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INSIGHTS ON APPELLATE ISSUES, TRIAL CONSULTATIONS, AND EVALUATING APPEALS

[When "Ocean View" Suddenly Becomes "On the Beach": Texas Supreme Court Tackles Rolling Easements](#)

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Under Texas law, the public has an easement to access dry beaches. This easement extends landward to the vegetation line. A recent Texas Supreme Court case examined the validity of the easement when a hurricane suddenly alters the beachfront.

The property owner had constructed a house behind the vegetation line in the West Beach area of Galveston Island. Hurricane Rita caused sudden and dramatic beach erosion and the house was now seaward of the vegetation line. When the state attempted to enforce the public easement, the property owner initiated litigation in federal court arguing that the state was engaged in an unconstitutional "taking" of private property. Ultimately, the Fifth Circuit certified a question to the Texas Supreme Court regarding whether the public beach access easement "rolled" into previously unencumbered private property when storms altered the shoreline.

The Supreme Court distinguished between mere beach erosion and avulsion, a sudden and dramatic change in the shoreline. The beachfront is constantly changing due to natural forces and both the public and the property owner are properly charged with notice that their respective rights may be altered. In avulsion cases, however, the change is too sudden for the parties to adjust their behavior. Consequently, the public beach easement does not roll landward into previously unencumbered private property.

While the opinion provides some protection for property owners who build near beaches, it also places the precise boundary of the public easement into doubt. The vegetation line is no longer a reliable boundary in all cases.