

Illinois Venue Reform: Not Tort Reform Rants

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INTRODUCTION

Judicial Hellholes® is a term coined by the American Tort Reform Association (“ATRA”) to refer to places where it thinks that judges apply the laws and court procedures unfairly against defendants in civil suits.¹ Cook County, Illinois, appeared on ATRA’s Judicial Hellholes List for six straight years, and now appears on the Watch List of places that could return to the Judicial Hellholes List.² Three other Illinois counties—Madison County, St. Clair County, and McLean County—appear on the latest Judicial Hellholes List.³ According to ATRA, Judicial Hellholes have fifteen characteristics, the first of which is judge-condoned forum shopping.⁴ By this, ATRA means that plaintiffs file personal injury suits with little or no connection to the jurisdiction, and the judges neither dismiss these suits nor transfer them to a more

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1. AM. TORT REFORM FOUND., JUDICIAL HELLHOLES (2011/2012), available at <http://www.judicialhellholes.org/wp-content/uploads/2011/12/Judicial-Hellholes-2011.pdf> (last visited Apr. 19, 2012) [hereinafter JUDICIAL HELLHOLES 2011/2012]. The American Tort Reform Foundation is the American Tort Reform Association’s education arm. See *ATR Foundation*, JUDICIAL HELLHOLES, <http://www.judicialhellholes.org/about/> (last visited Apr. 19, 2012) (“The primary purpose of the Foundation is to educate the general public about how the American civil justice system operates.”).

2. JUDICIAL HELLHOLES 2011/2012, *supra* note 1, at 25–26; AM. TORT REFORM FOUND., JUDICIAL HELLHOLES (2010/2011), available at <http://www.judicialhellholes.org/wp-content/uploads/2010/12/JH2010.pdf> (last visited Apr. 19, 2012).

3. JUDICIAL HELLHOLES 2011/2012, *supra* note 1, at 20–22, 25–26.

4. *Id.* at 42–43. ATRA lists the following characteristics: (1) judge-condoned forum shopping, (2) adoption of novel legal theories, (3) discovery abuse, (4) inappropriate consolidation and joinder, (5) improper class certification, (6) unfair case scheduling, (7) uneven application of evidentiary rules, (8) admission of junk science, (9) improper or slanted jury instructions, (10) excessive damages, (11) permitting inappropriate suits under loosely-worded consumer protection laws, (12) permitting inappropriate public nuisance claims, (13) expansion of damages, (14) state Attorney General alliances with the personal injury bar, and (15) cozy relations among judges, personal injury lawyers, and public officials. *Id.*

appropriate jurisdiction.⁵ In ATRA's view, the cure for Judicial Hellholes is the enactment of its tort reform agenda—a limit on noneconomic damages, abolition of joint and several liability, health care liability reform, and so forth.⁶

ATRA's views on forum shopping are expectedly one-sided. Because the results of litigation vary from county to county, both plaintiffs and defendants forum shop.⁷ Plaintiffs sue whenever possible in counties where the juries and judges are expected to favor greater tort liability, and, whenever possible, defendants seek transfer to counties where the juries and judges are expected to favor less tort liability. Therefore, both the expectation of greater tort liability and the expectation of lesser tort liability encourage forum shopping. These expectations are based on county-to-county differences in the residents' socioeconomic characteristics (e.g., predominantly blue collar versus predominantly white collar), which can lead to the selection of significantly different juries and the election of significantly different judges.

There is nothing improper about a party wanting to have the merits of its claim or defense decided in a county where it expects the socioeconomic characteristics to yield a "community judgment" favoring its side. The end result, however, is that time and money are spent on procedural maneuvers that delay litigation and increase its cost. A further result is deep anger on the part of business-oriented groups, who conclude the law favors their opponents' forum shopping and skews the administration of justice against them.

ATRA's tort reform agenda is not a cure for forum shopping; it sets aside the community judgment about tort liability, not just in a county with little or no connection to a suit, but also in a county with an

5. *Id.* ATRA does not spell out how this occurs, but ATRA undoubtedly means that plaintiffs take advantage of liberal personal jurisdiction statutes and venue statutes to sue in plaintiff-friendly places, the judges there deny most of the defendants' interstate and intrastate *forum non conveniens* motions, and these discretionary rulings are hard to get overturned on appeal.

6. AMERICAN TORT REFORM ASSOCIATION, <http://www.atra.org/about/> (last visited Apr. 19, 2012). ATRA thinks America's civil justice system compromises access to affordable health care, raises the cost of goods and services, chills innovation, and undermines personal responsibility. *Id.* Its complete reform agenda includes: (1) health care liability reform, (2) class action reform, (3) promotion of jury service, (4) abolition of joint and several liability, (5) abolition of the collateral source rule, (6) limits on punitive damages, (7) limits on noneconomic damages, (8) product liability reform, (9) appeal bond reform, (10) sound science in the courtroom, and (11) stopping regulation through litigation. *Id.*

7. See *First American Bank v. Guerine*, 764 N.E.2d 54, 61 (Ill. 2002) (citing *Torres v. Walsh*, 456 N.E.2d 601, 607 (Ill. 1983) and quoting Gordon E. Maag, *Forum Non Conveniens in Illinois: A Historical Review, Critical Analysis, and Proposal For Change*, 25 S. ILL. U. L.J. 461, 510 (2001)).

overwhelming connection to a suit. For example, a \$500,000 limit on noneconomic damages in a medical malpractice suit limits what a jury can award not just in a county where one of the medical defendants has a slight connection, but also in a county where all of the medical defendants have a strong connection and where all of the alleged negligent acts occurred. The cure for forum shopping is venue reform, which emphasizes the need for a strong connection between the county and the transaction or the parties for proper venue. The case for venue reform is easily made without lashing out at counties that favor greater tort liability. Unlike one major tort reform proposal, venue reform proposals generally do not violate the Illinois Constitution.⁸ This Article proposes two alternative venue reforms: (1) convenience-based proposals, which accept venue law's traditional defendant-convenience and witness-convenience policies but change all venue rules that fail to protect or overprotect convenience; and (2) anti-forum shopping proposals, which reject convenience policies and limit venue in higher-value personal injury suits to the county (or counties) with the most significant connection to the occurrence and the parties.

In Illinois, the general venue statute provides for residence-based venue in a county where any defendant resides, and for transaction-based venue in a county where the transaction (or part of it) occurred out of which the cause of action arose.⁹ According to the Illinois Supreme Court, residence-based venue is designed to serve the convenience of the defendant, and transaction-based venue is designed to serve the convenience of the witnesses to the transaction.¹⁰ However, the statute's venue rules often defeat these purposes. Six instances stand out.

8. A venue statute that is sufficiently burdensome and unreasonable can deny due process, but the only venue statute ever held by the Illinois Supreme Court to deny due process was a unique, special venue statute that had fixed venue in all of the state commission's guaranteed student loan collection suits in a single county (Cook County), which often was remote from the defendant's residence and the place where the substantial parts of the loan transaction had occurred. *See Williams v. Ill. State Scholarship Comm'n*, 563 N.E.2d 465, 473–85 (Ill. 1990) (“ISSC’s practice of filing all its collection actions in Cook County is improper under the general venue statute.”). The venue reforms proposed here bear no resemblance to that unique special venue statute. On the other hand, the Illinois Supreme Court has determined three times that one major item on the tort reform agenda—a limit on noneconomic damages—violates the Illinois Constitution. *See Lebron v. Gottlieb Mem’l Hosp.*, 930 N.E.2d 895, 914 (Ill. 2010) (violating the Illinois Constitution’s separation of powers clause); *Best v. Taylor Mach. Works*, 689 N.E.2d 1057, 1078 (Ill. 1997) (violating the Illinois Constitution’s special legislation clause); *Wright v. Cent. DuPage Hosp. Ass’n*, 347 N.E.2d 736, 743 (Ill. 1976) (violating the Illinois Constitution’s special legislation clause).

9. 735 ILL. COMP. STAT. 5/2-101 (2010) (requiring good faith joinder for residence-based venue).

10. *Langenhorst v. Norfolk S. Ry. Co.*, 848 N.E.2d 927, 933 (Ill. 2006).

(1) *The Registered Office Problem.* A private corporation resides, among other places, where it has its “registered office.”¹¹ Many corporations use an outside entity with expertise in processing legal papers as their registered agent.¹² These corporations have their registered office at the outside entity’s place of business, which may be located in another city and county.¹³ If so, the registered office rule allows for suits against the corporation in that other county. The convenience of the corporation is not served, however, by defending suits where an independent entity has its place of business. The convenience of the corporation is served by defending suits where the corporation has its own place of business. For example, in a suit arising from medical treatment at a hospital in Sangamon County (Springfield), the hospital’s parent corporation was using an outside entity as its registered agent.¹⁴ The outside entity had its place of business in Cook County (Chicago), where neither the hospital nor its parent corporation had a place of business.¹⁵ Thus, the convenience of the hospital was not served by defending the suit in Cook County instead of Sangamon County.¹⁶

(2) *The Small Office Problem.* A private corporation, partnership, or unincorporated association resides, among other places, where the entity has an “office.”¹⁷ The term “office” is interpreted to mean any fixed place where the entity conducts its affairs.¹⁸ Many entities have a relatively large place of business in one county and a relatively small place of business in another county.¹⁹ For entities with places of

11. 735 ILL. COMP. STAT. 5/2-102(a) (2010).

12. *See Corporations*, WOLTERS KLUWER CORPORATE LEGAL SERVICES, <http://ct.wolterskluwer.com/ctcorporation/corporations> (last visited on Apr. 19, 2012) (claiming that CT Corporation serves as a registered agent for over 70% of Fortune 1000 companies and thousands of small and medium businesses).

13. *See id.* (listing 208 South LaSalle Street, Chicago as CT Corporation’s one location in Illinois).

14. *Torres v. Walsh*, 456 N.E.2d 601, 603–04 (Ill. 1983).

15. *Id.* at 603.

16. *See id.* at 608 (upholding the Circuit Court’s authority to transfer the case to Sangamon County).

17. 735 ILL. COMP. STAT. 5/2-102(a)–(c) (2010). The other rules about residence vary for these entities. *Id.*

18. *Melliere v. Luhr Bros., Inc.*, 706 N.E.2d 40, 44 (Ill. App. Ct. 1999) (finding a corporation in the construction business had an “office” at a leased airport hangar where only two employees worked).

19. In *Melliere*, the Appellate Court did not compare the employee headcounts at the defendant’s St. Clair County airport hangar and its Monroe County headquarters. The decision, however, says the following: “Luhr Bros. is engaged in construction projects, such as embankment work, channel maintenance, and other river projects, on the navigable waters of the United States. It also engages in heavy construction projects and highway work on land.” *Id.* at

business that fit this pattern, the “any-fixed-place” interpretation allows for suits against the entity in the county with the small place of business. The convenience of the entity is not served, however, by defending suits where it has only a relatively small place of business. The convenience of the entity is served by defending suits where it has its largest place or places of business. For example, in a suit arising from an accident at a recycling yard in Vermillion County (Danville), the recycling company had no yard in Cook County, but it had a salesperson who worked out of an office in his home there.²⁰ The company’s convenience was not served by defending the suit in Cook County instead of Vermillion County.

(3) *The Group Convenience Problem.* Venue is proper where any defendant resides.²¹ Even if every defendant but one resides in a county, the “any-defendant” rule allows for suit in the remaining defendant’s county of residence. The convenience of other defendants is not served, however, by defending the suit where just one of the defendants resides. Indeed, the convenience of the defendants as a group is served by defending the suit in the county with the greatest number of defendants. For example, in a suit arising from surgery at a hospital in McHenry County (Woodstock) by a McHenry County surgeon who was part of a McHenry County surgical group, the hospital’s parent corporation also owned a behavioral health facility in Cook County.²² The convenience of the three defendants was not served by defending this suit in Cook County instead of in McHenry County.²³

(4) *The Nonresident Worker Problem.* Suits against nonresidents can be filed in any county.²⁴ This “any-county” rule disregards the convenience of nonresidents who work in Illinois. For example, a Kentucky resident who commutes to a job in Massac County (Metropolis) might have a car accident in Illinois. The convenience of the Kentucky resident is served by defending the accident suit in Massac County, not at the opposite end of Illinois in Cook County, where venue is also proper.

41. Logically, a corporation engaged in these large construction projects would have substantially more than two employees at its headquarters.

20. *Corral v. Mervis Indus., Inc.*, 839 N.E.2d 524, 526–27, 532 (Ill. 2005) (affirming, for lack of a sufficient record, a ruling that the corporation “resided” in Cook County because of this one-employee office).

21. 735 ILL. COMP. STAT. 5/2-101 (2010).

22. *Gundlach v. Lind*, 820 N.E.2d 1, 5–6 (Ill. App. Ct. 2004).

23. *See id.* (holding that the Cook County Circuit Court abused its discretion by refusing to transfer the suit to McHenry County).

24. 735 ILL. COMP. STAT. 5/2-101.

(5) *The Part of the Transaction Problem.* Transaction-based venue is proper in any county where part of the transaction giving rise to the cause of action occurred.²⁵ Even if all of the witnesses are in a county where part of the transaction occurred and none of the witnesses are in a different county where another part of it occurred, the “any-part” rule allows for suit in either county. The convenience of the witnesses is not served, however, when proper venue rests in either county. Logically, in this situation, the more convenient county to hear the suit is the county with all of the witnesses. For example, in a suit based on a doctor’s improper supervision of care during an ambulance transfer from Clinton County (Carlyle) to St. Louis, the negligence and injuries occurred partly in an ambulance as it passed through St. Clair County (Belleville).²⁶ No person along the route could have witnessed the negligence inside the ambulance. Instead, the witnesses to the negligence were in Clinton County, where the transfer began and the care was supervised.²⁷ Venue was proper in Clinton County and St. Clair County, but hearing the suit in St. Clair County instead of Clinton County did not serve the convenience of the witnesses.²⁸

(6) *The Indirect Dealings Problem.* Transaction-based venue, according to some courts, must be based on dealings between the parties.²⁹ Many manufacturers sell their products only through dealers or retailers. If a manufacturer sells its product this way and is sued for consumer fraud, the county where the consumer bought the product and suffered the loss normally has the greatest number of witnesses to the transaction. Yet, because the consumer and the manufacturer did not deal with each other in this county, the “party-dealings” test prevents the consumer from suing the manufacturer there. The convenience of

25. *Id.*

26. *Wier ex rel. Wier v. Ketterer*, 479 N.E.2d 416, 416–17 (Ill. App. Ct. 1985).

27. The St. Louis witnesses could not be compelled to testify in Illinois. *See* 735 ILL. COMP. STAT. 5/2-1101 (providing that the subpoena power extends to witnesses “in the State”).

28. As explained later, the variation in witness location patterns from suit to suit makes it impossible to design a venue statute that will solve this problem without creating witness inconvenience problems in other suits. *See infra* text accompanying notes 308–10. The problem can be solved only by using the intrastate *forum non conveniens* doctrine to serve the witnesses’ convenience. *Id.*

29. *See, e.g., Rensing v. Merck & Co., Inc.*, 857 N.E.2d 702, 706 (Ill. App. Ct. 2006) (holding venue not proper in the county where the plaintiff bought Vioxx because the defendant drug manufacturer had no direct dealings with the plaintiff there); *Boxdorfer v. DaimlerChrysler Corp.*, 790 N.E.2d 391, 398–99 (Ill. App. Ct. 2003) (holding venue not proper in the county where the plaintiffs bought their cars because the defendant car manufacturer had no direct dealings with the plaintiffs there). *But see* *Frey Corp. v. Gildorn Mortg. Midwest, Inc.*, 475 N.E.2d 1100, 1103 (Ill. App. Ct. 1985) (stating that dealings with a third party are a proper basis for venue when these dealings have a definite and direct bearing on the cause of action); *Kenilworth Ins. Co. v. McDougal*, 313 N.E.2d 673, 675 (Ill. App. Ct. 1974) (same).

the witnesses, however, is not served by preventing suit in the county with the greatest number of witnesses; indeed, it is best served by permitting suit there. For example, in a consumer fraud suit accusing a Michigan car manufacturer of not disclosing a defect that caused paint to delaminate from its cars after the warranty expired, the paint delamination had occurred in Madison County on cars sold by Madison County car dealers to Madison County residents.³⁰ Because the “party-dealings” test indicated transaction-based venue was improper in Madison County, the appellate court ordered a transfer to Sangamon County where the manufacturer had its registered agent.³¹ Hearing the suit in Sangamon County instead of Madison County did not serve the convenience of the witnesses.

When these six problems threaten the sensible administration of justice, the intrastate *forum non conveniens* doctrine might apply. Under this doctrine, a court may transfer a suit to another county where venue is also proper.³² To determine whether the doctrine applies, a court weighs three private interest factors and three public interest factors.³³ A court rarely disturbs the plaintiff’s forum choice, however, unless the forum is neither the plaintiff’s residence nor the place of the accident or injury.³⁴

Litigation of intrastate *forum non conveniens* transfer motions consumes a lot of time and money.³⁵ One proposed way to reduce this

30. *Boxdorfer*, 790 N.E.2d at 393, 398–99.

31. *Id.* at 398–99.

32. *Langenhorst v. Norfolk S. Ry. Co.*, 848 N.E.2d 927, 934 (Ill. 2006). Because the doctrine does not permit transfer to a county where venue is improper, it cannot solve the indirect dealings problem. The venue amendment needed to solve this problem is discussed *infra* text accompanying notes 292–98.

33. The private interest factors are: “(1) the convenience of the parties; (2) the relative ease of access to sources of testimonial, documentary, and real evidence; and (3) all other practical problems that make trial of a case easy, expeditious, and inexpensive.” *Langenhorst*, 848 N.E.2d at 934 (internal quotations omitted). The public interest factors are: “(1) the interest in deciding controversies locally; (2) the unfairness of imposing trial expense and the burden of jury duty on residents of a forum that has little connection to the litigation; and (3) the administrative difficulties presented by adding litigation to already congested court dockets.” *Id.*

34. *Id.* When the plaintiff’s choice is neither the plaintiff’s residence nor the place of the accident or injury, the suit sometimes has been transferred, but not always. *Compare* *Dawdy v. Union Pacific R.R. Co.*, 797 N.E.2d 687, 696–701 (Ill. 2003) (directing transfer of the suit to the county where the accident occurred), *with* *Langenhorst*, 848 N.E.2d at 937–41 (upholding the refusal to transfer the suit to the county where the accident occurred).

35. *First Am. Bank v. Guerine*, 764 N.E.2d 54, 60, 64–66 (Ill. 2002); Jill E. Adams, *Dawdy and the Future of Intrastate Forum Non Conveniens in Illinois*, 92 ILL. B.J. 246, 253–54 (2004); Gordon E. Maag, *Forum Non Conveniens in Illinois: A Historical Review, Critical Analysis, and Proposal For Change*, 25 S. ILL. U. L.J. 461, 517 (2001). Justice Maag notes that between 1982 and 1999, an average of 16.2 *forum non conveniens* decisions were published in Illinois each year. *Id.* Parties can petition for interlocutory review of intrastate *forum non conveniens* rulings.

expensive litigation is to prohibit transfers that involve less than a required minimum distance, such as 100 or 200 miles.³⁶ That minimum-distance solution is one-sided, however, because it curbs forum shopping by defendants without curbing forum shopping by plaintiffs. The right solution is to enact better venue rules—ones that advance the statute’s convenience purposes or reduce both sides’ ability to forum shop.

This Article makes the case for venue reform. Part I discusses the current venue statute and how courts have interpreted it. Next, Part II proposes a reform in which venue is aligned more closely with convenience. These convenience-based proposals would narrow venue when the current rules are too broad to serve the statute’s convenience purposes, and they would broaden venue when the current rules are too narrow to serve these purposes. Finally, Part III proposes a reform in which forum shopping is eliminated in higher-value personal injury suits. The anti-forum shopping proposals would limit venue to the county (or counties) with the most significant connection to the occurrence and the parties.

I. OVERVIEW OF ILLINOIS VENUE LAW

Venue is the location where a suit may be heard.³⁷ Personal jurisdiction law determines whether the defendant is required to defend the suit in Illinois; venue law identifies the specific Illinois counties available to hear the suit.³⁸ In most suits, the general venue statute identifies the counties where venue lies.³⁹ The general venue statute

ILL. S. CT. R. 306(a)(2). Thus, the fact that parties can petition for an interlocutory appeal prolongs the litigation in the trial courts. See *Guerine*, 764 N.E.2d at 60 (“Obviously, one of the purposes of the *forum non conveniens* doctrine—sensible and effective judicial administration—is not being served by this protracted interlocutory litigation over plaintiffs’ forum choices.”). Obviously, the parties themselves do not only incur the costs, as the Illinois Supreme Court has noted that its resources, and indeed the resources of the lower courts, are better applied elsewhere. *Id.*

36. Maag, *supra* note 35, at 523–25.

37. *Baltimore & Ohio R.R. Co. v. Mosele*, 368 N.E.2d 88, 91 (Ill. 1977).

38. *Id.* at 91–92.

39. 735 ILL. COMP. STAT. 5/2-101 (2010). Special venue provisions apply in actions against public, municipal, governmental, or quasi-governmental corporations; actions involving real estate; actions made local by statute; actions for libel against an owner, publisher, etc., of a newspaper or magazine; and actions against insurance companies. 735 ILL. COMP. STAT. 5/2-103. Special venue provisions also apply in attachment proceedings, forcible entry and detainer proceedings, and replevin actions. 735 ILL. COMP. STAT. 5/4-103, 9-106, 19-103. For further discussion of special venue provisions, see Willis R. Tribler & Panos T. Topalis, *Venue and Forum Non Conveniens*, §§ 5.13–5.18 & 5.21–5.32, in 1 ILLINOIS CIVIL PRACTICE: OPENING THE CASE (IICLE 2009). Forum selection clauses determine venue in some suits. *E.g.*, *Aon Corp. v. Uteley*, 863 N.E.2d 701, 707–08 (Ill. App. Ct. 2006) (enforcing a clause that required legal

provides for two different types of venue: (a) residence-based venue, and (b) transaction-based venue.

A. Residence-Based Venue

The Illinois rules for residence-based venue depend on whether the suit is against (1) an individual, (2) a legal entity, (3) a legal representative, (4) multiple defendants, or (5) nonresidents. For all defendants, venue is based on residence at the time the suit is filed.⁴⁰

1. Individual Defendant

The statute does not expressly define what constitutes an individual's "residence," so courts have defined it by borrowing four rules from domicile law. First, residence requires an individual's physical presence in the venue plus "intent and permanency of abode."⁴¹ Second, an individual's intent is inferred primarily from an individual's actions.⁴² Third, an individual can have only one residence at a time.⁴³ Fourth, a change of residence requires a physical move coupled with the intent to make the new dwelling place a home.⁴⁴

These rules equate "residence" with domicile.⁴⁵ An individual can have multiple dwelling places at any one time, but only one domicile at a time.⁴⁶ For some individuals, identifying this place of domicile—and, thus, residence—is difficult. In one case, the defendant divided his time between his sister's mobile home in one county and his girlfriend's apartment in another county, paying rent in both places.⁴⁷ In another

proceedings to be brought in the Circuit Court of Cook County of the State of Illinois).

40. *Long v. Gray*, 714 N.E.2d 1041, 1044 (Ill. App. Ct. 1999), *abrogated on other grounds by Corral v. Mervis Indust. Inc.*, 839 N.E.2d 524 (Ill. 2005); *Wilson v. Cent. Ill. Pub. Serv. Co.*, 519 N.E.2d 44, 47–48 (Ill. App. Ct. 1988).

41. *Webb v. Morgan*, 531 N.E.2d 36, 41 (Ill. App. Ct. 1988).

