

# Gas station appraisals differ, lead to lost option to purchase

Trial court rules midpoint figure would be awarded; plaintiff also wins interest

## \$2.11 million

In a lawsuit filed in Wayne County Circuit Court, plaintiffs Albert M. Stutz, Caroline M. Stutz and Union Associates sought damages from defendants BP Products North America, Inc., American Appraisal Associates, Inc., Kenneth Papecki, David L. Perry and Brent A. Brown on claims of breach of specific performance of an option to purchase.

Albert Stutz owned a gas station property in close proximity to MotorCity Casino in Detroit. He leased the property to BP pursuant to a written lease containing a unique option to purchase: in the event that BP exercised the option, the property's sale price would be determined by two independent appraisals, one to be secured by Stutz, the other by BP. When the

**Type of action:** Specific performance

**Type of injuries:** Breach of specific performance of an option to purchase, payment of interest as damages incidental to specific performance

**Name of case:** *Stutz, et al. v. BP Products North America, Inc., et al.*

**Court/Case no./Date:**  
Wayne County Circuit Court;  
05-502318-CK; Nov. 5, 2010

**Tried before:** Judge

**Name of judge:** Amy P. Hathaway

**Verdict amount:** \$2.11 million

**Special damages:** Interest as damages incidental to specific performance

**Most helpful expert:** Andrew B. Chamberlain, real estate appraisal, Berkley

**Attorney for plaintiff:** H. Adam Cohen

**Attorneys for defendant:** Daniel G. Wyllie, Thomas M. Schehr

two appraisals reached widely divergent estimates of value, BP refused to close.

Plaintiffs filed an action seeking specific performance. After three years of litigation and a bench trial, the trial court ordered the parties to close at the midpoint of the two appraisals, resulting in BP's payment of \$1.81 million to plaintiff.

Plaintiffs then filed a motion seeking payment of interest as damages inciden-



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tal to the court's award of specific performance. It was asserted that interest was necessary to restore plaintiff to the position he would have occupied had the closing occurred in a timely manner.

Following substantial litigation concerning this issue in the trial court; a Michigan Court of Appeals decision; and two orders entered by the trial court on remand, defendants paid more than \$301,000 in interest.