

Shifting Sands for Consumers

EXECUTIVE SUMMARY

In the 2002-2003 session of the Texas Supreme Court, an activist, hard-line faction of justices issued a record-shattering number of defense win opinions that tossed standard legal procedures and judicial restraint to the wind, shattering many of the legal foundations that allow citizens and consumers to access justice. Consumers lost not only in a straight numerical comparison, but also from the loss of legal standards and predictability intended to provide equal footing between defense and plaintiffs in the halls of justice.

With a 79 percent win-rate for insurance, medical and corporate interest defendants, the court set new standards for defendant bias, finding for consumer plaintiffs in only 19 percent of consumer cases considered by the court. Of the 82 cases decided by the Texas Supreme Court during 2002-2003 session, (September 26,2002-July 3,2003), 47 cases pitted citizens, consumers, workers and patients as plaintiffs against insurance, healthcare and government defendants.

Texas Supreme Court Plaintiff-Defendant Win Ratios, 1996-2003

Years	Defendant Win Rate	Plaintiff Win Rate
1996-1997	71%	24%
1997-1998	69%	22%
1998-1999	60%	27%
1999-2000	57%	31%
2000-2001	52%	41%
2001-2002	68%	27%
2002-2003	79%	19%

This record level of bias reflects the power of an emboldened activist, pro-insurance faction, comprised of traditional hard-line forces and justices that rose to power in recent years. This new faction consolidated power and isolated forces with the departure of moderating—although undoubtedly conservative—justices from the Court.

With this consolidated power, this activist faction took extraordinary legal liberties, bypassing predictability, standards and legal restraint to deliver results that favored defendants.

Opinions issued by this powerful activist faction:

- Ignored long-standing common law precedents
- Changed the rules of procedure to create higher and less predictable hurdles for consumer plaintiffs.
- Granted significant leeway to defendants to escape accountability
- Overstepped constitutional responsibilities by squashing the decision-making of local juries.

Shifting Sands for Consumers

The 2002-2003 session of the Texas Supreme Court was marked by a record win-rate for insurance, healthcare and corporate defendants as a hard-line activist faction issued results-oriented opinions to protect defendants at the expense of consumer plaintiffs. The startling 79/19 percent split between defendant and consumer plaintiffs is detailed on page 5.

Perhaps just as alarming as this dramatic split is the judicial contortions and activism employed by this newly emboldened hard-line faction throughout the session including rejecting common law principles, changing legal rules in mid-stream to the detriment of consumer plaintiffs, opening new loopholes for defendants and substituting their own subjective opinions for those made by local citizen juries.

Taken as a whole, the 2002-2003 Texas Supreme Court session tosses consumer plaintiffs into an unpredictable, confusing and inconsistent legal system slanted in favor of corporate insurance, healthcare and corporate interests.

New Forces

Already a defense and insurance oriented court since the early 1990s, this session saw a significant expansion of power by a hard-line, activist faction. The long-time outsider pair, Justices Nathan Hecht and Priscilla Owen, found new allies from justices appointed by and elected with the help of Gov. Rick Perry. Perry's supported justices present a stark contrast to the more moderate justices appointed to the Supreme Court by then Gov. George W. Bush.

A review of majority agreements (pg 7) documents the overwhelming agreement among this new faction on the court and illustrates the sharp alienation of Justices Deborah Hankinson and Craig Enoch, two justices who have shown signs of conservative moderation in their voting history. The departure of Hankinson and Enoch from the bench allows the more hard-line faction to reject precedent and conservative legal thought in favor of activist, result-oriented decision-making.

Ignoring Common Law

Our entire system of law is built on common law precedent and history intended to govern legal decision-making and provide critical checks and balances. Unfortunately, with the recent increase in the use of private justice through arbitration, legal decision-making has become less predictable and consistent.

In past years and in this session, the Texas Supreme Court has granted increased leeway and opportunities for the use of arbitration in consumer contracts. One of the biggest consumer pitfalls of arbitration is the lack of an appeals process to ensure legal decisions are consistent with common law. The court continued to defer to arbitration, refusing to allow appeals on an arbitrator's decision—even when it contradicted common law.