42. *Id.* A court may also consider statements of intent. *Long*, 714 N.E.2d at 1044–46. Among the actions considered in the two decisions cited in this footnote were the ownership of real estate, the individual's job (temporary or long-term), and the designation of the address to appear on the individual's driver's license.

43. *Id.* at 1044.

44. *Webb*, 531 N.E.2d at 41.

45. Some courts interpret "residence" in a venue statute to mean domicile, while other courts interpret it to mean a dwelling place regardless of domicile. RESTATEMENT (SECOND) CONFLICT OF LAWS § 11 cmt. k (1971). Illinois courts follow the domicile interpretation. *See Webb*, 531 N.E.2d at 41–42 (citing *Hatcher v. Anders*, 453 N.E.2d 74, 77 (Ill. App. Ct. 1983) (finding that the term "resident" was synonymous with "domicile" unless its meaning was limited by express definition or by the context of the act).

46. RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 11, 20 (1971).

47. *See Long*, 714 N.E.2d at 1045 (referring to the defendant's testimony that he stayed at his sister's mobile home in Kankakee County, where he paid part of the rent for "a month maybe," then stayed at his girlfriend's apartment in Cook County, where he paid all the rent for "four, five

case, the defendant moved to places where he found work without developing strong ties to those places.⁴⁸ To determine the residence of individuals like these, the court must weigh the evidence and make a judgment call about where the individual's ties are greatest—thus, finding intent to reside there indefinitely.⁴⁹

These judgment calls could be avoided—and venue would be better aligned with the convenience of the defendant—if venue was instead based on an individual's regular dwelling place. In the first example, the individual had regular dwelling places in two counties: where his sister's mobile home was located and where his girlfriend's apartment was located.⁵⁰ No matter where the court determined that the defendant had his “residence,” he could have conveniently defended suits in either county. In the second example, the individual had his regular dwelling place in the county where he currently lived.⁵¹ Even if he had his “residence” in the county where he formerly lived, he could have defended suits more conveniently where he currently lived.

Residence-based venue also restricts venue more than would be required to adequately protect the convenience of the defendant. Many individuals live in one county and have half-time or full-time jobs in another county. If an individual commutes three to five times per week to another county, these regular commutes indicate the individual also could conveniently defend suits there. If the Illinois legislature were to amend the statute to base venue on both a defendant's regular dwelling place and a defendant's regular work place, the plaintiff would still have this choice of venue without infringing on the convenience of the defendant.

2. Legal Entity Defendant

While the statute does not expressly define what constitutes the “residence” of individuals, it does expressly define what constitutes the “residence” of legal entities.⁵² The statute has separate definitions for (a) private corporations, (b) partnerships, and (c) unincorporated associations.

weeks”).

48. *See Webb*, 531 N.E.2d at 43 (describing the codefendant as “a transient who moved from place to place searching for employment”).

49. *See Long*, 714 N.E.2d at 1044–45 (reviewing the record to determine whether venue was established outside of Cook County).

50. *See id.* (reasoning that the individual's place of residence was ambiguous because he resided in two different locations).

51. *Webb*, 531 N.E.2d at 42.

52. 735 ILL. COMP. STAT. 5/2-102 (2010).

a. Private Corporations

In actions against private corporations, venue will be proper if the corporation meets any of three requirements to establish residence. A private corporation organized under Illinois law resides in any county where it has: (1) a registered office; (2) an “other office”; or (3) is doing business.⁵³ This same definition of residence applies to a foreign corporation authorized to transact business in Illinois.⁵⁴ If a foreign corporation is not authorized to transact business in Illinois, it is a nonresident.⁵⁵

(i) Registered Office or Other Office

The term “registered office” refers to a private corporation’s registration with the Illinois Secretary of State or other Illinois agency. The various Illinois registration statutes permit use of an outside entity as a registered agent, with the outside entity’s place of business serving as the corporation’s registered office.⁵⁶ Many corporations choose an outside entity with expertise in processing legal papers to ensure that these papers receive proper attention and do not get lost among routine mail and other correspondence.⁵⁷ Because this office serves as a registered office for venue purposes, this choice can unfortunately make venue proper in a county where the corporation has no place of business and cannot conveniently defend suits.⁵⁸

The term “office,” as noted before, means any fixed place where a private corporation conducts its affairs.⁵⁹ This place does not have to be the corporation’s principal place of business, nor even one of its

53. 735 ILL. COMP. STAT. 5/2-102(a). The statute also lumps railroad and bridge companies into the residence definition for private corporations, and therefore, the same venue rules apply to these types of entities. *Id.*

54. *Id.*

55. *Id.* If a foreign corporation not authorized to transact business in Illinois is the only defendant, or if all the other defendants also are nonresidents, venue is proper in any county. 735 ILL. COMP. STAT. 5/2-101.

56. See 805 ILL. COMP. STAT. 5/5.05(a)–(b) (2010) (Business Corporation Act of 1983); 805 ILL. COMP. STAT. 105/105.05(a)(1)–(2) (General Not for Profit Corporation Act of 1986); 205 ILL. COMP. STAT. 645/9(a)–(b) (2010) (Foreign Banking Office Act).

57. ROBERT W. HAMILTON, CORPORATIONS INCLUDING PARTNERSHIPS AND LIMITED LIABILITY COMPANIES: CASES AND MATERIALS 251 (7th ed. 2001).

58. See *Torres v. Walsh*, 456 N.E.2d 601, 603–04 (Ill. 1983) (upholding the Cook County circuit court’s authority to transfer a suit in which venue was proper because Humana of Illinois, Inc., which owned the Springfield Community Hospital, had designated C.T. Corporation System as registered agent and C.T. Corporation System had its office in Cook County).

59. See *Melliere v. Luhr Bros., Inc.*, 706 N.E.2d 40, 44 (Ill. App. Ct. 1999) (“We . . . hold that the phrase *other office* as used in our venue statute means a fixed place of business at which the affairs of the corporation are conducted in furtherance of a corporate activity.”).

relatively large places of business.⁶⁰ If all of the corporation's executives and most of its employees work at a single large place of business located in one particular county, residence there does not preclude it from also residing in a county where the corporation maintains a small place of business with no executives and only one or two employees.⁶¹ Thus, the corporation may be forced to defend an action in a location where it will be much less convenient to litigate than where it primarily conducts its business activities. By disregarding the relative size of a private corporation's places of business, Illinois protects the convenience of a private corporation far less than it protects the convenience of a governmental corporation. In suits against governmental corporations, a special venue statute limits residence-based venue to the county where the governmental corporation has its "principal office."⁶² The term "principal office" is interpreted to mean the governmental corporation's nerve center—i.e., where its top executives work.⁶³ For example, in a suit against the Illinois Department of Revenue, the Department had fifty employees who worked at its DuPage County (Wheaton) regional office.⁶⁴ DuPage County was not a proper venue, however, because the Department's top executives worked at its larger offices in Springfield and Chicago.⁶⁵

60. See 735 ILL. COMP. STAT. 5/2-102(a) (treating the location of an "other office" as a corporate residence without regard to that office's size relative to other offices of the corporation).

61. See *Corral v. Mervis Indus., Inc.*, 839 N.E.2d 524, 526–27 (Ill. 2005) (affirming, for lack of a sufficient record to permit appellate review, a ruling that venue was established by a one-employee office in that employee's home); *Melliere*, 706 N.E.2d at 43–44 (finding a leased airport hangar where just two employees worked to be an "office").

62. 735 ILL. COMP. STAT. 5/2-103(a).

63. *Home Depot, U.S.A., Inc. v. Dep't of Rev.*, 823 N.E.2d 625, 632 (Ill. App. Ct. 2005), *abrogated on other grounds by Corral v. Mervis Indus.*, 839 N.E.2d 524 (Ill. 2005). The United States Supreme Court recently adopted the "nerve center" test as the proper test to identify, for diversity of citizenship purposes, the state where a corporation has its principal place of business. *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192 (2010). The Supreme Court defined the nerve center as the location where "a corporation's officers direct, control, and coordinate the corporation's activities." *Id.* The corporation's headquarters is normally the nerve center, "provided that the headquarters is the actual center of direction, control, and coordination . . . and not simply an office where the corporation holds its board meetings." *Id.*

64. *Home Depot*, 823 N.E.2d at 633–34.

65. *Id.* at 634. The Appellate Court said that governmental entities other than municipalities can have more than one "principal office." *Id.* at 631. However, the United States Supreme Court has said that statutory language referring a corporation's principal "place" of business should be interpreted to refer to a single place. *Hertz Corp.*, 130 S. Ct. at 1192. If the Illinois Supreme Court ultimately interprets the similar language in the special venue statute to refer to a single place, Illinois courts will have to decide whether a state agency's nerve center is at its Springfield office or its Chicago office based, perhaps, on how much time the agency's top executives spend at each office.

(ii) Doing Business

A corporation is also deemed a resident of a county for venue purposes if it is “doing business” there.⁶⁶ The term “doing business” refers to the conduct of a private corporation’s “usual and customary business.”⁶⁷ The statute does not specify how often the corporation must conduct this business in the county to satisfy this requirement. Courts have held, however, that infrequent conduct is insufficient.⁶⁸

A private corporation’s usual and customary business is its core business. For example, a corporation in the legal services business is “doing business” in a county where it often performs legal services.⁶⁹ Similarly, a corporation in the trucking business is “doing business” in a county where it often picks up and delivers freight.⁷⁰

A private corporation’s usual and customary business, however, does not include activities that are only incidental to its core business. For this reason, a corporation is generally not doing business in counties where it only: (1) solicits business,⁷¹ (2) makes purchases,⁷² or (3) supports sales of its products by independent dealers.⁷³ For this reason,

66. 735 ILL. COMP. STAT. 5/2-102(a).

67. *Baltimore & O. R. Co. v. Mosele*, 368 N.E.2d 88, 92 (Ill. 1977).

68. *See id.* (holding that infrequent train movements across county lines during “yarding” of trains in an adjacent county were insufficient to establish that the defendant was doing business in the proposed venue county); *see also* *Stambaugh v. Int’l Harvester Co.*, 464 N.E.2d 1011, 1014–15 (Ill. 1984) (holding that sales-support visits to independent dealers were similar to the regular, but infrequent, activities that did not constitute “doing business” in *Mosele*).

69. *See* *McLane v. Russell*, 512 N.E.2d 366, 370 (Ill. App. Ct. 1987) (holding that a professional corporation was “doing business” in Peoria County by representing creditors in bankruptcy proceedings that involved eight proofs of claim filed in the federal bankruptcy court in Peoria).

70. *See* *Long v. Gray*, 714 N.E.2d 1041, 1046–47 (Ill. App. Ct. 1999), *abrogated on other grounds by* *Corral v. Mervis Indus.*, 839 N.E.2d 524 (Ill. 2005) (holding that a trucking company was “doing business” in Cook County by making six freight deliveries and thirteen freight pickups in Cook County in the month the suit was filed).

71. *See Mosele*, 368 N.E.2d at 93–94 (holding that solicitation of freight traffic, which occurred both in person and by telephone within Madison County, did not constitute “doing business” there because the railroad received the freight outside Madison County).

72. *See Hartung v. Cent. Ill. Pub. Serv. Co.*, 443 N.E.2d 16, 17–19 (Ill. App. Ct. 1982) (holding that an electric company was not “doing business” in a county where it had entered into contracts with residents to purchase supplies and materials).

73. *See Stambaugh*, 464 N.E.2d at 1014–17 (holding that an equipment manufacturer was not “doing business” in a county where: (i) it did not design, manufacture, directly advertise, directly finance, or directly sell its products to consumers; and (ii) the independent dealer sales were a tiny percentage of the defendant’s annual sales). Acts incidental to independent dealer sales, such as mailing rebate checks and paying for warranty work, also do not meet the “doing business” requirement. *See, e.g.,* *Boxdorfer v. DaimlerChrysler Corp.*, 790 N.E.2d 391, 396–97 (Ill. App. Ct. 2003) (paying for warranty work); *Gardner v. Int’l Harvester Co.*, 499 N.E.2d 430, 432–33 (Ill. 1986) (mailing rebate checks).

too, a corporation is not automatically doing business where its subsidiary corporation is doing business.⁷⁴

Once again, Illinois protects a private corporation's convenience less than it protects a governmental corporation's convenience. For example, the Illinois Department of Revenue ("IDR") likely conducts its usual and customary business on a regular basis in every Illinois county.⁷⁵ Yet, in suits against governmental corporations like the IDR, venue cannot be based on doing business, and thus residence-based venue is limited to where the IDR has its principal office.⁷⁶

In addition to this inequality problem, lack of clarity about the meaning of "doing business" has led to wasteful litigation. For example, in a suit based on injuries suffered by a farmer during a tractor fire in Brown County (Mt. Sterling), the tractor manufacturer had its headquarters in one county and its manufacturing plants in six other counties.⁷⁷ It had no place of business in St. Clair County, but it supported sales by St. Clair County farm equipment dealers by sending employees to visit the dealers to assist with product marketing, and by partially reimbursing the dealers for the cost of advertising that included the manufacturer's logo.⁷⁸ When the suit was filed, no controlling precedent determined whether this kind of sales-support activity qualified as "doing business" within the meaning of the statute.⁷⁹ The farmer's attorney filed the suit in St. Clair County, the circuit court overruled a venue objection, and the jury returned a large verdict.⁸⁰ However, on appeal, the Illinois Supreme Court held for the tractor manufacturer on the "doing business" issue and remanded with

74. See *Stambaugh*, 464 N.E.2d at 1015 (holding that an equipment manufacturer was not "doing business" where its wholly-owned financing company subsidiary financed equipment sales by independent dealers).

75. The Department's self-described responsibilities are to: (1) "serve as the tax collection agency for state government and for local governments"; (2) administer the state's lottery; (3) regulate the manufacture, sale, and distribution of alcoholic beverages; (4) oversee local property assessments; and (5) serve as funding agent for the Illinois Housing Development Authority. *Our Responsibilities*, ILL. DEP'T OF REVENUE, <http://www.revenue.state.il.us/AboutIdor> (last visited Apr. 19, 2012). Logically, the Department carries on these activities in all Illinois counties.

76. 735 ILL. COMP. STAT. 5/2-103(a) (2010).

77. *Stambaugh*, 464 N.E.2d at 1016.

78. *Id.* at 1013-15.

79. See *id.* at 1013 (noting that the Illinois Supreme Court had not construed the term "doing business" before the *Mosele* decision).

80. *Id.* at 1011-13. The jury's verdict awarded the plaintiff \$650,000 in compensatory damages and \$15 million in punitive damages. *Id.* at 1011. The trial court ordered a remitter reducing the punitive damages to \$7.5 million, which the appellate court further reduced to \$650,000. *Id.*

directions to transfer the suit for retrial in a proper venue.⁸¹ As a result, the St. Clair County trial and subsequent appeals—including the time and expenses invested by the parties—were essentially wasted.⁸²

b. Partnerships

A partnership sued in its firm name resides in any county where a partner resides, where the partnership has an office, or where it is doing business.⁸³ If all partners are nonresidents, the partnership has no Illinois office, and it is not doing business in Illinois, the partnership is a nonresident.⁸⁴ These residence and nonresident definitions also apply to joint ventures, which essentially are partnerships formed for a specific enterprise or transaction.⁸⁵

The terms “office” and “doing business” have the same meanings for partnerships as for private corporations.⁸⁶ Yet, partnership residence based on individual partner residence has no counterpart in corporate residence. For example, in many general partnerships, the partners are akin to corporate officers, but corporate residence is not based on officer residence. Likewise, in many limited partnerships, the limited partners are akin to shareholders, but corporate residence is not based on shareholder residence. Whether the organizers of a business form a general partnership, limited partnership, or private corporation hinges on their preferences about liability, taxation, and registration fees. The venue in which an organization can be sued and the effect that this has on the convenience of litigating there are not considerations that typically influence the selection of a business organization form. Accordingly, the statute should not have different residence rules for partnerships and private corporations.

Venue based on partner residence can force a partnership to defend suits in inconvenient places. For example, in a personal injury suit

81. *Stambaugh*, 464 N.E.2d at 1016–17.

82. *See supra* note 80 and accompanying text (discussing the outcome of the trial in St. Clair County). Not only was the trial wasted, but also both plaintiff and defendant incurred considerable expense to address the issue of the excessive punitive damages award.

83. 735 ILL. COMP. STAT. 5/2-102(b) (2010).

84. *Id.* If the partnership is the only defendant, or if the other defendants also are nonresidents, the suit can be filed in any county. 735 ILL. COMP. STAT. 5/2-101.

85. *See Wilson v. Cent. Ill. Pub. Serv. Co.*, 519 N.E.2d 44, 48–49 (Ill. App. Ct. 1988) (examining whether any of the corporations that participated in the defendant joint venture were “doing business” in Madison County at the time the suit was filed and concluding that none of them were).

86. *See Turner v. Jarden*, 656 N.E.2d 1125, 1127 (Ill. App. Ct. 1995) (holding that a dairy partnership was “doing business” in Madison County by raising feed for its cows on about 150 acres in Madison County, even though its acreage and buildings were located primarily in an adjoining county).

based on an accident at an office building in Lake County (Waukegan), the defendant might be a limited partnership organized to own the building on behalf of investors. If a limited partner investor resides in Madison County (Edwardsville), the partnership's convenience is not served by defending a suit in Madison County instead of Lake County.⁸⁷

c. Unincorporated Associations

A voluntary unincorporated association sued in its own name resides in any county where it has an office; or, if no Illinois office can be found on due inquiry, it resides where any officer resides.⁸⁸ If all members are nonresidents, the association has no Illinois office, and it is not doing business in Illinois, then the association is a nonresident.⁸⁹

Because limited liability companies are neither corporations nor partnerships,⁹⁰ the residence and nonresident rules that apply to unincorporated associations also, by process of elimination, seem likely to apply to limited liability companies. However, it is undecided in Illinois which venue rules apply to limited liability companies, and in one state, a limited liability company that has been treated as a partnership for tax purposes is also treated as a partnership for venue purposes.⁹¹ If the Illinois venue rules for unincorporated associations apply, a limited liability company resides where it has an office; or, if

87. No Illinois decision considers whether the term "partner" in the Illinois venue statute refers to all partners (including limited partners) or to only general partners. Decisions by other state courts conflict, though one Georgia Supreme Court decision that limited the term "partner" to general partners interpreted a state constitutional provision rather than a venue statute. *See Maupin v. Meadow Park Manor*, 125 P.3d 611, 613–14 (Mont. 2005) (interpreting the partnership provision of the Montana venue statute to apply to limited partnerships and holding venue was proper in a slip-and-fall suit brought in Cascade County against the limited partnership that owned the Richland County apartment building where the accident occurred because one of the limited partners, who did not participate in managing the business, resided in Cascade County). *But see Nolan Road West, Ltd. v. PNC Realty Holding Corp. of Ga.*, 559 S.E.2d 447, 449–50 (Ga. 2002) (interpreting a provision in the Georgia Constitution about venue in suits against copartners residing in different counties not to apply to a limited partner).

88. 735 ILL. COMP. STAT. 5/2-102(c).

89. *Id.*

90. *See* Limited Liability Company Act, 805 ILL. COMP. STAT. 180 (2010) (setting forth the statutes that govern LLCs, which differ from the statutes that govern private corporations and the statutes that govern partnerships); Scott R. Anderson, *The Illinois Limited Liability Company: A Flexible Alternative For Business*, 25 LOY. U. CHI. L.J. 55, 86–105 (1993) (comparing LLCs with other Illinois business entities).

91. *Ex parte* Miller, Hamilton, Snider & Odom, LLC, 942 So. 2d 334, 336–37 (Ala. 2006) (noting that limited liability companies are not mentioned in the Alabama venue statutes, and holding that venue in a suit against a law firm organized as an LLC, which had been treated for many years as a partnership for tax purposes, should also be determined under the Alabama venue rule for partnerships, not the rule for corporations, nor the rule for unincorporated associations).

no Illinois office can be found on due inquiry, it resides where any officer resides. If all of its members are nonresidents, it has no Illinois office, and it is not doing business in Illinois, the limited liability company is a nonresident.

The choice between forming a limited liability company and forming a private corporation hinges primarily on preferences about taxation.⁹² Much like the partnership discussed above, venue and its effect on litigation convenience are not considerations that go into the decision to run a business as a limited liability company. The Illinois venue statute should not have different residence rules for limited liability companies, partnerships, and private corporations.

The definitions themselves invite confusion. A limited liability company has no officers; it has managers and members.⁹³ Also, the term “member” has a technical meaning in the limited liability company context.⁹⁴

These definitions could also create a small venue gap. For example, a trucking company that is based in Indiana and organized as an Indiana limited liability company might regularly pick up and deliver freight in White County (Carmi), Illinois, despite having no place of business in Illinois. Suppose its truck hits a White County resident’s car just across the border in Indiana, and the car owner tries to sue in Illinois. Residence-based venue is unavailable, because the trucking company has no Illinois office, it likely has no “officer” who resides in Illinois, and the company cannot be a nonresident when it is doing business in Illinois.⁹⁵ Transaction-based venue is also unavailable because the suit is based on a transaction (the accident) that took place outside of Illinois. The Illinois courts might have personal jurisdiction over the trucking company under the Illinois long-arm statute;⁹⁶ but, due to lack of venue, the suit could not be filed in any county.

92. See Anderson, *supra* note 90, at 56–57 (noting tax benefits and other benefits associated with LLCs).

93. See 805 ILL. COMP. STAT. 180/13-5 (2010) (establishing agency rules for members and managers); 805 ILL. COMP. STAT. 180/45-5(a)(7) (requiring a statement as to whether an LLC is member-managed or manager-managed).

94. 805 ILL. COMP. STAT. 180/13-5. Similar issues would arise if an LLC were deemed a partnership for venue purposes. Which persons would then count as “partners” whose residence would make venue proper in a suit against the LLC? For example, would a member who is not a manager count as a “partner”?

95. See 735 ILL. COMP. STAT. 5/2-102(c) (2010) (specifying what makes an unincorporated association a nonresident). This potential venue gap would be a strong reason not to treat an LLC as an unincorporated association for venue purposes.

96. See 735 ILL. COMP. STAT. 5/2-209(b)(4), (c) (granting Illinois courts the power to exercise personal jurisdiction over a person or entity doing business in Illinois and to the extent allowable under the Illinois Constitution and the Constitution of the United States); Williams v. Lawson &

3. Legal Representative Defendant

Unlike the ordinary individuals or business entities to which the previously-described rules apply, certain individuals must be sued through a legal representative. Neither a deceased individual nor the deceased individual's estate has the legal capacity to be sued—the proper party to name as the defendant is the executor or the administrator.⁹⁷ A minor or a legally disabled individual similarly lacks legal capacity—the proper party to name as the defendant is a guardian, guardian ad litem, or next friend.⁹⁸ In suits against legal representatives, venue depends on the legal representative's residence, not the represented individual's residence.⁹⁹ In other words, if the legal representative is an individual, the residence rules for individuals are applied to that individual; if the legal representative is a legal entity, the residence rules for legal entities are applied to that legal entity.

