

1 TIMING IS EVERYTHING

2 Terms of art and definitions can dramatically influence a valuation. It was in the 1970s
3 and early in my career when the lesson struck home. Following is an account of my first
4 appraisal of machinery and equipment, and testimony in a trial.

5 Dr. Petersen was a customer at our antique shop. One day he dropped in and asked if I
6 knew anyone who could appraise medical equipment. Buddy Collins was pretty much the only
7 appraiser of machinery and equipment in Miami at the time. He sometimes employed me to help
8 inventory and photograph property associated with restaurants and hotels. I immediately
9 suggested that Dr. Petersen call him.

10 "I can't. He's already been hired by my partner. Know anyone else?"

11 Curiosity got the best of me and I asked, "What's going on?"

12 "My partner and I are splitting up. He's leaving and wants to be compensated for the
13 contents of the office. Collins did an appraisal and it's over \$200,000. That is way out of line.
14 Why can't you do another appraisal?"

15 I explained to him that I was only certified for residential contents and antiques and had
16 no experience with medical equipment.

17 "There is nothing to it. We purchased much of the equipment, used, through an
18 equipment dealer. I can show you how much we paid, and he can provide you with current
19 prices."

20 The ethics of the situation concerned me. Simply reporting values provided by the good
21 doctor's friend and equipment dealer could be a recipe for disaster. On the other hand, I would
22 have Collins' report, something he would never ordinarily share with me, and not be restricted in

23 doing whatever research might be necessary to come up with my own opinion. I knew that
24 Collins might be unhappy, and I stood to lose my best chance at a machinery and equipment
25 practice, but took the job anyway.

26
27
28 I went to Dr. Petersen's Coral Gables office and see what I had to deal with. The discreet
29 shingle on the carved mahogany door, in a building catering to mostly lawyers and financial
30 advisors, advertised in gilt letters Dr. Petersen and his partner as plastic surgeons. It was just
31 down the street from the one of the pre-eminent shopping centers in the world. It was no
32 ordinary doctor's office. They had, in addition to the expected examining and treatment rooms,
33 complete surgical and x-ray suites. Decorations were reminiscent of a fancy private club, all
34 wood paneling, leather furniture, and built-in custom cabinets. It was epitomized by English
35 sporting prints on the walls and a well-stocked cellarette in the waiting room. One could imagine
36 hubby relaxed with a cigar and claret, while madame had her eye lids trimmed or tummy tucked,
37 between excursions to Gucci's and Sak's.

38 I got some more of the details of the impending split-up of the doctors. Their lease for
39 the premises was about to expire. Dr. Petersen wanted to stay. His partner wanted to leave, and
40 the expiration of the lease put the timetable for the breakup into motion. Buddy Collins's
41 appraisal included all the built-ins. They represented the bulk of his valuation.

42 Two concepts of value exist for appraising machinery and equipment: Fair Market Value
43 (FMV), and Fair Market Value for Continued Use in Place (FMV-IP). The first represents what
44 the property would sell for to be used in another location, and the second how much the property
45 would contribute to the value of an ongoing — income producing — business in its present
46 location and use. FMV-IP is almost always the higher of the two. Property that cannot be easily

47 removed and installed somewhere else may not have any fair market value except for continued
48 use in place. That was the case for the doctors' built-ins.

49 I asked for a copy of the lease. It included a clause that all attached built-ins had to be
50 removed at the end of the lease and the premises restored to its original condition. If any
51 attached property was not removed, it became the property of the landlord. Collins appraised the
52 built-ins at their full value on the eve of their removal or transfer in ownership to the landlord. If
53 the landlord kept the built-ins he could incorporate their value into any new rent he charged for
54 the premises.

55 I took photos of the complete contents of the office with an emphasis on the built-ins,
56 collected copies of the lease and Collins' appraisal, and left to prepare my appraisal.