In *Callahan & Associates v. Orangefield Independent School District* (12/19/02) and *CVN v. Delgado* (12/31/02) the court deferred to decisions made by private arbitrators despite the fact that those decisions incorrectly applied Texas law and public policy. These decisions confirm criticisms that arbitration removes critical checks and balances that serve as the foundation of the public justice system and consequently strip consumers of their ability to attain justice.

Changing Rules Mid-stream

The Medical Liability and Insurance Improvement Act, (Article 4590i), includes the set of rules intended to clarify a patient's expert report requirements in medical malpractice cases. Rules of procedure in this and other statutes, are designed to provide a road-map for plaintiffs and defendants about materials, standards of proof and other requirements for predictability and fairness in the court process.

To the detriment of injured patients, the Court has been very inconsistent and result-oriented in its interpretation of this statute, making it nearly impossible for the patient to know what constitutes an appropriate report or properly present a case for consideration and evaluation.

In two cases in the 2002-2003 session—*Walker v. Gutierrez* (6/19/03) and *Horizon/CMS Healthcare Corporation, Inc. v. Fischer* (6/19/03)—the court used subjective criteria to invalidate key expert reports from the trial. These decisions imposed almost impossibly strict requirements on plaintiffs and blurred the rules intended to serve as guidelines for gaining access to justice.

In both cases, plaintiffs believed they had met expert report statutory requirements. The court rejected the expert reports—as well as opportunities for plaintiffs to make adjustments—making their own subjective evaluations concerning the content, conclusions and validity of reports developed by statutorily approved experts.

Due to the Court's erratic revisions of the statutory requirements, consumers are left with shaky footing and little predictability in the Texas legal system.

Double Standards

This session the Texas Supreme Court went out of its way to alter legal requirements for defendants, giving them the opportunity to avoid court imposed penalties and ultimately accountability for their actions. Specifically, the court has stated that it is OK for defendants to ignore legal deadlines and manipulate evidence and they will not be held accountable. The court used creative and arbitrary reasoning to deny plaintiffs' access to justice, while opening the door for future defendants to ignore legal deadlines and requirements.

In two cases—*Spohn Hospital v. Karen Mayer* (4/24/03) and *Wal-Mart v. Johnson* (5/22/03)—the court overturned sanctions against two defendants that delayed or destroyed evidence. By lifting these sanctions for failure to produce evidence—and severely undermining the plaintiff’s case against the defense—the Court sent a signal to defendants that they would be granted tremendous flexibility to hide, delay or destroy evidence of misdeeds.

In *Jernigan v. Langley* (7/3/03), the Court went out of its way to give physicians a long window of time to request dismissal of a case. The Court ruled there is no statutory deadline to file a motion to dismiss, giving healthcare defendants the upper hand in defending against malpractice.

Overstepping Judicial Bounds

The Texas Constitution establishes very specific thresholds designed to respect the role of juries in deciding factual issues, and to protect jury decisions from unnecessary judicial interpretation and action. The Constitution restricts the court to ensure evidence exists to support a jury decision—it is barred from subjective evaluations of that evidence.

This past session, the court went far beyond its role in ensuring the existence of evidence, taking great liberties to evaluate evidence to the detriment of plaintiffs. Again, showing their willingness to go anywhere at anytime to find a way for insurance and corporate defendants to win, the court now is infringing on the role of independent local juries.

In three cases—*Wal-Mart v. Miller* (3/27/03), *Tiller v. McLure* (5/8/03), *Marathon Corporation v. John Pitzner* (5/22/03)—the court bent over backwards to evaluate evidence, supplanting three juries’ opinions with its own conclusion on behalf of the defense.

By overstepping these constitutional bounds and rejecting the opinions of local citizen juries, the court is stripping consumer plaintiffs of critical social checks and balances delineated in the Texas Constitution.

