

The Texas Supreme Court in 1999-2000

Executive Summary

The Texas Supreme Court continued its consistent support of defendants in the state's civil court battles throughout the 1999-2000 term, stripping consumers, employees and children of needed protections and shielding corporate defendants from responsibility.

The court released opinions that will have a lasting and harmful effect on workplace safety, premises safety, product safety, insurance consumers and small-dollar claimants. The 1999-2000 term follows a period in which the court dismantled many of the most important consumer protection laws in Texas. Given that consumers faced a house that was almost completely destroyed at the start of the 1999-2000 term, the fact that the court found any additional protections to strip is indeed alarming.

Out of the 117 cases decided by the Texas Supreme Court during the 1999-2000 term, they ruled on 56 cases that pitted consumers, patients and crime victims as plaintiffs against corporate, professional and governmental defendants. Court Watch found that of these 56 cases, defendants won 32 decisions, or 57 percent of the time. Meanwhile consumers won a total of 18 decisions or 32 percent of the time with 6 cases being split decisions. The defendants' 57 percent win-rate is consistent with the 60 percent win-rate for defendants in the previous term and lower than the 69 and 71 percent win-rates by defendants in the 1996-1997 and 1997-1998 terms.

The increasing parity of the corporate opinions documented above suggests two possibilities. One possibility is an increasing moderation of court justices led by recent appointees and newly elected justices. However, given the court's continuing strong alignments (See page 6), another, and more likely, possibility is that since recent years have seen consumers' house of protections all but knocked down, there is little left for the court to dismantle.

An interesting element to consider is that when consumer cases against government (17 of the 56 considered) are removed from the tabulation, the corporate defendant win-rate rises to 64 percent and the consumer plaintiff win-rate falls steeply to 23 percent. Of those 56 cases, 17 were cases involving consumers against the government.

Taken together, the numbers and decisions of the Texas Supreme Court create a picture of the continued movement to strip consumers of basic protections against corporate interests. The court continues to send a clear message to the corporate community in Texas—they have an old reliable friend in the Supreme Court.

The Court's Continued Progression Against Consumers

In its 1999-2000 term, the Texas Supreme Court continued its progression of pro-defense sessions by granting many significant wins to defendants and passing up opportunities to protect consumers. Court decisions in this term stripped women, children, workers and potential class action members of many protections while shielding commercial property owners, employers and manufacturers from responsibility.

In the heyday of the conservative majority court—1995 through 1998—injured consumers, employees, patients, clients, insurance policyholders and workers saw their rights curtailed and protections eliminated. During this period, the court went to extreme measures to protect corporate wrongdoers, granting corporate defenders victory in more than 70 percent of their cases. As chronicled in previous Court Watch reports, the court made it increasingly difficult for consumers to hold irresponsible doctors, insurance companies, manufacturers and employers accountable.

While the pro-defense activist court of the mid-1990s left little more to strip from consumers, the court of 1998-1999 and the court of 1999-2000 has managed to ferret out and eliminate some remaining vestiges of consumer protections. In particular, the 1999-2000 court removed important protections and incentives for workplace safety, premises safety, product safety, insurance consumers and small-dollar claimants

The moderate decline in overwhelming victory-by-the-numbers for defendants is deceiving. As very few consumer protections remained after 1998, there were fewer for the court to weaken.

In the 1999-2000 term, the court decided 56 cases that involved claims by individuals or businesses seeking damages for physical or economic injury. Court Watch found that of these 56 cases, defendants won 32 decisions, or 57 percent of the time. The defendants' 57 percent win-rate is consistent with the 60 percent win-rate for defendants in the previous term and lower than the 69 and 71 percent win-rates by defendants in the 1996-1997 and 1997-1998 terms.

Meanwhile consumers won a total of 18 decisions or 32 percent of the time with 6 cases being split decisions. That win ratio is up from 27 percent in the 1998-1999 session and 24 percent and 22 percent in the prior two years.

The pro-defense bent of 1999-2000 is slightly masked, however, when cases against government entities are included in the tabulation. When the tabulation considers only cases involving consumers and corporate entities, the consumer win-rate drops to 23 percent from 32 percent. Defendant-win-rate increases to 64 percent from 57 percent.

