

Nathan Hecht's 25 Year Record in Texas Supreme Court

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Contributing Writers to *The Texas Lawbook*

September 30, 2013 – Having already served on the Supreme Court of Texas for nearly twenty-five years, Nathan Hecht will begin his tenure as the court's chief justice with a much different perspective than did any of his twenty-six predecessors.



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At the time that Justice Hecht assumes the role of the top civil judge in the State of Texas, he will have already worked as a colleague to thirty-two supreme court justices and seen the court shift from being comprised largely of Democrats to its current all-Republican composition.

When outgoing Chief Justice Wallace Jefferson became Chief Justice in 2004, he only had three years of experience on the court. Chief Justice Jefferson's predecessor, Tom Phillips, was brand new to the court at the time he became its chief justice in 1988.

Justice Hecht's experience on the court prior to his appointment exceeds that of even Chief Justices Joe Greenhill and Jack Pope, who had served as justices on the court for some fifteen and seventeen years, respectively, before being elevated to chief justice.

Indeed, in January, Justice Hecht will equal former Chief Justice Greenhill as the longest-serving justice in the court's history. During that time, Justice Hecht has already authored more than 350 supreme court opinions, a number of which are among the seminal cases in Texas jurisprudence.

Five of Justice Hecht's opinions in particular stand out for their impact on the state's jurisprudence:

- *Edwards Aquifer Authority v. Day*, 369 S.W.3d 814 (Tex. 2012). It is not often that a Texas Supreme Court decision catalogues, examines, and clarifies a century's worth of the court's common law, but Justice Hecht wrote for a unanimous court (notable in and of itself) that did so in *Day*. Therein, Justice Hecht distinguished aspects of the court's opinion



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some 108 years earlier that originally adopted the "rule of capture" as it applies to groundwater. In *Day*, the court settled the uncertainty created by its 1904 opinion in *Houston & Texas Central Railway Co. v. East* and concluded that overlying landowners have a property interest in groundwater "in place" beneath their land, and, as such, it cannot be taken for public use without adequate compensation.

- *Nafta Traders, Inc. v. Quinn*, 339 S.W.3d 84 (Tex. 2011). State supreme courts rarely are either jurisdictionally able or jurisprudentially willing to disagree with the U.S. Supreme Court on a given point of law. In *Nafta Traders*, Justice Hecht led the Texas Supreme Court in doing just that regarding the construction of the Texas Arbitration Act (TAA). The U.S. Supreme Court's decision in *Hall Street Associates, L.L.C. v. Mattel, Inc.* a few years earlier held that the Federal Arbitration Act (FAA) precluded parties from agreeing to submit an arbitration award for judicial review. Justice Hecht explained >

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that the TAA reflects Texas's public policy to permit parties to contract to arbitrate their disputes. Therefore, the terms of the parties' arbitration agreement should be controlling and the TAA should not be construed to limit the right of parties to contract as they see fit. Justice Hecht also reasoned that the FAA does not preempt the TAA in regard to permitting agreed judicial review of arbitration awards because the FAA only preempts state-law action that *impede* the enforcement of arbitration agreements. Because *Nafta Traders* construed the TAA to *foster* the enforcement of parties' arbitration agreements, the Texas Supreme Court held that preemption under the strictures of *Hall Street* was not triggered.

• *Romero v. KPH Consolidation, Inc.*, 166 S.W.3d 212 (Tex. 2005) and *State Department of Highways & Public Transp. v. Payne*, 838 S.W.2d 235 (Tex. 1992). These two decisions complement one another as each has directly and greatly impacted jury-charge practice in Texas. *Payne* was the first major attempt by the court to clarify the confusion caused by the move in Texas towards broad-form submission of jury charges in place of special-issue practice. Justice Hecht wrote for the majority in *Payne*, observing that the Texas procedural rules should be applied "to serve rather than defeat" the principle that "[t]here should be but one test for determining if a party has preserved error in the jury charge, and that is whether the party made the trial court aware of the complaint, timely and plainly, and obtained a ruling." While several subsequent decisions by the court clarified the somewhat *ad hoc* application of *Payne*'s central holding, it was Justice Hecht's majority opinion in *Romero* that confirmed it was reversible error to include an invalid liability theory in a comparative responsibility question.

• *Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713 (Tex. 1998). Having been cited over 3,600 times by various Texas courts at all levels, as well as in the legal literature, *Gammill* is perhaps Justice Hecht's most impactful decision. Justice Hecht wrote for a unanimous court in *Gammill*, which built upon the relevance and reliability standards established a few years before in the court's opinion in *E.I. du Pont de Nemours and Co. v. Robinson*. Specifically, the *Gammill* court determined that expert opinions "based on scientific knowledge should be treated [no] differently than opinions based on technical or other specialized knowledge." Justice Hecht noted that "[i]t would be an odd rule of evidence that insisted that some expert opinions be reliable but not others." Justice Hecht concluded the opinion by confirming that the "trial court is not to determine whether an expert's conclusions are correct, but only whether the analysis used to reach them is reliable."

Chad Ruback has always devoted his practice to handling appeals and trial court motions likely to be at issue on appeal. Following his service as a briefing attorney at the Fort Worth Court of Appeals, Ruback worked in the appellate sections of a medium-sized firm and of a large firm before founding the Dallas-based Ruback Law Firm in 2005.

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