Shaky Footing for Consumers

The 2002-2003 Texas Supreme Court not only shattered defendant win rate records, but effectively shattered the stable foundation that governed access to justice for Texas consumer plaintiffs. An emboldened faction of activist, result-oriented justices engaged in legal backbends and contortions to benefit insurance, medical and corporate interests. The willingness to change rules mid-stream, overstep judicial bounds and employ double standards leaves consumer plaintiffs paddling against unpredictable and choppy waters to gain access to the halls of justice.

Chart 1: Consumer Case Categories

Texas Supreme Court 2002-2003

47 decisions*

Category	Record (D-P-S)	% for D	% for P	% Split**
Arbitration	3-1-0	75	25	0
Class Action	7-3-0	70	30	0
Employee	5-0-0	100	0	0
Federal/Common Law	0-0-1	0	0	100
Sovereign Immunity	6-0-0	100	0	0
Medical Malpractice	8-1-0	89	11	0
Other	8-4-0	67	33	0
Overall	37-9-1	79	19	2

* Total number of cases including signed and per curiam opinions that deal with consumer issues. The plaintiffs are individuals or business consumers suffering a property loss or personal injury. Cases dealing with family law issues were not included.

** A split decision is a decision that includes aspects that are beneficial and detrimental for consumers.

- **Big Losers:** It was a bad year for patients, employees and Texans injured by governmental entities as the court found in favor of medical, government and employers more than 89 percent of the time.
- **Bad Numbers:** Consumers failed to win more than 50 percent of their cases in any single category during the 2002-2003 term.
- **Making a Statement Through Medical Malpractice:** There has been a steady increase in the number of medical malpractice cases that the Court has chosen to review. There was 1 in 2000-2001, 3 in 2001-2002, and 9 in 2002-2003. Increased scrutiny of medical malpractice claims—and deference to defendants—is consistent with statewide efforts to shield the medical industry from accountability.

Chart 2: Voting Alliances
 Texas Supreme Court 2002-2003
 60 Decisions (40 Unanimous, 20 Majority)

	Enoch	Hankinson	Hecht	Jefferson	O'Neill	Owen	Phillips	Rodriguez	Schneider	Smith	Wainwright
Enoch			77	83	80	80	78		78		
Hankinson											
Hecht				87	83	93	88		87		
Jefferson					87	92	88		88		
O'Neill						87	95		95		
Owen							93		90		
Phillips											
Rodriguez									73		
Schneider											
Smith											
Wainwright											

Average cohesion=90

Bloc=95

Blank boxes: not enough cases together for accurate study

- Average agreement (cohesion) = 90.15(1803/20)

Bloc calculation: $100 - 90.15 = 9.85$

$9.85/2 = 4.925$

$90.15 + 4.925 = 95.075$

Bloc is 95 or greater

Case source: 2002-2003 Texas Supreme Court opinions

- **Blocs for 2002-2003:** Two voting blocs emerged in the 2002-2003 term. Justice O'Neill with Justice Phillips and then again with Justice Schneider form the strongest voting bloc at 95 percent agreement.
- **Going, Going, Gone:** Justice Enoch and Hankinson logged the lowest agreement across the board with all other justices. Their departure leaves the court with virtual lock-step agreement and a serious lack of independent thinking.

Bloc voting 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. At least 20 opinions with a split result are required to make the study accurate.

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.

Chart 3: Agreement With the Majority on Result
Texas Supreme Court 2002-2003

	Majority Opinions		Unanimous Opinions and Majority Opinions	
	Agreed/Cases	Agreement (%)	Agreed /Cases	Agreement (%)
<u>Justice</u>	21 Decisions		60 Decisions	
Rodriguez	6/6*	100%	11/11*	100%
Smith	14/15*	93%	48/49*	98%
Phillips	19/21	90%	58/60	97%
Owen	18/21	86%	57/60	95%
Schneider	17/21	81%	56/60	93%
Hecht	17/21	81%	56/60	93%
Wainwright	8/10*	80%	38/40*	95%
Jefferson	16.5/21	79%	54.5/60	91%
O'Neill	16/21	76%	55/60	92%
Enoch	9.5/21	45%	48.5/60	81%
Hankinson	5/11*	45%	14/20*	70%