The Texas Supreme Court Leaves Consumers Out on a Limb

The *Dirty Dozen of 1999-2000* (Page 7) illustrates how the court's opinions came squarely on the side of corporate defendants, leaving workers, women, children and potential small-dollar claimants holding the bag for irresponsible wrongdoers.

The cumulative effects of several decisions throughout the term create disincentives for responsible behavior by insurance companies, property owners and manufacturers. Even more harmful, several of the opinions may *create* incentives for employers, manufacturers and commercial property owners to ignore safety hazards.

Dangerous Workplaces

Employers emerged as one of the big winners again this session, winning two out of three cases—67 percent—pitting workers against their employers.

Workers were also on the short end of a 3rd party liability decision and three premises liability decisions all found in favor of commercial property owners and general contractors (*Elliot, CMH, LPC, Koch*). These opinions—all concerning the duty of a third-party landowner or land-controller to injured workers—removed important incentives for safe and secure worksites, sending the message: “See no evil, hear no evil, escape responsibility.”

In each of the cases, the court allowed the party in control of the work sites to evade responsibility for injuries to workers directly caused by hazardous conditions. Despite indications that the controlling parties could have—or should have—known of the hazardous conditions—through contracts, established safety programs and control of equipment—the court allowed them each to ignore the conditions that led to injury.

In another employee decision—*Fort Worth v. Zimlich*—the court eliminated an important shield to protect whistleblowers against retaliation, sending a message that employees report wrongdoing at their own peril.

The sole pro-employee decision held the Kroger grocery chain—a non-subscriber to the workers' compensation system—to its responsibility to provide compensation for injured workers' expenses.

How Safe Are We?

Closely related to the premises liability cases mentioned above, the court shielded an irresponsible garage owner from accountability, applying the same “See no evil, hear no evil, escape responsibility” philosophy. These decisions strike a significant blow to crime prevention, child safety and women's rights groups who seek increased protections for Texas families.

In a case involving a woman who was raped in a vacant parking garage by a police officer (*Mellon Mortgage*), the court held that while the garage and surrounding history had a history of criminal activity and the garage owner had several indications that the garage posed an invitation to crime, the owner could not have “foreseen” the actual rape—i.e. that a police officer was going to bring the woman to the garage on that

particular night, at that particular time—and therefore bore no responsibility. This decision added a second test that granted the garage owner leeway. This opinion follows the same “ignorance is bliss” logic demonstrated in cases outlined in the previous section involving workers.

In the case *Hernandez v. Tokai Corporation*, the court shielded the manufacturer of butane lighters not equipped with child safety locks from responsibility and established a chilling precedent for all product liability cases. The court reasoned that since the product was not meant for children’s use, the injuries and damages caused by a child’s use could not be the responsibility of the manufacturer.

This decision erases important safety incentives for corporations that manufacture products that could cause serious harm in the hands of a child such as baby-proofed medicine caps, childproof trigger locks on guns, warning signs on poisonous cleaning supplies and other protective features on dangerous products. This ruling is a serious set back for child product safety advocates.

No Class

The Texas Supreme Court took the opportunity this term to make a statement on the use of class action lawsuits by Texas consumers and injured Texas families. In three cases regarding class actions this session, the consumer plaintiffs went 0-3, losing all of them. (*Ford, Intratex & Southwestern Refinery*)

The court rejected all three class-certification questions that came before the court. The court severely narrowed class-certification definitions, indicating that classes may not be defined according to the alleged violation. This standard effectively eliminates the common ground held by the class members—that they all suffered the alleged violation. These rulings ultimately force plaintiffs to prove liability before coming together as a class—i.e. as individual plaintiffs taking on multi-million dollar corporations—essentially eliminating the function of class action suits.

Class action lawsuits provide an avenue to justice for smaller-dollar individual claimants to join together to prove their case against major manufacturers, insurance companies or other corporate wrongdoers in the name of judicial economy. The bar set by the Texas Supreme Court may be too high for potential class members to reach. This narrowed definition effectively denies access to justice for individuals while shielding corporate wrongdoers from bearing their responsibility for fraud by the nickel.

Insurance Consumers

For the first time since the early 1990s, insurance companies and insurance policyholders emerged evenly in decisions by the court with company defendants winning four cases (44%), policyholders winning four (44%) and one emerging as a split (11%). However, all four of the insurance company wins stripped consumers of important substantive protections, while within the consumer wins, two of the four cases were on legal procedural issues rather than substantive victories.

