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The IDC Monograph

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The Evolution of Forum *Non Conveniens* in Illinois and Recent Legislation to Limit the Doctrine

Recent developments regarding the doctrine of forum *non conveniens* over the past year have forced civil litigation practitioners to consider both the Illinois appellate courts' evolving analysis of this doctrine as well as the potential for legislation attempting to eradicate intrastate forum *non conveniens* as an option for defendants and courts to consider when cases are filed in technically correct but wholly inconvenient forums within the state.

The purpose of this Monograph is to educate the reader as to the long history and importance of the forum *non conveniens* doctrine and to a recent movement to have the Illinois legislature act to take away Illinois courts' ability to transfer cases to more appropriate counties within the State. It is well-known that certain Illinois counties are viewed as more "plaintiff-friendly," while others are viewed as more defense-oriented. Plaintiffs have the power to choose where to file their lawsuits within the rules and laws concerning venue and jurisdiction. Illinois Supreme Court Rule 187, which allows for transfer or dismissal of cases pursuant to the doctrine of forum *non conveniens*, is a defendant's check on the plaintiff's unilateral choice, which ensures fairness and convenience to all parties. This rule has engendered a robust history of case law that continues to evolve as courts wrestle with the factors that make a county both technically correct and also fair and convenient to the parties, witnesses, jurors, and counties themselves.

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History of the Doctrine of Forum *Non Conveniens*

The doctrine of forum *non conveniens* is a long-standing part of the common law in this country. Although the origins of the doctrine are unclear, it is believed that it was first discussed in Scottish estate cases.[1] In the federal courts of the United States, the doctrine was seen earliest and most frequently in admiralty law.[2] However, the doctrine was not exclusively used in admiralty law and has long been a doctrine of general application in the federal courts.[3]

The modern framework for forum *non conveniens* was first put forth in *Gulf Oil Corp. v. Gilbert*. *Gulf Oil Corp.* arose out of a warehouse fire in Lynchburg, Virginia.[4] The plaintiff was a resident of Virginia, and the defendant corporation was qualified to do business in Virginia and New York.[5] Plaintiff filed suit in New York even though the incident occurred in Virginia and most of the witnesses resided in Virginia.[6] The Supreme Court upheld the District Court's dismissal of the plaintiff's complaint and remittal to the courts of Virginia, explaining that under the principle of forum *non conveniens* a court may "resist imposition upon its jurisdiction even when jurisdiction is authorized by the letter of a general venue statute" to prevent misuse of venue.[7] The court noted that it had not attempted to catalogue the circumstances which would require granting or denying the remedy – much discretion is granted to the court selected by the plaintiff.[8] Instead, the court provided a list of private and public factors the court is to consider when determining whether the case should be transferred.[9] The United States Supreme Court has continued to develop the doctrine set forth in *Gulf Oil Corp*.[10]

Illinois courts employ the analytical framework for forum *non conveniens* motions established in *Gulf Oil Corp*. In *Adkins v. Chicago, Rock Island & Pac. R.R. Co.*,[11] the Illinois Supreme Court provided one of the earliest discussions of forum *non conveniens* by Illinois courts. The case was brought by a Michigan resident against a railroad doing business in Iowa, Illinois and other states and involved a grade crossing collision in Iowa.[12] Originally, the case was filed in Iowa and then voluntarily dismissed, before being refiled in Illinois.[13] The defendant moved to dismiss the Illinois action on the ground of forum *non conveniens*.[14] Before the court could rule on the motion, the plaintiff added the engineer and conductor, who were Illinois residents, as defendants to the action.[15] The court denied the motion to transfer the case, and it proceeded to trial.[16] The forum issue was raised again in post-trial motions.[17] The Illinois Supreme Court applied the *Gulf Oil Corp.* factors and found the case should have been transferred to Iowa.[18] Specifically, the *Adkins* court noted that the only connection Illinois had to the lawsuit was that the railroad did business there, and that the action was ready for trial in Iowa before it was voluntarily dismissed and then tried in Illinois. [19]