**participated*

- **Part of the In-Crowd Once Again:** Defendant win ratios (Chart 1 p.5), as well as the high rate of agreement amongst justices demonstrated above, documents that the Texas Supreme Court is overwhelmingly like-minded in ruling for insurance defendants.
- **The Hard-line Faction:** Justices Hecht and Owen are gathering strength among newly elected justices and Perry appointees to form a strong hard-line alliance operating in significant agreement throughout a session of extreme defendant dominance.
- **Defectors:** In a historic role reversal, Justices Hankinson and Enoch logged the lowest levels of agreement on the court, representing a marked shift from recent years. (*See p.8 for historic trend*)

Chart 4. Shift in Agreement Between Moderate and Activist Cores Texas Supreme Court 2002-2003

Justice	Term	MAJORITY CASES			UNANIMOUS & MAJORITY CASES		
		Agreed/Cases	Agreement (%)	Change	Agreed/Cases	Agreement (%)	Change
Hecht	2000-2001	11.5/22	52.30		44.5/56	79	
	2001-2002	17/22	77.00		39/44	89	
	2002-2003	17/21	80.95	3.95	56/60	93.3	4.3
Owen	2000-2001	12/22	54.50		47/56	84	
	2001-2002	18/22	82.00		40/44	91	
	2002-2003	18/21	85.71	3.71	57/60	95	4
Hankinson	2000-2001	20.5/22	93.20		49.5/52	95	
	2001-2002	13/22	59.00		35/44	80	
	2002-2003	5/11*	45.45	-13.55	14/20*	70	-10
Enoch	2000-2001	17.5/22	79.50		50/56	89	
	2001-2002	18/22	82.00		40/44	91	
	2002-2003	9.5/21	45.24	-36.76	48.5/60	81	-10

* participated

- **Taking the lead again:** Previously characterized as isolated and disagreeable castaways on a moderating court, Justice Owen and Justice Hecht have dramatically increased their agreement levels with new justices, logging the biggest increases in agreement with majority and unanimous opinions between the 2001-2002 and 2002-2003 terms.
- **Off into the Sunset:** The increasing disagreement between the former conservative moderates Hankinson and Enoch and the newly invigorated activist faction reflects growing hesitation and discomfort of these two moderate justices with the extreme imbalance on the 2002-2003 court. Unfortunately for consumers, the departure of Hankinson and Enoch strips consumers of some of the only remaining judges willing to look at two sides to every issue.

Chart 5. Authors of Opinions
Texas Supreme Court 2002-2003

Justice	Unanimous	Majority	Concurring	Concurring & Dissenting	Dissenting	Total
Enoch	7	3	2	1	4	17
Hankinson	2	0	0	0	3	5
Hecht	4	3	2	0	5	14
Jefferson	8	1	1	1	1	12
O'Neill	3	6	2	0	3	14
Owen	1	2	1	0	1	5
Phillips	5	6	4	0	1	16
Rodriguez	2	1	0	0	0	3
Schneider	3	0	0	0	0	3
Smith	1	2	1	0	1	5
Wainwright	2	0	0	0	0	2
TOTALS	38	24	13	2	19	96

Chart 6. Consumer Win/Loss Dissents

Texas Supreme Court 2002-2003

Justices	Total Dissents	Consumer Case Dissents	Consumer Case Win Dissents	Consumer Case Losses Dissents
Enoch	11	6	2	4
Hankinson	6	5	0	5
Hecht	5	3	3	0
Jefferson	5	1	0	1
O'Neill	5	4	0	4
Owen	3	1	1	0
Phillips	2	1	0	1
Rodriguez	0	0	0	0
Schneider	4	3	0	3
Smith	1	0	0	0
Wainwright	2	0	0	0
Totals	44	24	6	18

- ❑ **Defending Consumers:** Justice Enoch and Justice Hankinson (combined) wrote half (9 out of 18) of the consumer loss dissents, illustrating their concern about the Court's continued march against consumer rights and protections.
- ❑ **Seven Year Stretch:** For the seventh year in a row, Justice Owen has not dissented in a consumer loss.
- ❑ **The Federal Nominee Continues to Distinguish Herself:** Priscilla Owen continues to distinguish herself as perhaps the most unfriendly justice to Texas consumers that has ever served on the Texas Supreme Court. Not only does she rarely, if ever, vote for consumer plaintiffs, she often finds fault with the court when—on the rarest of occasions—a consumer actually wins a case at the court. In the past seven years, however, she has never once dissented on an opinion in which a consumer lost.

