# Gaps Filled in Venue Statute

by Colin H. Dunn

**Gaps filled in Venue Statute**

Normally, determining venue is a relatively straight-forward analysis. Section 2-101 of the Illinois Code of Civil Procedure provides that every action must be commenced either: "(1) in the county of residence of any defendant who is 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, or (2) in the county in which the transaction or some part thereof occurred out of which the cause of action arose."[1]

While establishing the residence of an individual defendant is also straightforward in the mill run of cases - it's where the defendant lives when the lawsuit is filed-[2] pinning down a corporate defendant's residence can be trickier. Luckily, subsection 2-102(a) defines residency for corporate defendants. It provides that a private corporation "is a resident of any county in which it has its registered office or other office or is doing business."[3] Several recent cases have analyzed these venue pathways: what qualifies as an "other office;" how much business is "doing business;" and when an aspect of the plaintiff's claim is "part thereof" under the "transaction" prong.

**I. What's an "other office"?**

For instance, in *Tabirta v. Cummings*,[4] the Illinois Supreme Court found that a corporate defendant employee's home office didn't qualify as an "other office" for venue purposes. In *Tabirta*, the plaintiff's tractor trailer was struck by the defendants' tractor trailer in Delaware County, Ohio. The plaintiff sued in Cook County, Illinois. After the defendants moved to transfer venue, the parties engaged in limited discovery, which revealed that the defendant-driver was not a resident of Cook County. The corporation that owned the truck was a Missouri corporation with its principal place of business and registered agent located in the city of Chester, Illinois, which is in Randolph County. That corporate defendant owned multiple food manufacturing plants in the midwest region of the United States, including several in Illinois, but none in Cook County. However, the corporate defendant employed a part-time customer service and account representative who worked out of his home in Cook County. So the question for the supreme court was whether that home office qualified as an "other office" under the venue statute.

**A. General venue law**

The court began its analysis by noting that proper venue is a valuable privilege belonging to the defendant.[5] As such, it is accorded great weight by Illinois courts.[6] The purpose of the Illinois venue statute is to ensure "that the action will be brought either in a location convenient to the defendant, by providing for venue in the county of residence, or convenient to potential witnesses, by allowing for venue where the cause of action arose."[7] The statute "reflect[s] the legislature's view that a party should not be put to the burden of defending an action in a county where the party does not maintain an office or do business and where no part of the transaction complained of occurred."[8]

A defendant who objects to a plaintiff's chosen venue bears the burden of proving that the venue is incorrect.[9] The defendant must be able to identify specific facts clearly establishing that the plaintiff's choice of venue is improper.[10] In considering a defendant's motion based on improper venue, the trial court should construe the statute liberally in favor of effecting a change of venue.[11]

**B. Other cases discussing what constitutes an "other office."**

The supreme court then reviewed appellate court decisions that interpreted the "other office" language in the venue statute. For instance, in *Melliere v. Luhr Bros., Inc.*, the appellate court found an airport hangar leased by the defendant to

house an airplane used to transport employees to job sites, locations for bidding jobs, and industry meetings and conventions qualified as an "other office" where the defendant employed two full-time pilots who regularly reported to work at the hangar and logged approximately 400 flight hours per year; the hangar was equipped with a telephone and a desk for the pilots' use; and the public telephone directory also contained a business listing for the defendant at the airport hangar.[12] The court also reviewed the Georgia Supreme Court's decision in *Scott v. Atlanta Dairies Cooperative*, where a facility that the defendant (a corporate milk distributor) rented, equipped and listed in the telephone directory; maintained its trucks; and dispatched its employees to pick up milk qualified as an office for venue purposes.[13]

Those cases provided the supreme court with a definition of "other office" for venue purposes:

> [T]he 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. This *other office* may be, but need not be, a traditional office in which clerical activities are conducted. Rather, we believe that the phrase *other office* includes any fixed location purposely selected to carry on an activity in furtherance of the corporation›s business activities. The facility may be open to the public or may be a strictly private corporate operation.[14]

**C. The defendant's employee's home office was not an "other office" of the corporation for venue purposes.**

Applying that definition, the court found that while the corporate defendant employee's home office "was an 'office' in the plain, commonly understood sense of the word," and although he "clearly engaged in activities in furtherance of [the defendant's] corporate business interests," it did not qualify as an "other office" under the venue statute.[15]

While the defendant hired the employee to provide service to three of its customers in Northern Illinois and knew he would be working out of his home, there was no evidence it hired him because he lived in Cook County. There was also no evidence that the defendant intended to open an office in Cook County or would have done so had it not hired the employee. So the corporate defendant did not "purposely select[]" a fixed location

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in Cook County to carry on its business activities.[16]

