommunications purposes. However, it appears that some governmental units have simply been unaware of the value of their corridor assets or unaware of the limits of federal pre-emption and of their legal right, in many instances, to charge fair value for the installation and maintenance of the facilities.

Counties, cities, and towns will benefit from increased awareness of their rights. Taxpayers will benefit from obtaining fair value for the commercial use of the taxpayers' public land.

VIII. SUMMARY OF SIGNIFICANT DECISIONS FAVORING LANDOWNERS[42]

1. *Clark v. CSX Transportation, Inc.* [43] (first appellate decision affirming certification of a right-of-way class action)
2. *Hinshaw v. AT&T* [44] (first certification of nationwide class)
3. *Hinshaw v. AT&T* [45] (first telecommunications settlement on abandoned railroad lines)
4. *Fritsch v. Interstate Commerce Commission*[46] (first successful landowner challenge of trail conversion)

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42. This summary is limited to cases in which the author is counsel for the landowners, numbering more than seventy cases, including twenty-three certified class actions and ten settled class actions. At this time, the author is aware of five other classes that have received preliminary certification and five other class actions that have been settled in which the author does not represent the landowners.

43. 646 N.E.2d 1003 (Ind. Ct. App. 1995).

44. No. 29D01 9705-CP-00038, 1998 WL 1799019 (Ind. Super. Ct. Aug. 24, 1998).

45. No. IP99-0549-CT/G (S.D. Ind. filed Sept. 17, 1999) (Final Order and Judgment) (on file with author).

46. 59 F.3d 248 (D.C. Cir. 1995).

5. *Fritsch v. Interstate Commerce Commission*[47] (first award of attorneys' fees to landowner in successful challenge of trail taking)

6. *Conrail v. Lewellen*[48] (first class action in which landowner real estate rights were confirmed by a state supreme court)

7. *Calumet National Bank v. AT&T* [49] (first case holding that a telecom company can be liable for trespass before it has exercised its power of eminent domain)

8. *Hefty v. All Other Members of Settlement Class*[50] (first successful challenge to right-of-way settlement that was inadequate and unfair to class members)

9. *AT&T Fiber Optic Cable Installation Litigation*[51] (first right-of-way class actions to be consolidated by the United States Judicial Panel on Multi-District Litigation)

10. *Firestone v. Penn Central*[52] (first state court sanction for improper conduct by defendant in right-of-way class—$600,000 attorneys' fees plus pre-judgment interest)

11. *Hash v. United States*[53] (first certified Tucker Act right-of-way class action)

12. *Uhl v. T-Cubed*[54] (first multi-state telecom class certification)

13. *Uhl v. T-Cubed*[55] (first creation of landowner-owned telecommunications corridor company)

14. *Uhl v. T-Cubed*[56] (first telecom pre-packaged right-of-way class action settlement)

15. *Firestone v. Penn Central*[57] (first railroad class action right-of-way settlement)

16. *Preseault v. United States*[58] (first successfully concluded landowner trial for compensation by the United States for the physical taking of an aban-

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47. *Id.*
48. 682 N.E.2d 779 (Ind. 1997).
49. 682 N.E.2d 785 (Ind. 1997).
50. 680 N.E.2d 843 (Ind. 1997).
51. MDL No. 1313 (J.P.L.M. filed Dec. 7, 1999).
52. No. 29D03-9210-CP-500 (Ind. Super. Ct. ordered Jan. 21, 1999) (Order and Memorandum Opinion Imposing Sanctions) (on file with author).
53. No. CV 99-324-S-MHW, 2000 WL 1460801 (D. Idaho July 7, 2000).
54. No. IP00-1232-C-B/S, 2001 WL 987840 (S.D. Ind. Aug. 28, 2001).
55. *Id.*
56. *Id.*
57. No. 29D03-9210-CP-500 (Ind. Super. Ct. filed Dec. 13, 1999) (on file with author).
58. 52 Fed. Cl. 667 (2002).

doned railroad line for a trail, and first federal court award of attorneys' fees to landowner in successful proof of trail taking by the Government)

17. *Clark v. CSX Transportation, Inc.*[59] (first right-of-way settlement by an active railroad)

18. *Zografos v. Sprint*[60] (first federal court sanction for improper conduct in right-of-way class action —dismissal for judge shopping)

19. *AT&T Fiber Optic Cable Installation Litigation*[61] (first right-of-way class action settlement by major telecom company for occupancies on active railroad lines)

20. *Becherer v. Qwest*[62] (first multi-state class action certified against Qwest)

IX. SUMMARY OF SIGNIFICANT DECISIONS AGAINST LANDOWNERS[63]

1. *Swisher v. United States*[64] (denial of motion to certify nationwide class)

2. *Isaacs v. United States*[65] (reversal of motion to certify nationwide class; rendered moot by subsequent dismissal due to lack of federal subject matter jurisdiction)

3. *Nicodemus v. Union Pacific*[66] (denial of motion to certify multistate class)

