



# www.Eagle1Resources.com

---

- David L. Thomas
- Eagle 1 Resources, LLC
- 242 Bridgewater Blvd
- Auburn, AL. 36830

- Mobile 334.546.8166
- Office 334.209.0508

- E-mail [dthomas@eagle1resources.com](mailto:dthomas@eagle1resources.com)
- Web [www.eagle1resources.com](http://www.eagle1resources.com)



- *"There is nothing more satisfying than to work hard at work worth doing"*

# Railroad Crossing Fees



127

DAVID & GOLIATH

*Keith Newt*



# Railroad Crossing Fees

---

Because the Railroad Industry does not like me and they have filed numerous complaints against me, I will have to qualify my comments in order to be sure I am not misleading you in any manner.



# Railroad Crossing Fees

---

## I am not

- A Lawyer
- I am not providing legal advice
  - We have GREAT lawyers providing support



# Railroad Crossing Fees

---

# I am not

- An Engineer
  - I am not providing Engineering Design Services.
    - We have Engineering Companies in place to assist in this area.



# Railroad Crossing Fees

---

# I am not

- A Risk Management Consultant
  - I am not providing Risk Management Services.
    - Please check with your Risk Management Professional.



# Railroad Crossing Fees

---

I

- Am a Utility Consultant
- Can Read
- Can Research Railroad Records
- Can Locate State Laws / US Codes
- Can Question Railroad Fees
- Can Review RR Agreements



# Railroad Crossing Fees

---

# Safety

WILL NOT BE

**COMPROMISED**

Under Any Circumstances



A decorative graphic consisting of overlapping yellow, red, and blue squares with a black crosshair.

# Railroad Crossing Fees

---

- The railroads listed below have a fee structure for HDD underground installations as:
  - a. CSX = \$3950.00
  - b. NSRR = \$2000.00
  - c. G&W = \$5000.00  
(includes a right of entry fee of \$1500.00)



# Railroad Crossing Fees

---

- **Wisconsin Fee - \$500.00**

- Why does your railroad charge a fee greater than the \$500.00 Wisconsin fee?
- The railroad will say that their goal is safety. Our question is simple;
- How does giving you more money increase safety? If we are meeting and/or exceeding your minimum requirements, how are we decreasing safety?
- Do you farm out the engineering review to third parties? What percentage of the fee do they get to keep?



# Railroad Crossing Fees

---

The railroads will say this is to offset their costs. Our question is:

- What Costs? We are not reinventing the wheel. This is a very straight forward procedure. The railroads all have standards for HDD installations and AREMA also has a national standard that in some cases is more stringent than the rr's. If the utility / communication company is meeting or exceeding the rr's minimum standards, what is the justification for the excessive fees?
- Don't the RR's third party "land managers" earn a percentage of the fees they can collect? How is that a legitimate cost?



# Railroad Crossing Fees

---

CSX calls HDD a variance. Why? HDD has been a standard installation procedure since 1983. HDD is now the standard procedure in the utility and communication industry nationwide. HDD also has less potential impact on the railroad industry than a traditional jack and bore procedure, which is a standard installation with CSX. Traditional Jack and Bore procedures can leave voids under the rr tracks and HDD would not. CSX has an HDD installation procedure in place.

What is your justification for the higher charge?

Is this called a variance in order to charge a higher application review fee?



# Railroad Crossings Fees

---

- If this railroad says that HDD is unsafe and they must make a more detailed review, ask them to name 1 location where a properly installed HDD crossing has created a reportable incident?
- We have reviewed the FRA Accident Reports for the last 15 years and no HDD installations have been reported as the cause of a train accident.



# Railroad Crossings Fees

---

- The railroad will say there are no accidents because of how closely they monitor the installations;
- Our Questions:
- During HDD installations when utility / communications company has had a rr inspector on the job site during an HDD installation, by a show of hands, did you ever have one that never got out of the truck during the HDD installation? Has this happened most every time during an HDD installation?
- What are you going to inspect during an HDD installation? They are below ground.
- Historically, UPRR and BNSF do not send flagmen or inspectors during an HDD installation. Why do you require this?



# Railroad Crossings Fees

---

Somewhere in this conversation, the railroad will state that they have an established procedure for utility / communication company installations, and they see no reason to change their procedure.

Are the utilities installed the same way they were installed 40 years ago? This is not a rational basis for continuing an unnecessary or improper procedure. Otherwise, women would not be able to vote, and we would still be burning witches.