One case of note is *Henson v. Southern Farm Bureau Casualty Insurance Co.* that eliminated an important incentive for insurance companies to pay claims in a timely

manner. The court upheld a policy that made pre-judgment interest payable only from the time of a judgment finding an insurance company liable for the claim rather than from the time the claim was filed. The plaintiff in this case waited seven years from the date of filing the claim until a court said the insurance company was liable. This decision removes important incentives for insurance companies to act efficiently, ultimately making it more difficult for Texans to get insurance claims resolved promptly.

The court addressed prejudgment interest in several other cases during this term including *Embrey v. Royal Insurance Company of America* and *Horizon v. Auld*, stripping consumers of this important protection. Prejudgment interest is one of the most powerful incentives available to ensure that defendants do not unnecessarily drag out insurance and court proceedings. Without prejudgment interest, it is in defendants' interest to delay payments on legitimate claims for as long as possible, retaining payments that duly belong to plaintiffs.

Court Usurps Juries

Despite a constitutional bar from considering jury facts, the court continued to second-guess jury decisions, reversing three jury verdicts and stripping consumers of their protections. This effort to strip juries of their ability make decisions on fact questions—and even consider some fact questions at all—continues the court's controversial consideration of questions of fact and reversing jury verdicts that began in the 1980s in cases concerning insurance bad faith.

Each of the three decisions that overturned jury verdicts appears on the Court Watch *Dirty Dozen*. In six of the 56 consumer-related cases before the court in 1999-2000, the court overturned all or part of the jury's verdict. (*CMH Homes, Louisiana Pacific, Zimlich, Casteel, State of Texas v. Miguel & Horizon*) In three of the six cases (*CMH Homes, Louisiana Pacific & Zimlich*), the court overturned a jury verdict in favor of a consumer plaintiff, reversed the decisions and found for the defendant. In another (*Casteel*), the court overturned a portion of the jury's verdict, removing a portion of the finding in favor of the plaintiff.

Alignments

A study of voting alliances reveals a court that is operating in overwhelming agreement, with a few outliers. A voting bloc analysis documents that the justices—with the exception of Owen and Hecht—agree with each other on at least 80 percent of decisions. (The only other agreement between justices below 80 percent occurs between Baker and Phillips).

This high level of agreement results in only three official voting blocs:

- The outliers, Justice Hecht and Justice Owen continue to form the strongest voting bloc on the court with a 93 percent voting agreement. Justices Owen and Hecht conversely have the lowest level of agreement with other members of the court.
- Justices Gonzales and Phillips form one voting bloc while Justice O’Neill is part of a voting bloc with Justice Hankinson.

Justices Hecht and Owen trailed the other justices in their agreement with the majority opinions on the court, with Justice Owen agreeing with the majority on only 54 percent of the cases and Justice Hecht agreeing on only 37 percent of the decisions.

As a whole, the court is characterized by two camps: the “Old Guard” comprised of justices elected between 1988 and 1994 and the “New Guard” comprised of justices initially appointed by Governor George W. Bush. Recently elected Justice Harriet O’Neill joins the “New Guard.”

The “New Guard,” comprised of Justices James Baker, Greg Abbott, Deborah Hankinson, Alberto Gonzales and Harriet O’Neill, appears to be continuing efforts to stake its claim on the court. Increasingly, the “New Guard,” led by Justices Hankinson and O’Neill are questioning—and in some cases refusing to follow—the judicial activism of the “Old Guard.”

While the “Old Guard,” comprised of Justices Tom Phillips, Nathan Hecht, Pricilla Owen and Craig Enoch, wrote 66 of the 126 opinions to the “New Guard’s” 60 opinions, the “New Guard” wrote 18 of the court’s majority opinions. The “Old Guard” wrote only 12 of the court’s majority opinions.

Data on swing votes was inconclusive in the 1999-2000 term. There was no single justice who could be identified as the swing vote in the court’s 1999-2000 term. Justices Gonzales, Phillips, Owen, Hecht and Enoch each were in the majority three times. This year Gonzales takes Abbott’s place to join with Phillips, Owen, Hecht and Enoch who were most likely to tilt the balance last year.

THE DIRTY DOZEN OF 2000

Elliott-Williams Co. v. Diaz:

Impact: Allows general contractors to ignore worker safety even if they accept contracted responsibility to control the means, methods or details of the work. Limits the scope of responsibility for property owners in a work environment.