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59. 737 N.E.2d 752 (Ind. Ct. App. 2000).
60. 225 F. Supp. 2d 1217 (D. Or. 2002).
61. No. IP99-C-9313-H/G (S.D. Ind. filed Sept. 10, 2001).
62. No. 02-L-140 (St. Clair County, Ill. Cir. Ct. filed Feb. 14, 2003).
63. This summary is limited to cases in which the author is counsel for the landowners. The author is aware of other cases in which landowners have not prevailed, both on class certification and on the merits of their claims. Not surprisingly, opposing counsel often attempt to convince courts to rely on those cases and the author attempts to convince courts that those decisions either should be distinguished or are wrong. Frequently cited cases that are unfavorable to landowners are Int'l Paper Co. v. MCI WorldCom Network Servs., Inc., 202 F. Supp. 2d 895 (W.D. Ark. 2002); Hynek v. MCI World Communications, Inc., 202 F. Supp. 2d 831 (N.D. Ind. 2002); Mellon v. S. Pac. Transp. Co., 750 F. Supp. 226 (W.D. Tex. 1990); Hallaba v. WorldCom Network Servs., Inc., 196 F.R.D. 630 (N.D. Okla. 2000); Davis v. MCI Telecomm. Corp., 606 So. 2d 734 (Fla. Dist. Ct. App. 1992); Chambers v. MCI WorldCom Network Servs., Inc., No. 00-C-348-C (W.D. Wis. Mar. 2, 2001).
64. 189 F.R.D. 638 (D. Kan. 1999).
65. 261 F.3d 679 (7th Cir. 2001).
66. 204 F.R.D. 479 (D. Wyo. 2001).

4. *Multi-District Federal Fiber Optic Installation Litigation*[67] (denial of motion to consolidate all federal fiber optic cable federal right-of-way class actions in a single court)

X. SUMMARY TABLE OF CLASS CERTIFICATIONS, BY COUNSEL: CERTIFIED RIGHT-OF-WAY CLASS ACTIONS

Case	Federal Court	Certified for Litigation	National/ Multi-State	Statewide	Settlement
ACKERSON, et al Counsel Cases					
Becherer v. Qwest Communications Int'l, Inc., No. 02-L-140 (St. Clair County, Ill. Cir. Ct. Feb. 14, 2003).		√	√		
Billinovich v. AT&T Corp., No IP00-1293-C (S.D. Ind. Sept. 10, 2001).	√			√	√
Billinovich v. AT&T Corp., No IP00-1293-C (S.D. Ind. Jan. 8, 2003).	√			√	√
Bywaters v. United States, 196 F.R.D. 458 (E.D. Tex. 2000).	√	√			

67. 199 F. Supp. 2d 1377 (J.P.M.L. 2002) (order denying transfer).

Case	Federal Court	Certified for Litigation	National/ Multi-State	Statewide	Settlement
Clark v. CSX Transp., Inc., No. 29D03-9308-CP-404 (Hamilton County, Ind. Super. Ct. Dec. 19, 1996)		√			√
CSX Transp., Inc. v. Clark, 646 N.E.2d 1003 (Ind. Ct. App. 1995).		√		√	√
Firestone v. Am. Premier Under-writers, Inc., No. 29D03-9210-CP-500 (Hamilton County, Ind. Super. Ct. Apr. 15, 1998).		√		√	√
Hash v. United States, No. CV 99-324S-MHW, 2000 WL 1460801 (D. Idaho July 7, 2000).	√	√			

Case	Federal Court	Certified for Litigation	National/ Multi-State	Statewide	Settlement
Hinshaw v. AT&T Corp., IP99-0549-CT/G (S.D. Ind. Sept. 17, 1999).	√			√	√
Hinshaw v. AT&T, Inc., No. 29D01 9705-CP-000308, 1998 WL 1799019 (Hamilton County, Ind. Super. Ct. Aug. 24, 1998).		√	√		
Larson v. AT&T Corp., No. IP01-1657-C-H/K (S.D. Ind. May 31, 2002).	√			√	√
Lewellen v. Consol. Rail Corp., No. 54C01 9406 CP 0187 (Montgomery County, Ind. Cir. Ct. Apr. 4, 1996).		√		√	

Case	Federal Court	Certified for Litigation	National/ Multi-State	Statewide	Settlement
Lowers v. United States, No. 1-99-CU-90039, 2001 WL 1200869 (S.D. Iowa May 2, 2001).	√	√			
Morgan v. AT&T, No. IP01-646-C (S.D. Ind. May 31, 2002).	√			√	√
Nicholson v. AT&T Corp., No. IP99-C-1892-H/K (S.D. Ind. Jan. 8, 2003).	√			√	√
O'Connell v. AT&T Corp., No. IP99-C-1893-C-H/K (S.D. Ind. Jan. 8, 2003).	√			√	√
Peschell v. AT&T Corp., No. IP99-C-1889 (S.D. Ind. Sept. 10, 2001).	√			√	√
Peschell v. AT&T Corp., No. 399CV-1203 (D. Conn. filed Jan. 8, 1999).	√			√	√

Case	Federal Court	Certified for Litigation	National/ Multi-State	Statewide	Settlement
Poor v. Sprint, No. 99-L-421 (Madison County, Ill. Cir. Ct. Feb. 20, 2003).		√	√		
Reynolds v. AT&T Corp., No. IP00-827-C (S.D. Ind. Sept. 10, 2001).	√			√	√
Schmitt v. United States, 203 F.R.D. 389 (S.D. Ind. 2001).	√	√			
Schneider v. United States, 197 F.R.D. 397 (D. Neb. 2000).	√	√		√	
Uhl v. Thoroughbred Tech. & Telecomm., Inc., 309 F.3d 978 (7th Cir. 2002).	√		√		√

