

The Firm Line

Welcome to *The Firm Line*, a newsletter designed to inform our clients and friends about developments at the firm, legal issues that may impact your lives and businesses, and other items of interest. Our intention is to keep the information we provide to you in this newsletter concise. We welcome any further discussion on the topics addressed herein and hope that *The Firm Line* will provide you with interesting and noteworthy information about the law and our firm.

The United States Supreme Court Issues an Important Decision Protecting Private Landowners' Rights

On March 10, 2014, the United States Supreme Court issued its 8-1 opinion in [*Brandt Revocable Trust v. United States, No. 12-1173, 572 U.S. _____ \(2014\)*](#). In *Brandt*, the Court considered the question of whether the United States retained an interest in rights-of-way granted to railway companies after the underlying lands were given to private landowners. It found those rights-of-way to be easements that were terminated upon abandonment by the railroad, therefore leaving the landowner's property unburdened.

In the late nineteenth century, Congress began granting rights-of-way over public lands to private railway companies to encourage the settlement and development of the Western United States, eventually passing the General Railroad Right-of-Way Act of 1875 (the "1875 Act"). Later, many of those same lands were conveyed to settlers and homesteaders, with the railway retaining its right-of-way over that land. The dispute in the *Brandt* case arose over such a right-of-way on a piece of property called the Fox Park parcel in the National Forest in Wyoming.

In 1908, the United States granted the right-of-way in question to a private company to build a railway from Laramie, Wyoming to Colorado. In 1976, the United States granted the land surrounding the right-of-way to Melvin and Lula Brandt via a patent, which stated that the land was granted subject to the railroad's rights but did not set out what would occur if the railroad subsequently relinquished its rights. In 1986, a new railway company acquired and operated the right-of-way until it officially abandoned the land in 2004. Subsequently, the United States sued the Brandts, taking the position that abandoned rights-of-way revert back to the government. The Brandts filed a countersuit seeking full ownership of the land, including the right-of-way. Their argument was that the government only held an *easement*, which ceased upon abandonment of the right-of-way by the railway company. The district court found in favor of the United States and the US. Court of Appeals for the Tenth Circuit affirmed.

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Suggestions

Please provide us with ideas and suggestions for topics that you would like to read about in the future, as well as any thoughts you may have that will help us deliver better, more insightful information to you.

Contact Us

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In an opinion authored by Chief Justice Roberts, the Supreme Court reversed and found that the 1875 Act granted only an easement to the railway and did not grant any other type of property interest. Citing legislative history, past administrative decisions, and the Court's 1942 decision in *Great Northern Railway Company v. United States*, 315 U.S. 262 (1942), the Court found in favor of the Brandts, noting that easements are "unilaterally terminated by abandonment, leaving the servient owner with a possessory estate unencumbered by a servitude." *Brandt* at 11. The Court held that "...basic common law principles resolve this case. When the Wyoming and Colorado Railroad abandoned the right-of-way in 2004, the easement referred to in the Brandt patent terminated. Brandt's land became unburdened by the easement, conferring on him the same full rights over the right-of-way as he enjoyed over the rest of the Fox Park parcel." *Id.* at 12.

While the effects of this ruling remain to be seen, the Supreme Court's decision undoubtedly has important implications for landowners whose property has been burdened by a right-of-way and any developments made pursuant to that right-of-way. Once the right-of-way is abandoned, it is now clear that the property of these landowners becomes unencumbered, such that the federal government has no interest in, nor claim to the property.

***New Orleans CityBusiness*: "Opinion: Jindal undermines energy in levee board attack"**

New Orleans CityBusiness published an editorial in which the author makes a compelling argument for the constitutional necessity of allowing the courts to decide the liability of oil and gas companies in the landmark litigation filed by Jones Swanson on behalf of the Southeast Louisiana Flood Protection Authority - East (SLFPA-E), a lawsuit which seeks restoration of the critical environmental buffer zone that protects southeastern Louisiana against catastrophic flooding. Indeed, concluding the article, the author writes, "The judicial branch - not the executive or legislative - is best suited and constitutionally ordered to address the dispute between the flood authority and the energy sector. Any interference from the governor or lawmakers is not only undermining the energy industry's stance, it is legally questionable." Read the full article [here](#).