This use of the legal representative's residence invites manipulation. During the many years when the legal representative's citizenship determined whether the federal courts had diversity jurisdiction, attorneys chose legal representatives specifically for their effect on

Lawson Towing Co., 510 N.E.2d 1308, 1311 (Ill. App. Ct. 1987) (holding that a towing company was subject to personal jurisdiction under the “doing business” doctrine because it regularly provided towing services on the Mississippi River in Illinois). If a state has a valid basis for general jurisdiction over a defendant, it can exercise jurisdiction in a suit that is unrelated to the defendant's connection with the state. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011). The U.S. Supreme Court recently reaffirmed that a state may base general jurisdiction on “systematic and continuous general business contacts.” *Id.* at 2857 (internal quotation marks omitted). The Supreme Court further described these contacts as ones that mean a corporate defendant is “fairly regarded as at home.” *Id.* at 2854. It listed incorporating in a state, or locating the corporation's principal place of business in a state, as paradigm bases for the exercise of general jurisdiction. *Id.* at 2854 (citing *Lea Brilmayer et al., A General Look at General Jurisdiction*, 66 TEX. L. REV. 721, 733 (1988)). The cited law review article argues that a state also should be able to exercise general jurisdiction when a corporate defendant's activity “reaches the quantum of local activity in which a purely local company typically would engage.” *Lea Brilmayer et al., A General Look at General Jurisdiction*, 66 TEX. L. REV. 721, 742 (1988). An Indiana-based trucking company that regularly picks up and delivers freight in Illinois arguably has reached the quantum of local activity in which an Illinois-based trucking company would engage. The opposing argument is, of course, that the Illinois-based trucking company engages in qualitatively greater local activity as a result of having a local place of business.

97. See *Marcus v. Art Nissen & Son, Inc.*, 586 N.E.2d 694, 696–97 (Ill. App. Ct. 1991) (“[A] lawsuit must have a plaintiff and a defendant and . . . both must be in existence for the lawsuit to proceed.” (dictum)); *Wisemantle v. Hull Enters., Inc.*, 432 N.E.2d 613, 616 (Ill. App. Ct. 1981) (“[A]n action against an estate must be brought against an administrator or executor as the representative of the estate.”).

98. See 755 ILL. COMP. STAT. 5/11-13(d) (outlining the capacity of a guardian of a minor to sue or be sued on the minors behalf); 755 ILL. COMP. STAT. 5/11a-18(c) (outlining the same, but in the context of a disabled adult).

99. See *Precision Components, Inc. v. Estate of Kuntz*, 445 N.E.2d 449, 450 (Ill. App. Ct. 1983) (noting venue is proper where the executor resides).

jurisdiction, and not for their experience or skill in representing individuals lacking legal capacity.¹⁰⁰ Congress stopped this manipulation by making diversity jurisdiction depend instead on the citizenship of the deceased person, minor, or incompetent.¹⁰¹ Illinois does not have a similar history of attorneys choosing legal representatives for their effect on residence-based venue, but given the opportunity to divert litigation to a preferred venue, similar incentives exist. Accordingly, Illinois should prevent this type of manipulation before it starts.

4. Multiple Defendants

In suits against multiple defendants, venue is proper where any defendant resides.¹⁰² The defendant that the plaintiff uses to fix venue must be “joined in good faith and with probable cause for the purpose of obtaining a judgment against him or her and not solely for the purpose of fixing venue in that county.”¹⁰³ This good faith requirement is designed to prevent the “subterfuge” of pretending to seek a judgment against a resident defendant who has been joined just to fix venue in a suit really aimed at securing a judgment against a nonresident defendant.¹⁰⁴

Making a determination of whether or not the plaintiff has complied with the statute’s anti-venue fixing requirement demands the application of several key terms of art. “Good faith,” in the context of the statute, means an honest intention to abstain from unconscientiously taking

100. See Linda S. Mullenix, *Creative Manipulation of Federal Jurisdiction: Is There Diversity After Death?*, 70 CORNELL L. REV. 1011, 1026 (1985) (noting that some litigants have admitted that they intentionally appointed a representative for the purposes of securing federal jurisdiction). Not surprisingly, courts have acknowledged the difficulty in determining the subjective intentions of appointing a representative for the purposes of securing jurisdiction. *Pallazola v. Rucker*, 797 F.2d 1116, 1121 (1st Cir. 1986). As a result, various commentators had proposed the adoption of per se rules that would govern the citizenship of the parties, ranging from the domicile of the decedent to the domicile of the beneficiaries. *Id.* Eventually, Congress settled on the domicile of the represented decedent. See *infra* note 101 and accompanying text.

101. 28 U.S.C. § 1332(c)(2) (2006). This change was adopted as a part of the 1988 amendments to section 1332. See David Siegel, *Commentary on 1988 Revision*, in 28 U.S.C. § 1291–1329 at 382 (2006).

102. 735 ILL. COMP. STAT. 5/2-101.

103. *Id.*

104. See *Green v. Unity Container Corp.*, 129 N.E.2d 458, 462 (Ill. App. Ct. 1955) (“The purpose . . . is to prevent a plaintiff from joining a resident in the county with a nonresident as a mere subterfuge for the purpose of obtaining a judgment against the nonresident.”). In this sense, the concept is much like that of fraudulent joinder used to defeat diversity jurisdiction in federal court between otherwise diverse parties. See, e.g., *Poulos v. Naas Foods, Inc.*, 959 F.2d 69, 73 (7th Cir. 1992) (explaining federal law designed to prevent or remedy fraudulent joinder in diversity cases).

advantage of another.¹⁰⁵ “Probable cause” means a reasonable belief the claim is valid.¹⁰⁶ “Solely for the purpose” means fixing venue must not be the only reason for joining the defendant, though it may be the primary reason.¹⁰⁷

Under these definitions, the plaintiff can meet the good faith requirement despite circumstances strongly suggesting that the joinder was motivated by forum shopping. For example, in a personal injury suit the plaintiff alleged a defendant manufacturer’s drug caused a hemorrhage that other defendants then negligently treated.¹⁰⁸ After using the manufacturer’s residence to fix venue, the plaintiff waited sixteen months to pursue the bad drug claim, after which the plaintiff’s own experts testified the drug played no role in the hemorrhage and the plaintiff did not oppose the manufacturer’s summary judgment motion.¹⁰⁹ Nevertheless, the court deemed the joinder in good faith and approved the plaintiff’s use of the manufacturer’s residence to fix venue.¹¹⁰

Bad faith occasionally has been found. For example, in a loan collection suit, the plaintiff lenders sued the guarantors of a note and the note’s maker after the lenders already had received a distribution on

105. *Green*, 129 N.E.2d at 462.

106. *Id.*

107. *Suttle ex rel. Suttle v. Lake Forest Hosp.*, 660 N.E.2d 214, 218 (Ill. App. Ct. 1995). The decision indicates that meeting the probable cause requirement establishes that a defendant was not joined solely for the purpose of fixing venue. *Id.* This interpretation makes the proper purpose requirement redundant.

108. *Decker v. St. Mary’s Hosp.*, 619 N.E.2d 537, 540 (Ill. App. Ct. 1993).

109. *Id.* at 543.

110. *Id.* Specifically, the court determined that the manufacturer was not added in bad faith because it was not clear until the depositions of the plaintiff’s own experts that the manufacturer’s drug could not have caused the alleged injury. *Accord Novak v. Thies*, 412 N.E.2d 666, 668 (Ill. App. Ct. 1980) (holding that the plaintiff’s failure to produce evidence at trial against the defendant joined to fix venue did not establish bad faith, because a flexible trial strategy might have led the plaintiff’s attorney to forego introduction of evidence against that defendant). Query whether a plaintiff, by turning a blind eye to evidence that would preclude a claim against a defendant joined to fix venue, or by making little effort to investigate this claim, could ensure that the court could not find bad faith joinder. These actions likely would violate the duty to perform a reasonable investigation before pleading a claim, ILL. SUP. CT. R. 137, but the plaintiff might calculate that the odds of sanctions are low enough that the risk is worth taking to pursue a favorable venue. The Illinois Supreme Court dealt with a joinder ploy similar to the ploy in *Decker* in a case where the plaintiff, facing a motion to dismiss on the ground of *forum non conveniens*, joined two Illinois residents as additional defendants to justify keeping the suit in Illinois. *See Adkins v. Chi., Rock Island & Pac. R.R. Co.*, 301 N.E.2d 729, 731 (Ill. 1973) (“It seems apparent that the individual defendants were joined in order to make the Illinois action look different from the Iowa action, and thereby provide some sort of basis upon which the denial of the motion to dismiss could be predicated.”). Despite making this statement, the Illinois Supreme Court did not suggest that the plaintiff should be sanctioned. *Id.*

their claim against the maker in the maker's bankruptcy proceedings.¹¹¹ Because the claim against the maker could not survive those bankruptcy proceedings, the court deemed the joinder in bad faith and disapproved the plaintiffs' use of the maker's residence to fix venue.¹¹²

If the claim against the defendant that the plaintiff uses to fix venue is later dismissed, the dismissal's effect on venue depends on the type of dismissal. Following a voluntary dismissal, a remaining defendant can move for transfer as though the dismissed defendant had not been a party.¹¹³ If dismissal is involuntary, however, a defendant cannot move for transfer under this voluntary dismissal rule.

The voluntary dismissal rule can discourage settlement with the defendant used to fix venue. Ordinarily, if discovery indicates that the claim against this defendant is weak, the plaintiff would prefer to settle the claim by voluntarily dismissing it in exchange for a small payment. Or, if discovery indicates the claim against this defendant is strong, the plaintiff would prefer to settle the claim by voluntarily dismissing it in exchange for a large payment. Yet, because of the venue consideration, the plaintiff might continue to litigate the claim in order to preserve the right to litigate claims against other defendants in the plaintiff's preferred county.

5. Nonresident Defendants

An action may be commenced in any county if all defendants are nonresidents.¹¹⁴ The rationale for this any-county rule is that all counties are about equally inconvenient for most nonresidents.¹¹⁵ This equal-inconvenience rationale is false, however, for the tens of thousands of individuals who live in adjacent states and work in Illinois.

111. *Green v. Unity Container Corp.*, 129 N.E.2d 458, 462 (Ill. App. Ct. 1955).

112. *Id.*; *see also Gass v. Anna Hosp. Corp.*, 911 N.E.2d 1084, 1089–93 (Ill. App. Ct. 2009) (holding that in a suit based on a subsidiary corporation's acts, the plaintiff cannot join the parent corporation and use its residence to fix venue without alleging facts that meet the legal requirements for piercing the corporate veil).

113. 735 ILL. COMP. STAT. 5/2-104(b) (2010).

114. 735 ILL. COMP. STAT. 5/2-101.

115. *See Burlington N. R.R. Co. v. Ford*, 504 U.S. 648, 652 (1992) (“[F]or most nonresident defendants the inconvenience will be great whether they have to defend in, say, Billings [county] or Havre [county].”). This concept is also often applied in the case where a nonresident plaintiff has chosen a particular venue. Because the plaintiff is a nonresident, the convenience of one county within the state over another is mitigated, and as a result, the plaintiff's choice of forum is given less deference. *See Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 256 (1981) (applying this concept in the international context); *Dawdy v. Union Pac. R.R. Co.*, 797 N.E.2d 687, 694 (Ill. 2003) (applying this concept in the intrastate context). The Indiana Supreme Court spelled out the same principle in the context of a nonresident defendant in *Am. Family Ins. Co. v. Ford Motor Co.*, 857 N.E.2d 971, 977 (Ind. 2006).

For these nonresidents, a distant county on the opposite side of Illinois is a far less convenient place to defend suits than the county where they regularly work.¹¹⁶

B. Transaction-Based Venue

The general venue statute provides for transaction-based venue in any county where part of the transaction occurred out of which the cause of action arose.¹¹⁷ Under a broad interpretation of this form of venue, any matter the plaintiff has the burden of proving can be used to establish venue.¹¹⁸ Under a narrow interpretation, dealings between the parties must be used to establish venue.¹¹⁹ Because the Illinois Supreme Court has not identified which of these interpretations reflects the Illinois General Assembly's intent, there is some uncertainty about the proper venue for (1) contract claims, and (2) tort claims.¹²⁰

1. Contract Claims

In breach of contract suits, the burden-of-proof test applied under the broad interpretation of transaction-based venue permits venue to be based on (i) negotiations,¹²¹ (ii) signing,¹²² (iii) an event that triggers a

116. The equal-inconvenience rationale nevertheless has enough truth for this type of venue provision to pass muster under the U.S. Constitution. See *Burlington N. R.R. Co.*, 504 U.S. at 653 (“Montana could thus have decided that a nonresident defendant’s interest in convenience is too slight to outweigh the plaintiff’s interest in suing in the forum of his choice.”). Regardless, states have the right to create alternative methods of choosing venue for nonresident defendants and, indeed, “to give so much weight to the interests of plaintiffs as to allow them to sue in the counties of their choice under all circumstances.” *Id.* at 651–52.

117. 735 ILL. COMP. STAT. 5/2-101.

118. See *Williams v. Ill. State Scholarship Comm’n*, 563 N.E.2d 465, 485 (Ill. 1990) (referring to the test for venue, where the plaintiff has the burden of proving the place where the transaction occurred).

119. See *id.* (defining the place where a “transaction or some part” occurred for purposes of the test for venue).

120. A few venue decisions have involved other types of claims. See *S. & Cent. Ill. Laborers’ Dist. Council v. Ill. Health Facilities Planning Bd.*, 772 N.E.2d 980, 984–85 (Ill. App. Ct. 2002) (governmental duty claim applying 735 ILL. COMP. STAT. 5/2-103(a)), *abrogated by Corral v. Mervis Indus., Inc.*, 839 N.E.2d 524, 526 (Ill. 2005); *Patel v. Lacey*, 561 N.E.2d 455, 457–58 (Ill. App. Ct. 1990) (fiduciary duty claim).

121. See *Christopher v. West*, 104 N.E.2d 309, 315 (Ill. App. Ct. 1952) (finding that venue was proper in the county where the parties engaged in conferences, negotiations, and other dealings).

122. See *Servicemaster Co. v. Mary Thompson Hosp.*, 532 N.E.2d 1009, 1012–15 (Ill. App. Ct. 1988) (concluding that venue was proper in the county where plaintiff signed the contract, even though plaintiff delivered the signed contract to the defendant in another county where the defendant affixed its signature) (alternative holding); see also *Doe v. Supreme Lodge of the Loyal Order of Moose*, 619 N.E.2d 194, 197 (Ill. App. Ct. 1993) (holding that venue was proper in the county where the contract was signed by plaintiff’s guardian, even though the services were provided in another county); *Curt Bullock Builders, Inc. v. H.S.S. Dev., Inc.*, 586 N.E.2d 1284,

contractual duty,¹²³ (iv) performance,¹²⁴ (v) an expected effect of performance,¹²⁵ or (vi) breach.¹²⁶ These six bases make it possible to sue in virtually any county with witnesses to a matter important to a contract claim.¹²⁷ The broad interpretation, in other words, ensures that venue *can* serve the convenience of the witnesses. Yet, this interpretation does not ensure venue *will* serve the convenience of the witnesses. In choosing among the counties where venue is proper, plaintiffs typically look for the county with the most favorable juries and judges, the most current docket, or the location most convenient for the plaintiff.¹²⁸ With six bases to use, plaintiffs have relatively wide latitude to advance their own interests instead of the convenience of the witnesses.

The party-dealings test applied under the narrow interpretation of transaction-based venue gives plaintiffs less latitude, but its effect on the convenience of the witnesses varies from case to case. If a case hinges on events in a county where the parties dealt with each other, this narrow interpretation likely has a positive effect on the convenience of the witnesses. On the other hand, if a case hinges on events in a county where the parties did not deal with each other, this narrow interpretation likely has a negative effect.

Whether positive or negative, these effects on the convenience of the witnesses might be only coincidental. The narrow interpretation,

1292 (Ill. App. Ct. 1992) (asserting that venue was proper in the county where plaintiff signed the lease agreement, even though the leased premises were in another county).

123. See *Kenilworth Ins. Co. v. McDougal*, 313 N.E.2d 673, 675 (Ill. App. Ct. 1974) (finding that venue was proper in the county where the accident, which allegedly triggered uninsured motorist coverage, occurred).

124. See *Servicemaster Co.*, 532 N.E.2d at 1013–15 (concluding that venue was proper in the county where the management services contract was performed in substantial part by plaintiff and where defendant initially delivered its payments, even though the management services were for a hospital in another county) (alternative holding).

125. See *Frey Corp. v. Gilldorn Mortg. Midwest, Inc.*, 475 N.E.2d 1100, 1102–04 (Ill. App. Ct. 1985) (finding that venue was proper in the county where an apartment project was to be built, even though the defendant mortgage banker's efforts to secure extensions of the U.S. government's firm commitment to this project were supposed to occur elsewhere).

126. See *Hanna v. Breese Trenton Mining Co.*, 449 N.E.2d 226, 228–29 (Ill. App. Ct. 1983) (asserting that venue was proper in the county where the corporation breached its contractual duty by not paying declared dividends to a shareholder who resided in the county).

127. Venue cannot be based on insignificant details that have no importance to the cause of action. See, e.g., *Winn v. Vogel*, 103 N.E.2d 673, 676 (Ill. App. Ct. 1952) (holding that venue was not proper in a county where a party merely deposited a check in its bank account after receiving the check in a different county).

128. See *Maag*, *supra* note 35, at 510–12 (commenting on the parties' efforts to obtain a favorable jury and judge). In certain types of cases, such as cases involving a terminal disease like mesothelioma, the plaintiff's need for a prompt trial date can make it very important to file in a venue with the capacity to handle complex litigation expeditiously.

according to at least one court, protects the defendant. The defendant-protection policy is most clearly stated in *American Oil Co. v. Mason*.¹²⁹ This decision concerned a venue objection in a loan collection suit filed by an oil company against a gasoline station operator and his sureties. In Ogle County (Oregon), the station operator and his sureties, who resided in DeKalb County (Sycamore), signed and delivered to the oil company's representative a dealership installment note and other loan documents.¹³⁰ In Cook County, which is about 100 miles east of Ogle County, the oil company received the note, approved the loan, and received the loan payments.¹³¹

Under the broad interpretation's burden-of-proof test, venue would have been proper in Cook County. In order to establish venue, the oil company would have had to show only that parts of the contract formation and breach—on which it had the burden of proof as elements of the contract action—had occurred in Cook County.¹³² Given the fact that the broad interpretation is the result of a policy to promote the convenience of the witnesses, such a policy would have been served just as well by hearing the suit in Cook County as in Ogle County. Cook County was the location convenient for the oil company personnel who knew about the loan, the payment record, and the default; Ogle County was the location convenient for the persons with this knowledge about the station operator's side of the transaction.

Nevertheless, the *Mason* court held that transaction-based venue was proper only in Ogle County—that is, Cook County was not a proper venue for the suit.¹³³ Invoking the “party-dealings test” applied in the narrow interpretation of transaction-based venue, the *Mason* court said this form of venue requires “dealings between the parties themselves while the[y] are in some sense adversaries,” not “incidental or preliminary” dealings between the parties, nor dealings “with third persons.”¹³⁴ This test, the *Mason* court explained, honors the Illinois

129. *Am. Oil Co. v. Mason*, 273 N.E.2d 17, 18 (Ill. App. Ct. 1971) (citing *Heldt v. Watts*, 69 N.E.2d 97 (Ill. App. Ct. 1946)).

130. *Id.* at 17–18.

131. *Id.* at 18.

132. *See Servicemaster Co. v. Mary Thompson Hosp.*, 532 N.E.2d 1009, 1012–15 (Ill. App. Ct. 1988) (holding that venue was proper where one party signed the contract even though it was delivered to and signed by the other party in another county); *Hanna v. Breese Trenton Mining Co.*, 449 N.E.2d 226, 228–29 (Ill. App. Ct. 1983) (finding that venue was proper where the corporation breached its contract by not paying declared dividends).

133. *Mason*, 273 N.E.2d at 18. Venue was also proper in DeKalb County based on the defendants' residence. *Id.*

134. *Id.* (quoting *La Ham v. Sterling Canning Co.*, 52 N.E.2d 467, 472 (Ill. App. Ct. 1943)) (internal quotation marks omitted).

General Assembly's intent "to insulate defendants from being sued in a faraway place where he neither resides nor carries on any kind of activities."¹³⁵ The *Mason* court then ruled that the oil company's receipt of the note, approval of the loan, and receipt of loan payments did not establish proper venue in Cook County.¹³⁶

Even assuming the *Mason* court correctly interpreted the General Assembly's intent in enacting the venue statute, such an interpretation did not justify that court's adoption of the party-dealings test.¹³⁷ A court could have insulated defendants from suit in places where they neither resided nor carried on activities by choosing a different test that limits transaction-based venue to counties where activities were carried on by *the defendant*. The party-dealings test, however, limits transaction-based venue to counties where activities were carried on by *both parties*. This further limitation has the potential to make venue improper in a location where it should be proper according to the *Mason* court's interpretation of the General Assembly's intent.

The party-dealings test is too narrow in another way as well. In personal jurisdiction law—also designed to protect the defendant—the United States Supreme Court has addressed the analogous question of what is required for a state to exercise personal jurisdiction over a defendant on a contract claim.¹³⁸ Because many transactions occur via mail, telephone, or the Internet, with neither party going to the other party's place of business, the Supreme Court permits a state to base personal jurisdiction on minimum contacts with the forum state, including activities the defendant purposefully directed at the forum state related to the cause of action.¹³⁹ This "purposefully directed activities" test gives potential defendants reasonable control over where they are subject to suit.¹⁴⁰ At the same time, the test does not permit

135. *Id.*

136. *Id.*

137. This version of the General Assembly's intent is also questionable. The *Mason* court did not cite legislative history, it cited an appellate court decision. *Id.* (citing *Heldt v. Watts*, 69 N.E.2d 97 (Ill. App. Ct. 1946)). The cited decision, in turn, relied on another decision. *Heldt*, 69 N.E.2d at 98–99 (citing *La Ham v. Sterling Canning Co.*, 52 N.E.2d 467 (Ill. App. Ct. 1943)). The *La Ham* decision relied on a secondary source that said the purpose of transaction-based venue is trial convenience. *La Ham*, 52 N.E.2d at 472.

138. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472–76 (1985) (discussing "purposeful availment" for personal jurisdiction).

139. *Id.* at 476.

140. *See id.* at 472 (stating that personal jurisdiction doctrine "allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit" (internal quotation marks omitted)). The Supreme Court tied this concept to that of "reasonable foreseeability." *Id.* at 476. Because the defendant will be subject to the jurisdiction of the state by virtue of directing his or her activities toward that state,

potential defendants to avoid jurisdiction by simply remaining physically outside of the state and using communications media to transact business with the state's residents.¹⁴¹ If venue and personal jurisdiction were viewed in the same way, Cook County would have been a proper venue in *Mason*.¹⁴²

The *Mason* court's views about transaction-based venue were rejected in *Kenilworth Insurance Co. v. McDougal*.¹⁴³ This decision addressed a venue issue in a declaratory judgment suit filed by an insurance company to determine whether its policy provided uninsured motorist coverage for an accident that had occurred in DuPage County.¹⁴⁴ The dealings between the parties had occurred in Cook County where the plaintiff insurance company issued the policy.¹⁴⁵ The dealings that would have made venue in DuPage County proper were those dealings between the defendants *and a third person*, i.e., the purported unidentified driver.¹⁴⁶ According to the *Mason* decision, venue should have been improper in DuPage County for lack of

the defendant can control its activities and is not prejudiced by jurisdiction in an unreasonable location. *Id.* at 476–77.

141. *See id.* at 476 (“So long as a commercial actor’s efforts are “purposefully directed” toward residents of another State, we have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there.”).