Facts: At a job-site, the general contractor, Elliott-Williams, agrees through a contract with the landowner to bear financial responsibility for the actions of all employees and contracted representatives. When Diaz, a subcontracted employee is injured on the site, however, the court rules that despite the contract, Elliott-Williams did not control the sub-contractor's work and therefore bears no liability for Diaz's injuries.

Koch Refining Company v. Chapa:

Impact: Allows property owners to avoid responsibility of safety on worksite even when they hire a safety manager to oversee the site. Court suggests that if the property owner hears no evil or sees no evil then he will not be forced to pay any damages.

Facts: Koch Refining Company, the property owner, hired a safety manager who was charged with overseeing safety of the work site. When a sub-contracted employee was injured after falling, Koch refused to accept responsibility. Immediately after the fall, the safety manager implements additional safety procedures to prevent future falls. The court determined that the presence of a safety manager paid for by the property owner does not indicate the property owner assumes responsibility for ensuring safety on the job site.

CMH Homes Inc. v. Daenen:

Impact: Allows premises owners to ignore hazardous conditions for workers, using ignorance as a defense against liability.

Ruling: While Daenen, a truck driver, was unloading a delivery on a platform owned by CMH Homes, the platform swayed under his feet, causing injury to Daenen's back. Despite the fact that CHM Homes knew that its platform would become unstable and consequently unsafe with prolonged use and that the platform was in fact unstable, the court ruled there was no evidence that CMH Homes *knew* the platform posed a risk on that particular day. Therefore, CMH Homes was ignorant of the instability and it could not be held responsible for the Daenen's injuries.

Mellon Mortgage Company v. Holder:

Impact: Takes enormous step backwards for crime prevention efforts by allowing property owners to escape accountability for failing to provide safe public environment.

Facts: A police officer pulled a woman over for a traffic violation and instructed her to follow him into a parking garage that had a history of high crime.

The police officer then raped the woman. The court ruled that the parking garage owed a duty to those who may be harmed by the criminal acts of third parties only when the risk of criminal conduct is so great that it is both unreasonable and foreseeable—i.e. proximate cause. However, while the court admitted to the risks at this particular garage, it created a second test for responsibility—whether the crime was foreseeable—i.e. the garage owners could not have known that the police officer would bring a motorist to that garage to commit a sexual assault. This ruling allows the court—and any court—to dismiss premises liability cases according to duty rather than proximate cause and allows irresponsible property owners to evade accountability even though they fail to make their property safe.

Hernandez v. Tokai Corporation:

Impact: Severely limits the scope of responsibility any manufacturer has to ensure the safe use of its products. This decision eliminates meaningful incentives for manufacturers to consider child safety in the production of products.

Facts: In a case concerning a child harmed by a butane lighter, the court ruled that the plaintiff must show that the product was unreasonably dangerous as designed, considering the utility of the product and the risk involved. The court weighs the product's utility for intended users against the foreseeable risks with use by intended users when determining whether the product is unreasonably dangerous. In this case of a child obtaining access to a lighter, the court rules that because children are not the intended users, they do not enter into the balancing of utility against risk. Therefore regardless of whether any product poses a risk to children, if they are intended for a specific use— guns, household cleaning supplies, etc...—the manufacturer does not have to take precautions against possible misuse by unintended users, even if that use is clearly foreseeable.

Henson v. Southern Farm Bureau Casualty Insurance Co.:

Impact: Eliminates incentive for insurance companies to pay legitimate first-party claims in a timely manner.

Facts: Mr. Henson was involved in an automobile accident caused by another driver. While the at-fault driver's insurance company eventually settled with Mr. Henson once he took the case to court, he was forced to continue in court with his own insurance company for additional damages it should cover. After a lengthy legal battle, the court awarded Mr. Henson pre-judgment interest to compensate for the lost-value of the legitimate claim he waited seven years to receive. The court, however, ruled that his policy language precluded Mr. Henson from collecting prejudgment interest, holding that the insurance company was only responsible from the date the trial court said it was responsible, not the date of the accident. This ruling perverts the intent of prejudgment interest to serve as an incentive for prompt payment of legitimate claims.

Ford Motor Company v. Sheldon:

Impact: Raises bar for class action certification to virtually impossible standard. Validates “special law” designed to shield certain special interests from accountability for their actions and products.