Case	Federal Court	Certified for Litigation	National/ Multi-State	Statewide	Settlement
SUSMAN, et al Counsel Cases					
Chem-Tronics, Inc. v. Sprint Corp., No. 9907 CV 284 (D. Kan. filed Dec. 7, 2000).		√	√		
Faivre v. Williams Pipe Line Co., No. 92 CH 00267 (Cook County, Ill. Cir. Ct. filed Apr. 1, 1993).		√		√	√
Thompson Live-stock Comm'n v. Williams Pipe Line Co., No. CL 3145 (Decatur County, Iowa Dist. Ct. filed Nov. 18, 1994).				√	√
Barway Invs. v. Williams Pipe Line Co., No. CV194-2159-CC (Clay County, Mo. Cir. Ct. filed Dec. 21, 1994).				√	√
VOWELL, et al Counsel Cases					
Buhl v. Sprint Communications Co., 840 S.W.2d 904 (Tenn. 1992).		√		√	

Case	Federal Court	Certified for Litigation	National/ Multi-State	Statewide	Settlement
Hord v. Qwest Communications Int'l, Inc., No. 40084 (Rutherford County, Tenn. Cir. Ct. filed June 13, 2001).		√		√	
MCDONALD, et al. Counsel Cases					
Dickerson v. WorldCom Network Servs., Inc., No. IP96-1311-C-M/S (S.D. Ind. filed Sept. 13, 2001).	√	√		√	
CAMPBELL Counsel Cases					
Gipson v. Sprint Communications Co., No. CJ-99-609 (Sequoyah County, Okla. Dist. Ct. filed Nov. 15, 2001)		√		√	
TUCKER Counsel Cases					
CSX Transp., Inc. v. Rabold, 593 N.E. 2d 1277 (Ind. Ct. App. 1992).		√			

Case	Federal Court	Certified for Litigation	National/ Multi-State	Statewide	Settlement
MOUNTAIN STATES LEGAL FOUNDATION Counsel Cases					
Moore v. United States, 54 Fed. Cl. 747 (2002).	√	√			
LATHROP & GAGE Counsel Cases					
Illig v. United States, No. 98-934L (Ct. Fed. Cl. filed Feb. 14, 2000).	√	√			
MCCORD Counsel Cases					
Bentley v. City of Tallahassee, No. 98-7107 (Leon County, Fla. Cir. Ct. filed Jan. 14, 2000).				√	√
PENDLEY, et al Counsel Cases					
Louisiana v. Sprint Corp., No. 26304 (West Baton Rouge Parrish, La. Dist. Ct. filed Sept. 19, 2001).		√		√	√

XI. PENDING RIGHT-OF-WAY ACTIONS IN WHICH LANDOWNERS ARE REPRESENTED BY THE AUTHOR AND CO-COUNSEL (CLASS ACTIONS UNLESS NOTED OTHERWISE)

Number	CASE	STATUS
1	Amaliksen v. United States, 53 Fed. Cl. 63 (2002).	Not a Class Action. Over thirty claims by plaintiffs with property in Vermont adjacent to abandoned railroad right-of-way converted to trail. In 1996, this abandoned right of way was "rail-banked" under federal law and then conveyed by the railroad to the State of Vermont. On July 29, 2002, defendant's summary judgment was granted and six of the claims were dismissed since plaintiffs failed to prove that abandoned railroad right-of-way was conveyed at time of purchase. Remaining claims to be appraised.
2	Ashby v. Pathnet, Inc., No. 0003175-00 (D.C. Super. Ct. filed Apr. 19, 2000).	Statewide class sought. Defendant filed Notice of Chapter 11 Bankruptcy Filing on April 2, 2001. (U.S. Bankr. E. VA 01-12264 /01-12265). Bankruptcy Court disallowed Ashby's claim on March 7, 2002. Court granted Pathnet's First Amended Joint Plan of Liquidation on March 11, 2002. Case stayed.
3	Barkema v. Williams Pipeline Co., No. LACV004501 (Decatur County, Iowa Dist. Ct. filed Feb. 15, 2001).	Statewide - Filed in attempt to set aside judgments entered January 12, 1996 and November 20, 1997 in *Thompson Livestock Committee. v. Williams Pipeline and WorldCom Network Services*. Defendant's Motion for Summary Judgment and Motion to Dismiss granted October 2001, appealed and fully briefed. Stayed by bankruptcy court.
4	Barr v. Qwest Communications, Inc., No. 01-B-924 (D. Colo. filed Apr. 23, 2001).	Statewide certification sought. Briefing on class certification complete; hearing pending.
5	Bauer v. Level 3 Communications, Inc., No. 02-L541 (Madison County, Ill. Cir. Ct. filed May 11, 2001).	Proposed twenty-two state class sought. Case filed in state court (Madison County Circuit, Ill.). Removed to U.S. Dist. Ct. S. Illinois on May 17, 2002, then remanded September 5, 2002. Briefing on class certification is ongoing.
6	Becherer v. Global Crossing, No. 01-L-586 (St. Clair County, Ill. Cir. Ct. filed Sept. 19, 2001).	Nationwide class sought. Filed complaint in St. Clair County Circuit Court, Ill. Removed to U.S. Dist. Ct. S. Illinois on October 18, 2001 and filed as 01-CV-688. On February 25, 2002, case was remanded to St. Clair County Circuit Court, Ill. Global Crossing filed Chap. 11 bankruptcy on January 8, 2002. U.S. Bankr. Ct. S. New York - Case number 02-40187 / 02-40188. Def. filed their Notice of Automatic Stay on April 3, 2002. Chapter 11 Reorganization Plan was filed September 16, 2002.

