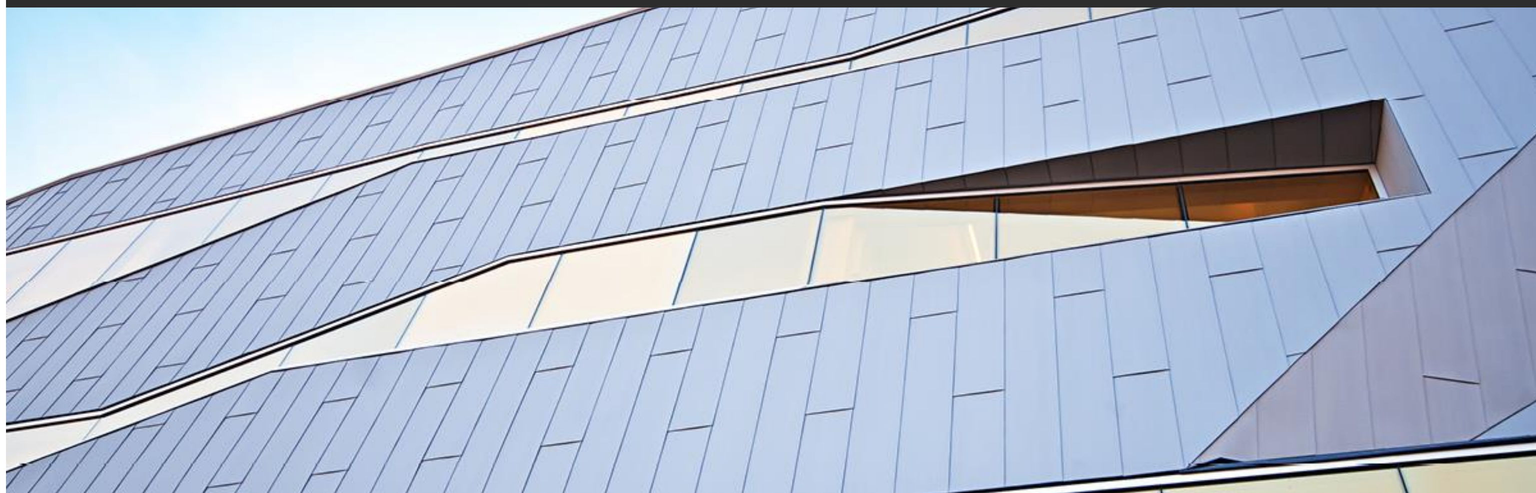
GT GreenbergTraurig

Alert | Real Estate Litigation



July 2019

Knick v. Township of Scott, Pennsylvania: Federal Courthouse Doors Now Open to Taking Claimants

On June 21, 2019, the U.S. Supreme Court, in a 5-4 majority opinion written by Chief Justice John Roberts "restor[ed] takings claims to the full-fledged constitutional status the Framers envisioned when they included the Clause among the other protections in the Bill of Rights." *Knick v. Township of Scott*, 139 S. Ct. 2162 (2019). The Fifth Amendment's "nor shall private property be taken without just compensation" is the clause Chief Justice Roberts references and is the bedrock protection afforded private property in the Bill of Rights, ensuring that full, fair, and just compensation is paid when a taking occurs. If rights guaranteed landowners in the Bill of Rights had so eroded that restorative action, and not merely interpretative, was necessary, there ought to be little dispute at the highest court. To the four justices who dissented, however, the *Knick* decision "smashes a hundred-plus years of legal rulings to smithereens." *Knick*, 139 S. Ct. at 2183 (Kagan, J., dissenting). What could possibly have caused such a hot dispute in the fairly tepid world of eminent domain?

The case concerned Rose Mary Knick, who lives on a 90-acre farm in Scott, Pennsylvania, a portion of which is used for a private cemetery. The Township of Scott passed an ordinance requiring "all cemeteries … be kept open and accessible to the general public during daylight hours," including those like Knick's, mandating that Knick allow daytime public access to the graveyard on her private property. It was private

© 2019 Greenberg Traurig, LLP

no more. Knick sued in federal court for a deprivation of her civil property rights under 42 U.S.C. § 1983,[1] arguing that the ordinance was a taking that violated the Fifth Amendment's Takings Clause.[2]

But Knick ran headlong into the *Williamson County* "ripeness" problem, which blocks taking-claimant access to the federal courts. "A property owner whose property has been taken by a local government has not suffered a violation of his Fifth Amendment rights – and thus cannot bring a federal takings claim in federal court – until a state court has denied his claim for just compensation under state law." *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U. S. 172 (1985). Owners who claim their property was taken by governmental action are prevented from proceeding in federal court unless they first seek and exhaust their just compensation remedies under state law in state court. Try to get paid in state court; until that fails, a federal takings claim under § 1983 is not "ripe," and the doors to the federal courthouse are locked shut. That is what happened to Knick; the U.S. District Court dismissed Knick's lawsuit, a decision later affirmed by the Third Circuit.