**“We’ve always done it that way” is the lazy man’s excuse.**



# Railroad Crossings Fees

---

- NSRR provided a letter in 2012 stating that they do not charge a license fee for public crossings.
- CSX has stated in their agreements that that do not charge a license fee for public crossings.
- BNSF has an internal communication stating they cannot force a utility to sign an agreement or any other type of agreement at a public crossing.





# Railroad Crossings Questions

---

- How do you define / determine a public crossing?
- Does this include bridge crossings of highway railroad corridor intersections? (Both RR over and RR under crossings)
- Does the approaching road right of way decrease when it crosses the railroad corridor at a public Highway Railroad crossing intersection? (Pig Trail Lawsuit)
- If they say yes, ask them to explain and give their legal statute that supports their determination.



# Public Crossing Definition

---

- The term “Public Crossing” shall mean any crossing by Utility and/or Communications Company within the boundaries of public streets, highways, and/or roads, as designated by the State, County or City where Utility and/or Communications Company has the right to place its facilities.
- The width of the public right of way at the highway railroad crossing will be determined by extending the existing boundaries of the public road right of way from the points where each boundary intersects with the existing boundary of the railroad right of way across the railroad corridor to the same intersecting point on the opposite side of the highway railroad crossing.



# Public Crossing Definition

---

- A public crossing will include all highway railroad crossings listed on the USDOT Crossing Inventory Report as RR over, RR under, and/or RR at grade crossings. This will also include private crossings with public access as listed on the USDOT Crossing Inventory Report.



# Railroad Agreements

---

The railroad states they own the underlying land at public Highway / Railroad Crossing intersections and they have a right to charge a crossing fee.

**However:**



# Railroad Agreements

---

14. It is expressly understood Railroad does not warrant title to the premises and Licensee accepts the grant of privileges contained herein subject to all lawful outstanding existing liens and superior rights. Licensee agrees it shall not have to make any claim against Railroad for damages on account of any deficiency in title and agrees that in the event of failure or insufficiency of such title the sole remedy of Licensee shall be the right to return of the consideration paid in advance, provided for herein, or a proportionate part thereof in the event of a partial deficiency or insufficiency of title. Licensee further agrees to indemnify and save harmless the Railroad and to assure all risk, responsibility and liability (including any expenses, attorneys' fees and costs incurred or sustained by Railroad) arising from, growing out of, or in any manner or degree directly or indirectly attributable to or resulting from any deficiency or insufficiency of its title affecting the right of the Railroad to make this grant.



# Railroad Agreements

---

- What if the true owner of the property showed up and told you to remove your installation?
- You tell them you have an agreement with the RR. But the RR says, we never said we had the right to grant you permission to cross, and we never promised your installation wouldn't be disturbed by the true owner.
- So...why pay money to the RR for nothing?



# Railroad Agreements

---

When we actually look at underlying recorded instruments, the RR may not actually hold anything other than a right to use the corridor for a RR.

Anything that doesn't interfere with the RR's easement is not up to them to prohibit or regulate or charge for.

You should consult your local counsel for interpretations of recorded instruments and land use rights of holders of easements.



# Railroad Agreements

---

In 1913, under Valuation Order #7, all of the railroads in the United States were required to identify their railroad land holdings as “Dedicated to Public Use” or private use. If it was “Dedicated to Public Use”, it was allowed to be added to the railroads rate base for their fee structure. The railroad was given the option to maintain their private status of their land. It appears all of the railroad corridors in the United States were declared “Public Use” land.





# Railroad Agreements

---

In 1976, the US Department of Transportation required the railroads to identify each Highway Railroad crossing in the US as Public or Private.

If it was Public, the USDOT would install safety equipment at no charge to the railroad. The USDOT Crossing Inventory reflects this designation.



# Railroad Agreements

---

Railroads are classified as public utilities and receive sufficient federal funds on an annual basis for railroad facility upgrades.

If they are private companies with private landowner rights, why are federal tax dollars being provided for their facility upgrades?



# Railroad Agreements

---

So if the railroad does not warrant title and has identified the land as public under past US government regulations, why would the utilities and communications industry have to pay the railroad an excessive (over \$500.00, which we believe is a fair review fee) and/or recurring annual fee for an installation across the railroad corridor at a public crossing?



# Railroad Agreements

---

- BNSF had a 2-page agreement it was using (until January 2015) as the standard agreement for all public utility / communications crossings nationwide.
- Railroad wants a 16-page “Give up your First Born Child” type of one sided agreement in favor of the railroad.