Lynn Swanson Honored With 2014 "Leadership in Law" Award

New Orleans CityBusiness recently honored [Lynn Swanson](#) with one of fifty Leadership in Law awards at a cocktail reception held at the New Orleans Museum of Art on March 24. Selection for the award is based upon the nominee's accomplishments both professionally and within the community and considers attorneys working in the greater New Orleans area.



Now the Managing Member of Jones, Swanson, Huddell & Garrison, Lynn Swanson joined the firm in 2004, at which time she helped to establish the Commercial Litigation practice. Since then, her legal work has included leading the firm's response to the 2010 Deepwater Horizon Disaster in the Gulf of Mexico, helping to pursue claims for clients who have not been made whole by BP as a result of that disaster, and contributing her professional experience to the landmark litigation filed by Jones Swanson on behalf of the SLFPA-E.

In addition to her professional accomplishments, Lynn contributes significantly to the community. When she's not representing children in need of care through the Pro Bono Project or providing legal services to the homeless through the HELP program, she manages the firm's donations to charitable organizations such as St. Andrew's Village, Second Harvest, the Leukemia & Lymphoma Society, and Volunteers of America, the organization through which she and her husband adopted their two children.

Congratulations to Lynn, and may everyone continue to benefit from her leadership in law in 2014!

Bessie Daschbach Profiled by the University of Edinburgh

The University of Edinburgh featured [Bessie Daschbach](#) in an [Alumni Profile](#) detailing her time spent studying Victorian Women's Writing in 1996 as a visiting student and her experiences since returning to the United States.



In particular, the author looks at Bessie's trajectory from "studying the writing of Victorian women to taking on major corporations as a lawyer." Besides mentioning the SLFPA-E case, Bessie concludes the interview with a quote from Winston Churchill: "never, never, never give up."

Jones, Swanson, Huddell & Garrison Featured in *Tulane Environmental Law News*

Published by the Tulane Environmental Law Society, the *Tulane Environmental Law News* mentioned Jones, Swanson, Huddell & Garrison in a segment titled, "[TLS Alums in Mega Litigation: Two Cases that Shake Their Worlds.](#)" with reference to the lawsuit filed by Jones Swanson on behalf of the SLFPA-E.

Tulane Law School alumni currently working on the case include [J. Michael Veron](#) of Veron, Bice, Palermo & Wilson (TLS, 1974), as well as Jones Swanson members [Gladstone Jones](#) (TLS, 1992), [Tad Bartlett](#) (TLS, 2000), [Bessie Daschbach](#) (TLS, 2001), [Kevin Huddell](#) (TLS, 2000), and [Rose Murray](#) (TLS, 2012).

Jones, Swanson, Huddell & Garrison Sponsors Mid-City Tree Planting

On March 29, approximately sixty volunteers participated in a tree planting project funded by, among others, the American Bar Association and Jones, Swanson, Huddell & Garrison. Volunteers included Jones Swanson attorneys, area high school and college students, and members of Tulane's and Loyola's Environmental Law Societies. Over forty trees were planted along the Broad Street corridor from Iberville to Bayou Road in Mid-City as part of the ABA's "One Million Trees" program. Because the number of interested volunteers was overwhelming, another tree planting event is being considered.

ABOUT THE FIRM

Jones, Swanson, Huddell & Garrison, LLC, is a boutique litigation law firm based in New Orleans, with a second office in Baton Rouge, Louisiana, which primarily handles complex commercial and environmental/property disputes. In the commercial and environmental litigation arenas, the firm has and continues to represent many of Louisiana's and the Southeast's largest and most active business entrepreneurs and landholders, while also retaining a sharp focus on the representation of smaller businesses and individuals. Jones Swanson has served as lead counsel in New York, Connecticut, Massachusetts, California, and Texas, as well as in Mississippi, Alabama, Florida, and Louisiana.



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