And the corporate defendant did not own, lease, or pay any expenses associated with the employee's residence. It paid no portion of his mortgage, real estate taxes, or utilities, including telephone and Internet charges. Though it furnished him with a computer, it did not provide a cell phone or any office supplies. The corporate defendant did not hold out to customers or the public that his residence was its office. His home address was not listed as a corporate location on its website or in any public or internal directories. There was no corporate signage on the home. And no customers ever came to his home.[17]

That the employee conducted work for the corporation from his home office, standing alone, was not enough for his home to qualify as an "other office" of the corporation. The key was there was no evidence the corporation purposely selected his residence as its office. So the employee's Cook County residence was not an office of the corporation for venue purposes.[18]

## II. What kind of business is needed under the "doing business" prong?

To establish corporate residency under the "doing business" prong of the statute, the defendant "must * * * be conducting its usual and customary business within the county in which venue is sought."[19] This requires a defendant to have more extensive contacts with a county than the "minimal contacts" required to subject a defendant to the jurisdiction of the Illinois courts.[20] Evidence that a defendant solicits business or sells goods and services within the county does not automatically establish that defendant is "doing business" in the county.[21]

A relevant factor in the court's determination is the quantity or volume of business conducted by the defendant in the county.[22] A defendant will be characterized as doing business only where its activities are "of such a nature so as to localize the business and make it an operation within the district."[23] And "residence" for venue purposes means residence at the time of the institution of the suit.[24]

The supreme court found the doing business prong was not met for many of the same reasons that the home office wasn't an "other office:" the corporation had no office or other facility in Cook County; it did not design, manufacture, advertise, finance, or sell its products from within Cook County; no products were sold from the employee's home office and the work he conducted from his Cook County residence was merely incidental to the corporation's usual and customary business of food product manufacturing; and the corporation's sales to customers in Cook County constituted just 0.19 percent of its total sales, *i.e.*, less than one-fifth of 1 percent of its total sales, for the year 2016.[25] Because the corporation was not "doing business" in Cook County, and there was no other venue pathway that led to Cook County as a proper venue, the supreme court remanded the case to the circuit court to transfer the matter to an appropriate forum.[26]

## III. How is the "transaction or some part thereof" analysis conducted?

Besides the residency pathway to venue, the statute also allows for a lawsuit to be filed in "the county in which the transaction or some part thereof occurred out of which the cause of action arose."[27] Known as the "transactional pathway," in *Braun v. Aspide Med.*,[28] the first district helpfully analyzed how to determine when part of the "transaction" occurs within a county for venue purposes.

In *Braun,* the plaintiffs filed product liability claims in Cook County after surgical meshes implanted in their bodies to repair hernias allegedly caused further injury. Believing venue was improper in Cook County, the defendant (the mesh manufacturer's exclusive U.S. distributor) filed a motion to transfer venue to Lake County, arguing no defendant resided in Cook County and no part of the transaction from which the plaintiffs' claims arose occurred in Cook County.

Under the transactional pathway, an action must be commenced "in the county in which the transaction or some part thereof occurred out of which the cause of action arose."[29] The phrase should be interpreted broadly and liberally.[30] The First District analyzed three cases to determine how to apply that section of the venue statute.

### A. Cases applying the "transactional" pathway.

The first case was *Rensing v. Merck & Co.*,[31] where a plaintiff filed a class action complaint in St. Clair County sounding in fraud against

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a drug manufacturer for marketing and selling the drug Vioxx as safe and effective for people with hypertension despite allegedly being aware that clinical trials associated hypertension-related adverse health effects with Vioxx. In determining where "the transaction or some part thereof occurred," the court stated that the two factors were important: (1) the nature of the cause of action and (2) the place where the cause of action sprang into existence.

In cases involving consumer fraud, the action "springs into existence where the alleged acts concerning the fraud took place." "This is the place where the product is manufactured and/or the place where the decisions regarding any advertising, promotion, and/or nondisclosure take place," not where any plaintiffs purchased the product. Because the defendant's advertising, promotion, and nondisclosure did not occur in St. Clair County and the plaintiffs only purchased Vioxx there, the appellate court reversed the circuit court's ruling and found venue was improper in St. Clair County

The second case was the supreme court's decision in *Williams v. Illinois State Scholarship Comm'n*,[32] where the plaintiffs filed a class action to prevent an Illinois state agency from filing collections actions on their defaulted and delinquent student loans in Cook County. In determining whether venue would be proper in Cook County for the agency to file their collections actions, the supreme court discussed the transactional pathway for venue and highlighted how the operative phrase "transaction or some part thereof" had been defined previously.

