



Court Watch

a project of the Texas Watch Foundation

THE TEXAS SUPREME COURT BY THE NUMBERS A Statistical Analysis of the Texas Supreme Court (2005-2006)

Introduction

Ten years ago, Court Watch began to monitor the Texas Supreme Court, tracking the Court's decision-making and how it impacts Texas consumers. Over the years, the trends have been revealing and oftentimes disturbing for average Texans.

This year, we are releasing our findings in a series of reports designed to educate the public about the Court's anti-consumer behavior. In this first report, we will highlight the statistical trends of the Court's most recent term. We are building on past reports to show trends over the last decade, and we have added our first ever Consumer Scorecard, which shows how each justice voted in matters that impact consumers. Sadly, each of the nine justices received a failing grade on our scorecard.

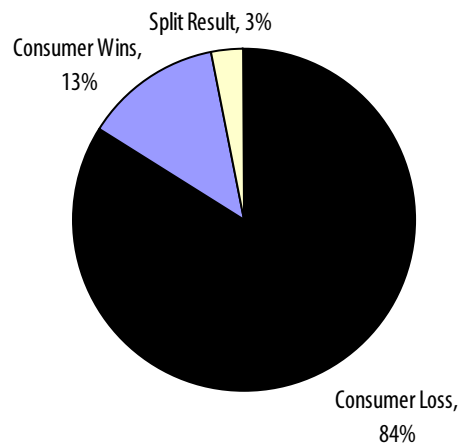
We have found that previous trends were clearly affirmed. The Texas Supreme Court is a decidedly pro-defendant body that time and again protects the interests of corporate and government wrongdoers at the expense of individuals.

As we have for each of the past ten years, we reviewed each opinion issued by the Court during its 2005-2006 term with particular attention paid to those opinions that pitted individuals against insurance, medical, corporate, and governmental defendants.¹ We found that 69 of the 110 opinions issued by the Court over the last year could be classified as consumer cases.²

Out of 69 consumer opinions issued by the Court, consumers won only 9 cases, a paltry 13%, while they lost 84% of the time.

That is the highest rate of consumer losses in Court Watch's ten year history. While this is hardly a new trend for this pro-defendant court, it does reflect a deepening animosity towards consumers.

Chart 1: Consumer Win-Loss Rate, 2005-2006



Consumer Scorecard

All nine justices on the Texas Supreme Court received an “F” on our first ever Consumer Scorecard.³

With just a 39% record of voting in favor of individuals, Justice Harriet O’Neill was the most consumer “friendly” of the nine justices. Meanwhile, Justice Don Willett had the lowest rate of siding with consumers with a miniscule 11% voting record. The average score was a mere 22%. Texans have serious cause for concern that the most pro-consumer justice on the highest civil court in the state stands up for consumers far less than half the time.

Chart 2: Texas Supreme Court Consumer Scorecard, 2005-2006

Justice	Score	Grade
Harriet O’Neill	39%	F
Scott Brister	24%	F
Wallace Jefferson	24%	F
Phillip Johnson	24%	F
Paul Green	21%	F
David Medina	21%	F
Dale Wainwright	21%	F
Nathan Hecht	12%	F
Don Willett	11%	F

