

By: Hartnett

H.C.R. No. 223

HOUSE CONCURRENT RESOLUTION

1           WHEREAS,        Maria        Isabel        Guerrero-McDonald        and  
2 Guerrero-McDonald & Associates, Inc., allege that:

3                   (1)    on March 22, 1994, subsequent to the submittal and  
4 acceptance of a bid, Pelzel & Associates entered into a contractual  
5 agreement with Travis County for the construction of the Travis  
6 County Precinct One Office Building in Austin, Texas;

7                   (2)    the terms for the construction of the building  
8 specified that the work should be substantially completed within  
9 150 calendar days, on December 8, 1994, and that in the event of  
10 late completion Travis County would sustain and retain liquidated  
11 damages in the amount of \$250 for each calendar day beyond the  
12 contractually required date for substantial completion of the  
13 project;

14                  (3)    the final completion date for the construction of  
15 the building was December 29, 1994, twenty-one days beyond the  
16 contractually required date for substantial completion;

17                  (4)    Travis County retained liquidated damages in the  
18 amount of \$5,500, and Pelzel & Associates was required to prove at a  
19 significant expense that the actions of Travis County caused the  
20 delayed completion date;

21                  (5)    Pelzel & Associates presented its claim to the  
22 Travis County Commissioners Court, at which time Travis County  
23 admitted that no liquidated damages were justified and that Travis  
24 County was at fault for delays that had indeed damaged Pelzel &

1 Associates, the cost of which, together with the cost of proving  
2 these facts, totals over \$100,000;

3 (6) Travis County offered to relinquish its claim for  
4 liquidated damages only, but threatened to claim sovereign immunity  
5 if Pelzel & Associates demanded additional damages;

6 (7) a final offer to resolve the matter was made by the  
7 Pelzel & Associates attorney on April 25, 1995, for approximately  
8 one-third of the total damages, but Travis County did not respond to  
9 this offer;

10 (8) on October 3, 1995, Pelzel & Associates brought  
11 suit against Travis County in the District Court of Travis County  
12 for payment due, for cost of proving its case, and for interest to  
13 date, and Travis County denied all allegations, seeking summary  
14 judgment regarding sovereign immunity from suit and the dismissal  
15 of Pelzel & Associates' cause, premised on lack of jurisdiction and  
16 based on immunity from suit rather than on the merits of the case;

17 (9) in June 1999, Pelzel & Associates changed its name  
18 to Guerrero-McDonald & Associates, Inc.;

19 (10) on November 22, 1999, the trial court signed an  
20 order denying the plea to the jurisdiction and amended motion for  
21 summary judgment;

22 (11) on December 16, 1999, Travis County filed a  
23 notice of appeal with the Third Court of Appeals for an  
24 interlocutory appeal of the trial court's decision;

25 (12) during the appeals process, the parties engaged  
26 in mediation on June 1, 2000; however, no decision was reached, and  
27 the parties agreed to a continuance allowing Guerrero-McDonald &

1 Associates, Inc., time to provide additional documentation;

2 (13) on October 19, 2000, the Third Court of Appeals  
3 affirmed the order of the trial court, and subsequently denied a  
4 motion for rehearing requested by Travis County on November 30,  
5 2000;

6 (14) Travis County filed a petition for review with  
7 the Supreme Court of Texas, which was granted, briefs were filed,  
8 and oral arguments were held on November 28, 2001;

9 (15) on April 30, 2002, pending the decision of the  
10 Supreme Court of Texas, both parties filed a joint motion to retain  
11 case on docket and objection to ADR with the intent that, should the  
12 supreme court render in favor of Travis County, the case would be  
13 abated until legislative consent was obtained;

14 (16) on May 9, 2002, the Supreme Court of Texas  
15 rendered its opinion, finding in favor of Travis County and  
16 reversing the Third Court of Appeals' decision, its findings being  
17 made more on the merits of Travis County's case than on their  
18 allegation of sovereign immunity, in spite of the dissenting  
19 opinion of Justice Enoch that the Court continues to "keep the  
20 courthouse doors locked" by allowing the county to "interpose  
21 sovereign immunity from suit"; now, therefore, be it

22 RESOLVED by the Legislature of the State of Texas, That Maria  
23 Isabel Guerrero-McDonald and Guerrero-McDonald & Associates, Inc.,  
24 are granted permission to sue Travis County in the manner described  
25 for a suit against the state under Chapter 107, Civil Practice and  
26 Remedies Code; and, be it further

27 RESOLVED, That the suit authorized by this resolution shall

1 be brought in Travis County; and, be it further

2           RESOLVED, That the total of all damages awarded in the suit  
3 authorized by this resolution, including any court costs, and any  
4 prejudgment interest awarded under law, may not exceed \$3 million  
5 plus the amount of any attorney's fees authorized to be awarded  
6 under law, and that Maria Isabel Guerrero-McDonald and  
7 Guerrero-McDonald & Associates, Inc., may not plead an amount in  
8 excess of that amount that may be recovered with respect to the  
9 contract that is the subject of this resolution in all actions  
10 brought with respect to that contract; and, be it further

11           RESOLVED, That the county judge of Travis County be served  
12 process.