142. Although the oil company sent its representative to Ogle County, the station operator and his sureties knew the oil company was based in Cook County, they probably knew the loan would be approved in Cook County, they agreed to send their loan payments to Cook County, and they ordered merchandise from the oil company’s Cook County warehouses. *Mason*, 273 N.E.2d at 18. The U.S. Supreme Court reviewed a similar contract affiliation between Michigan franchise owners and a Florida-based fast food franchising company in *Burger King Corp. v. Rudzewicz*, 471 U.S. 472 (1985), where it applied its “purposefully directed activities” test for personal jurisdiction. Because the Michigan franchise owners had purposefully directed their activities at Florida, they were subject to suit in Florida. *Id.* at 479–80. Similarly, because the station operator and sureties in *Mason* had purposefully directed their activities at Cook County, they should have been subject to suit in Cook County. In *Burger King*, the U.S. Supreme Court warned that personal jurisdiction must not be extended arbitrarily to the point that litigation becomes very difficult for vulnerable parties such as consumers. *Id.* at 485–86. Similarly, the Illinois Supreme Court has held that venue must not be extended arbitrarily to the point that the defense of collection suits becomes very difficult for indigent student borrowers. *Williams v. Ill. State Scholarship Comm’n*, 563 N.E.2d 465, 475–76 (Ill. 1990). In *Mason*, however, the station operator and his sureties were business persons involved in an arm’s length transaction, not ordinary consumers. *Mason*, 273 N.E.2d at 17. The 100-mile drive from Ogle County to Cook County would not have made their defense of the collection suit very difficult. *Id.*

143. 313 N.E.2d 673 (Ill. App. Ct. 1974).

144. The coverage issue hinged on whether the insured car had collided with an unidentified driver’s vehicle or, instead, whether the insured had collided with some other object, thus negating coverage under the uninsured motorist provision. *Id.* at 674.

145. *Id.* at 675.

146. *Id.*

dealings there between the parties to the declaratory action.¹⁴⁷ The *McDougal* court held, however, that venue can be based on dealings with a third person when these dealings have a “definite and direct bearing on the cause of action.”¹⁴⁸ Transaction-based venue, the *McDougal* court explained, is “intended for the convenience of witnesses . . . and the ease of proving local surroundings where these may be material, as in the case of an automobile accident.”¹⁴⁹ As a result, the court found that transaction-based venue was proper at the site of the accident.¹⁵⁰

Years after *Mason* and *McDougal*, the Illinois Supreme Court decided *Williams v. Illinois State Scholarship Commission*, a leading decision on both the due process limit on venue and the meaning of the general venue statute, in a case that hinged on whether transaction-based venue could be established in a particular county.¹⁵¹ Yet, following *Williams*, the requirements for transaction-based venue have remained unclear because the Supreme Court referenced both the broad interpretation and the narrow interpretation without saying which interpretation reflects the Illinois General Assembly’s intent. In this decision, the Supreme Court reviewed the Commission’s practice of filing all guaranteed student loan collection suits in Cook County.¹⁵² These loans are made via a three-step lending process. First, a federal agency reviews a student’s application for compliance with federal financial need guidelines, prepares a student aid report, and transmits this report electronically to the Commission.¹⁵³ Second, the Commission approves the student’s loan, prepares the necessary documents including its guarantee, and forwards the documents to the student and the lender.¹⁵⁴ Third, the student and the lender sign the documents, the lender makes the loan, and the student makes loan payments.¹⁵⁵

The Commission wanted to base venue on its loan guaranty preparation work in Cook County, but the Illinois Supreme Court

147. See *Mason*, 273 N.E.2d at 18 (applying the “party dealings” test to find venue unsupported).

148. *McDougal*, 313 N.E.2d. at 675.

149. *Id.* at 675–76 (citation omitted).

150. *Id.* at 675.

151. *Williams v. Illinois State Scholarship Comm’n*, 563 N.E.2d 465, 467 (Ill. 1990).

152. *Id.* at 468.

153. *Id.*

154. *Id.*

155. *Id.*

rejected this as improper.¹⁵⁶ Instead, the Supreme Court held that Cook County was a proper venue in suits against borrowers who resided in other counties *only if* the borrower obtained the loan in Cook County.¹⁵⁷ First, the Supreme Court quoted one of its earlier decisions stating that transaction-based venue is proper “where matters occurred that plaintiff has the burden of proving.”¹⁵⁸ This burden-of-proof test is consistent with and justified by a policy of promoting the convenience of the witnesses: the Supreme Court had noted that the fewest and least important witnesses were located at the Commission’s offices, while the most numerous and most important witnesses were located where the borrowers obtained their loans.¹⁵⁹ Next, the Supreme Court quoted Appellate Court decisions stating that transaction-based venue requires “dealings between the parties . . . while they were in an adversarial position.”¹⁶⁰ This party-dealings test was consistent with and justified by the policy of promoting the convenience of the defendant: the Supreme Court commented that indigent borrowers who obtained their loans in distant counties could not defend collection suits in Cook County.¹⁶¹ Then, having referred to both the broad and the narrow interpretations and their respective tests and policies, the Supreme Court ruled that the loan guaranty processing work involved only “preliminary and insignificant details,” which did not make venue proper in Cook County.¹⁶² Rather, the “integral parts” of the loan transactions occurred where the borrowers obtained their loans, which made that place the proper venue.¹⁶³

156. *Id.* In addition to the reasons described in the text, the Illinois Supreme Court ruled that the Commission did not meet its burden of proving where it worked on each loan, i.e., that it really did the work in Cook County. *Id.* at 485. The guaranty preparation work was done more often in Lake County than in Cook County, and the Commission did not record the location of this work. *Id.* at 468.

157. *Id.* The Illinois Supreme Court also held that: (1) a special venue statute making Cook County the exclusive venue in suits involving delinquent and defaulted student loans violated the borrowers’ constitutional right to due process, and (2) a clause in the loan agreement that permitted the Commission to file collection suits in Cook County was contrary to public policy and therefore unenforceable. *Id.* at 484–87.

158. *Id.* (quoting *People ex rel. Carpentier v. Lange*, 134 N.E.2d 266, 268 (Ill. 1956)) (internal quotation marks omitted).

159. *Id.* at 482.

160. *Id.* at 485 (quoting *Winn v. Vogel*, 103 N.E.2d 673, 676 (Ill. App. Ct. 1952) and *La Ham v. Sterling Canning Co.*, 52 N.E.2d 467, 472 (Ill. App. Ct. 1943)).

161. *Id.* at 475–76.

162. *Id.* at 485.

163. *Id.* The Supreme Court also referred to a test that focuses on the place where the parties’ legal relations were altered, observing that the legal relations between the student borrowers and the Commission were altered only where the loan agreements were signed, which did not take place at the Commission’s offices. *Id.*

Because the Commission's filing practice seemed to violate both interpretations of transaction-based venue, the Illinois Supreme Court understandably did not decide which interpretation is correct. However, by not choosing between the conflicting interpretations, the Supreme Court left the scope of transaction-based venue unclear. If a breach of contract suit raises a venue issue, absent clear controlling precedent, a lower court cannot easily decide whether venue is proper in a situation where the burden-of-proof test would permit venue but the party-dealings test would forbid it.

2. Tort Claims

In tort suits that involve personal injury or death, the burden-of-proof test applied under the broad interpretation of transaction-based venue permits venue to be based on (i) the defendant's act or omission,¹⁶⁴ or (ii) the injury or death.¹⁶⁵ If the defendant acted negligently in more than one county, or if the plaintiff suffered cumulative injuries in more than one county, venue is proper in each of these counties.¹⁶⁶

The burden-of-proof test, if applied literally, would permit venue to be based on the location where expenses claimed as money damages accrued. For example, in a suit that seeks recovery of medical expenses, the plaintiff has the burden of proving that the treatment occurred. The plaintiff might receive specialized treatment at a metropolitan hospital, follow-up treatment from a family doctor, and physical therapy at a clinic recommended by the plaintiff's attorney. If the plaintiff claims the costs of treatment as damages, the burden-of-proof test seems to make venue proper in the counties where the

164. *See Wier ex rel. Wier v. Ketterer*, 479 N.E.2d 416, 416–17 (Ill. App. Ct. 1985) (holding venue proper in St. Clair County in a suit based on a Clinton County physician's failure to provide for proper medical supervision of a patient during transport in an ambulance that passed through St. Clair County).

165. *See Wier*, 479 N.E.2d at 417 (holding venue proper in St. Clair County when a Clinton County physician's negligent supervision of an ambulance transfer caused the plaintiff's hypoglycemia and hypoxia in St. Clair County); *Tipton v. Estate of Cusick*, 651 N.E.2d 635, 637 (Ill. App. Ct. 1995) (holding venue proper in Cook County when negligence in writing and filling prescriptions in DuPage County caused the plaintiff's stroke in Cook County); *Bradbury v. St. Mary's Hosp. of Kankakee*, 652 N.E.2d 1228, 1230 (Ill. App. Ct. 1995) (holding venue proper in Cook County when negligent acts in delivery of a baby in Kankakee County led to the baby's death in Cook County).

166. *See Kaiser v. Doll-Pollard*, 923 N.E.2d 927, 935–936 (Ill. App. Ct. 2010) (holding venue proper in St. Clair County in a medical malpractice suit that arose out of surgery in Clinton County followed by post-operative surgery in St. Clair County to stop internal bleeding, because the defendants' "ongoing negligence" and the plaintiff's "cumulative injuries" occurred partly in St. Clair County).

metropolitan hospital, the family doctor, or the physical therapy clinic are located.

A court likely would decide, however, that venue cannot be based on the location where expenses claimed as money damages accrued. Such a decision is supported by the venue decisions that refer to the last-event rule.¹⁶⁷ This rule distinguishes between the last event required to create tort liability—the injury or death—and later events that only add to the plaintiff’s losses.¹⁶⁸ The treatment given by the metropolitan hospital, the family doctor, and the physical therapy clinic are post-injury events that only add to the losses caused by the injury. Under the last-event rule, venue cannot be based on this treatment.

However, the two proper bases for venue—the act or omission and the injury or death—still give plaintiffs some latitude to serve their own purposes instead of the convenience of the witnesses. The act or omission or the subsequent injury might have occurred partly in a county where no witness resides or works, but the plaintiff might nevertheless choose to sue in this county if its juries and judges seem more favorable.¹⁶⁹

The party-dealings test applied under the narrow interpretation of transaction-based venue gives the plaintiff less latitude to forum shop, but it creates the “indirect dealings” problem described in the Introduction.¹⁷⁰ In *Boxdorfer v. DaimlerChrysler Corp.*,¹⁷¹ the

167. See *Bradbury*, 652 N.E.2d at 1230 (holding that venue is proper in a wrongful death suit where the death occurred because death is not only an element of such an action, “it is the last element necessary to render an actor liable for the pecuniary injuries suffered by the surviving spouse and next of kin”); *Smith v. Silver Cross Hosp.*, 726 N.E.2d 697, 701–02 (Ill. App. Ct. 2000) (following *Bradbury*). In *Bradbury*, the appellate court referred to the place of the wrong rule, based on where the last event takes place, which is necessary to render the actor liable, citing the Illinois Supreme Court’s application of this rule in its best-known personal jurisdiction decision. *Bradbury*, 652 N.E.2d at 1230 (citing *Gray v. American Radiator & Standard Sanitary Corp.*, 176 N.E.2d 761 (Ill. 1961)). *Gray*, in turn, relied on the place of the wrong rule used in section 377 of the Restatement (First) of Conflict of Laws. *Gray*, 176 N.E.2d at 762–63 (“[I]n law the place of a wrong is where the last event takes place which is necessary to render the actor liable.”). *Bradbury* does not explain why the rule should transfer from the personal jurisdiction and conflict of laws contexts to the venue context. *Bradbury*, 652 N.E.2d at 1230. Nevertheless, because occurrence witnesses often are located where the victim sustained injury or died, the rule is consistent with the witness convenience policy underlying transaction-based venue.

168. Cf. RESTATEMENT (FIRST) OF CONFLICT OF LAWS § 377 n.1 (1934) (stating that the “last event” necessary to create liability takes place where the person suffers bodily harm, not where the person later goes and suffers other loss).

169. See, e.g., *Wier*, 479 N.E.2d at 416–17 (upholding plaintiff’s choice of St. Clair County); *supra* notes 25–28 and accompanying text (discussing the “part of the transaction” problem illustrated by *Wier*).

170. See *supra* text accompanying notes 29–30 (discussing the “indirect dealings” problem).

171. 790 N.E.2d 391 (Ill. App. Ct. 2003).

Appellate Court applied the party-dealings test in a consumer fraud suit that accused a car manufacturer of failing to disclose a defect that caused paint to delaminate from its cars after the warranty expired.¹⁷² The paint delamination had occurred in Madison County on cars sold by Madison County car dealers to Madison County residents, two of whom sued the manufacturer on behalf of themselves and a class of similarly situated car buyers.¹⁷³ Under the burden-of-proof test, Madison County would have been a proper venue because the plaintiffs had the burden of proving the deceptions and losses.¹⁷⁴ Yet, because the Appellate Court applied the party-dealings test, Madison County was not a proper venue.¹⁷⁵ The car manufacturer had dealt only with the car dealers—and then only in Michigan, where the manufacturer had its principal place of business.¹⁷⁶ Thus, venue was not proper in Madison County where the consumers lived.¹⁷⁷

The *Boxdorfer* decision repeats an error highlighted earlier. In personal jurisdiction law—also designed to protect the defendant—the United States Supreme Court has addressed the analogous question of what is required for a state to exercise personal jurisdiction over a manufacturer on a consumer’s or product user’s claim in *World-Wide Volkswagen Corp. v. Woodson*.¹⁷⁸ The Supreme Court said a state may exercise personal jurisdiction over a corporation that “delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.”¹⁷⁹ Such a test allows a manufacturer that markets in a state where it has no plant, warehouse, or physical presence to be sued in certain circumstances in that state.¹⁸⁰ If

172. *Id.* at 392.

173. *Id.* at 392–93.

174. *See* *Oliveira v. Amoco Oil Co.*, 776 N.E.2d 151, 160, 164 (Ill. 2002) (discussing the meaning of the elements of a consumer fraud claim); *Martin v. Heinhold Commodities, Inc.*, 643 N.E.2d 734, 754 (Ill. 1994) (identifying the elements plaintiff must prove on a common law fraud claim and a consumer fraud claim). The deceptions occurred at least partly in Madison County when the car buyers were told nothing about the paint defect at the time of sale, and the losses occurred in Madison County when the paint delaminated from the cars. *Boxdorfer*, 790 N.E.2d at 393.

175. *Id.* at 397–99.

176. *Id.* at 393, 399.

177. *Id.* at 399.

178. *See* 444 U.S. 286, 294–95 (1980) (holding that due process may divest a state of jurisdiction despite the state being a convenient forum).

179. *Id.* at 297–98 (citing *Gray v. Am. Radiator & Standard Sanitary Corp.*, 176 N.E.2d 761 (Ill. 1961)).

180. *See id.* at 298 (holding that a local dealer and regional distributor were not subject to jurisdiction in a state where the only contact related to the car buyers’ personal injury claim was created by the car buyers’ own unilateral activity in driving the car to a state remote from where they had bought the car).

venue and personal jurisdiction were viewed in the same way, the car manufacturer's use of Madison County dealers as sales agents would prove its intent to serve the Madison County market and would make it subject to suit there on claims arising out of this activity.¹⁸¹

In light of the Illinois Supreme Court's decision in *Williams*, however, the *Boxdorfer* decision is somewhat understandable. In *Williams*, the Illinois Supreme Court did not tell lower courts what to do when the burden-of-proof test indicates venue is proper but the party-dealings test indicates it is improper.¹⁸² The car buyers' suit in *Boxdorfer* presented this very dilemma. Forced to choose between the burden-of-proof test and the party-dealings test, the Illinois Appellate Court chose the party-dealings test.¹⁸³ Yet, the appellate court should have noticed that its decision in *Boxdorfer* and the Supreme Court's decision in *Williams* had opposite effects: the latter protected the convenience of the consumer while the former did not.¹⁸⁴ It seems then

181. Competing stream of commerce theories have been endorsed by various Supreme Court Justices. See *Asahi Metal Indus. Co., v. Superior Court of Cal.*, 480 U.S. 102, 112 (1987) (O'Connor, J., plurality opinion) (endorsing the narrow stream of commerce theory); *id.* at 116–21 (Brennan, J., concurring) (endorsing the broad stream of commerce theory). The division continues within the Supreme Court about the question unanswered by *Asahi*. See *J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S. Ct. 2780, 2788 (2011) (Kennedy, J., plurality opinion) (stating that the transmission of goods permits a state to exercise jurisdiction only if the defendant can be said to have “targeted” the state, not simply “predicted” that its goods will reach the state); *id.* at 2791–92 (Breyer, J., concurring) (stating that a state cannot exercise jurisdiction based on a “single isolated sale” without “something more,” but declining to adopt a broad rule without full consideration of the consequences); *id.* at 2804 (Ginsburg, J., dissenting) (stating that a state can exercise jurisdiction over a manufacturer “seeking to exploit a multistate or global market” when its product was sold in the state and caused injury to a local plaintiff). These opinions give potential defendants different degrees of control over where they are subject to suit, but none of them allow a car manufacturer to use in-state dealers as sales agents and escape jurisdiction on a claim arising in that state out of sales of its cars made by those dealers. The use of in-state dealers as sales agents counts as “targeting” rather than merely “predicting.” See *Asahi*, 480 U.S. at 112 (O'Connor, J., plurality opinion) (treating the use of in-state dealers as purposefully directed activity). Moreover, the use of in-state dealers leads to regular sales in the state, not a single isolated sale with nothing more. Finally, the use of in-state dealers as part of a nationwide network of dealers counts as an effort to exploit a multistate market.

182. *Williams v. Ill. State Scholarship Comm'n*, 563 N.E.2d 465, 485–86 (Ill. 1990).

183. *Boxdorfer v. DaimlerChrysler Corp.*, 790 N.E.2d 391, 398 (Ill. App. Ct. 2003) (“[T]here were no direct dealings in Madison County between the plaintiffs and the defendant.”).

184. In *Williams*, the Supreme Court made venue convenient for consumers by limiting transaction-based venue to the county where the consumers (student borrowers) obtained their loans. See *supra* text accompanying notes 152–63. In *Boxdorfer*, the appellate court made venue inconvenient for consumers (car buyers) by making transaction-based venue unavailable in the county where the consumers bought their cars. *Boxdorfer*, 790 N.E.2d at 399; *id.* at 400 (Goldenhersh, J., dissenting). Because the appellate court held that venue was improper on the plaintiffs' individual claims, it did not decide how the general venue statute applies in class action suits. In suits brought by co-plaintiffs as individuals, rather than as class representatives, each plaintiff must meet the transaction-based venue requirements. See *Peterson v. Monsanto Co.*, 510

that the appellate court needs clarification to correctly determine venue in consumer fraud suits.

II. THE CONVENIENCE-BASED PROPOSALS

The Introduction and Part I foreshadowed the changes needed to align venue more closely with convenience. Part II now explains how Illinois could reach a closer alignment by adopting this Article's proposals for (a) defendant-based venue, (b) transaction-based venue, (c) any-county venue, and (d) venue procedure. Appendix A sets forth these proposals, which are described and cited to herein.¹⁸⁵

A. Defendant-Based Venue

The proposal for defendant-based venue would make venue proper where “the greatest number of defendants are located.”¹⁸⁶ This form of venue would replace residence-based venue. The proposal has rules for suits against (1) an individual, (2) a legal entity, (3) a legal representative, or (4) multiple defendants.

1. Individual Defendant

Under the proposals, if the defendant is an individual, venue would be proper in the county (or counties) where “the individual has a regular dwelling place or a regular work place.”¹⁸⁷ A “regular dwelling place” would be a place where, at the time the suit is filed, the individual (i) “is living,” and (ii) “has lived or intends to continue living” for at least one

N.E.2d 458, 461–62 (Ill. App. Ct. 1987) (holding, in a suit based on the failure to warn of the dangerous and permanent effects of dioxin, a chemical contained in the defendant's herbicide, that venue was proper in Madison County on the claims of the five plaintiffs who sprayed the herbicide in that county but that venue was improper on the claims of the plaintiffs who never sprayed the herbicide in Madison County). No reported decision considers whether and how this each-plaintiff rule applies in class action suits. In the federal courts, all of the named representatives must meet the federal venue requirements but unnamed class members need not meet the requirements. *United States ex rel. Sero v. Preiser*, 506 F.2d 1115, 1129 (2d Cir. 1974); *Dukes v. Wal-Mart Stores, Inc.*, 222 F.R.D. 137 (N.D. Cal. 2004); JAMES W. MOORE, 17 MOORE'S FEDERAL PRACTICE § 110.07 (3d ed. 2011).

185. In addition to the proposals discussed in the text, the proposed special venue statute includes special venue provisions that cover (i) ordinance enforcement actions by municipalities that extend into more than one county, and (ii) enforcement actions regarding child support payments sent to the State Disbursement Unit and returned by the bank or depository. *See infra* Appendix A § 2-103. These are edited versions of the provisions now contained—inappropriately—in the general venue statute. *See* 735 ILL. COMP. STAT. 5/2-101 (2010) (setting forth these provisions in the second and fourth paragraphs).

186. *See infra* Appendix A § 2-101(a) (“Venue is proper in the county (or counties) where the greatest number of defendants is located.”).

187. *See infra id.* (“An individual is located in the county (or counties) where the individual has a regular dwelling place or a regular work place.”).

year.¹⁸⁸ A “regular work place” is a place where, at the time the suit is filed, the individual (i) “is working or physically reporting for work,”¹⁸⁹ (ii) “has worked or physically reported for work” for at least one year,¹⁹⁰ and (iii) “has worked or physically reported for work” for at least 150 days during the preceding one-year period.¹⁹¹ Once an individual has a regular dwelling place or a regular work place, it would remain such a place despite a “temporary absence” that “is intended to last and has lasted” for less than a year.¹⁹²

The regular dwelling place rule would change proper venue for only a few individuals. Most individuals have one regular dwelling place at a time, and this place is their residence. For these individuals, the proposed regular dwelling place rule would make venue proper in the same county as the current residence rule.¹⁹³ A few individuals, however, have a regular dwelling place that is not their residence. As discussed below, some defendants have their residence where they no longer live; others live in two places, only one of which can be their residence.¹⁹⁴ For these individuals, the proposed rule would make venue proper in a different—or additional—county.

The first difference between the proposed regular dwelling place rule and the current residence rule is illustrated by *Webb v. Morgan*, where

188. *See infra id.* § 2-102(a)(1) (“A ‘regular dwelling place’ is a place where, at the time the suit is filed, the individual (i) is living, and (ii) has lived or intends to continue living for at least one year.”). The “intends to continue living” part of the regular dwelling place duration requirement recognizes that if an individual intends to keep a new dwelling place for at least a year, it becomes a convenient place for him or her to defend suits upon moving in. *But cf.* RESTATEMENT (SECOND) CONFLICT OF LAWS § 16 cmt. b (1971) (noting that courts and writers sometimes say physical presence, even for a moment, is enough to establish a domicile, though for most purposes the person must have been there “for a time at least”).

189. *See infra* Appendix A § 2-102(a)(2). The “physically reported for work” alternative describes an individual, such as a route driver, who has transient work locations, but who reports at the start of the workday to a central office, terminal, or similar place. The alternative does not cover reporting by telephone or Internet, which would not indicate the county where the individual reports for work is a convenient place to defend suits.

190. *See infra id.* Unlike the regular dwelling place duration requirement, the regular work place duration requirement would not be met by the intent to continue working at the place for at least one year, due to the greater risk that a new job will end during the first year despite the individual’s intent.

191. *See infra id.* (“A ‘regular work place’ is a place where, at the time the suit is filed, the individual (i) is working or physically reporting for work, (ii) has worked or physically reported for work for at least one year, and (iii) has worked or physically reported for work on at least 150 days during the preceding one-year period.”).

192. *See infra id.* § 2-102(a)(3) (“A regular dwelling place or a regular work place remains such a place during a temporary absence that is intended to last, and has lasted, for less than a year.”).

193. 735 ILL. COMP. STAT. 5/2-101 (2010).