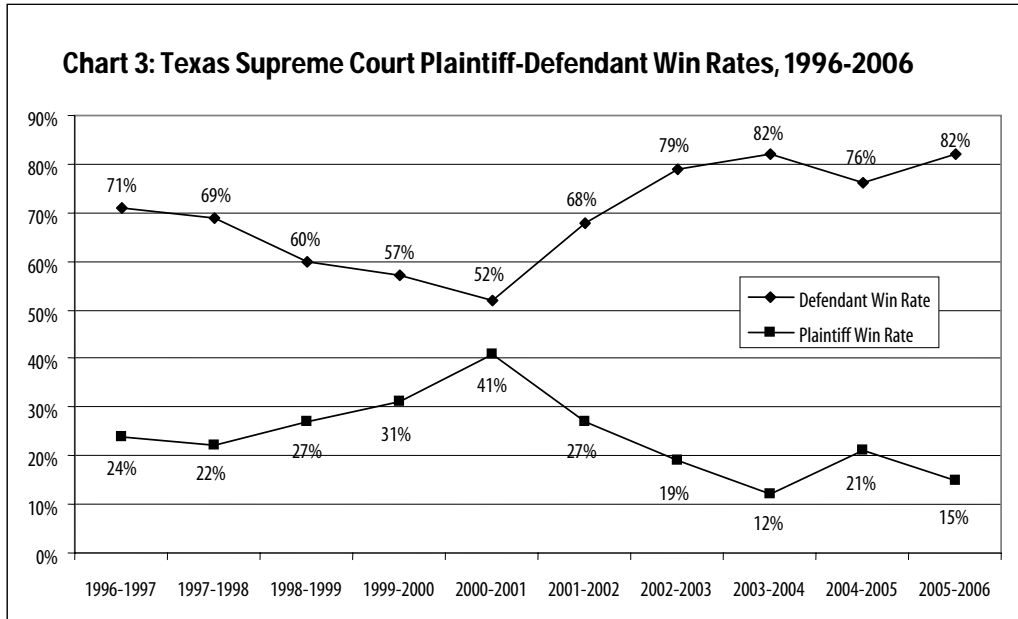
Whether considering a case involving a police officer shot by a methamphetamine addict who obtained drugs while at work with the knowledge of his employer,⁴ a pregnant woman who died as a result of an incompetent doctor who failed to follow standard procedure,⁵ or a senior citizen in a nursing home who was sexually assaulted because the home failed to protect her from a patient known to be dangerous,⁶ the Court ignored the law that dictated that wrongdoers should be held accountable and instead protected those who were responsible for these unimaginable injuries.

10 Years of Pro-Defendant Decision Making

Texas Watch has been tracking the plaintiff-defendant win rate⁷ in consumer cases at the Court since 1996. This past term, defendants walked away victorious 82% of the time, matching the highest rate of victories in Court Watch’s ten year history. Meanwhile, consumers generally walked away empty-handed.

This year’s high defendant win rate is sadly not surprising. Over the last ten years, we have found that the Court has been predictably and reliably pro-defendant. Consumers have never prevailed more often than defendants. However, that trend has been especially acute over the last six years when consumers have been beaten at virtually every turn.





This dramatic anti-consumer sentiment began in 2000 when more moderate Bush appointees left the Court and were replaced by justices appointed by Gov. Rick Perry. Perry’s appointees have dominated the Court ever since with a majority of the current justices coming to the Court as a Perry appointee.⁸ Despite repeated calls to bring more balance to the Court by making judicial appointments that reflect the diverse opinion and experience in our state’s legal community, Gov. Perry has continually appointed justices that support corporate and governmental interests over individuals.

Agreement with Majority

One might think that on a court with nine justices, there must often be dissent, especially in controversial cases. Unfortunately, that is not the case at the Texas Supreme Court. The high rates of agreement reflected in the Consumer Scorecard and the Plaintiff-Defendant Win-Loss rates are reflected in the high rates with which the justices agree. As you can see from the chart below, the rate of agreement with the majority ranges from 82% to 96%. The average rate of agreement is a staggering 90%.

Chart 4: Agreement with Majority on Result, 2005-2006⁹

	Majority Opinions (26 Decisions)		Unanimous & Majority (49 Decisions)	
	Agreed/Cases	Agreement %	Agreed/Cases	Agreement %
Jefferson	22.5/25	90%	45.5/48	95%
Hecht	21.5/26	83%	44.5/49	91%
O’Neill	19/26	73%	40/47	85%
Wainwright	19.5/26	75%	41.5/48	86%
Brister	20/25	80%	42/47	89%
Medina	22.5/26	87%	45.5/49	93%
Green	22/25	88%	40/44	93%
Johnson	17.5/26	67%	39.5/48	82%
Willett	14.5/16	91%	33.5/35	96%