Number	CASE	STATUS
7	Becherer v. Qwest Communications Int'l, Inc., No. 02-L-140 (St. Clair County, Ill. Cir. Ct. filed Sept. 19, 2001).	Originally filed in U.S. Dist. Ct. S. Illinois as *Tri-County Feed Mill, Inc. v. Qwest*, 01-CV-307 on May 11, 2001. Closed federal case and re-filed complaint on September 19, 2001 in state court (St. Clair County, Ill. Circuit Court) due to federal subject matter jurisdiction. Case was removed to federal court on October 18, 2001, but was remanded February 25, 2002. Eight state class certified on February 14, 2003 (IL, NE, MN, IA, WI, OH, MI, KY)
8	Benton v. AT&T Corp., No. C03-3013 (N.D. Iowa filed Feb. 10, 2003).	Proposed statewide class transferred under 28 U.S.C. § 1407 (Multidistrict Litigation) to U.S. Dist. Ct. S. Indiana, Case No: IP99-C-9313-H/G.
9	Billinovich v. AT&T Corp., No. 3:00CV7174 (N.D. Ohio filed Mar. 16, 2000).	Statewide complaint transferred under 28 U.S.C. § 1407 (Multidistrict Litigation) to U.S. Dist. Ct. S. Indiana, Case No: IP99-C-9313-H/G. Settlement class, covering only abandoned railroad right-of-ways, certified and given final settlement approval on September 10, 2001. Settlement Class, covering active railroad rights-of-way, certified and given preliminary approval in January 2003.
10	Bodine v. Burlington Northern Santa Fe Corp., No. CIV00-0515-N-BJL (D. Idaho filed Sept. 19, 2000).	Multi-state class sought. March 7, 2002 - Order denying motion for nationwide class certification. Limited to rights-of-way where railroad originally acquired its rights through federal land grants.
11	Boreen v. AT&T Corp., No. C02-5315 FDB (W.D. Wash. filed Jun. 20, 2002).	Proposed statewide class transferred under 28 U.S.C. § 1407 (Multidistrict Litigation) to U.S. Dist. Ct. S. Indiana, Case No: IP99-C-9313-H/G.
12	Busenbark v. WorldCom, Inc., No. IP98-1245C-H/G (S.D. Ind. filed Sept. 10, 1998).	Statewide class sought. Certification briefing completed and decision pending. Court found diversity jurisdiction secure on March 29, 2002. On July 26, 2002, Defendant filed Notice of Chapter 11 Bankruptcy (U.S. Bankr. S. NY, 02-13533, July 21, 2002).
13	Butler v. AT&T Corp., No. 02-275 (D. Del. filed Apr. 15, 2002).	Proposed statewide class transferred under 28 U.S.C. § 1407 (Multidistrict Litigation) to U.S. Dist. Ct. S. Indiana, Case No: IP99-C-9313-H/G.

Number	CASE	STATUS
14	Bywaters v. United States, 196 F.R.D. 458 (E.D. Tex. 2000).	Tucker Act case seeking just compensation from the United States for a taking of land for a trail by operation of the National Trails System Act. Class certified on August 25, 2000. Briefing on liability is ongoing.
15	Clark v. CSX Transp., Inc., 737 N.E.2d 752 (Ind. Ct. App. 2000), *transfer denied*, 783 N.E.2d 691 (Ind. 2002).	Statewide class certified June 14, 1994. Class includes Indiana landowners adjacent to abandoned CSX Railroad right-of-way. Settlement received final approval July 25, 2002. Claims process nearly completed.
16	Coffey v. AT&T Corp., No. CIV02-0500-S-LMB (D. Idaho filed Oct. 28, 2002).	Proposed statewide class conditionally transferred under 28 U.S.C. § 1407 (Multidistrict Litigation) to U.S. Dist. Ct. S. Indiana, case No: IP99-C-9313-H/G.
17	Cord v. Williams Communications, Inc., No. 37001-0004-CT-123 (Jasper County, Ind. Super. Ct. filed Apr. 25, 2000).	Statewide class sought. Proposed class consists of Indiana landowners, who executed agreements with Defendant for inadequate consideration. Discovery ongoing.
18	Drawhorn v. Qwest Communications Int'l., Inc., 121 F. Supp. 2d 554 (E.D. Tex. 2000).	Statewide class sought. Remand denied May 31, 2000. Motion for interlocutory appeal denied July 7, 2000. Case administratively closed on March 12, 2003 pending outcome of proposed nationwide settlement in *Smith v. Sprint, et al.*
19	Firestone v. Penn. Cent. Corp., No. 06C01-9912-CP-379 (Boone County, Ind. Cir. Ct. filed Oct. 19, 1992) (transferred from Hamilton County, Ind. Super. Ct. on Dec. 17, 1999).	Class was conditionally CERTIFIED on February 23, 1993. REINSTATED Class Certification on April 15, 1998. Class consists of Indiana landowners adjacent to abandoned Penn Central Railroad right-of-way (within statute of limitations requirements). The abandoned right-of-way totals over seven hundred miles. Settlement agreement signed on February 16, 2001 and received final court approval on August 15, 2001. Claims process nearly complete. NOTE: In January 1999, the Court ordered Penn Central Corp. to pay $600,000 in attorneys' fees as a sanction for misconduct. As part of the class settlement, a Joint Motion to Vacate the Sanction Orders was filed and granted.