Facts: Owners of Ford vehicles with defective paint-jobs brought a class action against Ford Motor Company for compensation for re-painting their vehicles. The class members banded together in the name of judicial economy to avoid bringing thousands of relatively small-dollar claims against the multi-billion dollar corporation. The class was certified at the trial court and affirmed by the appellate court. The Supreme Court, however, overturned the certification, citing a “special law” passed to protect automobile dealers and retailers. This “special law” was passed after the date the class action was initially filed. The ruling corresponds with the court’s determination in *Intratex* that class definitions cannot include the alleged violation or the class members’ state of mind.

Southwestern Refining Company v. Bernal:

Impact: Further restricts access to justice for individual consumers whose only path to justice against a large corporation is a class action lawsuit. Further limits qualifications for class certification.

Facts: A class of 904 residents of Corpus Christi filed a suit against Southwestern Refining Co. after an explosion of a slop tank that allegedly caused injury to the class members. The class sought to hold Southwestern accountable for the explosion, but their individual claims were not high enough to justify a suit or to sufficiently hold the corporation accountable. The court, however, held class actions not appropriate for personal-injury claims and decertified the class. The court also encouraged courts to err against certifying a class.

Intratex Gas Co. v. Beeson:

Impact: Establishes significant bar to certifying class action lawsuits. Bar makes it much more difficult for small-dollar claimants to seek justice against large corporations.

Facts: A group of producers of natural gas formed a class, alleging that Intratex Gas Co. had taken their gas over period of 10 years at less than ratable proportions. Despite trial court and appellate court approval, the court struck down the certification, claiming that classes could not be defined according to the alleged liability. The decision could potentially force class members to first prove liability before forming a class. This reasoning turns the purpose of class actions on its head. If the class members could afford to prove liability themselves, they would not need the judicial economy offered by class actions.

City of Fort Worth v. Zimlich:

Impact: Eliminates protections to employees who report the wrongdoing of their employers. Allows employers to silence whistle-blowers with no penalty.

Facts: Julius Zimlich, while employed as a deputy marshal for the City of Fort Worth Marshall's Office investigated a report about an illegal disposal site in a residential area of Fort Worth. After reporting his investigation to the appropriate law enforcement authority, Zimlich's job duties were changed and he was not promoted. Zimlich went to court to hold the City accountable for its violation of the Whistleblower Act, which makes it illegal for a local government to discriminate against a public employee who in good faith reports a violation of law. After a jury trial, Zimlich was awarded compensatory and punitive damages and the court of appeals affirmed the judgment. The Texas Supreme Court, however, overturned the jury's decision, letting the employer off the hook.

Walls Regional Hospital v. Bomar:

Impact: Eliminates avenues to justice for victims of sexual harassment in the workplace. The decision forces harassment victims to seek justice through the workers' compensation system despite an exemption that should apply in this situation.

Facts: Two female employees filed suit against Walls Regional Hospital, claiming sexual harassment in the workplace. The employer sought coverage under the Texas Workers' Compensation system. The employees sought a court remedy, citing an exemption to the workers' comp system that allowed suit in cases of injury due to personal reasons. The court determined that sexual harassment did not qualify as a personal offense, setting up a distinction within sexual harassment policy.

Stringer v. Cendant Mortgage Corp.:

Impact: Allows a home-equity lender to force a borrower to pay off an unrelated third-party debt with proceeds of the home equity loan. The decision lies in direct conflict to legislative intent and consumer disclosure that the funds may not be applied to unrelated debt.

Facts: Homeowners applied for a home equity loan from a mortgage company. When the loan closed, the mortgage company insisted that the homeowners use almost half of the loan to pay off unrelated unsecured debts. Homeowners claim that the mortgage company violated the contract as well as the Texas Constitution. The court held that the Texas Constitution does not prohibit the mortgage company from enforcing the requirement that the homeowners pay off unrelated debt.

SILVER LINING

The one category of plaintiffs that saw relief in 1999-2000 was plaintiffs trying to hold the state accountable. Plaintiffs won nine of 17—53 percent—of their cases against state entities. While not an overwhelming victory for consumers when compared to defendant ratios above 60 percent in other categories, the results in this category indicate that the court has the ability to protect consumers against state aggression if they choose to do so.

