

Just Compensation Clause of the Fifth Amendment is Alive and Well in Guam

The Territory of Guam has only a non-voting Delegate in the U.S. House of Representatives and no Electoral College votes for the U.S. President, but the Just Compensation clause in the Fifth Amendment of the U.S. Constitution does apply to property rights and the territory.

As the Guam Supreme Court held in [Gutierrez v. Guam Power Authority](#), the Just Compensation clause of the Fifth Amendment “has been extended to Guam by way of the Organic Act of Guam.” Codified in the United States Code at 48 U.S.C. 1421b(f), the Guam Bill of Rights states: “Private property shall not be taken for public use without just compensation.”

Takings or inverse condemnation cases against the federal government have in the past been transferred by the Guam district court to the U.S. Court of Federal Claims. For instance, in [Jan’s Helicopter Service v. Federal Aviation Administration](#) (April 14, 2008), the federal district court of Guam transferred the case to the CFC under 28 U.S.C. 1631, because the CFC had exclusive jurisdiction of the plaintiffs’ takings claims.

Gutierrez involved a landowner who claimed a taking of his land based on the unauthorized placement of power poles placed on his land by the Guam Power Authority. The poles had originally been placed on Gutierrez’s land under a license with the prior landowner. But the Guam Supreme Court held that Gutierrez was not bound by that license because, as noted in an [article](#) by Pacific News Center on January 18, 2013, “the license was not reserved in the deed to Gutierrez and because Gutierrez took title to the property without knowledge of the license”

The Guam Supreme Court held that the power poles amounted to a compensable taking, noting in its decision, among other things, that:

The poles were heavy cement structures embedded into the ground and remained on the property for several years; nothing suggests that the poles were a momentary excursion shortly to be withdrawn. Moreover, during the time the poles remained on the property, one would expect government workers to enter to maintain and monitor the power poles and transmission lines.

Although use of the property was temporary because the poles were eventually removed, the court held that “this affects only the determination of compensation, not the issue of whether a taking has occurred.”

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