194. *See supra* text accompanying notes 45–49.

one codefendant asserted that the other codefendant had been joined for the purposes of fixing venue.¹⁹⁵ At the time the suit was filed, the other codefendant had been living in a mobile home park in Sangamon County for more than a year.¹⁹⁶ Yet, he owned a boarded-up house in St. Clair County.¹⁹⁷ During the ten years since he had last lived in the house, he moved to places where he found work without developing strong ties to those places.¹⁹⁸ Because he still thought of St. Clair County as his home, and the “intent of the party whose residence is in question is the controlling factor,”¹⁹⁹ he still had his “residence” in St. Clair County.²⁰⁰ Therefore, under Illinois’s general venue statute, venue was proper in a St. Clair County suit based on a slip and fall at the Sangamon County mobile home park.²⁰¹

Under the proposed regular dwelling place rule, however, the proper venue would not be St. Clair County. The house would not be his regular dwelling place—he had lived away from it longer than the period allowed for a temporary absence. The mobile home park would be his regular dwelling place—he was living there, and he met the one-year duration requirement.

These facts illustrate how the regular dwelling place rule, not the residence rule, aligns venue more closely with convenience. For individuals whose regular dwelling place differs from their residence, the more convenient place to defend suits is not the place they still think of as home despite not living there for many years. The more convenient place is where they are living when the suit is filed.

The second difference between the proposed regular dwelling place rule and the current residence rule is illustrated by *Long v. Gray*.²⁰²

195. 531 N.E.2d 36, 40 (Ill. App. Ct. 1988).

196. *Id.* at 37–38.

197. *Id.* at 42.

198. *Id.* The court noted that the venue-fixing defendant had lived in Sangamon County but intended to move back to East St. Louis as soon as he could afford to live there. *Id.* at 43. Moreover, the codefendant acknowledged that it had been easier for him to find work in Sangamon County. *Id.* Yet, the court considered no set of facts that indicated that the codefendant actually had a reasonable way of returning to or residing in East St. Louis, nor a time frame in which he intended to do so. Under such a scenario, the codefendant’s actual presence in Sangamon County was indefinite, but nevertheless, the indefinitely maintained residence in East St. Louis was deemed to establish proper venue in St. Clair County.

199. *Id.* at 41.

200. *Id.*

201. *Id.* This defendant was the plaintiff’s relative, and therefore filing the suit in St. Clair County likely was forum shopping aimed at the co-defendant, who was a Sangamon County resident. *Id.*

202. 714 N.E.2d 1041 (Ill. App. Ct. 1999), *abrogated on other grounds by* Corral v. Mervis Indus., 839 N.E.2d 524 (Ill. 2005). The plaintiff sued three defendants, fixing venue partly on the

During the ten-year period before the individual was sued, he had lived in both Kankakee County and Cook County.²⁰³ In Kankakee County, he had lived in his sister's mobile home; in Cook County, he had lived in his girlfriend's apartment.²⁰⁴ He testified that he resided at the mobile home and, in fact, his driver's license and car registration listed the mobile home's address.²⁰⁵ His girlfriend testified, however, that he had lived and paid rent continuously at her apartment for a year before the suit was filed—though during this period, he still had visited the mobile home a couple of times per week and had paid part of its rent.²⁰⁶ After weighing this conflicting evidence, the court found he was a Cook County "resident."²⁰⁷ Therefore, under Illinois's general venue statute, venue was proper in a Cook County suit based on a traffic accident in southern Illinois.²⁰⁸

Under the proposed regular dwelling place rule, venue would be proper in Cook County but also would be proper in Kankakee County. The apartment would be his regular dwelling place—he was living there,²⁰⁹ and he met the duration requirement.²¹⁰ The mobile home also would be his regular dwelling place—he continued to visit and pay rent, so he never ceased living there,²¹¹ and he met the duration requirement.²¹²

These facts further illustrate how the regular dwelling place rule, not the residence rule, aligns venue more closely with convenience. The regular dwelling place rule recognizes that the convenience of an individual who is living in two counties does not require that proper venue be restricted to the county where the individual's ties are strongest. Both counties can be proper venues.

Unlike the proposed regular dwelling place rule—which would change proper venue for relatively few individuals—the proposed regular work place rule would change proper venue for two large

basis of the "residence" of the individual described in the text. *Id.* at 1044–46.

203. *Id.* at 1043.

204. *Id.*

205. *Id.* at 1045.

206. *Id.*

207. *Id.* at 1046.

208. *Id.* at 1046–47.

209. *Id.* at 1043.

210. *See infra* Appendix A § 2-102(a)(1) ("A 'regular dwelling place' is a place where, at the time the suit is filed, the individual (i) is living, and (ii) has lived or intends to continue living for at least one year.").

211. *Long*, 714 N.E.2d at 1045.

212. *See supra* note 210 (his mobile home residency would satisfy the same duration period as the apartment residency).

groups.²¹³ The first group is the many individuals who work in a county different from the county where they live. For these individuals, the regular work place rule would make their work place county another proper venue.²¹⁴ The convenience of these individuals, should they be forced to defend a lawsuit in that county, would still be served because at the time the suit is filed, that county would be a place where the individual has strong ties and has worked or physically reported for work on a regular basis. The second group is the many individuals who work in Illinois but live in adjacent states. For those individuals, the regular work place rule would make their work place county the only county where defendant-based venue would be proper. Because the nonresident defendant would have to make frequent trips into the state for work, this county is presumably a convenient location for the defendant to defend a lawsuit and almost assuredly more convenient than some far off county across the state. Thus, the proposed rule would align venue with the convenience of the nonresident defendant far better than the current rule that all Illinois counties are proper venues in suits against such nonresidents.²¹⁵

Under the proposals, if an individual defendant moves frequently *and* changes jobs frequently, the individual might have neither a regular dwelling place nor a regular work place. If so, these moves and job changes would prevent the use of defendant-based venue under the proposals. The plaintiff, however, would simply use the proposal for transaction-based venue or the proposal for any-county venue. In a suit based on a transaction that occurred in Illinois, the proposal for transaction-based venue would make the county where the transaction occurred the proper venue.²¹⁶ In a suit based on a transaction that

213. See *infra* Appendix A § 2-102(a)(2) (“A ‘regular work place’ is a place where, at the time the suit is filed, the individual (i) is working or physically reporting for work, (ii) has worked or physically reported for work for at least one year, and (iii) has worked or physically reported for work on at least 150 days during the preceding one-year period.”).

214. The facts presented in a case decided under the Illinois service of process statutes illustrate how the regular work place proposal and the regular dwelling place proposal would work. In *United Bank of Loves Park v. Dohm*, 450 N.E.2d 974 (Ill. App. Ct. 1983), the defendant had a job in Chicago as a commodity investment program salesman, a house in Rockford where his wife and children lived and where he spent time on weekends, and an apartment in Chicago where he generally lived during the work week. *Id.* at 976–78. The plaintiffs made substitute service on him at the house in Rockford, which was proper only if his “usual place of abode” was there. *Id.* at 976. This living arrangement lasted for just four months, until a downturn in the commodities market led to a job change. *Id.* If this job and the living arrangement had lasted for a year, however, the individual would have a regular work place in Cook County and regular dwelling places in both Winnebago County and Cook County, making venue proper in both counties under the proposals offered here.

215. 735 ILL. COMP. STAT. 5/2-101 (2010).

216. See *infra* Appendix A § 2-101(b) (“Venue is proper in the county (or counties) where the

occurred outside Illinois, which would prevent the use of transaction-based venue, the any-county venue proposal would make all Illinois counties proper venues.²¹⁷ In this circumstance, no county would serve either the convenience of the defendant or the convenience of the witnesses, so the plaintiff justifiably would have an unlimited choice of counties in which to sue.

2. Legal Entity Defendant

If the defendant is a legal entity, the proposed uniform rule for legal entities would determine proper venue.²¹⁸ This rule would replace the current rules that determine the “residence” of private corporations one way, partnerships a second way, unincorporated associations a third way, and governmental corporations a fourth way.²¹⁹ The proposed rule’s underlying premise is that the convenience of defending suits in a county does not depend on the form of an entity’s legal organization. Convenience depends instead on the extent of the entity’s presence in the county and how this presence compares with the entity’s presence in other counties. Accordingly, the proposed uniform rule has a series of presence tests that would be applied in a specified order.

First, venue would be proper in the county (or counties) where the legal entity has “fifty or more regular workers at its place or places of business.”²²⁰ The fifty-worker test identifies a large presence in the county—sufficiently large to make defending suits convenient despite any greater presence the entity might have in another county. An individual would count as a “regular worker” if, at the time the suit is filed, the individual (i) “is working for the legal entity in any capacity, including as an employee, sole proprietor, partner, or independent contractor;” (ii) “has worked or physically reported for work” at the place for at least one year; and (iii) “has worked or physically reported

transaction occurred that gave rise to the cause of action.”).

217. *See infra id.* § 2-101(c) (“If there is no county where venue is proper under paragraphs (a)–(b), venue is proper in any county.”).

218. *See infra id.* § 2-102(b) (“A legal entity—including any type of corporation, partnership, or unincorporated association—is located in the county (or counties) identified by the following presence tests applied in the specified order.”).

219. *See infra* Part II.A.2.a–d (discussing how the proposed uniform rule would solve certain problems inherent in the current legal entity residence rules).

220. *See infra* Appendix A § 2-102(b)(1) (“The legal entity is located in the county (or counties) where it has 50 or more regular workers at its place or places of business. An individual is a ‘regular worker’ if, at the time the suit is filed, the individual (i) is working for the legal entity in any capacity, including as an employee, sole proprietor, partner, or independent contractor; (ii) has worked or physically reported for work at the place for at least one year; and (iii) has worked or physically reported for work at the place on at least 150 days during the preceding one-year period.”).

for work” at the place on at least 150 days during the preceding one-year period.²²¹

Second, if no county meets the fifty-worker test, venue would be proper in the county (or counties) where the legal entity has “ten or more regular workers at its place or places of business.”²²² The ten-worker test identifies a medium-size presence in the county—one that makes defending suits convenient if there is no county where the entity has a large presence. The previously-described “regular worker” definition again would identify which individuals help reach the ten-worker threshold.²²³

Third, if no county meets the fifty-worker and ten-worker tests, venue would be proper in the county (or counties) where the legal entity has “a place of business.”²²⁴ The place-of-business test identifies a small presence in the county—one that makes defending suits convenient if there is no county where the entity has a large or medium-size presence.

Finally, if no county meets the first three tests, venue would be proper in the county (or counties) where the legal entity is “doing business.”²²⁵ The doing-business test identifies the smallest significant presence in the county—one that makes defending suits convenient only if there is no better alternative.

These presence tests would narrow venue in suits against private corporations and broaden venue in suits against governmental corporations. In suits against private corporations, the presence tests would not base venue on (i) a registered office, if it is not the private corporation’s own place of business, (ii) a place of business, if it is small relative to the private corporation’s other places of business, or (iii) doing business, if the private corporation has a place of business in Illinois. In suits against governmental corporations, the presence tests would base venue not only on the governmental corporation’s principal office,²²⁶ but also on any other place of business that would meet the same presence test.

221. *See infra id.*

222. *See infra id.* § 2-102(b)(2) (“If no county meets the test of subparagraph (1), the legal entity is located in the county (or counties) where it has 10 or more regular workers (see subparagraph (1)) at its place or places of business.”).

223. *See infra id.*

224. *See infra id.* § 2-102(b)(3) (“If no county meets the tests of subparagraphs (1)–(2), the legal entity is located in the county (or counties) where the legal entity has a place of business.”).

225. *See infra id.* § 2-102(b)(4) (“If no county meets the tests of subparagraphs (1)–(3), the legal entity is located in the county (or counties) where the legal entity is doing business.”).

226. *See* 735 ILL. COMP. STAT. 5/2-103(a) (2010) (“Actions must be brought against a public, municipal, governmental or quasi-municipal corporation in the county in which its principal office is located or in the county in which the transaction or some part thereof occurred out of

For each of the four types of legal entities, the proposed uniform rule would solve a series of problems caused by the current legal entity residence rules.

a. Private Corporations

The proposed uniform rule would solve three problems caused by the residence rule for private corporations. It would solve the registered office and small office problems²²⁷ and the doing business litigation problem.²²⁸

Torres v. Walsh,²²⁹ a Cook County lawsuit brought against a Sangamon County hospital, illustrates the registered office problem. This suit was based on medical treatment in Sangamon County, but Cook County was a proper venue because the hospital's parent corporation had its registered office at an outside entity's place of business in Cook County.²³⁰ The suit arrived in Sangamon County only after time-consuming and costly intrastate *forum non conveniens* litigation.²³¹ Under the proposed uniform rule, the proper venue would be Sangamon County because the corporation's own place of business—the hospital—was located there.²³² No intrastate *forum non conveniens* litigation would occur.

Corral v. Mervis Indus., Inc.,²³³ a Cook County suit brought against a Vermillion County recycling company, illustrates the small office

which the cause of action arose.”).

227. See *supra* notes 11–17 and accompanying text (identifying these problems).

228. See *supra* Part I.A.2.a.ii (identifying this problem).

229. 456 N.E.2d 601 (Ill. 1983).

230. *Id.* at 603.

231. *Id.* at 607.

232. See *supra* notes 218–25 and accompanying text (outlining the venue rules for legal entities).

233. *Corral v. Mervis Indus., Inc.*, 839 N.E.2d 524 (Ill. 2005). *Corral* is significant for an additional, albeit indirectly related, reason. The Illinois Supreme Court's holding in *Corral* abrogated many lower Appellate Court opinions that had considered whether venue was proper, but on a different point of law than those discussed in this Article. The Court considered which standard of review should be applied to a trial court's determination of proper venue. *Id.* at 527–30. Previously, in *Stambaugh v. Int'l Harvester Co.*, 464 N.E.2d 1011 (Ill. 1984), the Illinois Supreme Court had applied an abuse of discretion standard to review a determination of proper venue in the trial court, but without explaining why it was applying this standard. *Corral*, 464 N.E.2d at 528. In *Corral*, however, the Court noted that it had subsequently clarified the correct standards for review of factual versus legal questions presented to the trial court. *Id.* at 529. The Supreme Court noted that a determination of proper venue required a two-step analysis by the trial court. In the first step, the trial court must make factual findings about the parties. *Id.* at 530. These factual findings are to be given deference and only disturbed by the Appellate Court if they are against the manifest weight of the evidence. *Id.* Next, the trial court must apply the venue statute to the facts in order to determine whether venue is proper. *Id.* This is a question of law to be reviewed *de novo*. *Id.* Since *Corral* clarified these standards, it abrogated those

problem. The suit was based on an accident in Vermillion County, but Cook County again was a proper venue, this time because the corporation had a salesperson who worked out of a home-office in Cook County.²³⁴ Under the proposed rule, the proper venue would be in Vermillion County and not in Cook County because the recycling company's Vermillion County yard would surely meet the ten-worker test, while the salesperson's home-office in Cook County would not.²³⁵

Stambaugh v. International Harvester Co.,²³⁶ a St. Clair County lawsuit stemming from a tractor fire in Brown County, illustrates the doing business litigation problem. The tractor manufacturer had no place of business in St. Clair County, but it did support sales of its equipment in St. Clair County through St. Clair County farm equipment dealers.²³⁷ At the time the case was decided, it was unclear whether sales-support activities would meet the doing business test.²³⁸ The Illinois Supreme Court reversed the result of the St. Clair County trial based on the circuit court's venue ruling and remanded with directions to transfer the suit for retrial in a proper venue²³⁹—a needless waste of judicial time and resources. Under the proposed rule, however, this waste would rarely occur. Doing business would rank fourth as a basis for venue—used only when the defendant has no place of business in Illinois.²⁴⁰ Assuming the proposed rules governed at the time, the farmer's attorney in *Stambaugh* would have known that the suit had to be filed either in one of the counties where the tractor manufacturer had its headquarters or manufacturing plants, or in the county where the

opinions that had misapplied the abuse of discretion standard but did not abrogate the legal findings of those courts per se.

234. *Id.* at 526.

235. *See infra* Appendix A § 2-102(b)(2) (“If no county meets the test of subparagraph (1), the legal entity is located in the county (or counties) where it has 10 or more regular workers (see subparagraph (1)) at its place or places of business.”). The decision mentions that the recycling company had other yards in Champaign, Mattoon, and Springfield. *Corral*, 839 N.E.2d at 526. If those other yards would meet the same presence test as the Danville yard, Champaign County, Coles County, and Sangamon County also would be proper venues.

236. 464 N.E.2d 1011 (Ill. 1984).

237. *Id.* at 1013–14.

238. *See id.* (noting that the Illinois Supreme Court had not construed the term “doing business” before the *Mosele* decision, which did not address a manufacturer's sales-support activity).

239. *Id.* at 1017.

240. *See infra* Appendix A § 2-102(b)(4) (“If no county meets the tests of subparagraphs (1)–(3), the legal entity is located in the county (or counties) where the legal entity is doing business.”).

tractor fire occurred.²⁴¹ No venue-related retrial would have been necessary.

b. Partnerships

The proposed uniform rule would solve three problems caused by the residence rule for partnerships. It would solve the small office and doing business litigation problems, which can occur with partnerships.²⁴² It also would solve the partner residence problem, illustrated earlier by the hypothetical Madison County suit against the limited partnership that owned an office building in Lake County.²⁴³ The hypothetical suit was based on an accident in Lake County, but Madison County was a proper venue because a limited partner resided there.²⁴⁴ Under the proposed rule, however, Lake County would be the proper venue. The proposed rule would not base venue on a limited partner's residence—nor on a general partner's residence—but rather on the limited partnership's place of business.²⁴⁵

c. Unincorporated Associations

The proposed rule for unincorporated associations would solve two problems caused by the residence rule for unincorporated associations, including limited liability companies. Once again, the rule would solve the small office problem, which can occur with unincorporated associations.²⁴⁶ It also would close a venue gap, illustrated earlier by the hypothetical suit against the Indiana-based trucking company.²⁴⁷ This limited liability company regularly picked up and delivered freight in White County, and it operated the truck that collided with a White

241. *See infra id.*

242. The residence rule for partnerships, like the residence rule for private corporations, bases venue on the entity's offices and on doing business. 735 ILL. COMP. STAT. 5/2-102(b) (2010).

243. *See supra* text accompanying note 87 (discussing the partner residence problem).

244. *See supra* text accompanying note 87 (interpreting the partnership residence provision to refer to all partners including limited partners, as the Montana venue statute has been interpreted by the Montana Supreme Court, but noting a contrary interpretation of the Georgia Constitution's copartner venue provision).

245. The same rules would apply to all legal entities. *See generally infra* Appendix A § 2-102(b)(1)–(4) (outlining the procedure for determining residence for legal entities).

246. The residence rule for unincorporated associations, like the residence rule for private corporations, bases venue on the entity's offices. 735 ILL. COMP. STAT. 5/2-102(c).

247. *See supra* text accompanying notes 95–96 (discussing the potential for a “venue gap” for unincorporated associations). This illustration assumed that, by process of elimination, a limited liability company counts as an unincorporated association under the Illinois venue statutes. *See supra* text accompanying notes 90–91 (stating the assumption and noting that one state has deemed limited liability companies partnerships for venue purposes if they are treated as partnerships for tax purposes).

County resident's car just across the border in Indiana.²⁴⁸ Residence-based venue was unavailable, because (i) the trucking company had neither an Illinois office nor an officer with an Illinois residence, which prevented it from residing in any county; and (ii) it was doing business in Illinois, which prevented it from being a nonresident.²⁴⁹ Transaction-based venue was also unavailable, because the suit was based on an Indiana accident.²⁵⁰ The Illinois courts might have personal jurisdiction over the trucking company under the long-arm statute,²⁵¹ but there is no proper venue. Under the proposed rule, however, White County would be the proper venue, because venue would be based on doing business when a legal entity has no place of business in Illinois.²⁵²

d. Governmental Corporations

The proposed uniform rule would solve the inequality problem, which was illustrated by the suit against the IDR in *Home Depot, U.S.A., Inc. v. Department of Revenue*.²⁵³ In this suit, DuPage County was not a proper venue, despite the presence of the IDR's fifty-person office, because the office was not the IDR's principal office.²⁵⁴ Yet, the same office—or even a one-person office—would have made venue proper in a suit against a private corporation.²⁵⁵

Governmental corporations claim to need special venue protection so public officials can remain at home and discharge their public duties.²⁵⁶ This public interest rationale is, however, not convincing. In the leading decision giving this rationale, the defendant hospital corporation lost its venue objection for failing to prove it had municipal corporate

248. See *supra* text accompanying note 96 (illustrating how the proposed rule for unincorporated associations would solve the earlier hypothetical problem).

249. 735 ILL. COMP. STAT. 5/2-102(c).

250. 735 ILL. COMP. STAT. 5/2-101.

251. See *supra* note 96 (citing an Appellate Court decision holding that Illinois could exercise jurisdiction in analogous circumstances, but noting that the latest U.S. Supreme Court decision about general jurisdiction leaves the proper scope of this form of jurisdiction unclear).

252. See *infra* Appendix A § 2-102(b)(4) (“If no county meets the tests of subparagraphs (1)–(3), the legal entity is located in the county (or counties) where the legal entity is doing business.”).

253. *Home Depot, U.S.A., Inc. v. Dep’t of Revenue*, 823 N.E.2d 625, 632 (Ill. App. Ct. 2005), *abrogated on other grounds by Corral v. Mervis Indus., Inc.*, 839 N.E.2d 524 (Ill. 2005).

254. *Id.* at 634.

255. See 735 ILL. COMP. STAT. 5/2-102(a) (“Any private corporation . . . organized under the laws of this State . . . is a resident of any county in which it has its registered office or other office or is doing business.”).

256. See *Alsop v. Sycamore Mun. Hosp.*, 618 N.E.2d 895, 898 (Ill. App. Ct. 1993) (giving this rationale).

status as of the time the suit was filed.²⁵⁷ Due to this failure of proof, the special venue statute for governmental corporations did not apply, and the hospital had to defend in a county where it did not have its principal office.²⁵⁸ Whether the public interest demanded that the hospital's officials remain at home to conduct hospital business surely did not depend on whether the hospital had municipal corporate status at the time it was sued.

The public interest rationale wrongly assumes that all governmental corporations need special venue protection in all suits. In the rare suit that really does threaten to divert a public official from important and pressing public business, the courts can weigh this cost, together with other private interests and public interests, in deciding whether to grant an intrastate *forum non conveniens* transfer.²⁵⁹ The public interest requires nothing more.

The proposed uniform rule would end the inequality of treatment by applying the previously described series of presence tests to governmental corporations.²⁶⁰ Usually, these presence tests would yield the same result as the current principal office test. Most governmental corporations do not have a place of business outside the county where their principal office is located; or, if they do, their place of business in a different county would meet a lower-priority presence test than the test met by their principal office.²⁶¹ For example, if a city has fifty individuals who regularly work at its place or places of business in the county where its principal office is located, the city could have as many as forty-nine individuals who regularly work at a place of business in another county without the other county becoming a proper venue.²⁶²

In suits against some large governmental corporations, the proposed uniform rules' presence tests would make venue proper in an additional county, allowing the plaintiff more flexibility without sacrificing the defendant's convenience. For example, in *County of Fulton v. Prairie Plan Project*, a suit to enforce an ordinance against the Metropolitan Sanitary District of Greater Chicago, Fulton County was not a proper venue under the special venue statute, despite the District's employment

257. *Id.*

258. *Id.*

259. *See supra* note 33 and accompanying text (listing the private interest and public interest factors that go into a court's *forum non conveniens* determination).

260. *See supra* note 218 (noting that the same proposed rules apply to all legal entities).

261. *See infra* Appendix A § 2-102(b)(1)–(4) (outlining the order in which the rules should be applied in order to determine an entity's principal place of business).