The supreme court noted one definition was the place where "any significant negotiations were carried on between the parties, where an agreement was signed, the place where it was, or was supposed to be performed, or where matters occurred that plaintiff has the burden of proving."[33] Other definitions included "the place where dealings between the parties themselves occurred while they were in an adversarial position [citations] or where an event or act which alters the legal relation of the parties took place."[34] Ultimately, our supreme court found that venue would not be proper in Cook County because there was no evidence there was any personal or direct dealings between the plaintiffs and the state agency in Cook County and because the acts that altered the legal relationship of the parties, *i.e.*, signing for the loans,

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did not occur in Cook County. As such, "none of the integral parts of these transaction occurred in Cook County."

In the third case, *Lake County Riverboat L.P. v. Illinois Gaming Board*,[35] the appellate court asserted that, in determining venue under the transactional pathway, the two factors that must be analyzed were the nature of the cause of action and the place where the cause of action sprang into existence. The court then stated "[t]his is generally the place where the parties' direct dealings occurred while in an adversarial position or where events occurred that altered the parties' legal relationship."[36]

The first district found "the only difference between the frameworks discussed in *Williams* and *Rensing* was semantics.[37] Each variation of the essentially same framework has its place based on the specifics of the case, such as in *Williams*, which at its core was a contracts case involving students who were delinquent or had defaulted on their student loans, or in *Rensing*, which at its core was a fraud case. Consequently, the framework from *Rensing* does not contravene *Williams*, as they are two sides of the same coin, and the *Rensing* framework may be properly used to determine whether venue is proper under the transactional pathway."[38]

**B. Whether transactional pathway applies depends on the nature of the cause of action.**

The first district then examined "the nature of the cause of action and the place where the cause of action sprang into existence to determine if venue was proper in Cook County under the transactional pathway."[39] In doing so, any element, and the facts supporting it, that the plaintiff must prove to sustain his or her cause of action may establish venue.[40]

The plaintiffs each brought four causes of action against the defendant, including for strict liability and negligence. In a strict liability claim, one element the plaintiff must prove is that the product was unreasonably dangerous.[41] And a product may be unreasonably dangerous because of a party's failure to adequately warn of the product's risks.[42] In a negligence claim, one element the plaintiff must prove is that the defendant breached its duty of care.[43] And, under certain circumstances, the defendant's failure to warn of a product's risks may "constitute a breach of duty upon which an action for negligence might be predicated."[44] Indeed, in

support of the plaintiffs' causes of action for strict liability and negligence, they alleged that the defendant failed to adequately warn medical professionals and the public at large to the risks of the surgical mesh and alleged that the defendant marketed the product as safe despite the many adverse consequences associated with its implantation.[45]

When plaintiffs were implanted with the mesh, the defendant was based in Cook County. And, as the circuit court found, per the defendant's own website, the defendant was a sales and marketing distribution partner of the mesh manufacturer. Taken together, when plaintiffs were implanted with the mesh, the defendant formulated its marketing efforts while its sole office was in Cook County. Given that the allegations in plaintiffs' complaints concerned failing to transparently market and promote the mesh and there is nothing demonstrating those advertising decisions did not originate from the defendant's sole office in Cook County, some part of the transaction out of which the plaintiffs› causes of action arose occurred in Cook County.[46] The first district found that because several of the principal allegations that the plaintiffs must prove involve misrepresentations and omissions by the defendant in its marketing and promotion of mesh made in Cook County, venue was proper in Cook County.

**Conclusion**

For most cases, determining venue is easy: the lawsuit can be filed in either the county where the incident occurred or where a defendant resides. But the cases discussed above show that there may be more options than initially appears. Investigating where corporate offices are located can unlock additional venue locations. So can determining where the corporation conducts business. And breaking up a claim into separate occurrences can open up additional venues. For instance, if the claim is for negligent training, the county where that training occurred might qualify under the transaction analysis described in *Braun*. So don't just reflexively assume the only venue options are the two most often relied upon.

**Endnotes**

1 735 ILCS 5/2-101 (West 2016).

2 In Illinois, the term "residence" is determined on a case-by-case basis. See *Webb v. Morgan*, 176 Ill. App.3d 378, 386 (1988). Residence

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is generally understood to include the intent of the party whose residence is in question as well as his permanency of abode and mere physical presence. *Id.*, at 386. The party's intent, the controlling factor, is gathered primarily from his actions. *Id.*

[3] 735 ILCS 5/2-102(a) (West 2016). The definition is slightly different for partnerships and voluntary unincorporated associations. Partnerships are residents of "any county in which any partner resides or in which the partnership has an office or is doing business." 735 ILCS 5/2-102(b). A voluntary unincorporated association "is a resident of any county in which the association has an office or, if on due inquiry no office can be found, in which any officer of the association resides." 735 ILCS 5/2-102(c). There are no decisions from Illinois stating what residency definitions apply to a limited liability company for venue purposes. *Braun v. Aspide Med.*, 2020 IL App (1st) 200131, ¶ 22, citing Keith H. Beyler, *Illinois Venue Reform: Not Tort Reform Rants*, 43 Loy. U. Chi. L.J. 757, 772 (2012) (finding "it is undecided in Illinois which venue rules apply to limited liability companies" though asserting that the residency rules of voluntary unincorporated associations would likely apply). Also, nonresident corporations, partnerships, and voluntary unincorporated associations can be sued in any county (assuming Illinois has personal jurisdiction over the entity). 735 ILCS 5/2-101 ("If all defendants are nonresidents of the State, an action may be commenced in any county").