Lack of Consumer Loss Dissents

Year	Justices	Total Consumer Wins	Consumer Wins Dissents	Total Consumer Losses	Consumer Loss Dissents
1999-2000	Hecht	18	12	32	0
	Owen	18	9	32	0
2000-2001	Hecht	16	8	26	0
	Owen	16	7	26	0
2001-2002	Hecht	19	6	39	0
	Owen	19	5	39	0
2002-2003	Hecht	9	3	38	0
	Owen	9	1	38	0

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Terrible Ten of 2002-2003

Texas Supreme Court

St. Joseph Hospital v. Stacy Lynn Wolff (Moseley 6-2)

Allows medical industry to deflect accountability for injury or death when their employees commit medical malpractice.

Dr. Karen Roberts v. Lainie and Casey Williamson (Phillips 6-3)

Eliminates a legal claim for the emotional value and contribution of a child to a family.

Henry Schein Inc. v. Shelly E. Stromboe et.al (Hecht 5-3)

Forces plaintiffs with similar legitimate legal claims into costly individual litigation by denying the efficiency of a class action lawsuit.

In Re Bridgestone/Firestone (Hecht 8-0)

Creates barriers for consumers to obtain critical evidence by creating almost impossible evidentiary standards for plaintiffs.

Progressive County Mutual Insurance Co. v. Paul Sink (Owen 6-3)

Gives insurance companies more leeway to deny legitimate claims.

Marathon Corporation v. John Pitzner (Per curiam)

Creates an impossibly high standard for evidence verification subjecting consumer plaintiff's expert reports to inconsistent and extreme standards.

Douglas K. McIntyre, M.D., v. Debra Marie Ramirez (Wainwright 9-0)

Dramatically expands Good Samaritan immunity protections to doctors already practicing in a hospital setting.

Mission Petroleum Carriers Inc. v. Roy B. Solomon (Jefferson 9-0)

Eliminates employee protections against wrongful termination based on inaccurate drug testing.

Billie H. Tiller v. Barbara McLure (Per Curiam)

Eliminates predictability in cases involving intentional infliction of emotional distress by stripping juries of their ability to interpret facts.

Texas Commerce Bank v. Linda Grizzle et. al (Enoch 8-0)

Gives tremendous leeway to financial institutions to escape legal responsibility for mishandling funds.

Terrible Ten of 2002-2003

Texas Supreme Court

St. Joseph Hospital v. Stacy Lynn Wolff (Moseley 5-2)

Impact: Allows medical industry to deflect accountability for injury or death when their employees commit medical malpractice.

Minor patient and her parents, brought a medical malpractice action against a surgical resident, the teaching hospital that sponsored the medical residency program. The jury found for the plaintiff. The court of appeals affirmed. The Supreme Court ruled that the medical student was not an employee of the hospital even though the hospital pays student's salary and supervised work. The ruling left no one accountable for mistakes made by training physician. Additionally, the Court cast itself in a fact finder role to evaluate responsibility for medical student's actions.

Dr. Karen Roberts v. Lainie and Casey Williamson (Phillips 5-3)

Impact: Eliminates a legal claim for the emotional value and contribution of a child to a family.

