

# **Bond Case Briefs**

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## **EMINENT DOMAIN - INDIANA**

### **State v. Koorsen**

**Court of Appeals of Indiana - December 1, 2021 - N.E.3d - 2021 WL 5626362**

Landowners filed inverse condemnation action against State, seeking just compensation for taking resulting from State's construction of a detention pond to provide drainage for highway.

The Superior Court found that parties' negotiations resulted in an accepted offer of \$45,000 as just compensation for the taking and that landowners were entitled to an additional \$171,640.56 in litigation expenses. State appealed.

The Court of Appeals held that:

- State's \$45,000 settlement offer did not inherently include litigation expenses, and
- Landowners' response to the \$45,000 settlement offer was a counteroffer, not an acceptance, as there was no mutual assent.

State's offer to settle inverse condemnation action for \$45,000 did not inherently include litigation expenses; state eminent domain settlement statute's plain language did not contemplate the inclusion of litigation expenses, and if litigation expenses were inherently included in settlement offer, eminent domain statutory scheme reserving issue of litigation expenses as an incentive for parties to settle would be unworkable, as government's final settlement offer could not later be compared to factfinder's damage award to determine if a low-ball settlement offer triggered landowner's entitlement to litigation expenses.

Landowners' response to State's inverse condemnation settlement offer was not an acceptance, as there was no mutual assent; State's objective intent was for landowners to forego litigation expenses in the interest of settlement, but landowners responded with a counteroffer requesting that they be awarded litigation expenses in addition to the offered settlement sum, so landowners' objective intent was not to forego litigation expenses in the interest of settlement, and their response did not correspond with State's offer in every respect.