As evidenced in *Adkins*, some of the first Illinois cases that employed the doctrine involved egregious examples of forum shopping. Three early forum *non conveniens* cases to go to the Illinois Supreme Court involved Federal Employment Liability Act ("FELA") suits arising out of injuries in Iowa, Michigan, and Oklahoma, respectively.[20] In all three, the only connection to Madison County or St. Clair County, where the cases were filed, was that the defendant railroad's track ran through those counties and that plaintiffs' lawyers' offices were in those counties. In each of these cases, the Illinois Supreme Court found that the private and public factors favored transfer of the case to the place where the incident occurred.[21] Since then, Illinois courts have continued to apply the *Gulf Oil Corp*. factors to dismiss cases where the incident occurs outside of the state of Illinois and the case is filed in Illinois. More recently, in *Fennell v. Illinois Central R.R. Co.*, the Illinois Supreme Court dismissed a FELA case filed in St. Clair County, Illinois brought by a former railroad employee who lived in Hazlehurst, Mississippi against a defendant with offices in Memphis, Tennessee.[22] The *Fennell* court applied the *Gulf Oil Corp.* factors in reaching its conclusion to dismiss the action in favor of a Mississippi forum.[23]

In addition to interstate forum *non conveniens*, Illinois also developed intrastate forum *non conveniens*, as recognized by the Illinois Supreme Court in *Torres v. Walsh*.[24] The *Torres* court stated any distinction between intrastate and interstate forum *non conveniens* was merely artificial.[25] The court found that it was in the trial court's discretion to dismiss a case when a more appropriate intrastate forum is available and maintenance of the action in the selected forum would cause unnecessary hardship to the defendant and other parties.[26] Unlike most states where intrastate forum *non conveniens* is created by state legislatures, in Illinois the doctrine was created by the court under its power to manage Illinois courts under Article VI, Sec. 16 of the 1970 Illinois Constitution.[27] In subsequent cases, Illinois courts applied the *Gulf Oil Corp.* factors to determine whether a case should be transferred intrastate.[28]

Venue Compared to Forum *Non Conveniens*

Venue and forum *non conveniens* are two related, and often confused, concepts. Venue is governed by statute while forum *non conveniens* is an equitable doctrine later encapsulated in an Illinois Supreme Court Rule.[29] Venue is the legal concept of where an action is to be heard, specifically the geographical location.[30] The determination of venue is a procedural question and, therefore, is within the province of the legislature.[31]

Proper venue is an important statutory privilege held by the defendant.[32] In Illinois, proper venue is governed by the Code of Civil Procedure.[33] Generally, the venue statute is designed to ensure that an action will be heard in a location that is either convenient to the defendant based on the county of residence or convenient to potential witnesses based on the county where the action arose.[34] As such, venue may properly lie in more than one location.[35]

This reflects the legislature's view that the defendant should not be burdened with defending an action in a location that does not have any connection to the action.[36] Further, the venue statute serves to protect the defendant against the plaintiff's arbitrary selection of a forum.[37]

The defendant may waive or even forfeit an objection to improper venue by failing to timely raise the issue.[38] Under section 2-104(b) of the Illinois Code of Civil Procedure, all objections to improper venue are waived unless a motion to transfer is brought by the defendant on or before the date the defendant is required to appear or within any further time granted to answer or move with respect to the complaint.[39] Therefore, the burden of proving improper venue is on the defendant.[40] The defendant must show a clear right to relief based on specific facts, not conclusions.[41] The defendant may establish the necessary specific facts by providing supporting affidavits.[42] Although the defendant has an absolute right to insist on proper venue, any doubts resulting from the inadequacy of the record will be resolved against the defendant.[43]

Relatedly, the doctrine of forum *non conveniens* is an equitable doctrine rooted in notions of fundamental fairness and the effective administration of justice.[44] It presupposes the existence of at least two locations in which venue is proper and allows a court to decline jurisdiction if another location would better serve the ends of justice.[45]

The procedure for a motion to transfer pursuant to the doctrine of forum *non conveniens* is governed by Illinois Supreme Court Rule 187.[46] Unlike a motion to transfer based on improper venue, a motion based on forum *non conveniens* grounds does not need to be raised before the defendant's answer, but rather must be filed within ninety days after the last day allowed for the filing of that defendant's answer.[47] The Fourth District Court of Appeals case of *New Planet Energy Dev. LLC v. Magee*[48] recently clarified the timing requirement of Rule 187, finding the deadline is triggered by the filing of the party's answer, and not an amended answer.[49] The court further noted that while Supreme

Court Rule 183 allows the trial court to extend the time for filing, the defendant had not shown good cause for the forum *non conveniens* deadline to be extended.[50]

Additionally, the costs related to transferring an action differ depending on the basis for the transfer. The costs associated with transferring due to improper venue are taxed to the plaintiff, while the costs associated with transferring based on forum *non conveniens* considerations are taxed to the moving party.[51] Both motions may be supported by affidavit.[52]

Recent Forum *Non Conveniens* Decisions

There have been a series of recent decisions by the Fifth District Court of Appeals that have shown a more stringent approach to forum issues. The appellate court has closely examined the recent cases to determine if there is any real connection to the forum where the case is filed. The public factors appear to be of greater importance in the analysis than they have been in the past. All the recent cases decided by the Fifth District Court of Appeals involve incidents occurring outside St. Clair County with the lawsuits being filed in St. Clair County.