Parents of a child injured by medical malpractice sought damages against their medical provider to cover injuries as well as loss of consortium (i.e., the right to the company of, help of, affection of a person) to reflect family changes caused by daughter's developmental, emotional and physical impairments. The trial court and the court of appeals upheld the jury award to patients. The Supreme Court overturned ruling that parents may not claim a loss of consortium for a child. The opinion contradicts three Texas court of appeals cases: *Schindler Elevator Corp. v. Anderson*; *Enochs v. Brown*; and *Parkway Hosp., Inc. v. Lee* and negates value of life and family.

In the Court's own words:

"Although parents customarily enjoy the consortium of their children, in the ordinary course of events a parent does not depend on a child's companionship, love, support, guidance, and nurture in the same way and to the same degree that a husband depends on his wife, a wife depends on her husband, or a minor or disabled adult child depends on his or her parent."

Henry Schein Inc. v. Shelly E. Stromboe et.al (Hecht 5-3)

Impact: Forces plaintiffs with similar legitimate legal claims into costly individual litigation by denying the efficiency of a class action lawsuit.

Dentists filed action against dental software sellers, alleging software designed to aid office management was defective. The small business owners joined because the damages were relatively small and joint litigation would decrease their litigation costs. Pretrial court certified and the court of appeals affirmed. The Supreme Court overturned certification of the class, arguing that the amount of recovery was not small enough to show how prosecution of individual actions was more practical than individual suits. This decision is more costly because it prevents judicial economy and forces multiple similar suits on same issue for same product against same company.

In Re Bridgestone/Firestone (Hecht 8-0)

Impact: Creates barriers for consumers to obtain critical evidence by creating almost impossible evidentiary standards for plaintiffs.

Plaintiffs sought to discover the Firestone skim stock formulas, which they claim were defective and caused rollovers that resulted in injury and death. The plaintiffs presented testimony from two experts on why the formulas were necessary to prove their case. A pretrial judge ordered Firestone to produce skim stock formula information. The court of appeals reversed. The Supreme Court held consumers in this class action suit were not entitled to disclosure of these trade secrets. The Court created a delicate and almost impossible standard which plaintiffs have to meet in order to be granted disclosure. They have to produce other independent evidence to sustain their suit, but not too much evidence, creating an extreme catch-22 requirement for plaintiffs. If they have too much evidence, then the Court sees the requested trade secret as unnecessary to the case. However, if the plaintiffs do not have enough independent evidence, then they do not have a cause of action.

Progressive County Mutual Insurance Co. v. Paul Sink (Owen 6-3)

Impact: Greatly gives insurance companies more leeway to deny legitimate claims.

Joshua McCauley, an employee at Alamo Rent-A-Car, took one of its rental cars to pick up tools to repair his truck. While driving the rental car, he got in an accident with Paul Sink. Sink sued McCauley's auto insurance carrier, Progressive County Mutual Insurance Company, under its policy insuring McCauley's truck. Progressive claimed McCauley could not be covered ruling that the rental car did not qualify as a "temporary substitute" (i.e., a non-owned vehicle used with permission from the owner when the primary vehicle is out of commission for servicing or repair). The trial court held for Progressive. The court of appeals reversed. The Supreme Court reversed for Progressive, ruling that the car did not constitute a "temporary substitute" vehicle under the standard Texas personal auto policy. The Court takes a very limited view of a temporary substitute auto, thereby ruling

in favor of an insurance company over a consumer. This ruling causes a policy holder to lose protection under their purchased policy. In fact, no court had previously enforced a permission requirement unless the insurance policy explicitly contained such a requirement for temporary substitute automobiles.

Marathon Corporation v. John Pitzner (Per curiam)

Impact: Creates an impossibly high standard for evidence verification subjecting consumer plaintiff's expert reports to inconsistent and extreme standards.

Pitzner sued for injuries, which occurred while making repairs on the roof of a building owned by Marathon Corporation. Pitzner claimed that the building's undisputed noncompliance with certain provisions of the city's building and mechanical codes caused him to be electrocuted when he attempted to start the unit, causing him to fall off of the roof. The jury awarded Pitzner \$7.7 million in actual damages including pre-judgment and post-judgment interest. The court of appeals affirmed. The Supreme Court ruled that evidence, which included circumstantial evidence and expert testimony, was legally insufficient. It contended the expert opinions were based on speculation piled upon speculation and that Pitzner could have just as easily been a victim of foul play, although there was not evidence to that effect. This places an extremely high standard on plaintiffs to find non-disputable evidence.