# Railroad Agreements

---

## **We have a question:**

- When installing a utility / communication facility at an identified public Highway / Railroad Crossing intersection, *what law* requires the execution of an agreement with the railroad being crossed?
- The utilities / communication industry does not mind entering an agreement with the railroad at any public crossing. However, what is unacceptable about the 2-page agreement previously being used by BNSF?



# Railroad Agreements

---

- The railroad agreements are expressly stated they are confidential and cannot be recorded or reviewed outside of the companies involved.
- Why? Is there some agreement among the railroads about these agreements? Can the RR's share this information?
- If this is an anti-trust issue, please provide the anti-trust statute being used for this justification.
- If the railroad has an anti-trust issue, why are they sharing any information with any other railroad?
- Can a public utility even agree that an agreement it signs can be withheld from the public record?



# Railroad Agreements

---

- Why do the agreements, which appear to be standard generic agreements with fill in the blank sections, take greater than 30 days to be provided?
- A Master Agreement or a standard 2-page agreement could be submitted with the railroad crossing plans if this could be developed as the acceptable agreement for public highway railroad corridor crossings.

# Railroad Protective Insurance

## Is This Required ?

- *No, not unless you sign a RR Agreement.*
- *Our Question:*
- *By what authority does the railroad require the utility / communications industry to indemnify the railroad, or purchase RPL insurance, in order to cross a railroad corridor within a public road ROW and/or on land dedicated to public use? Once you provide me with a copy of this authority, the utility / communications industry attorneys would be happy to review your information.*





# Flagmen

---

- We fully understand the use of flagmen for aerial installations. Most aerial installations can be completed in less than 15 minutes.
- Why do we need a flagman on an underground installation?
- How does a flagman sitting in a truck improve safety?
- You do not flag pedestrians crossing at public highway railroad crossings / Why do you need one for an HDD underground installation?



# Flagmen

---

- Is there a law requiring certified flagmen be used at public highway railroad crossings for utility / communications installations? Why can't utilities use their own trained flagmen?
- Why can't the utility / communications construction coordinator be placed in contact with the train master / rail master for the proposed aerial highway railroad crossing installation and they coordinate the work when a train is not scheduled to be crossing that location? If you don't know when a train is coming, how does having a flagman on the jobsite help improve safety?



# Line location requests:

---

- Why do you charge \$250.00 to locate the signal equipment in the public right of way? Under the agreement with the USDOT, the railroad industry was required to maintain the highway railroad safety equipment that was installed.
- Public utilities and communication companies nationwide locate their facilities at no charge and they participate in statewide one call systems. Why do you – railroad, as a public utility, not participate in the one call system?



# Railroad Summary

---

The utility and communication companies nationwide are willing to enter an appropriate highway railroad crossings agreement and would like to work cooperatively with you toward that end.



# Railroad Summary

---

However, the utilities and communications industry is tired of subsidizing the railroad industry with excessive railroad crossing fees. The utility customers don't know that when they pay their utility bills, they may be subsidizing the railroad industry.

# Railroad Investigation Project Group



## ■ Our goals:

- to organize the utility industry in addressing the railroad industry (Railroad's Goal – Divide & Conquer)
- to combat existing / future abuse by the railroads.
- to eliminate / minimize all railroad crossing fees
- seek reimbursement for lease agreements / lifetime agreements over the past 4 to 6 years.
- address future installations to provide guidance for the utility industry and be a watchdog over the railroads.
- to be a clearinghouse of information addressing railroad issues
- to teach the railroad industry a new word:

# Railroad **I**nvestigation **P**roject Group



**NO**



# Fighting Railroad Crossing Fees

---

- **Number of Utilities in America**
  - **156,654**
- **Number of Railroads in America**
  - **650**





# Fighting Railroad Crossing Fees

---

**156,654 Utilities**

**650 Railroads**

**=**

**241 / 1**

# Fighting Railroad Crossing Fees

## **King Kong**





# Fighting Railroad Crossing Fees

---

**To my RR Buddies:**

**NSRR, CSX, UPRR, BNSF, Omega Rail, CNRR**

**If you can answer ANY of these railroad questions, please let me know.**

**I'm Waiting !!!**



# Fighting Railroad Crossing Fees

---

# Questions



# www.Eagle1Resources.com

---

- David L. Thomas
- Eagle 1 Resources, LLC
- 242 Bridgewater Blvd
- Auburn, AL. 36830

- Mobile 334.546.8166
- Office 334.209.0508

- E-mail [dthomas@eagle1resources.com](mailto:dthomas@eagle1resources.com)
- Web [www.eagle1resources.com](http://www.eagle1resources.com)



- *"There is nothing more satisfying than to work hard at work worth doing"*