

# Outdoor fruit market disputes land taking

Airport reduces estimate, says operations, pattern of traffic wouldn't change

## \$2.25 million

In a condemnation/ eminent domain lawsuit filed in Berrien County Circuit Court, defendant Benton Harbor Fruit Market, Inc. sought compensation from plaintiff Southwest Michigan Regional Airport Authority for taking of land and business interruption damages.

(Note: Under the state's eminent domain statute, the procedure calls for the government or municipality to file a lawsuit if the parties cannot agree on a property matter. In this case, the airport authority is the plaintiff, even though the defendants are seeking compensation.)

The airport authority initially offered the outdoor fruit market \$1.412 million for the taking of a 5-acre strip of land. However, the estimate was then reduced to \$72,000 based on the airport's second appraisal and an engineering report concluding that the taking would have no im-

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| <b>Type of action:</b><br>Condemnation/ eminent domain  |
| <b>Type of injuries:</b> Taking of land, business interruption damages  |
| <b>Name of case:</b> <i>Southwest Michigan Regional Airport Authority v. Benton Harbor Fruit Market, Inc.</i> |
| <b>Court/Case no./Date:</b> Berrien County Circuit Court; 10-0029-CC-B; March 21, 2011                        |
| <b>Name of judge:</b> Alfred M. Butzbaugh   |
| <b>Settlement amount:</b> \$2.25 million  |

**Special damages:** Costs, interest, attorney fees

**Most helpful experts:** David E. Burgoyne, real estate appraisal, Ann Arbor; O. Fredrich Pertner, financial consultant, Northville; Martin Parker, professional engineer, Taylor; Darrell Hinman, development expert, Benton Harbor

**Attorney(s) for plaintiff:** Withheld

**Attorneys for defendant:** H. Adam Cohen, Jason C. Long

pact on the fruit market's traffic patterns or operations.

The fruit market contended that the taking, while seemingly small (it was undisputed that the taken strip of land itself was worth less than \$100,000), would impact the business' operations and traffic patterns on the site.

After comprehensive discovery, including depositions of the parties' management personnel and numerous valuation and engineering experts, the parties settled for just compensation in the amount of \$2.25



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million in favor of the defendant. Costs, interest and attorney fees also were granted.