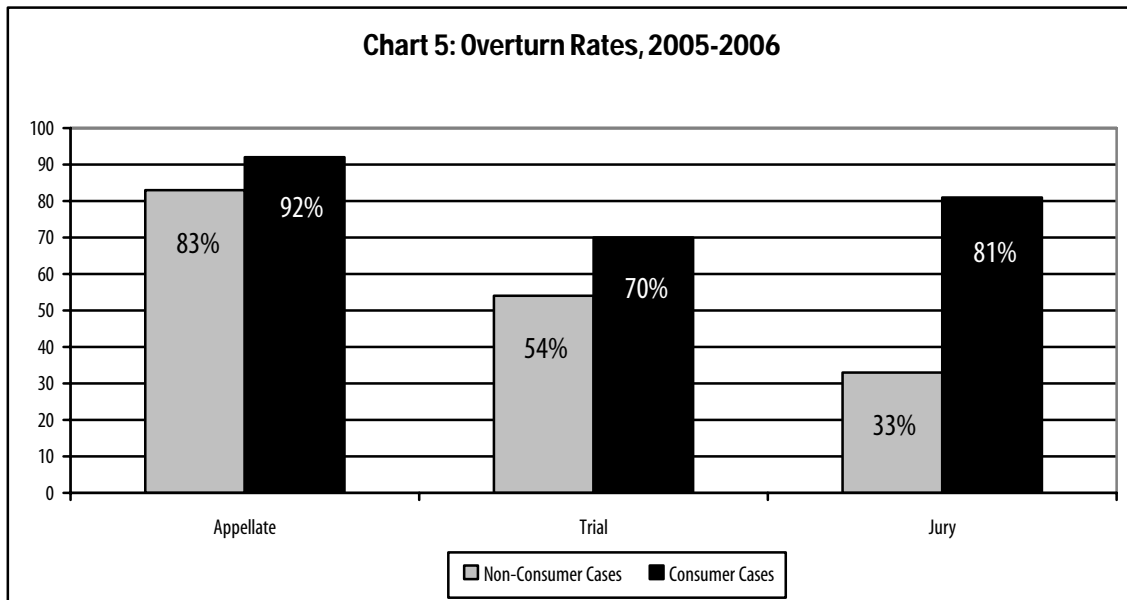
To put this in context, the Supreme Court of the United States, which is widely considered to be a court that engages in vigorous debate, had agreement with the majority in split decisions ranging from just 50% to 78% last term.¹⁰ Compared to our nation's high court, the Texas Supreme Court is exceedingly cohesive. This reveals the lack of an independent or moderate center.

A court filled with justices so eager to march in lock-step to the same ideology is a danger for all Texans. Without voices articulating a dissenting point of view, consumers will continue to be given short shrift at the Court. This trend reiterates the need for greater diversity of judicial philosophy and experience on the Court. Time and again, we have urged the Governor to fill vacancies on the Court with individuals who have experience representing the interests of average Texans.

Overturing Consumer Victories

Continuing another long trend in cases affecting consumers, the Court also demonstrated its lack of respect for citizen juries, as well as the decisions of both trial and appellate courts.

The Court overturned 81% of the consumer cases decided by juries. Additionally, the justices overturned 92% of the appellate opinions it considered and 70% of trial court decisions brought before the Court. In contrast, decisions in non-consumer cases decided by juries, trial judges, and appellate courts were much less likely to be overturned by the Court.¹¹



The justices' shockingly low rates of ruling in favor of consumers and the high rate of overturning lower courts in consumer-related matters reveal the prevailing mindset at the Court of protecting corporate defendants at the expense of individuals.



Conclusion

As we release this report, we expect criticism from the Court. The justices and their staff are likely to suggest that legal reasoning is too complex to reduce to mere numbers. While we agree that statistics are a rough indicator of judicial decision-making, they do provide us with concrete measures to spot trends and see how the justices behave both individually and as a group. Moreover, statistics provide clarity and the Court cannot refute the trends that have been established over the last ten years.

