

**RECENT DEVELOPMENTS IN UTAH CONDEMNATION LAW (2012)**

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*Utah Department of Transportation v. FPA West Point, et al.,*  
**2012 UT 79 (Utah Nov. 20, 2012)**

The Utah Supreme Court undid decades of protocol and adopted a minority approach to valuing multiple interests in a single piece of property when it ruled that each estate holder in a piece of property (fee owner, ground tenant, lender, etc.) was entitled to a separate determination of the value of their loss resulting from the condemnation of some or all of the property.

<p><b>New Approach for Utah Aggregate-of-Interests Approach Separate Valuation Rule</b></p>	<p><b>Old Approach for Utah Apportionment Approach Undivided-Fee Rule Unit Rule</b></p>
<p>"Each of the various interests that contribute to the value of the real property are valued separately, and the total represents the market value of the real property." Under this approach, "the condemnor pays each of the several owners the fair market value of his, her, or its property interest even [if] the total amount paid exceeds the fair market value of the property as if owned by a single owner."</p>	<p>"Condemned property is first valued as though it was unencumbered, and in a subsequent hearing, the total award is apportioned among the various interests." Thus, the apportionment approach "determines the fair market value as if only one person owned the property, and "the condemnor makes a single payment for the property taken and the payment is then apportioned among the various owners," instead of the condemnor "paying the value of each owner's partial interest."</p>

*Utah Department of Transportation v. Admiral Beverage Corporation, et al.,*  
**275 P.3d 208 (Utah 2011)**

“We conclude that our holding in *Ivers*, which allows severance damages only for ‘recognized property rights,’ is too restrictive to accord the full protection of the Utah Constitution and is inconsistent with both Utah statutes and our prior case law. We consequently overrule that part of *Ivers* and allow Admiral the right to recover from UDOT for the decrease in the fair market value of its remaining property resulting from the condemnation.”

“We hold that when a landowner suffers the physical taking of a portion of his land, he is entitled to severance damages amounting to the full loss of market value in his remaining property caused by the taking.”

“Properly determining the fair market value of property requires ‘that all factors bearing upon such value that any prudent purchaser would take into account . . . be given consideration.’”  
*Weber Basin Water Conservancy Dist. V. Ward*, 347 P.2d 863, 863 (Utah 1959).