Douglas K. McIntyre, M.D., v. Debra Marie Ramirez (Wainwright 9-0)

Impact: Dramatically expands Good Samaritan immunity protections to doctors already practicing in a hospital setting.

Dr. McIntyre, an obstetrician, was in the delivery/labor floor of St. David's hospital, where he had privileges, visiting a patient. He answered a page for "Dr.Stork," a call for any obstetrician in the hospital to participate in a delivery. Ramirez alleged that due to actions made by Dr. McIntyre during delivery, the baby was born with injuries resulting in permanent neurological impairment and paralysis. Dr. McIntyre claimed he was not liable under the Good Samaritan Law, which was originally enacted to protect individuals from liability when providing immediate, extreme voluntary help. The trial court granted the medical provider's motion for summary judgment based on the Good Samaritan law. The court of appeals reversed, holding that Dr. McIntyre failed to prove that he was entitled to protection from liability under the Good Samaritan Law. The Supreme Court ruled that even though Dr. McIntyre was in the hospital as part of his duties as an obstetrician, he did not expect payment for the Dr. Stork page and therefore gained protections under the Good Samaritan Law. This greatly expands Good Samaritan protections beyond extreme voluntary actions granting doctors broad shield of immunity even when operating in course of professional duties.

Mission Petroleum Carriers Inc. v. Roy B. Solomon (Jefferson 9-0)

Impact: Eliminates employee protections against wrongful termination based on inaccurate drug testing.

Solomon was terminated by Mission Petroleum after a drug test produced a false positive, incorrectly indicating the presence of marijuana. He was unable to find additional employment because of this inaccurate test. The trial court found for the employer. The court of appeals reversed. The Supreme Court ruled that an employer who wrongfully terminates an employee due to a false positive on a drug test is not liable for his injuries, declining to impose a common-law duty on employers who conduct in-house urine specimen collection pursuant to DOT regulations. This leaves employees without remedy for damages suffered due to inaccurate testing.

Billie H. Tiller v. Barbara McLure (Per Curiam)

Impact: Eliminates predictability in cases involving intentional infliction of emotional distress by stripping juries of ability to interpret facts.

McLure contended Tiller was responsible for intentional infliction of emotional distress through his conduct. Tiller made persistent and frequent telephone calls to Mrs. McLure, who took over husband's contracting business, during her husband's terminal illness. Tiller complained about the construction project, threatened to terminate the contract if the construction site was closed during the contractor's funeral, and refused to make final contract payment. Tiller's behavior and ultimate refusal to make a final contract payment caused the company to foreclose. The jury found for the plaintiff. The trial court overturned jury award and rendered that McLure take nothing. The court of appeals upheld the jury's verdict. The Supreme Court overturned the court of appeals, supplanting the jury's evaluation of Tiller's behavior with its own, concluding that Tiller's behavior was not extreme and outrageous. The Supreme Court, in an effort to assert more control, is effectively taking the fact interpretation out of the hands of the jury. The Court's duty is to answer questions of law, not fact. If this is not enough evidence for intentional infliction of emotional distress, it is not clear what will be sufficient.

Texas Commerce Bank v. Grizzle et. al (Enoch 8-0)

Impact: Gives tremendous leeway to financial institutions to escape legal responsibility for mishandling funds.

This class action suit alleged breach of fiduciary duty among other actions when the bank inappropriately liquidated trust accounts during a merger, which resulted in losses. The class argued that self-dealing (misapplying or mishandling trust funds) benefited the banks at expense of account holders, violating public policy. The trial court granted summary judgment for the bank. The court of appeals reversed. The Supreme Court relieved the bank from any liability. They indicated that public policy concerns are already reflected in

the statute authorizing exculpatory clauses (a clause which excuses or justifies a wrong action.) and the actions did not rise to the level of gross negligence.