The Texas Supreme Court operates in relative obscurity with few Texans aware of how the Court's decision-making affects their lives. A statistical analysis is a clear measurement that is easily understood by average Texans who have neither the expertise nor the time to analyze each opinion issued by the Court.

It is important for everyday Texans – who have the ultimate responsibility for ensuring that our highest court is a balanced body dedicated to the rule of law and not a political ideology – to have a clear picture of the Court's actions, whom they favor, and the role each justice plays.

Without a public understanding of the Court's actions, the third branch of government will continue to operate in veiled obscurity without the accountability that our founders intended when they designed our particular form of state government. Therefore, it is our sincere hope that this report offers Texans some perspective on the Texas Supreme Court, the important role it plays, and the harmful actions it routinely takes to damage the legal rights of average Texans.

About Court Watch

Court Watch is a project of the Texas Watch Foundation, a non-profit consumer research and education organization located in Austin, Texas, dedicated to protecting the interests of Texas consumers.

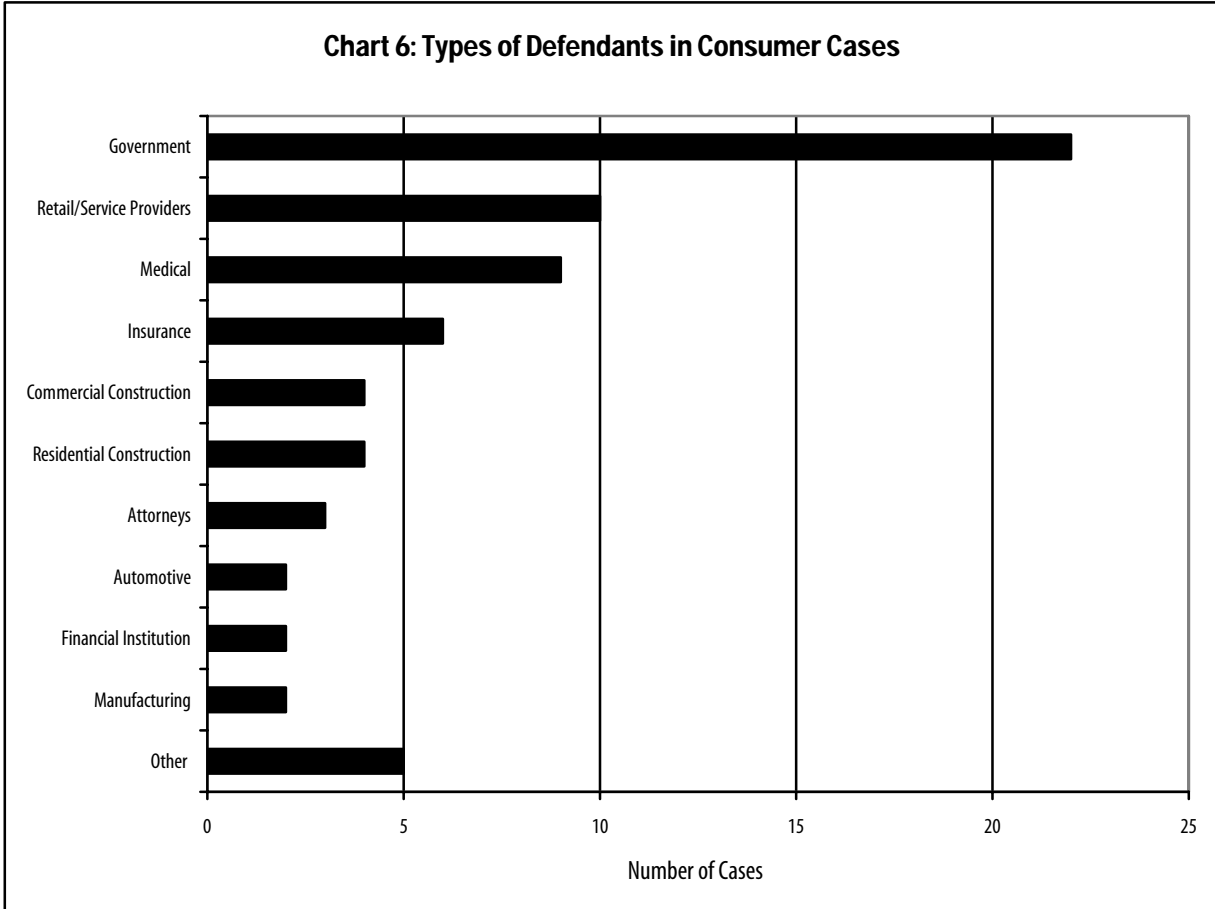
Since the 1996-1997 term of the Texas Supreme Court, Court Watch has monitored the Texas Supreme Court and is the only ongoing program reporting on how the Court's decisions impact average Texans.

