



★ 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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Dental Case Exposes High Court Decay

Like an X-ray, a dental lawsuit is revealing troubling Texas Supreme Court cavities. Defense firms and special interests are accumulating in high court chambers, promoting judicial activism that further decays confidence in Texas courts.

Dentists filed a class-action suit to recover losses that they attribute to faulty office management software. After two lower courts signed off on the class certification in *Schein v. Stromboe*, the defense made an interlocutory appeal for high court review of the class. The court ruled in August that it lacked jurisdiction to hear the case but reversed itself last week, when it suddenly discovered “conflicts jurisdiction” (thereby asserting the court’s jurisdiction because multiple appellate courts disagreed on a point of law).

Schein is timely. Two bills that died in House committee this year (HB 2072 and HB 2181) would have granted the high court jurisdiction over *all* interlocutory appeals of class certifications. Fostering rumors that these bills sought to protect the *Schein* defendants, *Schein* defense lawyer Jerry Clement of Locke Liddell (\$196,230 to sitting justices) testified in favor of both bills on behalf of the Texas Civil Justice League (TCJL). Akin Gump (\$58,875) lobbyist Shannon Ratliff, who testified for TCJL (\$37,400) on HB 2072, wrote a TCJL *amicus* brief in *Schein*. Even Justice Nathan Hecht testified in favor of this bill—without recusing himself from *Schein*.

While the defense’s *arguments* in both high court *Schein* motions did not change, its *lawyers* did. The defense recruited Vinson & Elkins (\$272,000 to sitting justices) managing partner Harry Reasoner to file its second motion asking the court to review the case. In the two weeks after this friend of the court filed his *Schein* motion, Chief Justice Tom Phillips received at least three phone messages from him. In one, Reasoner offered to give the court more aid responding to the scandal over top law firms subsidizing court clerks. The topic of the

October Dollar Docket

Cases heard by the Texas Supreme Court in October and the corresponding contributions to justices from the parties and/or attorneys.*

October 3, 2001

| | |
|---|-----------|
| <i>Bragg v. Edwards Aquifer Authority</i> | \$196,230 |
| | \$3,727 |
| <i>TxDOT v. Garza</i> | \$196,230 |
| | \$0 |
| <i>Cameron County v. Brown</i> | \$100 |
| | \$0 |
| <i>Texas State Bank v. Amaro</i> | \$16,305 |
| | \$8,200 |

October 10, 2001

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| <i>Garza v. TX Alcoholic Beverage Commission</i> | \$0 |
| | \$0 |
| <i>State of Texas v. Bristol Hotel Asset Co.</i> | \$0 |
| | \$0 |
| <i>King v. Dallas Fire Insurance Co.</i> | \$67,850 |
| | \$1,850 |

October 17, 2001

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|---|-----|
| <i>City of Austin v. Travis County Landfill Co.</i> | \$0 |
| | \$0 |
| <i>In the Matter of R.J.H.</i> | \$0 |

October 24, 2001

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| <i>Miga v. Jensen</i> | \$114,209 |
| | \$61,423 |
| <i>In re CI Host Inc.</i> | \$23,098 |
| <i>Continental Casualty Co. v. Downs</i> | \$4,000 |
| | \$0 |

Total for October: \$693,222

* Redistricting cases heard in September and October appear in September’s *Dollar Docket*.

The defense lobby and the court could use *Schein* to give these defendants what they failed to get from the legislature: high court control over this class action. Instead, the court should listen to the dentists: it’s time to floss. •