262. *See infra id.* § 2-102(b)(1).

of 200 workers at its Fulton County treatment facility, because the District had its principal office in Cook County.²⁶³ Under the proposed rule, however, both Cook County and Fulton County would be proper venues, because the places of business in both counties would meet the fifty-worker test.²⁶⁴ The District, in other words, would have to defend suits in the same counties as a private business that had a Cook County headquarters and a 200-worker place of business in Fulton County.²⁶⁵

3. Legal Representative Defendant

Under the proposed rules, if the defendant is a legal representative, venue would be based not on facts about the legal representative, but rather on facts about the represented individual.²⁶⁶ The legal representative of a minor or a legally disabled individual would be “deemed located” in the county (or counties) where, at the time the suit is filed, “the minor or legally disabled individual has a ‘regular dwelling place’ or a ‘regular work place.’”²⁶⁷ The legal representative of a deceased individual’s estate would be “deemed located” in the county (or counties) where, as of the time of death, “the individual had a ‘regular dwelling place’ or a ‘regular work place.’”²⁶⁸

The practical difference between the proposed legal representative rule and the current rule is illustrated by the factual scenario in *Precision Components, Inc. v. Estate of Kuntz*.²⁶⁹ In this Cook County suit against the legal representative of a Kane County resident’s estate, Cook County was a proper venue because the executor—The Northern

263. *Cnty. of Fulton v. Prairie Plan Project*, 399 N.E.2d 982, 984–85 (Ill. App. Ct. 1979).

264. *See infra* Appendix A § 2-102(b)(1).

265. In addition to the change discussed in the text, the proposal would delete sentences in the current statute that prevent use of transaction-based venue in certain suits related to an airport owned by a unit of local government. *See* 735 ILL. COMP. STAT. 5/2-103(a) (2010) (“Except as otherwise provided in Section 7-102 of this Code, any cause of action that is related to an airport owned by a unit of local government, and that is pending on or after the effective date of this amendatory Act of the 93rd General Assembly in a county other than the county in which the unit of local government’s principal office is located, shall be transferred, upon motion of any party under Section 2-106 of this Code, to the county in which the unit of local government’s principal office is located.”).

266. *See infra* Appendix A § 2-102(c) (“The legal representative of a minor or a legally disabled individual is deemed located where, at the time the suit is filed, the minor or the legally disabled individual has a ‘regular dwelling place’ or a ‘regular work place’ (see paragraph (a)). The legal representative of a deceased individual’s estate is deemed located where, as of the time of death, the deceased individual had a ‘regular dwelling place’ or a ‘regular work place’ (see paragraph (a)).”).

267. *Id.*

268. *Id.*

269. 445 N.E.2d 449 (Ill. App. Ct. 1983).

Trust Company—resided in Cook County.²⁷⁰ Under the proposed legal representative rule, however, Kane County would be the proper venue because the executor would be “deemed located” in Kane County based on the deceased individual’s regular dwelling place in that county as of the time of his death.²⁷¹

Ordinarily, legal representatives are chosen based on factors such as a family relationship or expertise in managing trusts and estates.²⁷² In the past, however, legal representatives have been chosen for their effect on where litigation will occur—i.e., whether it will occur in federal court, based on diversity of citizenship, or in state court, for lack of diversity.²⁷³ The proposed legal representative rule would prevent similar manipulation of venue.

4. Multiple Defendants

Under the proposed rules, if the suit is against multiple defendants, venue would be proper in the county (or counties) where “the greatest number of defendants is located.”²⁷⁴ The previously described rules for individuals, legal entities, and legal representatives would identify the county (or counties) where each defendant is located.²⁷⁵ Then, four “counting rules” would determine venue based on where the greatest number of defendants is located.²⁷⁶

First, a defendant would be considered for venue purposes (“count”) if, and only if, the defendant “was sued in compliance with Illinois Supreme Court Rule 137.”²⁷⁷ This counting requirement would borrow Rule 137’s familiar standards, and would require that the claim against each defendant be (i) based on reasonable inquiry, (ii) well grounded in

270. *Id.* at 450.

271. *See infra* Appendix A § 2-102(c) (identifying the venue for an action brought by or against a legal representative).

272. *See Choosing the Executor or Trustee*, AM. BAR. ASS’N, at 1–3, http://www.americanbar.org/content/dam/aba/migrated/publiced/practical/books/wills/chapter_10.authcheckdam.pdf (last visited Apr. 19, 2012) (reviewing pros and cons of choosing a family member or an institutional fiduciary as executor).

273. *See Mullenix*, *supra* note 100, at 1026 (noting that some litigants have admitted that they intentionally appointed a representative for the purposes of securing federal jurisdiction).

274. *See infra* Appendix A § 2-101(a) (“Venue is proper in the county (or counties) where the greatest number of defendants is located.”). Indiana has a similar venue provision stating that “preferred venue” lies in “the county where the greater percentage of individual defendants included in the complaint resides, or, if there is no such greater percentage, the place where any individual defendant so named resides.” IND. TR. PRO. R. 75(A)(1).

275. *Infra* Appendix A § 2-102(a)–(c).

276. *Infra id.* § 1-102(d).

277. *See infra id.* § 2-102(d)(1) (“A defendant counts if, and only if, it was sued in compliance with Illinois Supreme Court Rule 137.”).

fact, (iii) warranted by existing law or a good-faith argument for changing it, and (iv) made with no improper purpose such as harassment.²⁷⁸

Second, a defendant would count “in each county where it is located.”²⁷⁹ In essence, each county’s total would indicate the number of defendants that can conveniently defend suits in the county.

Third, a dismissal—voluntary or involuntary—would “not change whether a defendant counts.”²⁸⁰ If a dismissed defendant were sued in compliance with Rule 137, that defendant would have counted before the dismissal and still would count afterward. If a dismissed defendant were sued in violation of Rule 137, that defendant never would have counted and still would not count. This counting rule would solve the voluntary dismissal settlement problem discussed earlier.²⁸¹ By removing the threat that a voluntary dismissal might lead to transfer to a non-preferred county, the rule would ensure that venue considerations never would stand in the way of settlement.

Fourth, in case of a tie between counties for the greatest number of defendants, “each such county” would be deemed a county where the greatest number of defendants is located.²⁸² For example, in a suit against two defendants, one located in one county, the other located in another county, both counties would be proper venues.

The proposed greatest number of defendants rule and these counting rules would solve the group convenience problem, which was illustrated by the Cook County suit against the McHenry County hospital, surgeon, and surgical group in *Gundlach v. Lind*.²⁸³ Cook County was a proper venue under the current any-defendant rule because the hospital’s parent corporation owned a behavioral health facility in Cook County.²⁸⁴ The

278. ILL. S. CT. R. 137. This cross-reference to Rule 137 likely would not change the law, because the current good faith requirement has objective and subjective elements that overlap with Rule 137’s requirements. See 735 ILL. COMP. STAT. 5/2-101 (2010) (identifying Rule 137 requirements); *supra* text accompanying notes 105–12 (discussing requirements of good faith joinder under current venue statute).

279. See *infra* Appendix A § 2-102(d)(2) (“A defendant counts in each county where it is located.”).

280. See *infra id.* § 2-102(d)(3) (“A dismissal—voluntary or involuntary—does not change whether a defendant counts.”).

281. See *supra* text accompanying note 113 (discussing the current voluntary dismissal rule’s deterrent effect on settlement with the defendant used to fix venue).

282. See *infra* Appendix A § 2-102(d)(4) (“In case of a tie between counties for the greatest number of defendants, each such county is deemed a county where the greatest number of defendants are located.”).

283. 820 N.E.2d 1 (Ill. App. Ct. 2004).

284. *Id.* at 5–6. Venue was proper in Cook County under the rule that venue is proper where any defendant resides and the rule that a corporation resides (among other places) where it has an

suit arrived in McHenry County only after time-consuming and costly intrastate *forum non conveniens* litigation.²⁸⁵ Under the proposed rule, however, McHenry County would be the proper venue because it would have the greatest number of defendants.²⁸⁶ No intrastate *forum non conveniens* litigation would occur.

The proposed rule would not stop the plaintiff from filing one suit against the hospital and a second suit against the surgeon and surgical group. In the suit against the hospital, both McHenry County and Cook County would be proper venues because the hospital's parent corporation would be included in each county's count of defendants.²⁸⁷ As a result, the plaintiff could choose to sue the hospital in Cook County and the remaining defendants in McHenry County. Filing two suits instead of one has two negative effects, however, which would discourage plaintiffs from resorting to it: (1) it raises the plaintiff's cost of litigation, and (2) it lets the defendants use the empty-chair defense and avoid infighting at trial.²⁸⁸ Moreover, the hospital suit likely would be transferred to McHenry County. In the Cook County suit against all three defendants, the Appellate Court held that the argument for transfer to McHenry County was so compelling that denying the transfer was an abuse of discretion.²⁸⁹ This already-compelling argument would gain added force when the transfer of a separate suit against the hospital would enable this suit to be consolidated with the surgeon-surgical group suit.

B. Transaction-Based Venue

The proposal for transaction-based venue would make venue proper in the county (or counties) where “the transaction occurred that gave

“other office.” 735 ILL. COMP. STAT. 5/2-101–102(a) (2010).

285. *Gundlach v. Lind*, 820 N.E.2d 1, 5–6 (Ill. App. Ct. 2004).

286. The hospital and the surgical group both would be located in McHenry County—assuming, of course, that these legal entities had no presence in another county that would meet a higher-ranked presence test. *See infra Appendix* § 2-102(b) (“A legal entity . . . is located in the county (or counties) identified by the following presence tests applied in the specified order.”). The surgeon also would be located in McHenry County under the regular work place rule. *See infra id.* § 2-102(a) (“An individual is located in the county (or counties) where the individual has a . . . regular work place.”). Only the hospital would be located in Cook County under the proposed rules quoted here—assuming, again, that the places of business maintained by the parent corporation in these two counties would meet the same presence test.

287. *See Gundlach*, 820 N.E.2d at 5 (applying the proposed rules to each defendant).

288. *See* Hon. William J. Haddad, *Sole Proximate Cause: The “Empty Chair” Defense in Illinois*, 99 ILL. B.J. 152, 153 (2011) (explaining the “empty chair” defense, i.e., that a person or party other than the defendant is the sole proximate cause of an alleged injury).

289. *Gundlach*, 820 N.E.2d at 5.

rise to the cause of action.”²⁹⁰ The proposal, unlike the current statute, would delineate the limits of a transaction. The transaction would be deemed to have occurred “where any matter occurred that the plaintiff has the burden of proving.”²⁹¹ The burden-of-proof test would ensure, as it always has, that venue *can* serve the convenience of the witnesses. Based on other policies identified in the next two paragraphs, however, the use of this test would be limited in two ways.

First, the proposal states that “venue cannot be based on the accrual of an expense claimed as money damages.”²⁹² This money-damages limitation would preserve the already recognized last-event rule.²⁹³ Without this limitation, the plaintiff’s attorney in a tort action could pick a favorable county in which to sue, arrange for the plaintiff to receive some medical treatment there, add the cost of this arranged-for treatment to the damages claim, and base venue on the arranged-for treatment.

Second, a proposed special venue provision for suits by businesses against consumers states that, if the suit is “brought by a business against a consumer who was physically present in the State for part or all of the transaction,” venue cannot be based on “a matter that did not involve the consumer’s physical presence.”²⁹⁴ For example, a consumer and a business might enter into a contract over the telephone while they are in different counties. In a suit brought by the business to enforce this oral contract, the business, as the plaintiff, has the burden of proving that the consumer offered to purchase the business’s product or service, and that the business accepted the offer. Yet, venue would only be proper where the consumer was physically present, which is the

290. See *infra* Appendix A § 2-101(b) (“Venue is proper in the county (or counties) where the transaction occurred that gave rise to the cause of action.”).

291. See *infra id.* § 2-102.1 (“The transaction that gave rise to the cause of action is deemed to have occurred where any matter occurred that the plaintiff has the burden of proving, except as limited by paragraphs (a)–(b).”).

292. See *infra id.* § 2-102.1(a) (“Venue cannot be based on the accrual of an expense claimed as money damages.”).

293. See *supra* note 168 and accompanying text (discussing the last event rule). The last event rule would make venue proper where the victim suffers injury or dies, because each would be the last act required to create liability for personal injury or wrongful death, but the rule would make venue improper where the victim received treatment and incurred expense claimed as money damages, because such acts would occur after the last act required to create liability. *Id.*

294. See *infra* Appendix A § 2-103(g) (“In an action brought by a business against a consumer who was physically present in the State for part or all of the transaction, venue cannot be based on a matter that did not involve the consumer’s physical presence. A ‘business’ is an individual or a legal entity that sells, leases, lends, or enters into a transaction in the ordinary course of the individual’s or legal entity’s trade or business. A ‘consumer’ is an individual who buys, leases, borrows, or enters into a transaction primarily for personal, family, or household purposes.”).

location where the offer was made. The consumer was not physically present where the business accepted the consumer's offer.²⁹⁵

The proposed transaction-based venue rule—with its burden-of-proof test and above limitations—would solve two problems. First, it would solve the indirect dealings problem illustrated by the Madison County lawsuit brought against a Michigan car manufacturer in *Boxdorfer v. DaimlerChrysler Corp.*, which accused the car manufacturer of failing to disclose a defect that caused paint to delaminate from its cars after the warranty expired.²⁹⁶ Paint delamination had occurred in Madison County on cars sold by Madison County dealers, but Madison County was not a proper venue because no dealings had taken place there between the car buyers and the manufacturer.²⁹⁷ Under the proposed burden-of-proof test, however, Madison County would be a proper venue, because the plaintiff car buyers had the burden of proving the Madison County deceptions and losses.²⁹⁸ The suit would be heard in Madison County, a county that had witnesses, and not in another county with no witnesses.

Second, the burden-of-proof test would end the confusion created by the Illinois Appellate Court's use of multiple transaction-based venue tests. In some decisions, the Appellate Court has used the burden-of-proof test; in others, it has used the party-dealings test.²⁹⁹ The proposed

295. The consumer protection policy underlying this special provision for suits by businesses against consumers is similar to the policy that underlies a special venue provision that, in actions against insurance companies, makes venue proper in the county in which the plaintiff (or one of the plaintiffs) resides. See *Golden Rule Ins. Co. v. Manasherov*, 558 N.E.2d 543, 547 (Ill. App. Ct. 1990) (relying on the public policy of consumer protection in upholding the *forum non conveniens* transfer of an insurance company's declaratory judgment action against the policy holder regarding a disputed medical expense claim, from the county where the insurance company had its headquarters and received the application and initial premium, to the county where the policyholder dealt with the independent broker who allegedly acted as the insurance company's agent in making certain alleged statements about the policy's effective date). A similar consumer protection policy underlies the earlier-discussed decision in *Williams v. Ill. State Scholarship Comm'n*, 563 N.E.2d 465 (Ill. 1990). There, the Illinois Supreme Court protected student borrowers from a state agency's practice of filing loan collection suits in a county where the loan-related acts did not involve the borrowers' physical presence. *Id.* at 475–76, 485. The proposed special venue provision would extend the same protection, for the same reason, to all consumers in all suits brought by businesses. See *infra* Appendix A § 2-103(g). Some businesses might try to change the proper venue by using a forum selection clause, but the clause would have to meet requirements for forum selection clauses. See *Williams*, 563 N.E.2d at 487 (discussing requirements for forum selection clauses).

296. 790 N.E.2d 391, 398–99 (Ill. App. Ct. 2003).

297. *Id.*

298. *Infra* Appendix A § 2-102.1. For further discussion about the plaintiff's burden of proof in a consumer fraud claim, see *supra* note 174 and accompanying text.

299. See *supra* part I.B; *supra* notes 132–34 and accompanying text (applying party-dealings test to find that venue was not proper in Cook County because both parties did not transact with

rule resolves this conflict in favor of the burden-of-proof test, with the two above-described limitations.

This resolution of the conflict would have changed the result reached in the collection suit against the Ogle County gasoline station dealer in *American Oil Co. v. Mason*,³⁰⁰ where the use of the party-dealings test made Ogle County the only place where transaction-based venue was proper.³⁰¹ Under the proposed rule's burden-of-proof test, both Ogle County and Cook County would be places where transaction-based venue is proper. Because the persons who knew about the loan, the payment record, and the default were divided between the two counties, both counties would serve the convenience of the witnesses as a group to about the same extent. Both counties should be proper venues, and would be under the burden-of-proof test.

Even the proposed transaction-based venue rule would not solve the problem that can occur when venue is based solely on part of the transaction, which was illustrated in *Wier ex rel. Wier v. Ketterer*.³⁰² Recall that *part* of the plaintiff's medical treatment had occurred inside the ambulance, which passed through St. Clair County on the way from Clinton County to St. Louis. But other than the occupants of the ambulance, no other persons along the route could have seen the care provided inside the ambulance, which the plaintiff alleged was negligently supervised by the defendant doctor. Therefore, most of the occurrence witnesses likely to testify were medical personnel in Clinton County.³⁰³ The convenience of these witnesses was not served by letting the plaintiff sue in St. Clair County, instead of requiring the plaintiff to sue in Clinton County—though admittedly the burden of traveling between these adjacent counties is rather small and, indeed, some medical personnel who work in Clinton County might live in St. Clair County. Under the proposed rule, both counties would remain proper venues because the plaintiff has the burden of proving the negligence and the injuries, which had occurred cumulatively in both counties.³⁰⁴ As before, the plaintiff could sue in St. Clair County.

If all suits based on cumulative negligence and cumulative injuries had the same witness location pattern as the ambulance transfer suit, the

each other in Cook County).

300. 273 N.E.2d 17 (Ill. App. Ct. 1971).

301. Residence-based venue was proper in DeKalb County. *Id.* at 17.

302. 479 N.E.2d 416 (Ill. App. Ct. 1985).

303. As noted before, the occurrence witnesses in St. Louis could not be compelled to testify in Illinois. See *supra* note 27 (discussing which witnesses cannot be compelled to testify in Illinois).

304. *Infra* Appendix A § 2-102.1.

proposed rule could be modified to solve the part of the transaction problem. Specifically, the rule could limit venue to the first county in which the negligence and the injuries occurred. Yet, this first-county limitation often would not match the witness location pattern. For example, in *Kaiser v. Doll-Pollard*,³⁰⁵ a recent venue decision by the Appellate Court, the surgery that had occurred in Clinton County had been followed by post-operative surgery in St. Clair County to stop internal bleeding, with the negligence and the injuries again having occurred cumulatively in both counties.³⁰⁶ This time, however, both counties had witnesses to parts of the care, so the first-county limitation would not match the likely witness location pattern.³⁰⁷ In a hypothetical variation of the ambulance transfer suit, if a St. Clair County-based ambulance picked up an accident victim in Clinton County and took the victim to a hospital in St. Clair County, the mismatch has the potential to be even worse. In that variation, all of the witnesses who either saw the care inside the ambulance or supervised it likely would be located, not in the first county (Clinton), but in the second county (St. Clair).

The suit-to-suit variation in witness location patterns makes it impossible to draft a venue rule that would (1) always make venue proper where the witnesses are located, but (2) never give the plaintiff a venue option that could create a witness inconvenience problem. The burden-of-proof test best meets the first objective of always making venue proper where the witnesses are located, and it lets the court consider any witness inconvenience problem, along with other private interest factors and public interest factors,³⁰⁸ in deciding whether to

305. 923 N.E.2d 927 (Ill. App. Ct. 2010).

306. *See id.* at 929–30.

307. Because the circuit court addressed only the venue question and the parties had not conducted *forum non conveniens* discovery, *id.*, the decision does not indicate which occurrence witnesses were likely to testify and where these likely witnesses lived and worked. Logically, however, the medical personnel who treated the plaintiff in Clinton County worked in Clinton County and most of them probably also lived in this county, while the medical personnel who treated the plaintiff in St. Clair County worked in St. Clair County and most of them probably also lived in that county.

308. *See* First Am. Bank v. Guerine, 764 N.E.2d 54, 58 (Ill. 2002) (discussing the public interest and private interest factors that a court must consider before granting a motion to transfer venue on the basis of intrastate *forum non conveniens*). Under guidance from the Illinois Supreme Court:

[T]he private interest factors include (1) the convenience of the parties; (2) the relative ease of access to sources of testimonial, documentary, and real evidence; and (3) all other practical problems that make trial of a case easy, expeditious, and inexpensive—for example, the availability of compulsory process to secure attendance of unwilling witnesses, the cost to obtain attendance of willing witnesses, and the ability to view the premises (if appropriate). The public interest factors include (1) the interest in

grant an intrastate *forum non conveniens* transfer.³⁰⁹ If, on the other hand, the narrower party-dealings test had been used, that test sometimes would fail to make venue proper where the witnesses are located, and it would prevent the court from remedying the witness inconvenience problem because the court cannot transfer a suit to an improper venue.³¹⁰

C. Any-County Venue

The any-county venue proposal would make all Illinois counties proper venues if (1) defendant-based venue is not proper in any county, and (2) transaction-based venue is not proper in any county.³¹¹ This proposal, in other words, would back up the other proposals and prevent venue gaps, so there never could be a suit in which the Illinois courts would have jurisdiction but there would be no proper venue. Essentially, the plaintiff would have the unlimited choice of counties in which to sue only when there is no county that would serve the convenience of the defendant and also no county that would serve the convenience of the witnesses.

deciding localized controversies locally; (2) the unfairness of imposing the expense of a trial and the burden of jury duty on residents of a county with little connection to the litigation; and (3) the administrative difficulties presented by adding further litigation to court dockets in already congested fora.

Id. (internal citations omitted). The court will apply the same factors when considering an interstate *forum non conveniens* motion to transfer venue to out of Illinois. *See Laverty v. CSX Transp., Inc.*, 956 N.E.2d 1, 5 (Ill. App. Ct. 2010) (“The rationale underlying the doctrine of *forum non conveniens* ‘is as valid on an intrastate [basis] as it is on an interstate basis.’”).

309. Although the concepts of proper venue and *forum non conveniens* share significant overlap, they are fundamentally distinct. For example, this Article is primarily devoted to providing a better way to determine which forum would be the proper venue to hear a case by changing the statutory framework for establishing venue. *Forum non conveniens* is an equitable doctrine that allows the court to decline to exercise jurisdiction over an action even if venue *is already proper* under the venue statutes, when there is “another forum with proper jurisdiction and venue ‘would better serve the ends of justice.’” *Guerine*, 764 N.E.2d at 57. Although courts considering a motion to transfer or dismiss under *forum non conveniens* generally give the plaintiff’s choice of venue deference, courts also consider the interest that a different forum would have in resolving the litigation and the interest of judicial administration. *Id.* To resolve these questions, courts look to the factors outlined in *Guerine*. *See supra* note 308 and accompanying text. Of course, *forum non conveniens* litigation is costly, especially in light of the fact that it is rarely dispositive of the action; indeed, even if the motion is successful, the transfer usually just prolongs the litigation. Therefore, a better set of rules that establish a limited number of proper venues would serve the same interests as *forum non conveniens* without the need to apply its list of factors and is precisely one of the goals of the rules proposed in this Article.

310. *See Langenhorst v. Norfolk S. Ry. Co.*, 848 N.E.2d 927, 934 (Ill. 2006) (reiterating that a suit can be transferred on the ground of *forum non conveniens* only if the other county is a proper venue).

311. *See infra* Appendix A § 2-101(c) (“If there is no county where venue is proper under paragraphs (a)-(b), venue is proper in any county.”).

