

Timber Trespass Bill Becomes Law

Pennsylvania forest landowners have gained a significant new remedy for timber trespass. On February 17, 1994 Act 10 of 1994, which entitles landowners to recover multiple damages in a civil action for conversion of timber (commonly known as timber trespass), was signed into law by Governor Casey. It became effective on April 18, 1994. (See text box.)

According to Steve Thome, PF A director and chairman of the Policy and Legislation Committee, this legislation fills a gap in Pennsylvania law that for the past 22 years has left forest landowners without an effective remedy for timber trespass.

Thome explained, "In 1972 the legislature repealed a 148-year-old law that had allowed the recovery of double or triple damages for timber trespass. This left landowners with the unsatisfactory alternatives of either trying to recover single damages in a civil action for trespass or persuading the district attorney to bring criminal charges for timber theft, in which case the court might order restitution in the amount of double the value of the trees taken. Unfortunately, criminal prosecution rarely occurred because of the need to prove both criminal intent and guilt beyond a "reasonable doubt."

"The new law allows landowners to bring a civil lawsuit to recover three times the value of the timber cut or removed in cases of intentional trespass or two times that value for negligent trespass," according to Kent Fox, government affairs representative of the Hardwood Lumber Manufacturers Association of Pennsylvania, Inc. (HLMA). He adds, "Landowners can also recover the costs of establishing the value of the timber cut or removed and of complying with state erosion and sedimentation control rules."

Norman Lacasse, PF A president said, "The passage of this act was the result of hard work and cooperation by HLMA, PFA, the Game Commission, the Bureau of Forestry, and the Pennsylvania Landowners Association." Senators Raphael Musto (O-Luzerne) and John Peterson (R-Venango) were prime co-sponsors of the legislation. These legislators, along with Senator Roger Madigan (R-Bradford) deserve recognition for their unfailing support and energetic efforts to move the bill promptly through the legislature. Representative Thomas Caltagirone (O-Berks County) and Dan Surra (D-Elk County) also provided important support at a critical point in the House floor debate when an unrelated amendment threatened

to kill the bill.

Landowners who wish to take advantage of the new law should consult an attorney about the steps necessary to establish a claim. Among other things, landowners will have to be able to show ownership of the property involved, establish the boundaries, determine the value of the timber removed and other damages to the property, and prove the trespass was committed intentionally or negligently by the defendant. Professional foresters can be very helpful in gathering many of these facts, especially those relating to timber and land damages.

Pennsylvania's New Timber

Trespass Law

§ 8311. Damages in actions for conversion of timber.

(a) General rule. -In lieu of all other damages or civil remedies provided by law, a person who cuts or removes the timber of another person without the consent of that person shall be liable to that person in a civil action for an amount of damages equal to:

(1) the usual and customary costs of establishing the value of the timber

cut or removed and of complying with the erosion and sedimentation control regulations contained in 25 Pa. Code Ch. 102 (relating to erosion control); and

(2) one of the following:

(i) three times the market value of the timber cut or removed if the act is determined to have been -deliberate;

(ii) two times the market value of the timber cut or removed if the act is determined to have been negligent; or

(Hi) the market value of the timber cut or removed if the defendant is determined to have had a reasonable basis for believing that the land on which the act was committed was his or that of the person in whose service or by whose direction the act was done.

(b) Restitution. - Any damages awarded under this section shall be reduced by any restitution which is made under 18 Pa. C.S. § 1107 (relating to restitution for theft of timber.)

(c) Definitions. - As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Timber." Standing trees, logs, or parts of trees that are commonly merchandized as wood products.

"Market value." The value of the standing timber at local market prices for the species and quality of timber cut or removed at the time it was cut or removed.