In a rather contradictory decision, however, the court found in a premises liability case that the state was in fact responsible for its failure to protect two campers who drowned in a state park during a flood (*Wilson v. Texas Parks and Wildlife Department*). The only difference between this case and those against commercial property owners was that the court determined the state assumed responsibility by placing flood-warning signs throughout the state park. In cases involving employees, however, the court said that contracts with sub-contractors, established safety programs and other indications by the premises owners could not constitute responsibility on the part of the owners for the safety of the premises.

The distinction between this state case and the commercial property owner cases could potentially establish a disincentive to post warning signs and assume safety precautions. The owners that disavowed responsibility and ignored potential hazards evaded accountability; the park that took safety precautions bears responsibility. This appears to be a dangerous distinction and precedent.

It is also important to note that the results in this particular category skew the results for consumers across the board, masking the pro-defendant nature of the court. If the win/loss tabulation removes cases involving government entities and considers only cases involving consumers and corporate entities, the consumer win-rate drops to 23 percent from 32 percent; defendant business win-rate increases to 64 percent from 57 percent.

The hope behind this silver lining is that the court will turn its protection sights toward consumers, holding corporate interests accountable as well. Is the Texas Supreme Court only willing to hold the state accountable or will they also protect consumers against corporate interests?

Another Silver Lining was the court's opinion in *Horizon v. Auld* to uphold the application of punitive damages under the Civil Practices & Remedies Code for nursing home operators and medical practitioners. In this case concerning the abuse and neglect of Martha Hary, a nursing home resident, the court rejected nursing home industry arguments that punitive damages should have been capped under the Medical Liability Act (4590i), deciding instead to protect nursing home residents and patients from neglect by maintaining an important incentive for responsible treatment.

Additionally, the court affirmed the importance of admitting survey reports into trial, opining that survey reports offered the only way to provide juries with an accurate picture of nursing home care. This is a particularly important statement in light of current tort "reformer" efforts to keep survey reports out of trial.

Plaintiffs versus Defendants
in the Texas Supreme Court
2000-2001
60 decisions

Type of case	Record (D-P-S)	% for D	% for P	% Split
Insurance	1-1-1	33	33	33
Government	11-3-0	79	21	0
Employment	4-2-0	67	33	0
Medical	1-1-0	50	50	0
Banking/Mortgage	3-1-0	75	25	0
Legal Malpractice/fees	0-6-1	0	86	14
Product Liability/PI	0-3-2	0	60	40
Class Action	1-2-0	33	67	0
Arbitration	2-1-0	67	33	0
Other	5-2-0	71	29	0
OVERALL	31-28.5-.5	52	47	

The plaintiffs are individuals or business consumers suffering a property loss or personal injury. Excludes family law cases, commercial contract disputes.

- **Tabulation without government cases:** (46 decisions) When the tabulation considers only cases involving consumers and corporate-entities, the consumer win-rate rises to 55 percent from 47 percent. Defendant win-rate drops to 44 percent from 52 percent. These figures (? do or do not?) fall into line with tabulations from the past three years of court opinions.

	(D-P-S)	% for D	% for P	% Split
Overall	(20-25.5-.5)	44%	55%	1%

- **Equal Numbers, Not Rights:** ----- for 2000-2001:
- (last year: All four of the insurance company wins stripped consumers of important substantive protections, while within the consumer wins, two of the four cases were on legal procedural issues rather than substantive victories.
- **Doctors Lose Edge:**-----for 2000-2001
- (last year: Medical defendants lost the edge they enjoyed in past terms. Medical defendants won 100 percent of their cases in the 1996-1997 and 1998-1999 terms and 67 percent of their cases in 1997-1998.

**TEXAS SUPREME COURT VOTING ALLIANCES
2000-2001**

Result Analysis
58 decisions

Scores indicate percentage of decisions where each pair agreed.

	Hecht	Phillips	Gonzales	Abbott	Hankinson	Enoch	Baker	O'Neill
Owen	92.2	77.6	12.1	66.4	75.9	80.2	76.7	74.1
Hecht		73.3		79.0	65.3	68.0	71.8	64.2
Phillips			91.0	80.6	89.0	82.8	78.2	84.2
Gonzales				87.9	88.1	86.9	83.9	86.7
Abbott					87.3	82.8	83.1	85.8
Hankinson						86.9	85.5	91.7
Enoch							85.5	90.8
Baker								90.0

- **Unified Front?** With the exception of Owen and Hecht, the justices agree with each other on at least 80 percent of decisions. (Baker's only other less than 80 percent agreement occurs with Phillips).
- **Building Alliances:** Justices Gonzales and Phillips form one voting bloc. Justice O'Neill is part of a voting bloc with Justice Hankinson.
- **On an Island:** Justice Hecht and Justice Owen continue to form the strongest voting bloc on the court with a 93 percent voting agreement.