The problem created by the current any-county rule was illustrated by the hypothetical car accident suit against the Kentucky resident who commuted to a job in Massac County.³¹² If the accident occurred in Massac County, so transaction-based venue is proper there, the current any-county rule still makes all Illinois counties proper venues simply because the defendant is a nonresident.³¹³ The plaintiff can sue in Cook County, for example, despite the obvious witness inconvenience problem this choice creates. Under the proposed any-county rule, however, the plaintiff would not have the unlimited choice of Illinois counties when there is a county where transaction-based venue would be proper.³¹⁴

D. Venue Procedure

The venue procedure proposal would amend the current procedure in three ways.³¹⁵ First, the defendant would have the right to have a suit transferred if “the addition of a new defendant changes the county (or counties) with the greatest number of defendants.”³¹⁶ This amendment would block a sue-and-amend ploy. Without the amendment, the plaintiff’s attorney could identify a preferred county where some defendants are located, sue just those defendants, use them to fix venue, and then amend to add the rest of the defendants. With the amendment, this ploy would fail.

Second, the defendant similarly would have the right to a transfer if “the addition of a new cause of action requires severance and transfer because venue is improper on the new cause of action.”³¹⁷ This amendment also would block another sue-and-amend ploy since, without the amendment, the plaintiff’s attorney could identify a preferred county in which one of the plaintiff’s causes of action arose,

312. See *supra* note 24 and accompanying text (setting forth the hypothetical).

313. 735 ILL. COMP. STAT. 5/2-101 (2010).

314. See *infra* Appendix A § 2-101(c) (“If there is no county where venue is proper under paragraphs (a)–(b), venue is proper in any county.”).

315. In addition to the three amendments described in the text, a fourth amendment would modify the section on costs and expenses of transfer to incorporate Illinois Supreme Court Rule 137 standards. *Infra id.* § 2-107.

316. See *infra id.* § 2-104(b)(2) (“A defendant waives all venue objections by failing to make a timely motion to transfer the action to a proper venue. A ‘timely’ motion means a motion made: . . . promptly, if the addition of a new defendant changes the county (or counties) with the greatest number of defendants . . .”). The requirement of a “prompt” motion is borrowed from the current statute that, if the plaintiff voluntarily dismisses the venue-fixing defendant, requires a remaining defendant to move for transfer “promptly” or waive the venue objection. 735 ILL. COMP. STAT. 5/2-104(b).

317. See *infra* Appendix A § 2-104(b)(3) (defining what constitutes a timely motion to transfer venue).

sue on just this cause of action, use it to fix venue, and then amend to add the other causes of action. With the proposed amendment, this ploy would fail.³¹⁸

Third, the proposal would provide that, following the denial of a motion to transfer, “no further step is required to preserve the venue objections that were included in the motion.”³¹⁹ The current preservation rule is complicated and requires a further step. The current rule applies when (1) the plaintiff relies on residence-based venue in a suit against defendants that reside in different counties, (2) the court denies a motion to transfer made by a defendant that does not reside in the county, and (3) this defendant proceeds to trial on the merits and then appeals.³²⁰ The current rule states that, in order to use the denial of the transfer motion as a ground for reversal, the defendant must renew the motion at the close of all evidence.³²¹

This current rule implicitly assumes that something can happen during the trial to change the venue transfer ruling—otherwise, no purpose is served by renewing the motion. Yet, the settled interpretation of the current statute’s good faith requirement rebuts such an assumption because it effectively prevents the trial from changing the venue ruling. If the plaintiff introduces no evidence against the defendant who was used to fix venue, the court neither finds that the defendant was joined in bad faith nor reverses an earlier transfer ruling.³²² Instead, the court presumes this failure of proof results from

318. The second amendment is less important than the first amendment because plaintiffs join truly distinct causes of action in relatively few suits. In claim preclusion law, the Illinois Supreme Court treats two claims as different causes of action only if the claims arise out of different transactions. *River Park, Inc. v. City of Highland Park*, 703 N.E.2d 883, 893 (Ill. 1998). The transaction test relies on pragmatic factors, such as whether the claims are related in time space, origin, or motivation; whether they form a convenient trial unit; and whether their treatment as a unit conforms to the parties’ expectations or business understanding. *Id.* (citing RESTATEMENT (SECOND) OF JUDGMENTS § 24 (1982)). If the plaintiff has several claims based on different legal theories, these claims often count as a single cause of action rather than two causes of action. *Id.*

319. *See infra* Appendix A § 2-105 (“Following the denial of a motion to transfer, no further step is required to preserve for appeal the venue objections that were included in the motion.”).

320. 735 ILL. COMP. STAT. 5/2-105.

321. *Id.* The statute does not indicate what step a defendant must take if the plaintiff is not relying on residence-based venue or the suit is not against multiple defendants. *Id.*

322. *See Novak v. Thies*, 412 N.E.2d 666, 668 (Ill. App. Ct. 1980) (rejecting the argument by the defendant motorcycle driver and the defendant car driver—that the defendant motorcycle manufacturer must have been joined in bad faith since the plaintiff motorcycle passenger’s estate introduced no evidence at trial establishing the manufacturer’s liability—because this failure to introduce evidence “could have been the result of a flexible trial strategy” that depended on the testimony elicited).

the plaintiff's "flexible trial strategy."³²³ Because the current renewal requirement serves no purpose other than to add needless effort and cost to litigation, this third proposed procedure amendment would eliminate it.

III. THE ANTI-FORUM SHOPPING PROPOSAL

This Part offers a proposal that would curb forum shopping employed by both sides in higher-value personal injury suits. In these suits, the previously described convenience-based proposals often would give the parties fewer venue options than they have under Illinois's general venue statute. Yet, because both sides still would expect the results of litigation to vary significantly among the counties that would remain proper venues, the incentive to forum shop might not be significantly reduced. Logically, the incentive to forum shop depends to a large extent on the number of available venues; the more proper venues that exist, the more likely the parties can find a forum that maximizes the possible outcome for their side. Ideally, in order to curb forum shopping, proper venue would be limited to one county, although the proposed rules recognize that there are some occasions when more than one proper venue is justified and the incentive to forum shop is still relatively low.

The proposal offered here would produce this pattern by limiting venue to the county (or counties) with the most significant connection to the occurrence and the parties. This "most significant connection test" is patterned on the most significant relationship test that Illinois courts currently use to resolve conflict of laws issues.³²⁴ Thus, this Part explains (a) why the use of the most significant connection test would be appropriate, (b) what it would require, and (c) how it would curb forum shopping. Appendix B sets forth the proposal.³²⁵

A. *The Rationale*

The anti-forum shopping proposal would apply in suits for injury to the person or wrongful death that "seek money damages exceeding the amount specified in Illinois Supreme Court Rule 222."³²⁶ Rule 222

323. *Id.*

324. *Townsend v. Sears, Roebuck & Co.*, 879 N.E.2d 893, 898, 901 (Ill. 2007).

325. *See generally infra* Appendix B (outlining the proposed anti-forum shopping rules associated with Part III).

326. *See infra id.* § 2-102.2 ("This special venue statute applies to all actions for injury to the person or wrongful death that seek money damages exceeding the amount specified in Illinois Supreme Court Rule 222. In these actions, venue is proper in the county (or counties) with the greatest connection to the occurrence and the parties according to paragraphs (a)-(d).").

specifies \$50,000 in damages exclusive of interest and costs as the dividing line between (1) the lower-value suits to which its limited and simplified discovery procedures apply, and (2) the higher-value suits to which the general rules governing discovery apply.³²⁷ Under Rule 222, a party must attach to its initial pleading in any civil action seeking money damages an affidavit stating whether the total of money damages sought “does or does not exceed \$50,000.”³²⁸ Based on this Rule 222 affidavit, therefore, it would be clear whether the proposed rule would or would not determine venue.

The forum shopping that occurs in these suits is due, as noted before, to county-to-county differences in juries and judges, which cause county-to-county variations in verdicts and judgments. In counties where the community judgment favors greater tort liability, the plaintiff anticipates better odds of victory and a larger victory. In counties where the community judgment favors less tort liability, the defendant anticipates lower odds of defeat or a smaller defeat.³²⁹

Because the law’s practical meaning—how the law operates in effect, not just in theory—depends not just on legal rules but on the results reached when legal rules are applied, this variation in verdicts and judgments indicates that the law’s practical meaning varies from county to county. Thus, as a practical matter, there is not solely Illinois law, there is also “Cook County law,” “Madison County law,” “Du Page County law,” and so forth. Each county’s socioeconomic characteristics affect how juries and judges exercise their discretion in applying Illinois tort law, and the end result is that each county acts as though it has a somewhat distinct tort law. Venue essentially determines which county’s law applies.

Since venue is often selected for the effect it will have on the outcome of the case, much in the same way as the plaintiff selects the state in which to sue based on tort law differences that can lead to a favorable result, it makes sense to look to conflict-of-laws principles for ways to curb forum shopping. When suits have connections with more than one state and these states have conflicting laws, Illinois courts resolve the conflict by applying the Restatement (Second) of Conflict of

327. ILL. SUP. CT. R. 222(a) (providing exceptions for small claims, ordinance violations, actions based on family law, and actions seeking equitable relief). Because the proposal would borrow Rule 222’s dividing line, its coverage would shift in tandem with any amendments to Rule 222 that move this dividing line upward.

328. ILL. SUP. CT. R. 222(b).

329. *See supra* text accompanying note 7 (discussing the reasons for forum shopping and citing authorities that discuss this litigation tactic).

Laws.³³⁰ For conflicts about issues of tort law, the Second Restatement calls for application of the law of the state that, with respect to the issue, has the “most significant relationship” to the occurrence and the parties.³³¹ This state is chosen in two steps: (1) jurisdiction-selecting rules identify a state as the presumptive choice, and (2) this choice is tested by applying choice of law factors and the tort law list of contacts.³³²

The first step is easy. Under the jurisdiction-selecting rules for personal injury and wrongful death suits, the presumptive choice is the state where the injury occurred.³³³ This presumption is a weaker version of the old rule that tort issues are governed by the law of the place of the wrong (*lex loci delicti*).³³⁴ The presumption is justified, according to the Illinois Supreme Court, because the law of the state where the injury occurred reflects the balance of competing substantive interests struck by the community whose members are most likely to become involved in accidents in the state.³³⁵

The second step—testing the presumptive choice—is complex. In personal injury suits, this testing process takes into account three policy-oriented choice of law factors: (1) the relevant policies of the forum; (2) the relevant policies of other interested states and their relative interests in the determination of the particular issue; and (3) the basic policies underlying the particular field of law.³³⁶ The Second Restatement calls for “the best possible accommodation” of state policies.³³⁷ The Illinois Supreme Court has said that rules that impose tort liability and rules that limit tort liability “are entitled to the same consideration.”³³⁸

330. See *Townsend v. Sears, Roebuck & Co.*, 879 N.E.2d 893, 898 (Ill. 2007) (citing the Restatement (Second) of Conflict of Laws). *Townsend* cites many of the Supreme Court and Appellate Court decisions that have relied on the Second Restatement. *Id.* at 899–907. *Townsend* is now the decision commonly relied on by Illinois courts in tort cases that raise conflict of laws issues. See, e.g., *Banks v. Ribco, Inc.*, 933 N.E.2d 867, 869–73 (Ill. App. Ct. 2010) (citing *Townsend* repeatedly); *Quaid v. Baxter Healthcare Corp.*, 910 N.E.2d 1236, 1250–51 (Ill. App. Ct. 2009) (relying on *Townsend* to determine which state’s tort law would apply, which was relevant to a *forum non conveniens* ruling).

331. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 145(1) (1971) [hereinafter SECOND RESTATEMENT].

332. *Townsend*, 879 N.E.2d at 903.

333. SECOND RESTATEMENT, *supra* note 331, §§ 146, 175.

334. *Townsend*, 879 N.E.2d at 899, 904 (citing RESTATEMENT (FIRST) OF CONFLICT OF LAWS §§ 377–78 (1934)).

335. *Id.* (quoting *Spinozzi v. ITT Sheraton Corp.*, 174 F.3d 842, 844–45 (7th Cir. 1999)).

336. *Townsend*, 879 N.E.2d at 906–07 (citing SECOND RESTATEMENT, *supra* note 331, § 6(2)(b), (c), (e)).

337. SECOND RESTATEMENT, *supra* note 331, § 6 cmt. f.

338. *Townsend*, 879 N.E.2d at 907 (citation and internal quotation marks omitted).

The testing process also takes into account the four contacts listed for tort law: (1) the place where the injury occurred; (2) the place where the conduct causing the injury occurred; (3) the domicile, residence, nationality, place of incorporation, and place of business of the parties; and (4) the place where the relationship, if any, between the parties is centered.³³⁹ The testing process might indicate the injury state has a less significant relationship to the occurrence and to the parties than a state with other such contacts.

This is most likely to occur when all the parties have the same domicile, for then the “party” contacts often have more significance than the “place of injury” contact.³⁴⁰ Among courts that have abandoned the *lex loci delicti* rule, the judicial practice of applying the common domicile state’s law instead of the injury state’s law has gained ground steadily—so much ground that a leading conflict of laws scholar has said, “one can speak of the emergence of a true common-domicile rule.”³⁴¹ The Illinois decisions support this scholar’s statement about judicial practice.³⁴²

At the core of the common-domicile rule is the idea that individuals who live in the same community implicitly agree to a social contract. As the social contract is described by one court, an individual “assents to casting her lot with others in accepting burdens as well as benefits of identification with a particular community.”³⁴³ The individual cedes to

339. SECOND RESTATEMENT, *supra* note 331, § 145(2).

340. This is not to say that this is the only context in which the testing process may indicate that the injury state has a less significant relationship to the occurrence and parties. A second circumstance arises when the conflict involves a tort rule designed to deter certain conduct, and thus the “place of conduct” contact sometimes has greater than usual significance. See *Townsend*, 879 N.E.2d at 908–09 (citing SECOND RESTATEMENT, *supra* note 331, § 146 cmt. c, e) (noting that there is “better reason” to think the state of conduct is the state of dominant interest in this circumstance). Just as the community judgment of the injury state seems to deserve priority when tort law seeks to compensate victims for injury, the community judgment of the conduct state seems to deserve priority when tort law seeks to deter conduct. SECOND RESTATEMENT, *supra* note 331, § 146 cmt. c, e. The Second Restatement warns, however, not to give too much emphasis to this point. *Id.* Most tort rules, it notes, have both compensatory and deterrent purposes. *Id.*

341. Symeon C. Symeonides, *Oregon’s New Choice-of-Law Codification for Tort Conflicts: An Exegesis*, 88 OR. L. REV. 963, 1001 (2009).

342. *Esser v. McIntyre*, 661 N.E.2d 1138, 1141–44 (Ill. 1996) (reasoning that the duty issue was governed by the law of common domicile); *Miller v. Hays*, 600 N.E.2d 34, 36–39 (Ill. App. Ct. 1992) (reasoning that the wrongful death damage limit issue was governed by the law of common domicile); *Nelson v. Hix*, 522 N.E.2d 1214, 1217–18 (Ill. 1988) (reasoning that the spousal immunity issue was governed by the law of marital domicile); *Ingersoll v. Klein*, 262 N.E.2d 593, 595–97 (Ill. 1970) (reasoning that the wrongful death action was governed by the law of common domicile).

343. *Collins v. Trius*, 663 A.2d 570, 573 (Me. 1995) (reasoning that the law of common domicile applied to limit damages for non-pecuniary losses).

community lawmaking agencies “the authority to make judgments striking the balance between her private substantive interests and competing ones of other members of the community.”³⁴⁴ Under the common-domicile rule, the community judgment of the state common to all of the parties trumps the community judgment of the injury state.

The above-described features of the Second Restatement guide the proposal offered here. Under this proposal, the proper venue would be determined by a “most significant connection” test.³⁴⁵ Just as the “most significant relationship” test tilts neither toward tort rules that impose greater tort liability nor toward tort rules that impose less tort liability, the “most significant connection” test would tilt neither toward counties where the community judgment favors greater tort liability nor toward counties where the community judgment favors less tort liability.

B. The Most Significant Connection Test

The proposed most significant connection test would focus on four questions: (1) Do the parties belong to the same community in Illinois; (2) did the injury occur somewhere in Illinois; (3) did the conduct that caused the injury occur somewhere in Illinois; and (4) if the answers to the previous three questions are “no,” what default rule should apply? The search for the county (or counties) with the greatest connection would proceed step by step through these questions. These rules recognize that certain sets of facts make it more likely that a particular venue will have the most significant connection to the lawsuit and establish priority accordingly.

1. Same Community

The first question—whether the parties belong to the same community in Illinois—would be asked using the location terminology used in Part II.³⁴⁶ A “common location” would be a county where “all plaintiffs and all defendants were located when the transaction occurred that gave rise to the cause of action.”³⁴⁷ The previously-described

344. *Id.*

345. *Infra* Appendix B § 2-102.2.

346. *See supra* Part II.A (discussing the location rules for defendant-based venue).

347. *See infra* Appendix B § 2-102.2(a) (“A ‘common location’ is a county where all plaintiffs and all defendants were located when the transaction occurred that gave rise to the cause of action. The location rules of § 2-102(a)–(c) determine a party’s location, except these rules are applied to the facts at the time of the transaction. If a county meets the common location requirement, this county has the greatest connection to the occurrence and the parties and venue is proper in this county. If more than one county meets the common location requirement, each such county has the greatest connection to the occurrence and the parties and venue is proper in each such county.”).

location rules³⁴⁸ would determine the location of all individuals, legal entities, and legal representatives. These location rules would apply, however, to “the facts at the time of the transaction.”³⁴⁹

This timing feature is borrowed from choice of law decisions. According to a leading decision on the timing issue, domicile should be determined at the time of the accident so the plaintiff cannot change the applicable law via a post-accident change of domicile.³⁵⁰ The proposal’s common-location rule similarly would apply to the facts at the time of the transaction so the plaintiff could not change the proper venue via a post-transaction change of location.

The plaintiff and the defendant could have a common location in various ways. For example, if the plaintiff had her regular dwelling place in County A and her regular work place in County B, and the defendant had both his regular dwelling place and his regular work place in County B, these two parties would have a common location in County B. If the plaintiff instead sued a corporation that had multiple places of business, including one in County B that would meet the fifty-worker test, these two parties also would have a common location in County B. If that corporation also had a place of business in County A that would meet the fifty-worker test, these two parties would have a common location in County A, in addition to their common location in County B.

The proposed common-location rule would give priority to the common-location county’s community judgment in almost the same way that the common-domicile rule gives priority to the community judgment of the common domicile state.³⁵¹ In two ways, however, the proposed rule’s scope would be broader than the common-domicile rule.

348. *Infra* Appendix A § 2-102(a)–(c).

349. *Infra* Appendix B § 2-102.2(a).

350. *Reich v. Purcell*, 432 P.2d 727, 730 (Cal. 1967) (determining domicile at the time of the accident on which the suit was based). The law is not uniform on this point. *See* PETER HAY, PATRICK J. BORCHERS & SYMEON C. SYMEONIDES, *CONFLICT OF LAWS* 825–26 nn.8–9 (5th ed. 2010). The Second Restatement states that a post-accident change of domicile “presumably . . . should have no effect” upon the applicable law with most issues, but it concedes that the change might have some effect on some issues. *SECOND RESTATEMENT*, *supra* note 331, Intro. Note on Torts cmt. 2. The Second Restatement concludes the existing authority is “too sparse” for it to address the problem. *Id.*

351. *See* *Esser v. McIntyre*, 661 N.E.2d 1138, 1141–44 (Ill. 1996) (holding that—in a suit between two individuals who were domiciled in Illinois and traveled to Mexico together—the legal duty owed by the individual who allegedly spilled popcorn kernels on the hotel floor to the individual who allegedly was hurt when these kernels caused her to slip and fall is governed by Illinois law rather than Mexican law).

First, the proposed common-location rule would use a broader measure of community membership than the common-domicile rule. Referring back to an example discussed above, the plaintiff who had her regular dwelling place in County A had a different county domicile than the defendant who had his regular dwelling place in County B. Yet, by having a regular work place in County B, the plaintiff had cast her lot in a substantial way with other persons located in County B. When she sues that County B defendant, their shared acceptance of County B's burdens and benefits would make it fair to determine tort liability according to County B's community judgment.

Second, the common-location rule would not include exceptions comparable to the exceptions that some courts have recognized to the common-domicile rule.³⁵² For example, some courts distinguish between "loss-allocating" tort rules, which seek to compensate, and "conduct-regulating" tort rules, which seek to deter.³⁵³ According to these courts, the common-domicile rule applies to conflicts between loss-allocating rules, but not to conflicts between conduct-regulating rules.³⁵⁴ A similar conduct-regulation exception was not included in the proposal, partly because it would let forum shopping continue while Illinois courts sorted out which tort rules are conduct-regulating.³⁵⁵ The exception also was not included because it is based on an issue-by-issue approach to conflict of laws that is incompatible with venue law.³⁵⁶ For example, in a suit that involves a conflict between loss-allocating rules on one issue, and between conduct-regulating rules on a second issue, courts that recognize the conduct-regulation exception will apply the

352. The common-domicile rule's proper scope is the subject of ongoing debate. *See* Symeonides, *supra* note 341, at 1001–03 (discussing five ways in which the rule has been defined based on different philosophical assumptions and biases in favor of forum law, the law that favors recovery, or both).

353. *Id.* Dean Symeonides describes the distinction between conduct-regulating and loss-allocating as follows: (1) conduct-regulating rules are "designed to primarily deter or regulate conduct by declaring certain substandard conduct to be tortious," and (2) loss-allocating rules are "primarily designed to allocate between parties the losses caused by admittedly tortious conduct." *Id.* at 1008–09.

354. *See id.* at 1009 ("Admittedly, the line between the two categories is not always very bright. . . . [T]here are many tort rules that do not easily fit in either category, and some rules that appear to fit in both categories because they may both regulate conduct and affect loss distribution.").

355. *See id.* (reviewing judicial and legislative efforts to give specific content to the distinction).

356. *See id.* at 1007–08 (citing *Babcock v. Jackson*, 191 N.E.2d 279, 284–85 (N.Y. 1963)) (discussing *Babcock v. Jackson*, the famous case in which the New York Court of Appeals applied New York law on the guest-host issue while it acknowledged that it would have applied Ontario law to an issue related either to the manner in which the defendant had been driving his car at the time of the accident or to the defendant's exercise of due care).

common-domicile state's law to the first issue and the conduct state's law to the second issue.³⁵⁷ Yet, it is impractical to hear a suit issue by issue in different counties.

The proposal would translate the above points about community judgment into venue rules. If one county is a common location for all of the parties, "this county has the greatest connection to the occurrence and the parties and venue is proper in this county."³⁵⁸ If more than one county is a common location for all of the parties, "each such county has the greatest connection to the occurrence and the parties and venue is proper in each such county."³⁵⁹ If no county meets the common location requirement, however, the search for the county (or counties) with the greatest connection would continue to the second step.

2. Place of Injury

If the answer to the first question is "no," the second question would be whether the injury occurred somewhere in Illinois. A "place of injury" would be a county where "the injury giving rise to the cause of action occurred."³⁶⁰ For wrongful death suits, the term would refer to a county where "the injury was suffered that caused the death, not the county where death occurred."³⁶¹ In suits based on cumulative injuries, more than one county could be a place of injury. For example, in the case involving the transfer of the patient in an ambulance across county lines, the negligently supervised treatment caused the patient to suffer injuries that started in Clinton County and continued in St. Clair County,³⁶² so both of these counties would meet the place of injury requirement.

The proposed place-of-injury rule would give priority to the injury-county's community judgment, second only to the priority that the common-location rule would give to the common-location county's community judgment. This second priority would resemble the priority

357. *Id.* at 1007–12.

358. *Infra* Appendix B § 2-102.2(a).

359. *Infra id.*

360. *See infra id.* §2-102.2(b) ("A 'place of injury' is a county where the injury giving rise to the cause of action occurred. In a wrongful death suit, a 'place of injury' is a county where the injury was suffered that caused the death, not the county where death occurred. If a county meets the place of injury requirement, and no county meets the requirement of paragraph (a), this county has the greatest connection to the occurrence and the parties and venue is proper in this county. If more than one county meets the place of injury requirement, and no county meets the requirement of paragraph (a), each such county has the greatest connection to the occurrence and the parties and venue is proper in each such county.").