A not-so-funny thing happened to the unripe taking claimant on the way to federal court during the 34 years since *Williamson County* that Chief Justice Roberts called a Catch 22. The landowner "cannot go to federal court without going to state court first; but if he goes to state court and loses, his [takings] claim will be barred in federal court." *Knick*, 139 S. Ct. at 2167. The adverse state decision that gives rise to a ripe federal takings claim simultaneously bars that claim under the full, faith and credit statute, 28 U.S.C. § 1738, preventing the federal court from ever considering it.[3] Id. at 2169. Calling the *Williamson County* court "confused," and relying on "poor" and "exceptionally ill founded" reasoning, the Supreme Court held that "the state-litigation requirement imposes an unjustifiable burden on taking plaintiffs, conflicts with the rest of [U.S. Supreme Court] takings jurisprudence and must be overruled." *Id.* at 2167.

The power to take by eminent domain is an inherent attribute of sovereignty. The Fifth Amendment limits that power by making it a constitutional violation if a taking is made without the payment of just compensation. Because the act of taking is the event which gives rise to the claim for compensation, if the government fails to pay just compensation at the time of the taking, the constitutional violation has occurred at that time.[4] That a state may provide a procedure to secure just compensation does not mean that the government has not violated the Fifth Amendment, no more than if a bank robber gives "the loot back…he still robbed the bank." *Id.* at 2172. Like all other citizens who have been denied a protected civil right, therefore, a property owner may sue in federal court under § 1983 for the deprivation of the constitutional right to just compensation as soon as the government takes property without paying for it in full. *Id.* at 2170. A cause of action arises under § 1983 at the time of the constitutional violation.

That is where the court split. It is not the taking which violates the Fifth Amendment, wrote the dissent, but rather the failure to pay just compensation. For over a hundred years, "advance or contemporaneous payment was not required, so long as the government had established reliable procedures for an owner to later obtain compensation." If there is a state procedure to remedy an inadequate initial payment, there is no violation of the Fifth Amendment for which landowners may seek redress in the federal courts until that remedy fails.

[1] Section 1983 provides: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State … subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law . . . ."
[2] Knick first sought an injunction in state court, which was denied when the Township agreed to stay enforcement of the ordinance.
[3] *San Remo Hotel L.P. v. City and County of San Francisco*, 545 U.S. 323 (2005) (a state court's resolution of a just compensation claim under state law has preclusive effect).
[4] Citing *U.S. v. Dow*, 357 U.S. 17, 22 (1958).

© 2019 Greenberg Traurig, LLP

The dissent was also concerned that the *Knick* decision will trigger an avalanche of regulatory takings cases being filed in the federal courts which are better left in state court. Because under modern takings law there is no magic formula to determine whether a lawful regulation is a taking in the constitutional sense, "responsible [government officials] will almost inescapably become constitutional malefactors," potentially spawning a massive number of federal cases that should be decided in state court. *Id.* at 2187 (Kagan, J., dissenting). Moreover, land use regulators may more often choose not to act at all for fear of being dragged into protracted federal litigation if any land use regulation might be challenged as an unconstitutional taking. *Id.* at 2187 (Kagan, J., dissenting). Chief Justice Roberts dismissed that rationale: "Governments need not fear that our holding will lead federal courts to invalidate their regulations as unconstitutional. As long as just compensation remedies are available – as they have been for nearly 150 years – injunctive relief will be foreclosed." *Knick*, 139 S. Ct. at 2179.

After *Knick*, there certainly will be more takings cases filed in federal court, but the rush predicted by the dissent is unlikely. In its essence, *Knick* is a procedural decision. *Knick* changes the judges who will be called upon to decide takings claims, and the courts where those cases will be heard, but not the law on which those decisions will be based. The significance of the *Knick* decision, however, should not be downplayed. It is undoubtedly a victory for property owners. By eliminating the state-litigation prerequisite obstacle, property owners wronged by a government taking without just compensation can bring their cases to federal court under § 1983. Judicial redress to an underserved class of landowners may become more accessible if lawyers are more willing to take on those cases with the possibility of recovering their attorney fees under § 1988.

Maybe most significant is that the U.S. Supreme Court decided that its *Williamson County* decision relegated property rights to a lesser status among those individual rights guaranteed by the Bill of Rights, and it was time to declare the prominence of those property rights. After *Knick*, a property owner's right to just compensation stands on equal footing with all civil rights, and the Constitution protection extends to them all, not only certain kinds. The court's longstanding position that a property owner has a constitutional claim to compensation at the time of the taking may not have needed restoration, but the right to access the federal courts to protect that right certainly did.

Author

This GT Alert was prepared by **James D. Masterman**. Questions about this information can be directed to:

- James D. Masterman | +1 617.310.6284 | mastermanj@gtlaw.com
- Or your Greenberg Traurig attorney

Albany. Amsterdam. Atlanta. Austin. Boca Raton. Boston. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany.¬ Houston. Las Vegas. London.* Los Angeles. Mexico City.+ Miami. Milan.» Minneapolis. Nashville. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Sacramento. San Francisco. Seoul.∞ Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv.^ Tokyo.¤ Warsaw.~ Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ¬Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. *Operates as a separate UK registered legal entity. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg*

Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ¤Greenberg Traurig Tokyo Law Offices are operated by GT Tokyo Horitsu Jimusho, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2019 Greenberg Traurig, LLP. All rights reserved.