Number	CASE	STATUS
20	Fisher v. Va. Elec. & Power Co., 243 F. Supp. 2d 538 (E.D. Va. 2003).	Class action sought for Virginia and North Carolina landowners against Dominion Resources, Inc.'s telecom subsidiary, Dominion Telecom, for fiber they laid on their electric utilities' right of ways. On February 4, 2003, defendant's motion to dismiss was denied and court further ruled that action was transitory in nature and local action doctrine was a question of venue, not jurisdiction. Briefing on class certification and summary judgment (liability and unjust enrichment) ongoing.
21	Fournie v. AT&T Corp., No. 00-298-DRH (S.D. Ill. filed Apr. 17, 2000).	Proposed statewide class transferred under 28 U.S.C. § 1407 (Multidistrict Litigation) to U.S. Dist. Ct. S. Indiana, Case No: IP99-C-9313-H/G.
22	Gadotti v. AT&T Corp., No. CV 02-4901-AS (D. Or. filed Apr. 15, 2002).	Proposed statewide class transferred under 28 U.S.C. § 1407 (Multidistrict Litigation) to U.S. Dist. Ct. S. Indiana, Case No: IP99-C-9313-H/G.
23	Gearity v. AT&T Corp., No. 1:03-CV-18 (D. Vt. filed Jan. 16, 2003).	Proposed statewide class pending transfer under 28 U.S.C. § 1407 (Multidistrict Litigation) to U.S. Dist. Ct. S. Indiana, Case No: IP99-C-9313-H/G.
24	Hash v. United States, No. CV99-3245-MHW (D. Idaho filed Dec. 17, 1999).	Tucker Act case seeking just compensation from the United States Government to the landowners for a taking of their land for a trail by operation of the National Trails System Act. Class certified on July 6, 2000. November 27, 2001 decision concerning certain property interests appealed to U.S. Court of Appeals for the Federal Circuit.
25	Healy v. AT&T Corp., No. 99CV11622MLW (D. Mass. filed July 30, 1999).	Proposed statewide class transferred under 28 U.S.C. § 1407 (Multidistrict Litigation) to U.S. Dist. Ct. S. Indiana, Case No. IP99-C-9313-H/G.
26	Hill Pleasant Farm, Inc., v. AT&T Corp., No. 4:02CV00144 (E.D. Va. filed Nov. 25, 2002).	Proposed statewide class complaint transferred under 28 U.S.C. § 1407 (Multidistrict Litigation) to U.S. Dist. Ct. S. Indiana, Case No: IP99-C-9313-H/G. Settlement class, covering only active railroad lines, was agreed upon in January 2003. Preliminary approval of settlement class certification pending.

Number	CASE	STATUS
27	Hinshaw v. AT&T Corp., No. 29D01 9705-CP-000308, 1998 WL 1799019 (Hamilton County, Ind. Super. Ct. Aug. 24, 1998).	Nationwide class certified on August 24, 1998. Class includes landowners adjacent to active and abandoned Railroad right-of-way as well as utility and pipeline rights-of-way. Case later transferred to federal court (IP98-C-1300, S.D. Ind.). These cases are being transferred under 28 U.S.C. § 1407 (Multidistrict Litigation) to U.S. Dist. Ct. S. Indiana, Case No: IP99-C-9313-H/G. A total of six statewide classes, have been settled and have received the court's final approval. An additional five statewide classes have settlement agreements, which have been preliminarily approved. Settlement agreement in principle has been reached nationwide.
28	Hinshaw v. AT&T Corp., No. IP99-0549CT/G (S.D. Ind. filed Sept. 17, 1999).	Final settlement approval September 17, 1999. Settlement class consists of Indiana landowners adjacent to abandoned Railroad right-of-way (totaling eighty miles) in which AT&T has laid fiber optics. Judge David Hamilton of U.S. Dist. Ct. S. Indiana, hailed the settlement as a "model" for class actions nationally, and praised the value created for class members. Class members received an average of $45,000 per mile plus other benefits.
29	Hudson v. Qwest Communications Int'l, Inc., No. 41D019809-00394 (Ind. Super. Ct. filed Sept. 9, 1998). Presently in Indiana Supreme Court due to withdrawal of submission Case No. 41S00-0206-SJ-00317 Intervention Action	Statewide class sought. Plaintiffs are represented by group of law firms led by Samuel Heins of Heins, Mills & Olson in Minneapolis. Order for Intervention granted December 6, 1999. Intervenors represented by Nels Ackerson and co-counsel. Class certification and decision on defendant's summary judgment is pending.
30	Isaacs v. Sprint Corp., No. 00-CV-0155-MJR, 2001 WL 775982 (S.D. Ill. Apr 6, 2001), *rev'd*, 261 F.3d 679 (7th Cir. 2001).	Nationwide class certification granted on April 5, 2001. Seventh Circuit reversed and remanded. On February 25, 2002, Judge Murphy of the District Ct. vacated order that consolidated *Isaacs* and *Poor v. Sprint*, then dismissed *Isaacs* for lack of federal subject matter jurisdiction, and remanded ***Poor*** to State Court (Madison County, Ill).
31	Ketter v. Union Pac. Corp., No. CIV-2001-25 (Franklin County, Ark. Cir. Ct. filed Dec. 26, 2001).	Multistate class sought. Briefing on class certification ongoing.
32	Koyle v. Level 3 Communications Inc., No. CIV01-0286-S-LMB (D. Idaho filed June 19, 2001).	Multistate class sought. Class certification briefed and pending. Determination on federal subject matter jurisdiction is pending.

