

## UTAH EMINENT DOMAIN AMENDMENT

Energy companies with condemnation authority have an important new tool as they acquire easements in Utah. The Utah legislature has made a significant revision to its eminent domain code.

» For all condemnation actions filed in Utah after July 1, 2010, courts may award litigation expenses. The new statute, Utah Code Ann. § 78B-6-509, allows the court to award litigation expenses, defined as expert witness, appraisal, and significantly, attorney fees, if the final amount of just compensation determined by the fact-finder is less than the condemnor's pre-trial settlement offer. Likewise, the condemnee would be entitled to litigation expenses if the final amount of just compensation is greater than condemnee's offer.

» Litigation expenses may not exceed one third (1/3) of the amount by which the just compensation amount exceeds the settlement offer. Litigation expenses awarded may not exceed \$50,000 in a case involving a single landowner defendant. Where there are multiple landowner defendants, litigation expenses awarded against a condemnor may not exceed \$100,000.

This revision promises to affect eminent domain litigation going forward. Litigants now have a powerful tool to drive cases to settlement and to defend against unreasonable valuation positions.

### OVERVIEW OF AMENDMENT

» The revision is intended to drive more cases to settlement and to protect condemnors and landowners from unreasonable valuation positions.

» The condemnor may make an offer to settle the case at any time after the close of discovery, but no later than 60 days before trial. If the landowner ultimately recovers less than the condemnor's offer, the condemnor is entitled to litigation expenses.

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*This Alert is intended to be a general summary of legal issues impacting the energy industry and does not constitute legal advice. You should consult with counsel to determine applicable legal requirements in a specific fact situation.*

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