[4] 2020 IL 124798.

[5] *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 154 (2005).

[6] *Stambaugh v. International Harvester Co.*, 102 Ill. 2d 250, 260 (1984).

[7] *Baltimore & Ohio R.R. Co. v. Mosele*, 67 Ill. 2d 321, 328 (1977), citing Edson R. Sunderland, *Observations on the Illinois Civil Practice Act*, 28 Ill. L. Rev. 861 (1934).

[8] *Bucklew v. G.D. Searle & Co.*, 138 Ill. 2d 282, 289 (1990), citing *Stambaugh v. International Harvester*, 102 Ill. 2d 250 (1984) and *Baltimore & O.R. Co. v. Mosele*, 67 Ill. 2d 321 (1977).

[9] *Corral*, 217 Ill. 2d at 155.

[10] *Id.*

[11] *Stambaugh*, 102 Ill. 2d at 261.

[12] 302 Ill. App. 3d 794 (1999).

[13] 239 Ga. 721, 238 S.E.2d 340 (1977).

[14] *Tabirta v. Cummings*, 2020 IL 124798, ¶ 26.

[15] *Id.*, ¶ 27.

[16] *Id.*, ¶ 29.

[17] *Id.*, ¶ 30.

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[18] *Id.*, ¶ 32.
[19] *Mosele*, 67 Ill. 2d at 329.
[20] *Id.*
[21] *Bucklew*, 138 Ill. 2d at 292.
[22] *Weaver v. Midwest Towing, Inc.*, 116 Ill. 2d 279, 286 (1987).
[23] *Mosele,* 67 Ill. 2d at 329-30, quoting *Remington Rand, Inc. v. Knapp-Monarch Co.*, 139 F. Supp. 613, 617 (E.D. Pa. 1956)).
[24] *Wilson v. Central Illinois Public Service Co.*, 165 Ill. App. 3d 533, 537 (1988).
[25] *Tabirta v. Cummings*, 2020 IL 124798, ¶¶ 35-6.
[26] *Id.*, ¶ 37.
[27] 735 ILCS 5/2-101.
[28] 2020 IL App (1st) 200131.
[29] 735 ILCS 5/2-101 (West 2018).
[30] *Tipton v. Estate of Cusick*, 273 Ill. App. 3d 226, 228 (1995).
[31] 367 Ill. App. 3d 1046 (2006).
[32] 139 Ill. 2d 24 (1990).
[33] *People ex rel. Carpentier v. Lange*, 8 Ill. 2d 437, 441 (1956).
[34] *Christopher v. West*, 345 Ill. App. 515, 528 (1952); *Winn v. Vogel*, 345 Ill. App. 425, 431-32 (1952); La *Ham v. Sterling Canning Co.*, 321 Ill. App. 32, 44 (1943).
[35] 313 Ill. App. 3d 943, 952 (2000).
[36] *Id.* at 953, citing *Williams*, 139 Ill. 2d at 69.
[37] *Braun v. Aspide Medical*, 2020 IL App (1st) 200131, ¶ 33.
[38] *Id.*
[39] *Id.*, ¶ 34.
[40] *Kaiser v. Doll-Pollard*, 398 Ill. App. 3d 652, 656 (2010).
[41] *Mikolajczyk v. Ford Motor Co.*, 231 Ill. 2d 516, 543 (2008).
[42] *Hammond v. North American Asbestos Corp.*, 97 Ill. 2d 195, 206 (1983).
[43] *Calles v. Scripto-Tokai Corp.*, 224 Ill. 2d 247, 270 (2007).
[44] *Lewis v. Lead Industries Ass'n*, 342 Ill. App. 3d 95, 100 (2003).
[45] *Braun v. Aspide Medical*, 2020 IL App (1st) 200131, ¶ 35.
[46] See *Rensing*, 367 Ill. App. 3d at 1050 (in cases where plaintiffs have alleged defendants' failure to disclose material facts regarding products, the action "springs into existence" "where the product is manufactured and/or the place where the decisions regarding any advertising, promotion, and/or nondisclosure take place").




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