For more information about Court Watch or the Texas Watch Foundation, please visit www.txwfoundation.org.



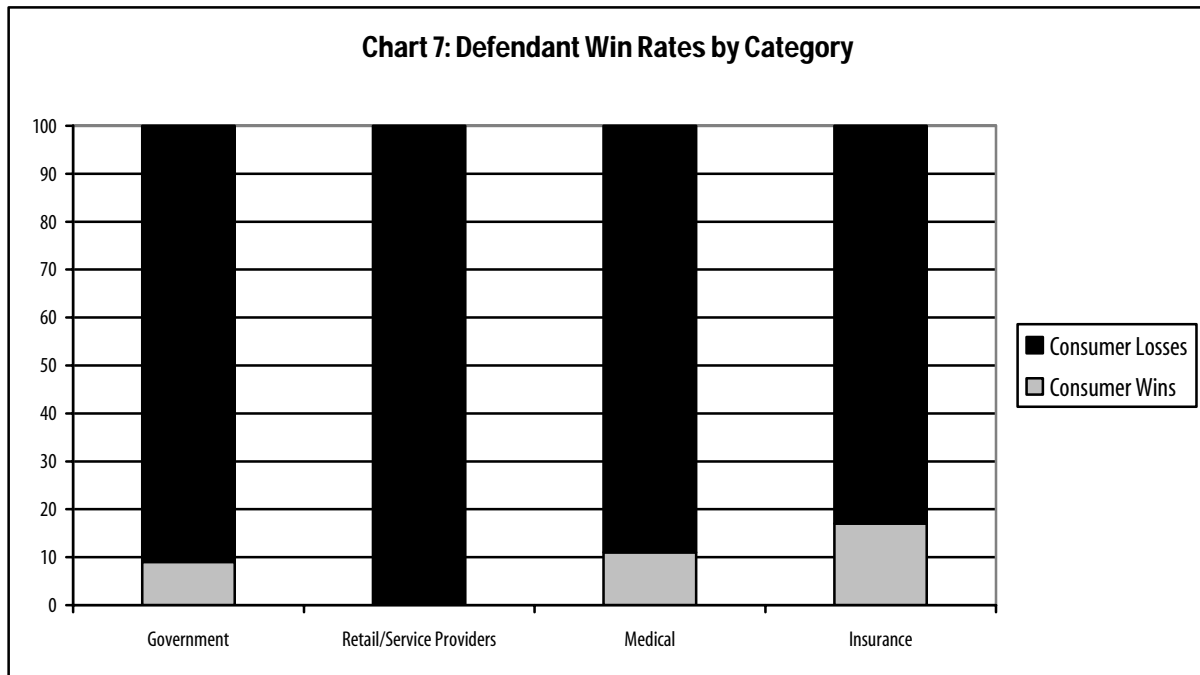
Appendix 1: Types of Defendants in Consumer Cases

Of the 69 consumer cases decided last term, 22 (or 32%) were brought against the government, 10 (14%) involved retail-service providers, 9 (13%) included the insurance industry, and 6 (9%) were brought against medical interests. Other categories of defendants are listed in the chart below.