57
58

59 Collins' appraisal, while dated, had no valuation date. The valuation date is the date that
60 the values are as of. It is not the date the appraisal was done. For example, in an estate appraisal,
61 the valuation date is often the day of death while the appraisal is usually done sometime after
62 that. Under the gun to meet a trial deadline, and without clear direction as to what the valuation
63 date should be. I made up a chart that showed the doctors' share in the value of the built-ins
64 declining from their original cost years ago to zero at the end of the lease when the property
65 would have to be removed or become the landlord's.

66 Collins's values for the moveable contents of the office were in pretty good agreement
67 with the figures provided by the doctor's equipment dealer. Even so the differences between
68 Collins' conclusion and my own were astounding. He made no allowance for the change in
69 ownership of the built-ins at the end of the lease, and came up with a total of a little over
70 \$200,000. I arrived at a total of about \$20,000 using the expiration of the lease as the valuation

71 date, and valuing the built-ins at zero. It was a *cause célèbre* in Miami's small community of
72 appraisers. I wasn't given much of a chance of prevailing in court.

73
74

75 The day of the trial Collins and his wife were sitting outside the judge's chambers when I
76 arrived. I was to be a rebuttal witness and had not been deposed by the opposing side. They
77 were aware of what my appraised value would be, but weren't clear on the basis of my appraisal.
78 The value conclusion probably came out during attempts by the doctors to negotiate a settlement
79 prior to the trial.

80 Buddy and his wife were friendly and cordial to the extreme. I was shitting in my pants.
81 Wrapped up under my arm were the exhibits that I planned on presenting. They included
82 photographs of the built-ins, and my declining *value-to-the-doctors* chart. We sat for what felt
83 like hours, but was probably minutes, before being called in to the judge's chambers. It was like
84 everybody in the room knew each other except for the doctors and myself. The judge, the
85 lawyers and Collins's not only knew each other but were apparently friends.

86 After we were seated the the Judge looked to the Collins's and, already on a first name
87 basis, asked "Buddy, what do we have here?"

88 Collins gave a well rehearsed, slick presentation. I am not sure why his wife was there,
89 but her adoring eyes seemed to emphasize his competence. On the other hand, glances from Dr.
90 Petersen over to me so much as screamed, "What the fuck have I done?" After about ten minutes
91 Buddy sat back with a self satisfied grin. It was my turn.

92 As if on cue, the stammer I had as a kid came back. "I a..a..a...am pretty much in
93 a...g..reement with Mr. Collins' values. The one issue is the value of the built-ins to the
94 doctors." With that I whipped out the photographs of the interior of the office. The value of the

95 built-ins, and the fact that they were not removable was apparent. When I went over the terms of
96 the lease, showed my chart, and explained how at its expiration the built-ins would have no value
97 to the doctor's there was a protracted silence. Petersen's partner's lawyer asked Buddy for his
98 opinion on my testimony.

99 "I've done these kind of appraisals for over twenty years, and have never seen any kind of
100 analysis like Samuels' here. It's preposterous" That was all and we were excused. The
101 proceeding went on for another hour while Collins, his wife and I waited in the hallway, now in
102 stony silence, to hear the outcome. The decision came in a big smile from Dr. Petersen.

103
104

105 The hype over my success in court expanded my career to include appraisals of medical
106 equipment. While most of the professional appraisers in our organization knew about my
107 success, very few knew the details of the trial, and I got credit for expertness that I didn't yet
108 have. The Collins's never spoke to me again.

109 One of the requirements of fair market value-in-place is that the property be used as part
110 of an **income producing** enterprise. A change in circumstances that renders a property obsolete
111 also eliminates any additional value it may have because of its location and use.

112 Dr. Petersen was so happy with the results of the trial that he offered to remove little fatty
113 deposits from my eyelids for free. He botched the job. The stitches were more like a child's
114 embroidery than those of a plastic surgeon. Years later as I learned what kind of equipment
115 could be expected for different medical specialties It occurred to me that Petersen's office would
116 have been better suited for obstetrics and gynecology than dermatology. Could it have been that
117 the fate of the office was determined by Roe v. Wade rather than the expiration of a lease?