Average agreement (cohesion) = 81.7 percent (2941/36)

Bloc calculation: $100 - 81.7 = 18.3$

$18.3/2 = 9.1$

$81.7 + 9.1 = 90.9$

Bloc is 91 or greater

Case source: Texas Supreme Court opinions

Bloc voting analysis

Bloc voting analysis is a political science technique for measuring the strength of voting alliances on collegial courts. It analyzes agreement to create a spectrum of voting behavior, but does not define an ideological spectrum.

Blocs are measured by defining a threshold that is halfway between the average agreement of the court and the perfect agreement score of 100 percent.

Result analysis measures agreement on result, counting concurrence as agreement with the majority. Concurring and dissenting opinions are scored so that justices on C&D opinions are counted as being half in agreement with the majority and half in agreement with each dissenter.

Cases include unanimous and majority decisions. Dissents on cases not taken are not included.

AGREEMENT WITH THE MAJORITY ON RESULT
Texas Supreme Court
1999-2000
27 decisions

Justice	Agreed/Cases	Agreement (%)
Gonzales	24.5/27	90.7
Hankinson	20.5/26	78.8
Abbott	21/27	77.8
O'Neill	19.5/26	75.0
Enoch	20.5/26	75.9
Phillips	19/27	70.4
Baker	18.5/27	68.5
Owen	14/26	53.8
Hecht	10/27	37.0

**AUTHORS OF OPINIONS
Texas Supreme Court
1999-2000**

Justice	Unanimous	Majority	Concurring	Concurring & Dissenting	Dissenting	Total
Hecht	3		5		12	20
Owen	5	1	3		9	18
Enoch	3	2	5	2	5	17
Abbott	4	6	4		4	18
Baker	4	5	1	1	2	13
Gonzales	4	3	5	1		13
Phillips	3	6			2	11
Hankinson	6			1	1	8
O'Neill	3	4			1	8
TOTALS	35	27	23	5	36	126

- The “New Guard,” comprised of Justices Baker, Abbott, Hankinson, Gonzales and O’Neill, appears to be continuing efforts to stake its claim on the court. While the “Old Guard,” comprised of Justices Phillips, Hecht, Owen and Enoch, wrote 66 of the 126 opinions to the “New Guard’s” 60 opinions, the “New Guard” wrote 18 of the courts majority opinions. The “Old Guard” wrote only 12 of the majority opinions.
- Justices Phillips, Baker, Hankinson, and O'Neill were least likely to dissent.
- Justice Nathan Hecht emerged this term as the courts most disagreeable justice having penned 12 dissents. This number does not include Hecht’s 10 dissents on cases where petition for review and writ of mandamus were denied.
- Nearly 40 percent of the opinions issued last term were unsigned, "per curiam" opinions. This number is fairly consistent with the number of per curiam decisions issued the past two terms. A per curiam opinion can be handed down when as many as three justices dissent but do not wish to write a dissenting opinion. Historical “per curiam” opinion percentages:

1996-1997	53 %
1997-1998	35 %
1998-1999	44%
1999-2000	40%

THE SWING VOTE

Voting with the Majority in 5-4 Decisions 1999-2000

Identifying the one justice who makes the difference in the court's close decisions-the swing vote-is best accomplished through an analysis of the court's decisions in which the justices split 5-4 on result. Four such decisions were issued in the last year.

There was no one justice who could be identified as the swing vote in the court's 1999-2000 term. Justices Gonzales, Phillips, Owen, Hecht, and Enoch each were in the majority three times. This year Gonzales takes Abbott's place to join with Phillips, Owen, Hecht, and Enoch who were most likely to tilt the balance last year.

Phillips	3-1
Gonzales	3-1
Hecht	3-1
Owen	3-1
Enoch	3-1
Abbott	2-2
O'Neill	1-3
Hankinson	1-3
Baker	1-3