Number	CASE	STATUS
33	La Bahia Court, L.L.C. v. AT&T Corp., No. 03-1632 (C.D. Cal. Filed Mar. 7, 2003).	Proposed statewide class transferred under 28 U.S.C. § 1407 (Multidistrict Litigation) to U.S. Dist. Ct. S. Indiana, Case No: IP99-C-9313-H/G.
34	Lammers v. Union Pac. Corp., No. 02-CV-1883 (El Paso County, Colo. Dist. Ct. filed June 4, 2002).	Statewide class sought. Removed to U.S. Dist. Ct. Colorado on June 27, 2002. Remanded back to state court on November 20, 2002.
35	Larson v. AT&T Corp., No. C-01-326-B (D.N.H. filed Aug. 31, 2001).	Statewide class transferred under 28 U.S.C. § 1407 (Multidistrict Litigation) to U.S. Dist. Ct. S. Indiana, Case No: IP99-C-9313-H/G. Given final settlement approval on May 31, 2002, covering only abandoned railroad right-of-ways.
36	Lewellen v. Consol. Rail Corp., No. 54C01 9406 CP 0187 (Montgomery County, Ind. Cir. Ct. filed June 30, 1994).	Limited statewide class certification on title granted April 9, 1996. Class Certification on damages denied. Briefing on motion to reconsider class certification ongoing.
37	Lillian Martine, Inc. v. AT&T Corp., No. 03-52-B-M3 (M.D. La. filed Jan. 21, 2003).	Proposed statewide class pending transfer under 28 U.S.C. § 1407 (Multidistrict Litigation) to U.S. Dist. Ct. S. Indiana, case No: IP99-C-9313-H/G.
38	Lowers v. United States, No. 1-99-CV-90039, 2001 WL 1200869 (S.D. Iowa 2001).	Tucker Act case seeking just compensation from the United States Government to the landowners for a taking of their land for a trail by operation of the National Trails System Act. Class certified May 4, 2001. Discovery ongoing. Case was stayed on July 11, 2002, pending Iowa Supreme Court ruling on certified questions presented by the federal court regarding title issues.
39	Maas v. Penn Cent. Corp., No. 99CV723 (Trumbull County, Ohio Ct. of Common Pleas filed Apr. 15, 1999).	Statewide class sought. Decision on class certification pending.
40	McCarley v. Ameritech Corp., No. 00CV124 (Gallia County, Ohio Ct. C.P. filed Sept. 15, 2000).	State class sought. Removed to Federal Court. Remanded May 29, 2001. Def. Motion to Dismiss Complaint denied January 28, 2002. Discovery ongoing.
41	Mikos v. AT&T Corp., No. 3-00CV0808-P (N.D. Tex. filed Apr. 8, 2000).	Proposed statewide class transferred under 28 U.S.C. § 1407 (Multidistrict Litigation) to U.S. Dist. Ct. S. Indiana, Case No: IP99-C-9313-H/G.

Number	CASE	STATUS
42	Morgan v. AT&T, No. 01-CV-00188 (E.D. Ark. filed Mar 9, 2001).	Statewide class transferred under 28 U.S.C. § 1407 (Multidistrict Litigation) to U.S. Dist. Ct. S. Indiana, Case No: IP99-C-9313-H/G. final settlement approval on May 31, 2002, covering only abandoned railroad right-of-ways.
43	Neill v. AT&T Corp., No. 4:02CV87-SAA (N.D. Miss. filed Apr. 15, 2002).	Proposed statewide class transferred under 28 U.S.C. § 1407 (Multidistrict Litigation) to U.S. Dist. Ct. S. Indiana, Case No: IP99-C-9313-H/G.
44	Nicholson v. AT&T Corp., No. 8:99-CV-02343-AW (D. Md. filed Aug. 3, 1999).	Statewide complaint transferred under 28 U.S.C. § 1407 (Multidistrict Litigation) to U.S. Dist. Ct. S. Indiana, Case No: IP99-C-9313-H/G. Settlement Class, covering only active railroad right-of-ways, certified and given preliminary approval on January 2003.
45	Nicodemus v. Union Pac. Corp., No. 01CV-009 (D. Wyo. filed Jan. 19, 2001), *appeal docketed*, No. 02-8016 (10th Cir. February 27, 2002).	Nationwide class sought. Court held no federal subject matter jurisdiction and Union Pacific appealed to the U.S. Court of Appeals for the Tenth Circuit. Affirmed by tenth circuit in February 2003. Decision of petition for rehearing en banc is pending.
46	O'Connell v. AT&T Corp., No. 2:99-cv-00723-RTR (E.D. Wis. filed June 28, 1999).	Statewide complaint transferred under 28 U.S.C. § 1407 (Multidistrict Litigation) to U.S. Dist. Ct. S. Indiana, Case No: IP99-C-9313-H/G. Settlement Class, covering only active railroad right-of-ways, certified and given preliminary approval on January 2003.
47	Ostler v. Level 3 Communications, Inc., No. IP 00-0718-C-H/K, 2002 WL 31040337 (S.D. Ind. Aug. 27, 2002).	Statewide class certification sought. NOTICE OF REMOVAL from the Clinton County Circuit Court (Ind.) on May 1, 2001. Proposed class consists of Indiana landowners adjacent to a public highway right-of-way where Defendant has laid fiber optics. Order for Class Certification was denied on August 27, 2002.
48	Peeler v. MCI WorldCom, Inc., No. IP-01-0983-C-Y/G (S.D. Ind.), *appeal docketed*, No. 01-3019 (7th Cir. Aug. 2, 2001) (originally filed June 28, 2001; case No. 29D03-0106-MI-448 (Hamilton County, Ind. Super. Ct.))	Hamilton County, Indiana class sought (landowners adjacent to Monon Trail). Plaintiffs sought injunction claiming MCI WorldCom was illegally placing fiber optic cable on their land. TRO granted. Plaintiffs' Request for Permanent Injunctive Relief was denied July 31, 2002. Decision appealed to the U.S. Court of Appeals for the Seventh Circuit. Case stayed due to WorldCom's Chap. 11 bankruptcy (U.S. Bankr. S. NY, 02-13533, July 21, 2002).

