



★ TEXAS SUPREME COURT ★ DOLLAR DOCKET

In Texas, 48% of judges and 79% of lawyers say contributions significantly influence judicial decisions. - Texas Supreme Court poll

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January 21, 2004

Misjudging The Market

As conflicts engulf Wall Street, the *Wall Street Journal* reported this month that Texas Supreme Court inaction let stand a dangerous securities opinion with national repercussions.

Greenbacks

The issue in the case was: Is brokerage Dean Witter liable for broker Miguel Millan's fraudulent theft of \$287,000 from the account of his own mother? One anomaly is that the case landed in court at all. Brokerage contracts routinely force investor claims into arbitration. Miguel Millan spared his mom this fate by forging her name on the arbitration agreement.

Finding that Millan's fraud was not in "the scope of his authority as a broker," a trial court issued a directed verdict for Dean Witter. A Fourth Court of Appeals panel countered that account embezzlement was not "utterly unrelated" to Millan's job duties. Then the full Fourth Court—including Justice Green—reaffirmed the trial court ruling for Dean Witter in 2002. Texas Supreme Court justices declined to hear the case last month, preserving the victory for Dean Witter and its lawyers at Baker Botts (\$222,528 to the current justices).

The association of state securities regulators urged Texas' high court to review the opinion, which undermines a brokerage's duty to supervise employees. Although Dean Witter had previous complaints about Millan making unauthorized trades, it failed to apply its own supervisory rules to this errant broker.

This bad precedent transcends Texas. Unbound by a court's rules of evidence, arbitrators draw from the jurisdiction of their fancy. Arbitrators in other states already have cited *Millan v. Dean Witter* to absolve securities firms of liability for crooked employees.

Highfalutin legal arguments about "*respondeat superior* doctrine" are fine. But a common criminal might have more luck briefing Texas judges on applicable common law. As bank robber Willy Sutton famously said, banks—like brokerages—attract crooks because "that's where the money is." And if they need not police their own insider thefts, nobody will.

The Dollar Docket

Texas Supreme Court cases heard in December and corresponding contributions to justices from the parties and/or attorneys.

December 3, 2003

In re Ann Marie Forlenza \$19,199

December 10, 2003

<i>General Motors Corp. v.</i>	\$3,400
<i>Iracheta</i>	\$64,500
<i>Alexander v.</i>	\$288,835
<i>Turtur & Associates</i>	\$6,300
<i>New Times, Inc. v.</i>	\$1,000
<i>Isaacks</i>	\$0

Grand Total for December: \$483,234

Backing Green

Adding to the case's local interest, Fourth Court of Appeals Justice Paul Green joined the troubling *Millan v. Dean Witter* opinion that the high court declined to review. Justice Green—backed by the Texas Republican establishment—is challenging Supreme Court Justice Steven Smith in the GOP primary.

Toppling an incumbent GOP justice in 2002, Smith defied Texas' gag rules that had barred judicial candidates from discussing meaningful issues. A month before the U.S. Supreme Court struck down such gag rules in 2002, Texans for Public Justice filed a pending federal lawsuit to force the Texas Supreme Court to disclose how justices vote on whether or not to hear an appeal.

Asked if he cast a minority vote to review the *Dean Witter* opinion, Justice Smith recently told *Dollar Docket*, "it wouldn't be appropriate to comment on that." Justice Smith's newfound secrecy leaves voters in the dark on whether or not he might differ from his opponent on this anti-consumer ruling. •