

Missouri's Supreme Court Reverses \$8,000,000
Punitive Damage Jury Verdict to Harrisonville

by

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Missouri's Supreme Court weighs in on another construction case in 2016 by reversing a jury verdict in favor of the City of Harrisonville of \$8,000,000 in punitive damages.

The case is *City of Harrisonville v. McCall Service Stations d/b/a Big Tank Oil and the Missouri Petroleum Storage Tank Insurance Fund*, 495 S.W.3d 738 (Mo. 2016), decided August 23.

The project was the cleanup from underground petroleum storage tanks at a service station in Harrisonville. An upgrade of an adjacent sewer system for the City prompted the cleanup.

Missouri, by statute, established the Missouri Petroleum Storage Tank Insurance Fund per Section 319.129 R.S.Mo. This Fund provides insurance to service station owners for the cleanup costs from spills and leaks from underground petroleum storage tanks.

McCall Service Stations d/b/a Big Tank Oil owned a service station. McCall informed the Fund in 1997 that significant gasoline had leaked into the soil around its tank system.

McCall and the Fund hired Bob Fine, an environmental engineer, to determine the extent of the leak. Fine notified the Missouri Department of Natural Resources that the leak was moving toward a nearby creek.

Fine prepared a plan to contain the leak by installing monitoring wells on streets next to the site. McCall thereafter sold the service station to Fleming Petroleum Corporation.

In 2003, Harrisonville decided to upgrade its sewer system given a growth in population. The City awarded a construction contract, after competitive bidding, to Rose-Lan Construction for a multi-million dollar sewer upgrade per a bond issue for this work.

During construction, Rose-Lan encountered contaminated soil next to Fleming's service station and notified the Department of Natural Resources.

Fine, who had been monitoring the situation since 1997, confirmed that the underground storage tank was the source of the leak. He suggested that the most cost-effective approach would be to leave the contaminated soil in place and install petroleum-resistant pipe and fittings.

The City's engineer estimated that to completely remove and replace the contaminated soil would cost more than \$500,000. BV Construction submitted a bid of \$190,226.38 to install the petroleum-resistant pipe per Fine's approach.

The Fund obtained a lower bid of \$175,161.41 from Midwest Remediation.

There were several discussions between the City and the Fund about the remediation and who would pay for it. Three representatives for the City felt based on the meetings that the Fund would reimburse the City for the remediation costs.

After these discussions, the City's attorney sent a letter to the Fund's representative that the City was going forward with Midwest in reliance on the "promise" that the Fund would pay the full amount of Midwest Remediation's costs. The City then authorized Rose-Lan to subcontract with Midwest Remediation to install the petroleum-resistant pipe.

The Fund did not reimburse the City for the work—thus the lawsuit.

The City sued the Fund for fraudulent and negligent misrepresentation. The City alleged it hired Midwest Remediation in reliance of the Fund's representative's express promise that the Fund would pay for the cost of Midwest's work.

During trial, the City established that it incurred increased costs of \$172,100.98 to complete the sewer upgrade project as a direct result of the contamination caused by McCall and Fleming. None of these costs would have been incurred had the City not encountered petroleum-contaminated soil.

The jury returned a verdict for the City of \$172,100.98 in compensatory damages against McCall, Fleming and the Fund, \$100 in punitive damages against McCall and Fleming and \$8,000,000 in punitive damages against the Fund.

Regarding the Fund's liability, Section 319.131 states that the Fund will pay all of any participants' cleanup costs that are greater than \$10,000 but less than \$1,000,000 per occurrence and the Fund shall provide coverage for third-party claims involving property damage or bodily injury caused by leaking petroleum storage tanks.

The Missouri Supreme Court decided the City's claims against the Fund did not fall within the statutorily authorized claims set out in Section 319.131. The Fund is not authorized to provide coverage for claims that do not constitute a participant's cleanup costs or involve third-party claims. The City's tort claims were beyond the coverage provided by the Fund.

Despite this finding, the Supreme Court left in place the award of compensatory damages solely because the Fund had not appealed this portion of the jury's verdict.

But the Supreme Court decided that since the City did not have a claim against the Fund for compensatory damages, even though they were awarded, the City could not recover punitive damages from the Fund.

There must first be actual damages to support the award of punitive damages. Since the actual damages were not allowed by statute, the punitive damages could not be allowed either, the high court concluded.

Thus, the Supreme Court reversed the \$8,000,000 punitive damage award.

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