

# **Bond Case Briefs**

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## **ENVIRONMENTAL - MISSOURI**

### **City of Harrisonville v. McCall Service Stations**

**Supreme Court of Missouri, en banc - August 23, 2016 - S.W.3d - 2016 WL 4443950**

City filed suit against owner and prior owner of gas station for negligence and trespass arising out of soil contamination caused by leak from underground petroleum storage tanks, which was discovered during city's project to upgrade sewer system. City also brought claims for compensatory and punitive damages against Missouri Petroleum Storage Tank Insurance Fund for negligent and fraudulent misrepresentation, after Fund refused to pay costs incurred by city to hire contractor qualified to perform that portion of contract affected by contamination.

The Circuit Court entered judgment on jury's verdict for city on all claims, and then entered remittitur on punitive damages award against Fund. Fund, owner, and prior owner appealed, and city cross-appealed remittitur of punitive damages award.

The Supreme Court of Missouri held that:

- Jury instructions referencing "consequential" damages did not give jury impermissible "roving commission";
- Whether city incurred additional costs that exceeded \$72,009.89 in completing portion of sewer system upgrade affected by soil contamination, for purposes of calculating compensatory damages, was question for jury;
- Whether city relied to its detriment on misrepresentation by Fund's third-party administrator that Fund would pay costs incurred by city to hire contractor, recommended by administrator, to perform portion of city's sewer system upgrade affected by soil contamination, less amount that city would have paid if it had not hired contractor, was question for jury;
- Statute authorizing Fund to provide coverage for claims involving property damage or bodily injury caused by leaking petroleum storage tanks did not authorize award of compensatory and punitive damages;  
Fund's board of trustees, and not Fund itself, was party subject to liability for fraudulent and negligent misrepresentation; and
- Interests of justice warranted remand following reversal of punitive damages award against Fund, in order to permit city to amend complaint to substitute/add board trustees and its members as defendants.