Number	CASE	STATUS
49	Peschell v. AT&T Corp., No. 399CV 1203-DJS (D. Conn. filed June 25, 1999).	Statewide complaint transferred under 28 U.S.C. § 1407 (Multidistrict Litigation) to U.S. Dist. Ct. S. Indiana, Case No: IP99-C-9313-H/G. Settlement class, covering only abandoned railroad right-of-ways, certified and given final settlement approval on September 10, 2001. Settlement Class, covering active railroad rights-of-way, certified and given preliminary approval on January 2003.
50	Peterson v. AT&T Corp., No. 02-WM-0731 (CBS) (D. Colo. filed Apr. 15, 2002).	Proposed statewide class transferred under 28 U.S.C. § 1407 (Multidistrict Litigation) to U.S. Dist. Ct. S. Indiana, Case No: IP99-C-9313-H/G.
51	Poor v. Sprint Corp., No. 99-L-421 (Madison County, Ill. Cir. Ct. filed April 30, 1999).	Formerly consolidated with *Isaacs v. Sprint*. On February 25, 2002, District Ct. vacated the order of consolidation and remanded *Poor* to Circuit Ct. for the Third Judicial Dist., Madison County, Ill. Nationwide litigation class certified on February 20, 2003. Divided among three subclasses (condemnation, private conveyance, and land grant).
52	Preseault v. United States, 52 Fed. Cl. 667 (2002).	Individual action. The Government's total payments to Preseault will be approximately $1 million, including Preseault's attorneys' fees. Damages awarded after trial on May 22, 2001. Attorneys fees awarded on May 22, 2002. The United States Supreme Court announced the first landmark decision in *Preseault I*, 494 U.S. 1 (1990), ruling that the rails-to-trails legislation was constitutional, but the Preseaults could seek compensation under the Fifth Amendment if their property was taken. That decision paved the way for *Preseault II* in the Court of Federal Claims, which led to another landmark decision in the Court of Appeals for the Federal Circuit, establishing that the rails-to-trails conversion was a taking of land that the Preseaults otherwise had full legal rights to use after railroad abandonment.

Number	CASE	STATUS
53	Regan v. Qwest Communications Corp., No. CIV01-0766 WBS. (E.D. Cal. filed Apr. 20, 2001).	Statewide class sought. Related case order with *Regan v. Williams* on July 6, 2001. Class certification denied on May 14, 2003.
54	Regan v. Williams Communications, LLC, No. CIV S-01-0779 WBS JFM. (E.D. Cal. filed Aug. 27, 2001).	Statewide class sought. Related case order with *Regan v. Qwest* on July 6, 2001. Class certification denied on May 14, 2003.
55	Reynolds v. AT&T Corp., No. 2:00-CV-00058-GC (D. Me. filed Mar. 4, 2000).	Statewide class transferred under 28 U.S.C. § 1407 (Multidistrict Litigation) to U.S. Dist. Ct. S. Indiana, Case No: IP99-C-9313-H/G. Given final settlement approval on September 10, 2001, covering only abandoned railroad right-of-ways.
56	Rindlisbacher v. AT&T Corp., No. 1:02CV00119 (D. Utah filed Sept. 23, 2002).	Proposed statewide class pending transfer under 28 U.S.C. § 1407 (Multidistrict Litigation) to U.S. Dist. Ct. S. Indiana, Case No: IP99-C-9313-H/G.
57	Schillinger v. Union Pac. Corp., No. 02-L815 (Madison County, Ill. Cir. Ct. filed June 7, 2002).	Statewide class sought. Removed to federal court on August 12, 2002. Remanded to state court on Sept. 10, 2002. Class certification pending.
58	Schmitt v. United States, 203 F.R.D. 387 (S.D. Ind. 2001).	Tucker Act case seeking just compensation from the United States Government to the landowners for a taking of their land for a trail by operation of the National Trails System Act. Class Certified on March 22, 2001. Plaintiffs' motion for partial summary judgment (liability) granted on March 5, 2003.
59	Schneider v. United States, 197 F.R.D. 397 (D. Neb. 2000).	Tucker Act case seeking just compensation from the United States Government to the landowners for a taking of their land for a trail by operation of the National Trails System Act. Statewide Class Certified on July 21, 2000. Briefing on summary judgment ongoing.
60	Schweizer v. Level 3 Communications, LLC, No. 99CV1323-5 (Boulder County, Colo. Dist. Ct. filed Aug. 5, 1999).	Statewide class sought. Class certification denied on November 25, 2002. Appeal filed in Colorado Court of Appeals.
61	Setzer v. AT&T Corp., No. 00-CV-104 (E.D. Pa. filed Jan. 7, 2000).	Proposed statewide class transferred under 28 U.S.C. § 1407 (Multidistrict Litigation) to U.S. Dist. Ct. S. Indiana, Case No: IP99-C-9313-H/G.