Appendix 2: Defendant Win Rates by Category

The Court ruled in favor of the four major categories of defendants – government, retail-service providers, medical, and insurance – from a low of 83% of the time to a high of 100% of the time.



Endnotes

¹ See appendices for charts illustrating the types of defendants and how often they prevailed at the Court.

² A case is categorized as a consumer case if the outcome of the case affects consumers, either directly or indirectly, and regardless of whether the consumer was the plaintiff or the defendant. Of the 69 consumer opinions of the term, 35 were per curiam opinions, 32 were authored opinions, and 2 were dissents from denials of review. Of the 69 consumer opinions, 58 were consumer losses, 9 were consumer wins, and 2 were split decisions that partially favored the plaintiff and partially favored the defendant.

³ Scores were determined by calculating how each justice voted in the 34 consumer cases with signed opinions (including 2 dissents from denials of review) decided during the Court's 2005-2006 term. The Court only found in favor of consumers in 18% (6 of 34) of the signed opinions that impact individual consumers.

⁴ *Loram Maintenance of Way, Inc. v. Ianni*, docket number 04-0666.

⁵ *Olveda v. Sepulveda*, docket number 04-0707.

⁶ *Diversicare General Partner, Inc. v. Rubio*, docket number 02-0849.

⁷ The plaintiff-defendant win rate is calculated based on consumer cases. Dissents from denials of review were not included in the calculation. In all cases except one, the consumer was the plaintiff. In one case, however, a business was the plaintiff suing a consumer defendant. The Court ruled in favor of the business in that case, and thus the case was counted as a plaintiff victory even though it was in reality a consumer defeat. If this case were deleted from the calculation, the true plaintiff win rate would be only 13%.

⁸ Chief Justice Wallace Jefferson: appointed by Gov. Perry, March 2001 (appointed Chief Justice September 2004); Justice Scott Brister: appointed by Gov. Perry, November 2003; Justice David Medina: appointed by Gov. Perry, November 2004; Justice Phillip Johnson: appointed by Gov. Perry, March 2005; Justice Don Willet: appointed by Gov. Perry, August 2005.

⁹ Opinions in which a justice both concurred and dissented are counted as half agree and half disagree.

¹⁰ Source: Georgetown University Law Center Supreme Court Institute's Supreme Court of the United States October Term 2005 Overview. Justice O'Connor participated in only 20 of the 87 cases decided by the Supreme Court last term, and thus her rates of agreement with the majority are not included.

¹¹ Information on calculating statistics for consumer cases: The Court issued opinions in 110 cases this term (26 majority decisions, 23 unanimous decisions, 58 per curiam decisions, and 3 dissents from denials of review). Of those, 66 were appellate cases affecting consumers. This excludes one consumer case which was a certified question from the Fifth Circuit of Appeals, and thus had no state court appellate record, and 2 dissents from denials of review. Of those 66 cases, the court overturned 61, for a total of 92%, and affirmed 5, for a total of 8%. The Court heard 64 cases with trial decisions, and it overturned 45, or 70% of those cases, and affirmed 19, or 30%. The Court heard 21 cases with jury decisions, and it overturned 17, or 81% of those, while affirming only 4, or 19%.

Information on calculating statistics for non-consumer cases: The Court issued opinions in 40 non-consumer cases this term (excluding one dissent from denial of review). Of those, 34 had appellate decisions, and the Court overturned 29, or 85%, and affirmed 5, or 15%. Twenty eight cases had trial decisions, and the Court overturned 16, or 57%, and affirmed 12, or 43%. The Court heard 3 jury cases. This excludes one case in which there was a jury decision, but the issue on appeal was whether the appellate judge who heard the case had a conflict of interest. Of those 3 cases, the Court overturned 1, or 33%, and affirmed 2, or 66%.