361. *See infra id.*

362. *Wier ex rel. Wier v. Ketterer*, 479 N.E.2d 416, 416–17 (Ill. App. Ct. 1985).

that the place of injury is given by Illinois courts in conflict of laws decisions.³⁶³

Thus, like the above rule that gives first priority to the county of common location shared by the parties, the proposed rule giving second priority to the county where the injury occurred continues to translate the concept of community judgment into venue rules. If one county meets the place of injury requirement, and no county meets the previous common location requirement, “this county has the greatest connection to the occurrence and the parties and venue is proper in this county.”³⁶⁴ If more than one county meets the place-of-injury requirement, and no county meets the previous common-location requirement, “each such county has the greatest connection to the occurrence and the parties and venue is proper in each such county.”³⁶⁵ If no county meets the place-of-injury requirement, the search for the county (or counties) with the greatest connection would continue to the third step.

3. Place of Conduct

The third question would be whether the conduct that caused the injury occurred somewhere in Illinois. This question would be reached only if the injury giving rise to the cause of action occurred outside of Illinois—as would be true, for example, if a defective machine manufactured in Illinois caused injury to a worker who was using the machine in Indiana. A “place of conduct” would be a county where “the acts or omissions giving rise to the cause of action occurred.”³⁶⁶ In many suits, more than one county could be a place of conduct. For example, if a manufacturer designed a product in one county and

363. Illinois courts follow the judicial practice known as the common-domicile rule, but they also agree with the presumption in favor of the state of injury. *See Townsend v. Sears, Roebuck & Co.*, 879 N.E.2d 893, 903 (Ill. 2007) (“[A] presumption exists, which may be overcome only by showing a more or greater significant relationship to another state.”). This essentially means that the proposed rank order for venue would reflect the rank order in Illinois conflict of laws decisions. Just as the proposal does not have a conduct-regulation exception to venue based on common location, the proposal does not have a conduct-regulation exception to venue based on the place of injury. The conduct-regulation exception would let forum shopping continue while Illinois courts sorted out which tort rules are conduct-regulating, and its issue-by-issue approach does not work with venue.

364. *Infra* Appendix B § 2-102.2(b).

365. *Infra id.*

366. *See infra id.* § 2-102.2(c) (“A ‘place of conduct’ is a county where the acts or omissions giving rise to the cause of action occurred. If a county meets the place of conduct requirement, and no county meets the requirements of paragraphs (a)–(b), this county has the greatest connection to the occurrence and the parties, and venue is proper in this county. If more than one county meets the place of conduct requirement, and no county meets the requirements of paragraphs (a)–(b), each such county has the greatest connection to the occurrence and the parties, and venue is proper in each such county.”).

manufactured it in a second county, both counties would be places of conduct in a suit alleging both defective design and defective manufacturing.³⁶⁷

The proposal's place-of-conduct rule would give third priority to the conduct-county's community judgment when there is no common-location county and the resulting injury occurred outside of Illinois. This priority once again would resemble the priority that Illinois courts give in conflict of laws decisions, which agree with the Second Restatement's presumption in favor of the injury state, not the conduct state.³⁶⁸

Again, this proposal would translate the concept of community judgment into venue rules. If one county meets the place-of-conduct requirement, and no county meets the previous common-location and place-of-injury requirements, the one "county has the greatest connection to the occurrence and the parties and venue is proper in this county."³⁶⁹ If more than one county meets the place-of-conduct requirement, and no county meets the previous common-location and place-of-injury requirements, "each such county has the greatest connection to the occurrence and the parties, and venue is proper in each such county."³⁷⁰ If no county meets the place-of-conduct requirement, the search for the county (or counties) with the greatest connection would continue to the final step.

4. Default Rule

At this point, the proposal would end the search by applying a default rule. When no county could meet the common-location requirement, the place-of-injury requirement, and the place-of-conduct requirement, no county would have a strong claim to have tort liability resolved according to its community judgment, making the community judgment of any county about equally appropriate. For want of a venue with a strong claim to resolve tort liability, the proposal would cross-reference the general venue statute and declare that the county with the greatest connection to the occurrence and the parties is "the county (or counties)

367. Products liability suits often allege that relevant design decisions were made at the corporate headquarters, not at the place where the product was manufactured. *See, e.g., Townsend*, 879 N.E.2d at 895 (reciting allegations that relevant design decisions were made in Illinois for a lawn tractor manufactured in South Carolina).

368. *See Townsend*, 879 N.E.2d at 904-05 (quoting *Second Restatement* § 146 & cmts. c & e (1971)) ("[A] strong presumption exists that the law of the place of injury, Michigan, governs the substantive issues herein, unless plaintiffs can demonstrate that Michigan bears little relation to the occurrence and the parties . . ." (emphasis in original)).

369. *Infra* Appendix B § 2-102.2(c).

370. *Id.*

where venue is proper under § 2-101.”³⁷¹ Under the convenience-based proposals discussed in Part II, defendant-based venue would determine the proper venue because transaction-based venue could not apply in situations where the tortious conduct and the injury both occurred outside Illinois.

C. *The Effect on Forum Shopping*

Adopting the proposed “most significant connection test” would have a significant effect on reducing forum shopping in Illinois—an effect that can be illustrated by applying this test to the facts of the Illinois Supreme Court’s last three intrastate *forum non conveniens* decisions. In all three instances, the parties had engaged in forum shopping. The most-significant-connection test would have prevented forum shopping in all three instances by making venue proper in just one county.

The first decision is *First American Bank v. Guerine*,³⁷² which addressed an intrastate *forum non conveniens* issue in a wrongful death suit based on an accident that happened when a trailer broke away from the vehicle towing it and hit the victim’s car head-on.³⁷³ The accident occurred in DeKalb County; the victim had resided in Kane County; the defendant driver resided in Cook County; and the defendant trailer manufacturer had its place of business in Indiana.³⁷⁴ The executor alleged that the trailer was negligently towed, defectively designed, and defectively manufactured.³⁷⁵ The executor sued in Cook County, and the trailer manufacturer sought an intrastate *forum non conveniens* transfer to DeKalb County.³⁷⁶

While the circuit court ordered the transfer, the Illinois Supreme Court reversed the transfer order on the ground that a transfer should be denied when the record shows “the potential trial witnesses are scattered among several counties, including the plaintiff’s chosen forum, and no single county enjoys a predominant connection to the litigation.”³⁷⁷ After lamenting the time it had to spend “micromanaging errant forum

371. See *infra id.* § 2-102.2(d) (“If no county meets the requirements of paragraphs (a)–(c), the county (or counties) with the greatest connection to the occurrence and the parties is the county (or counties) where venue is proper under § 2-101 and venue is proper where it is proper under § 2-101.”).

372. 764 N.E.2d 54 (Ill. 2002).

373. *Id.* at 56.

374. *Id.*

375. *Id.*

376. *Id.*

377. *Id.* at 56, 64.

rulings,” the Supreme Court expressed the hope that its holding would help clarify the intrastate *forum non conveniens* doctrine.³⁷⁸

Under the most-significant-connection test, the proper venue would have been DeKalb County. This conclusion would have been arrived at in two steps under the proposed rules. First, no county would meet the common-location requirement. At the time of his death, the victim had his regular dwelling place in Kane County, so the plaintiff executor would be deemed located there.³⁷⁹ The defendant driver would be located in Cook County, where he had his regular dwelling place.³⁸⁰ Second, DeKalb County would meet the place-of-injury requirement, because it is the county where the victim suffered the injury that killed him.³⁸¹ Accordingly, DeKalb County would unquestionably have the greatest connection to the occurrence and the parties and venue would be proper only in DeKalb County. No forum shopping could occur.

The second decision is *Dawdy v. Union Pacific Railroad Co.*,³⁸² which addressed an intrastate *forum non conveniens* issue in a personal injury suit based on a collision between a truck and a tractor.³⁸³ The collision occurred in Macoupin County; the victim resided in Greene County; the defendant truck driver resided in Macoupin County; and the defendant railroad, which employed the truck driver, did business in Macoupin County and operated a facility in Madison County.³⁸⁴ The victim alleged that the accident resulted from negligent driving, negligent training and supervision of the driver, and negligent attachment of items extending beyond the truck’s width.³⁸⁵ The victim filed suit in Madison County, and the defendants sought an intrastate

378. *Id.* at 60, 64.

379. *Id.* at 56; *see also infra* Appendix A § 2-102(c) (“The legal representative of a deceased individual’s estate is deemed located where, as of the time of death, the deceased individual had a ‘regular dwelling place’ or a ‘regular work place’ . . .”).

380. *Guerine*, 764 N.E.2d at 56; *see also infra* Appendix A § 2-102(a) (“An individual is located in the county (or counties) where the individual has a regular dwelling place or a regular work place.”). These statements about location assume the parties had their regular dwelling place where they resided and did not have a regular work place somewhere else. The decision does not indicate where the trailer manufacturer was doing business in Illinois, which is where a legal entity would be located when it has no place of business in Illinois. *See infra* Appendix A § 2-102(b)(4) (laying out different presence tests that courts would apply in a specified order to determine the county (or counties) in which legal entities, including corporations, are located).

381. *Guerine*, 764 N.E.2d at 56; *see also infra* Appendix B § 2-102.2(b) (defining “place of injury”).

382. 797 N.E.2d 687 (Ill. 2003).

383. *Id.* at 691.

384. *Id.* at 692.

385. *Id.*

forum non conveniens transfer to Macoupin County.³⁸⁶ While the circuit court denied the transfer, the Illinois Supreme Court granted transfer for two main reasons: (1) “none of the witnesses reside in Madison County,” and (2) “Macoupin County has a predominant connection to this case.”³⁸⁷

Under the most-significant-connection test, the proper venue would have been Macoupin County. This conclusion would have been arrived at by a two-step inquiry under the proposed rules. First, no county would meet the common-location requirement. At the time of the accident, the victim had his regular dwelling place in Greene County, and the defendant driver had his regular dwelling place in Macoupin County.³⁸⁸ Second, Macoupin County would meet the place-of-injury requirement because it is the county where the plaintiff suffered the injury.³⁸⁹ Accordingly, Macoupin County would have the greatest connection to the occurrence and the parties and venue would be proper only in Macoupin County. Again, no forum shopping could occur.

The third decision is *Langenhorst v. Norfolk Southern Railway Co.*, which addressed an intrastate *forum non conveniens* issue in a wrongful death suit based on a train-pickup truck collision at a railroad crossing.³⁹⁰ The accident occurred in Clinton County; the victim had resided in Clinton County; the defendant railroad had track traversing Clinton County and St. Clair County; the defendant division engineer resided in Macon County; the defendant train conductor resided in Indiana; and the defendant train engineer also resided in Indiana.³⁹¹ The special administrator alleged that the railroad violated state safety regulations about railroad crossing maintenance.³⁹² The special administrator sued in St. Clair County, and the defendants sought an

386. *Id.*

387. *Id.* at 700.

388. *Id.* at 692; see also *infra* Appendix A § 2-102(a)(1) (explaining that “an individual is located” in the county or counties where “the individual has a regular dwelling place or a regular work place” and defining a “regular dwelling place” as “a place where, at the time the suit is filed, the individual (i) is living, and (ii) has lived or intends to continue living for at least one year”). Again, these statements about location assume the parties had their regular dwelling place where they resided and did not have a regular work place somewhere else. The decision does not indicate the relative size of the defendant railroad’s places of business in Illinois, which would determine where it is located. See *infra id.* § 2-102(b)(3)(1)–(3) (explaining presence tests and the proper order in which courts should apply these presence tests to “legal entit[ies]” to determine the county or counties in which these legal entities are located).

389. *Dawdy*, 797 N.E.2d at 691; see also *infra* Appendix B § 2-102.2(b) (defining “place of injury”).

390. *Langenhorst v. Norfolk S. Ry. Co.*, 848 N.E.2d 927 (Ill. 2006).

391. *Id.* at 929–30, 939.

392. *Id.* at 929–31.

intrastate *forum non conveniens* transfer to Clinton County.³⁹³ The Illinois Supreme Court affirmed the denial of transfer for two main reasons: (i) “both St. Clair County and Clinton County have significant ties to the case;” and (ii) “the potential witnesses are scattered throughout several counties in the state, as well as Indiana and Missouri.”³⁹⁴

Under the most-significant-connection test, the proper venue would have been Clinton County. This conclusion would have been arrived at in two steps under the proposed rules. First, no county would meet the common-location requirement. At the time of his death, the victim had his regular dwelling place in Clinton County, so the plaintiff’s special administrator would be deemed located there.³⁹⁵ The defendant division engineer had his regular dwelling place in Macon County; and the defendant train conductor and the defendant train engineer had their regular dwelling places in Indiana.³⁹⁶ Second, Clinton County would meet the place-of-injury requirement because it is where the victim suffered the injury that killed him.³⁹⁷ Accordingly, Clinton County would have the greatest connection to the occurrence and the parties and venue would be proper only in Clinton County. Once again, no forum shopping could occur.

CONCLUSION

Illinois’s general venue statute should be amended. The statute’s defendant-convenience and witness-convenience purposes are poorly served by venue rules that reasonable persons who believe in these purposes cannot defend. These rules lead to far too much costly forum shopping, and their political effect is worse. Business-oriented groups have concluded that the venue rules applicable to them are designed

393. *Id.* at 929, 931.

394. *Id.* at 937.

395. *Id.* at 929; *see also infra* Appendix A § 2-102(c) (“The legal representative of a deceased individual’s estate is deemed located where, as of the time of death, the deceased individual had a ‘regular dwelling place’ or a ‘regular work place’ . . .”).

396. *Langenhorst*, 848 N.E.2d at 930; *see also infra* Appendix A § 2-102(a)(1) (explaining that “an individual is located” in the county or counties where “the individual has a regular dwelling place or a regular work place” and defining a “regular dwelling place”). Again, these statements about location assume the parties had their regular dwelling place where they resided and did not have a regular work place somewhere else. The decision does not indicate the relative size of the defendant railroad’s places of business in Illinois, which would determine where it would be located. *Infra* Appendix A § 2-102(b)(3)(1)–(3) (explaining presence tests and the proper order in which courts should apply these presence tests to “legal entit[ies]” to determine the county or counties in which these legal entities are located).

397. *Langenhorst*, 848 N.E.2d at 929–30; *see also infra* Appendix B § 2-102.2(b) (defining “place of injury”).

mainly to give plaintiffs in personal injury suits regular access to venues with socioeconomic characteristics favorable to plaintiffs. The groups' anger at this skewed administration of justice leads to nasty rhetoric ("Judicial Hellholes") and the advocacy of tort reform measures that have nothing to do with forum shopping—measures that, in this writer's opinion, are worse than the disease of forum shopping.

The time has come to restore confidence in the administration of justice by reforming Illinois venue laws. The adoption of the convenience-based proposals offered here would point Illinois in the right direction. True, in an era when advances in transportation and communication have shrunk the effective distances between different parts of the State, these convenience-based proposals, like any proposals of this type, would make multiple venues proper in many cases. Forum shopping would continue, albeit at a reduced pace. At the very least, however, reasonable persons could defend our venue rules with a straight face.

The anti-forum shopping proposals should be adopted to fully restore confidence in the administration of justice. These proposals, derived from Illinois conflict-of-laws decisions, would curb forum shopping in a way that is fair to both sides and respectful of the counties' different community judgments about tort liability. The counties where the community judgment favors greater tort liability would no longer decide disputes that should properly be decided in a different county, according to that county's judgment. On the other hand, in disputes that should properly be decided in a county where the community judgment favors greater tort liability, this county's community judgment would determine the matter unhampered by tort reform measures. If these proposals both anger the plaintiff's bar and disappoint business-oriented groups, so be it.

APPENDIX A: CONVENIENCE-BASED PROPOSALS

§ 2-101. Generally. Every action must be commenced in a county where venue is proper under paragraphs (a), (b), or (c), except as otherwise provided by special venue statutes or by a valid agreement about forum selection.

(a) Venue is proper in the county (or counties) where the greatest number of defendants is located.

(b) Venue is proper in the county (or counties) where the transaction occurred that gave rise to the cause of action.

(c) If there is no county where venue is proper under paragraphs (a)–(b), venue is proper in any county.

§ 2-102. Defendant-Based Venue. The following rules determine where defendants are located and which are counted to determine where the greatest number of defendants is located.

(a) An individual is located in the county (or counties) where the individual has a regular dwelling place or a regular work place.

(1) A “regular dwelling place” is a place where, at the time the suit is filed, the individual (i) is living, and (ii) has lived or intends to continue living for at least one year.

(2) A “regular work place” is a place where, at the time the suit is filed, the individual (i) is working or physically reporting for work, (ii) has worked or physically reported for work for at least one year, and (iii) has worked or physically reported for work on at least 150 days during the preceding one-year period.

(3) A regular dwelling place or a regular work place remains such a place during a temporary absence that is intended to last, and has lasted, for less than a year.

(b) A legal entity—including any type of corporation, partnership, or unincorporated association—is located in the county (or counties) identified by the following presence tests applied in the specified order.

(1) The legal entity is located in the county (or counties) where it has 50 or more regular workers at its place or places of business. An individual is a “regular worker” if, at the time the suit is filed, the individual (i) is working for the legal entity in any capacity, including as an employee, sole proprietor, partner, or independent contractor; (ii) has worked or physically reported for work at the place for at least one year; and (iii) has worked or physically reported for work at the place on at least 150 days during the preceding one-year period.

(2) If no county meets the test of subparagraph (1), the legal entity is located in the county (or counties) where it has 10 or more regular workers (see subparagraph (1)) at its place or places of business.

(3) If no county meets the tests of subparagraphs (1)–(2), the legal entity is located in the county (or counties) where the legal entity has a place of business.

(4) If no county meets the tests of subparagraphs (1)–(3), the legal entity is located in the county (or counties) where the legal entity is doing business.

(c) The legal representative of a minor or a legally disabled individual is deemed located where, at the time the suit is filed, the minor or the legally disabled individual has a “regular dwelling place” or a “regular work place” (see paragraph (a)). The legal representative of a deceased individual’s estate is deemed located where, as of the time of death, the deceased individual had a “regular dwelling place” or a “regular work place” (see paragraph (a)).

(d) The following four counting rules determine where the greatest number of defendants is located.

(1) A defendant counts if, and only if, it was sued in compliance with Illinois Supreme Court Rule 137.

(2) A defendant counts in each county where it is located.

(3) A dismissal—voluntary or involuntary—does not change whether a defendant counts.

(4) In case of a tie between counties for the greatest number of defendants, each such county is deemed a county where the greatest number of defendants is located.

§ 2-102.1. Transaction-Based Venue. The transaction that gave rise to the cause of action is deemed to have occurred where any matter occurred that the plaintiff has the burden of proving, except that venue cannot be based on the accrual of an expense claimed as money damages.

§ 2-103. Specially. In certain actions, the following special venue rules apply.

(a) If the corporate limits of a city, village or town extend into more than one county, the municipality may file an ordinance enforcement action—whether seeking a fine, imprisonment, penalty, or forfeiture, and regardless of where the violation occurred—in either the county where its clerk’s office is located or a county where at least 35% of the territory within its corporate limits is located. **[Transferred, as**

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modified, from chapter 735, act 5, section 2-101 of the Illinois Code.]

(b)–(e) [No changes from chapter 735, act 5, section 2-103 of the Illinois Code.]

(f) If a check, draft, money order, or other instrument for the payment of child support payable to or delivered to the State Disbursement Unit established under Section 10-26 of the Illinois Public Aid Code is returned by the bank or depository for any reason, venue for the enforcement of any criminal proceedings or civil cause of action for recovery (including recovery of attorney fees) shall be in the county where the principal office of the State Disbursement Unit is located. **[Transferred, as modified, from chapter 735, act 5, section 2-101 of the Illinois Code.]**

(g) In an action brought by a business against a consumer who was physically present in the State for part or all of the transaction, venue cannot be based on a matter that did not involve the consumer's physical presence. A "business" is an individual or a legal entity that sells, leases, lends, or enters into a transaction in the ordinary course of the individual's or legal entity's trade or business. A "consumer" is an individual who buys, leases, borrows, or enters into a transaction primarily for personal, family, or household purposes.

§ 2-104. Wrong venue—Waiver—Motion to transfer.

(a) [No changes from chapter 735, act 5, section 2-104 of the Illinois Code.]

(b) A defendant waives all venue objections by failing to make a timely motion to transfer the action to a proper venue. A "timely" motion means a motion made:

(1) on or before the date upon which the defendant is required to appear, or within any further time that may be granted to answer or move with respect to the complaint;

(2) promptly, if the addition of a new defendant changes the county (or counties) with the greatest number of defendants; or

(3) promptly, if the addition of a new cause of action requires severance and transfer because venue is improper on the new cause of action.

(c) [No changes from chapter 735, act 5, section 2-104 of the Illinois Code.]

§ 2-105. Preserving objections. Following the denial of a motion to transfer, no further step is required to preserve for appeal the venue objections that were included in the motion.

§ 2-106. Transfer. [No changes from chapter 735, act 5, section 2-106 of the Illinois Code.]

§ 2-107. Costs and expenses of transfer. The costs attending a transfer shall be taxed by the clerk of the transferring court, and, together with the filing fee in the transferee court, shall be paid by the plaintiff. If the transferring court finds that venue was fixed in violation of Illinois Supreme Court Rule 137, the transferring court may order the plaintiff to pay the reasonable expenses, including a reasonable attorney's fee, that the defendant incurred in attending and obtaining a transfer. If the costs and expenses are not paid within a reasonable time, the transferring court shall on motion dismiss the action. **[Transferred, as modified, from chapter 735, act 5, section 2-107 of the Illinois Code.]**

APPENDIX B: THE ANTI-FORUM SHOPPING PROPOSAL

§ 2-102.2. Venue in Higher-Value Personal Injury & Wrongful Death Actions. This special venue statute applies to all actions for injury to the person or wrongful death that seek money damages exceeding the amount specified in Illinois Supreme Court Rule 222. In these actions, venue is proper in the county (or counties) with the greatest connection to the occurrence and the parties according to paragraphs (a)–(d).

(a) A “common location” is a county where all plaintiffs and all defendants were located when the transaction occurred that gave rise to the cause of action. The location rules of § 2-102(a)–(c) determine a party's location, except these rules are applied to the facts at the time of the transaction. If a county meets the common location requirement, this county has the greatest connection to the occurrence and the parties and venue is proper in this county. If more than one county meets the common location requirement, each such county has the greatest connection to the occurrence and the parties and venue is proper in each such county.

(b) A “place of injury” is a county where the injury giving rise to the cause of action occurred. In a wrongful death suit, a “place of injury” is a county where the injury was suffered that caused the death, not the county where death occurred. If a county meets the place of injury requirement, and no county meets the requirement of paragraph (a), this county has the greatest connection to the occurrence and the parties and venue is proper in this county. If more than one county meets the place of injury requirement, and no county meets the requirement of

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paragraph (a), each such county has the greatest connection to the occurrence and the parties and venue is proper in each such county.

(c) A “place of conduct” is a county where the acts or omissions giving rise to the cause of action occurred. If a county meets the place of conduct requirement, and no county meets the requirements of paragraphs (a)–(b), this county has the greatest connection to the occurrence and the parties, and venue is proper in this county. If more than one county meets the place of conduct requirement, and no county meets the requirements of paragraphs (a)–(b), each such county has the greatest connection to the occurrence and the parties, and venue is proper in each such county.

(d) If no county meets the requirements of paragraphs (a)–(c), the county (or counties) with the greatest connection to the occurrence and the parties is the county (or counties) where venue is proper under § 2-101, and venue is proper where it is proper under § 2-101.