Number	CASE	STATUS
62	Smith v. Sprint Communications Corp., 2003 WL 715748 (N.D. Ill. 2003). Intervention action.	Nationwide Settlement Agreement proposed to court by Samuel Heins and Defendants in October 2001. Motions to Intervene filed by Ackerson and others opposing settlement as unfair. Heins' Plaintiffs and Defendants discontinued pursuit in U.S. Dist. Ct., N. Dist. Illinois and filed Motion to Preliminarily Approve Settlement in *Zografos v. Qwest* (U.S. Dist. Ct. Oregon). Judge Aiken, of U.S. Dist. Ct. Oregon, dismissed the Amended Complaint on July 12, 2002, stating, "protecting the integrity of the judicial process mandates dismissal of the amended complaint". After Aiken's opinion, Plaintiffs and Defendants went back to this case and filed Stipulation to Amend Complaint and Motion for Preliminary Approval of Settlement on September 4, 2002. Modification of proposed agreement is pending.
63	Sozhino v. Burlington Northern Santa Fe Corp., No. 01C2940 (Kings County, Cal. Super. Ct. filed Nov. 16, 2001).	Statewide class sought. Case stayed pending outcome of proposed settlement agreement in *Smith (formerly Buchenau). v. Sprint and Union Pacific*.
64	Sparks Cedarlee Farms v. AT&T Corp., No. 1:02CV0267 (W.D. Mich. filed Apr. 19, 2002).	Proposed statewide class transferred under 28 U.S.C. § 1407 (Multidistrict Litigation) to U.S. Dist. Ct. S. Indiana, Case No: IP99-C-9313-H/G.
65	Sustainable Forests LLC v. Qwest Communications Int'l, Inc., No. 0-01-2935-19 (D. S.C. filed July 12, 2001).	Statewide class sought. Class certification fully briefed; hearing pending.
66	Swisher v. United States, 176 F. Supp. 2d 1100 (D. Kan. 2001), *amended by* 201 F. Supp. 2d 1131 (D. Kan. 2001).	Proposed nationwide class seeking just compensation from the United States Government for a taking of land for a trail by operation of the National Trails System Act. Certification denied on September 24, 1999. Case continued as individual action. Plaintiffs' motion for summary judgment granted on August 29, 2001, ruling that plaintiffs are entitled to compensation under the Fifth Amendment's "taking" provision. Judgment awarded to plaintiffs on April 9, 2003.
67	Taylor v. AT&T Corp., No. 5:00-CV-27 (N.D. W. Va. filed Feb 22, 2000).	Proposed statewide class transferred under 28 U.S.C. § 1407 (Multidistrict Litigation) to U.S. Dist. Ct. S. Indiana, Case No.: IP99-C-9313-H/G.
68	Thomson v. AT&T Corp., No. 99-1251-MLB (D. Kan. filed June 23, 1999).	Proposed statewide class transferred under 28 U.S.C. § 1407 (Multidistrict Litigation) to U.S. Dist. Ct. S. Indiana, Case No: IP99-C-9313-H/G.

Number	CASE	STATUS
69	Uhl v. Thoroughbred Tech. & Telecomm., Inc., 309 F.3d 978 (7th Cir. 2002).	Sixteen state class settlement with telecom subsidiary of Norfolk Southern Railroad for over 50,000 class members adjacent to over 2500 miles of Norfolk Southern right-of-way. First right of way class action settlement where qualified landowners will receive cash, plus rights to obtain fiber and conduits. The assets will be managed by a newly created telecommunications company, named Class Corridor, LLC. Final settlement approval on August 21, 2001. Appeal to Seventh Circuit filed by Intervenor/Objector and affirmed on October 29, 2002. Upon determination of which class members are on the cable side of railroad right-of-way, claims process to begin.
70	Wallace v. AT&T Corp., No. CIV03-166-T (D. Okla. filed Feb. 7, 2003).	Proposed statewide class pending transfer under 28 U.S.C. § 1407 (Multidistrict Litigation) to U.S. Dist. Ct. S. Indiana, Case No.: IP99-C-9313-H/G.
71	West v. MCI Communications Corp., No. 0009912-98 (D.C. Cir. filed Dec. 12 1998).	Nationwide Class Action sought. Class Certification briefed. Oral Argument on class certification held February 27, 2002 - Decision pending. Case presently STAYED due to WorldCom's Chapter 11 bankruptcy (U.S. Bankr. S. NY, 02-13533, July 21, 2002).
72	Zografos v. Qwest Communications Corp., 225 F. Supp. 2d 1217 (D. Or. 2002).	Status conference held on January 29, 2002; preliminary approval of settlement discussed. Papers filed January 31, 2002. Complaint amended to add all five settling Defendants. Intervenors (as described in *Smith v. Sprint*, above) filed Motion to Intervene and Motion to Dismiss Amended Complaint or Stay Proceedings. Court dismissed the Amended Complaint for judge shopping on July 12, 2002, stating, "protecting the integrity of the judicial process mandates dismissal of the amended complaint."
73	9-M Corp. v. AT&T Corp., No. 0:01CV01338 (D. Minn. filed July 24, 2001).	Proposed statewide class transferred under 28 U.S.C. § 1407 (Multidistrict Litigation) to U.S. Dist. Ct. S. Indiana, Case No.: IP99-C-9313-H/G.
74	9-M Corp.. v. Williams Communications, LLC, No. 0:02CV00579 (Dakota County, Minn. Dist. Ct. filed Mar. 14, 2002).	Multi-state class sought. Originally filed in Dakota County District Court (Minn.). Removed to federal court on March 14, 2002. All class discovery shall be commenced in time to be completed by November 1, 2002 and motion to certify class shall be filed and the hearing completed on or before February 1, 2003.