

# ML Marzulla Law Legal Report

When it's Inverse Condemnation, We Help Property Owners Get Paid



Marzulla Law, LLC is the nation's leading law firm for takings claims against the federal government. ML represents landowners, developers, water districts, Indian tribes, business, and corporate interests in litigation of property rights and contract claims. ML also represents clients in environmental enforcement actions, and litigation involving natural resources and permitting issues, in federal district courts and courts of appeal.



We hope that this Newsletter will serve as a resource for you.

Sincerely,

**Nancie and Roger Marzulla**  
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## Ninth Circuit Affirms Validity of Fifth Amendment Claim In Guam Takings Case



### Testimonial

"Marzulla Law has provided exceptional expertise and service and dedication second to no firm I have worked with, and the personal attention from Nancie and Roger

Until 2002, Jan's Helicopters operated a helicopter transport business out of the island of Guam, a territory of the United States in the northern Pacific Ocean. On July 31, 2002, the Federal Aviation Administration (FAA) sent an e-mail to the authorities at Guam International Airport (GIA) stating that Jan's Helicopters did not have Department of Transportation (DOT) authorization to operate from Guam. As a consequence of the FAA e-mail, GIA grounded Jan's Helicopters' aircraft. Jan's Helicopters eventually filed suit against the FAA arguing due process and Fifth Amendment violations. The suit was dismissed in U.S. district court, appealed to the Ninth U.S. Circuit Court of Appeals, and finally transferred to the U.S. Court of Federal Claims.

### Background

In 2000, Jan's Helicopters purchased a de Havilland Caribou DHC-4A transport plane to be used to transport helicopters to commercial fishery operations throughout Micronesia. Although the plane was registered in the Philippines, Jan's Helicopters received authorization from the U.S. Department of Transportation to fly the Caribou into and out of Guam. However, in July 2002 the FAA sent an e-mail to authorities at Guam International Airport directing them to ground Jan's Helicopters flight operations. The e-mail falsely stated that Jan's lacked authority to fly the Caribou:

What can you tell me about a Philippines registered Caribou (DHC-5) that is supposed to be based on Guam and flying around the islands? Supposedly it used to be a U.S. registered aircraft and is hauling some small helicopters that are used on fishing boats. Whoever it is they aren't authorized to operate there.

The FAA never gave a justification for its conclusion stated in the e-mail. Furthermore, and contrary to FAA regulations, Jan's Helicopters was never informed by the FAA of the grounding order, and only learned of it when Guam International Airport ordered the Caribou's flights halted when the plane was actually taxiing on the runway preparing for takeoff.

### *Jan's Helicopters v. United States*

Jan's Helicopters eventually took the matter to federal district court in Guam, alleging that the FAA had violated their due process rights by issuing orders contrary to FAA regulations when they halted the operations of the Caribou without prior notice and an opportunity to respond. The complaint further alleged a violation of the Fifth Amendment for the unlawful and illegal taking of their transport business without just compensation.

The FAA moved to dismiss the lawsuit, arguing that because the complaint alleged that the e-mail order was final, the district court

is a welcome and rare occurrence in today's law firm environment."

**David P. Ledger**  
**Primary Counsel**  
**Jan's Helicopters**

**Expert**  
**Spotlight**  
**David P. Ledger**



David Ledger is primary counsel for Jan's Helicopters, and brought in Marzulla Law as co-counsel for the Jan's Helicopters v. United States case due to our expertise in government takings.

Mr. Ledger is admitted to regular practice in Guam, Hawaii, and the Northern Mariana Islands, and has been specially admitted in the Federated States of Micronesia on a case-by-case basis.

In 2006 Mr. Ledger was lead trial counsel in one of the largest cases ever tried in the Federated States of Micronesia tasked with defending a Japan shipping company and its London-based

was required under 49 U.S.C. 46110 to dismiss the complaint (section 46110 vests jurisdiction to hear challenges to final FAA orders in a U.S. Circuit Court).

Yet, while the FAA on the one hand had argued in its written briefs that the e-mail order was not final, during oral arguments counsel for FAA told the judge that if Jan's Helicopters had not complied with the e-mail then Jan's would "act at their peril" and would be subject to sanctions. As such, the district court reasoned that because the FAA e-mail subjects Jan's Helicopters to the enforcement powers of the FAA, the e-mail was in fact a final order and dismissed Jan's Helicopters' lawsuit, holding that jurisdiction was vested exclusively in the Ninth Circuit.

When the case reached the Ninth Circuit, the due process claim was dismissed, with the Court holding that "Jan's Helicopter's had not filed its petitions for review of the FAA's actions within the 60-day statutory period for the due process claim. The Ninth Circuit therefore dismissed Han's Helicopter complaint as untimely."

