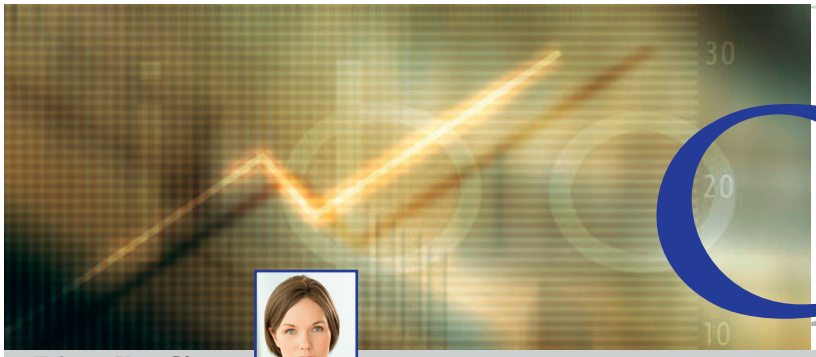

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Texas Supreme Court Will Hear One of Two Court Decisions Influenced by Environmental Concerns

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The Texas Supreme Court agreed to hear arguments on whether Texas law allows recovery of "stigma" damages when property is temporarily environmentally contaminated, but when there is no permanent physical injury to the property. In *Houston Unlimited, Inc. Metal Processing v. Mel Acres Ranch*, a leak from a metal processing facility temporarily elevated copper levels in surface water of a nearby ranch above that allowed by state regulations. Copper levels returned to normal shortly after the leak was fixed and the contamination was cleaned up. Houston's Fourteenth Court of Appeals upheld an approximately $400,000 jury award for market value loss of the property, thus finding lost market value damages from permanent "stigma" of property to be recoverable in Texas.[1]

For those businesses involved in activities with environmental concerns, the Court of Appeals' ruling has significant implications because these businesses can now be liable for permanent property damage resulting from only temporary contamination. Contracts including environmental indemnity provisions should now possibly specifically address "stigma" damages. The Texas Supreme Court is set to hear oral arguments on December 5.

At the same time, the Texas Supreme Court decided not to hear arguments in *City of Houston v. Trail Enterprises, Inc.*, where a Court of Appeals held that environmental concerns can justify a city's "taking" without compensation.[2]

In 1997, the City of Houston expanded an ordinance imposing restrictions on oil and gas development near Lake Houston for properties within the City and its extraterritorial jurisdiction. Landowners sued the City, alleging these restrictions constituted a compensable taking of their property rights. The trial court agreed and awarded the landowners $17 million.

The Fourteenth Court of Appeals reversed the judgment, however, finding protection of a water source to be an important governmental interest and that similar restrictions had been in effect for more than forty years. The Texas Supreme Court's denial of review means this is the current state of Texas law. ■

1. 389 S.W.3d 583 (Tex. App.—Houston [14th Dist.] 2012).
2. 377 S.W.3d 873 (Tex. App.—Houston [14th Dist.] 2012).