But the Ninth Circuit reversed the district court's dismissal of the Fifth Amendment damages claim.

The U.S. government responded with a motion to dismiss.

On May 28, 2009, the U.S. Court of Federal Claims denied the government's motion to dismiss, affirming Jan's Helicopters Fifth Amendment claim, and permitting the case to go forward with discovery.

"Now, finally, [our client] may obtain the relief that they are entitled to," said Nancie G. Marzulla, counsel for Jan's Helicopters. "The district court judge in Guam noted that the FAA's change of position after the grounding order placed Jan's Helicopters ... in a sort of procedural limbo or netherworld."

#### *Lessons learned from Jan's Helicopters:*

1. Make sure your claim for money damages is filed in the proper court. Joining a claim seeking damages for the unconstitutional taking(s) of property with a claim challenging the validity of the Government's actions in federal district court is a common procedural error in takings cases.

Under the Tucker Act, however, the U.S. Court of Federal Claims has exclusive jurisdiction to hear claims for money damages against the United States based on the Constitution (and not sounding in tort), if the damages sought are greater than \$10,000.

In this case, Jan's takings claim was transferred to the U.S.

underwriters from environmental pollution claims ranging from \$10M to \$43M.

Although the trial ended in a verdict for the plaintiffs, the success of the trial is measured by the amount of verdict, which was very modest when compared to the amounts demanded.

Mr. Ledger graduated from the University of Nebraska-Lincoln where he earned a Bachelor of Science degree from the College of Engineering.

Utilizing this degree for nearly ten years prior to entering Creighton University School of Law in 1985, Mr. Ledger held a general contractors license from the State of Virginia where his corporation performed contracts on military bases and State-owned power plants.

In 1985 Mr. Ledger sold his shares in the corporation and entered Creighton Law School graduating cum laude in 1988.

Mr. Ledger serves clients in a number of areas, including commercial aviation, commercial fishing, shipping and ocean transportation, trucking and transportation services, marine services, and more.

Mr. Ledger is a member

Court of Federal Claims for resolution, but only after Jan's had litigated in district court, and appealed to the Ninth U.S. Circuit Court of Appeals. Jan's then had to start over from the beginning in the Court of Federal Claims, having filed its takings claim in the wrong court at the outset.

2. Confirm that the government official whose actions you allege resulted in the taking of your property had authority to act. In Jan's, much of the litigation has focused on whether the FAA official who issued the grounding order had actual authority to ground the airplanes.

3. Don't focus just on the dirt. Property is far more than land, as Jan's illustrates. At issue in Jan's is the taking of a valuable helicopter transport business based in Guam. Business interests, contract rights, and intellectual property are all examples of the kinds of property protected against unconstitutional takings.

of the Maritime Law Association of the United States, Guam Chamber of Commerce, Maritime Affairs Committee, and the Guam Contractors Association.



## Staff Spotlight: Meet Ben La Manna

Ben La Manna is our newest intern here at Marzulla Law. He is currently pursuing his bachelor's degree in Business Management and Finance at St. Joseph's University in Philadelphia. In a very short period of time Ben has already grasped the level of commitment, dedication and precision a career in law requires.

"My first month with Marzulla Law has been nothing short of amazing," says Ben. "I have been able to engage in vigorous tasks that have educated me about things that I was completely unaware of. The entire staff, including Nancie and Roger, has been so helpful with mentoring me through the legal system. Marzulla Law is a class act law firm, and I am grateful for the opportunity the entire team has given me."

Ben refers to himself as a "huge sports fan," and was very actively involved in a number of sports and sports-related activities in high school, and continues to be so in college. He sees himself eventually enjoying a career in the sports and entertainment industry, possibly even becoming a sports agent. He does confess that his time at Marzulla has also made him consider possibly pursuing environmental law.



## About Marzulla Law

Marzulla Law, LLC is a Washington D.C.-based law firm. Nancie G. Marzulla and Roger J.

Marzulla help property owners get paid just compensation when the Government takes their property through inverse condemnation.

ML lawyers practice in the federal courts, especially the U.S. Court of Federal Claims, the Federal Circuit Court of Appeals, and the U.S. District Court for District of Columbia, as well as other federal district courts, appellate courts, and the U.S. Supreme Court. ML also represents clients in administrative agencies, such as the District of Columbia Office of Administrative Hearings or the Interior Board of Indian Appeals.

Chambers has recognized Marzulla Law as one of the top ten water rights litigation firms in the country. Nancie Marzulla and Roger Marzulla have been selected by their peers to be included on the list of Best Lawyers in America, and their firm has the highest AV-rating from Martindale-Hubbe. Nancie and Roger Marzulla are listed in Best Lawyers for environmental law, and Marzulla Law is a member of the International Network of Boutique Law Firms.



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