The Fifth District Court of Appeals ordered transfer from St. Clair County to Monroe County in *Shaw v. Haas*, in which a plaintiff was allegedly injured in a grocery store in Monroe County, Illinois, but filed her complaint in St. Clair County, Illinois.[53] In *Shaw*, the defendant lived almost equidistant from the two courthouses and the grocery store headquarters was similarly almost equidistance from both courthouses as well.[54]

In reversing the trial court's denial of defendants' motion to transfer, the Fifth District Court of Appeals noted that the St. Clair County courts are much more congested than the Monroe County Courts.[55] The court found that because the incident occurred in Monroe County, the residents of Monroe County had an interest in the litigation.[56] The court further noted that the plaintiff's choice of forum was entitled to less deference because he was not from St. Clair County.[57] The Fifth District Court of Appeals concluded it would be unfair to burden the citizens of St. Clair County with jury duty in that case.[58]

The Fifth District Court of Appeals also recently decided a medical malpractice case that illustrates this approach. *Kuhn v. Richard Nicol* involved medical malpractice claims where the alleged malpractice occurred in Clinton County, but the case was filed in St. Clair County, Illinois.[59] The Fifth District Court of Appeals found the trial court abused its discretion in denying the defendants' forum *non conveniens* motion and ordered the case to be transferred to Clinton County.[60]

In *Kuhn*, the Fifth District first noted that the alleged malpractice occurred in Clinton County.[61] The court further noted that plaintiff was a resident of Clinton County.[62] Plaintiff produced an affidavit of twenty-five witnesses who had information about plaintiff's condition before and after the stroke he suffered because of the alleged malpractice.[63] The court, relying on *Bland v. Norfolk Western Ry. Co.*,[64] addressed those witnesses in a manner similar to treating physicians and further questioned why counsel did not provide any explanation as to why no lay witnesses in Clinton County, where plaintiffs resided, were listed, as they could have provided identical testimony.[65] In its analysis, the court considered a viewing of the premises as a factor of trial convenience, even though it would be unlikely.[66]

The appellate court found the public factors strongly favored transfer to Clinton County.[67] The court noted that court congestion is a relevant factor to consider in determining whether the case should remain in plaintiff's chosen forum.[68] Specifically, the appellate court noted the Illinois Court's Statistical Summary showed that the courts of St. Clair County were significantly more congested than the courts of Clinton County.[69] Further, the court found that the residents of St.

Clair County had no local interest in the claim even though defendants conducted business in St. Clair County.[70] The residents of Clinton County, however, had a strong local interest because they "rely on the defendants for their medical treatment."[71] Based on these factors, the court noted it would be unfair to burden the citizens of St. Clair County with jury duty when St. Clair County had no connection to the case.[72] Finally, the Kuhn court stressed that, although plaintiffs are accorded deference to their choice of forum, they are accorded less deference when the plaintiff is a non-resident of the county where the case is filed.[73]

On the same day the Fifth District Court of Appeals issued its opinion in *Kuhn*, it also published its opinion in another medical malpractice forum *non conveniens* case filed in St. Clair County, *Evans v. St. Joseph's Hospital*.[74] Unlike in *Kuhn,* in *Evans*, the appellate court affirmed the trial court's denial of the defendant's motion to transfer pursuant to forum *non conveniens*.[75]

The *Evans* case involved an alleged failure to diagnose recurrent kidney cancer.[76] The claim was filed in St. Clair Count against St. Joseph's Hospital, Dugan Radiology Associates, Dr. Thomas Doyle, Urology Consultants, and Dr. Jeffrey Parres.[77] St. Joseph's Hospital filed a motion to transfer pursuant to forum *non conveniens*.[78] Defendants argued that plaintiff was a resident of Clinton County and that the alleged malpractice occurred in Clinton County.[79] Dr. Doyle worked in Clinton County, while Dr. Parres worked in Madison County.[80] In response to the motion to transfer, plaintiff argued that Urology Consultants and its employees practice medicine in St. Clair County.[81] Plaintiff further argued Dr. Doyle and Dr. Parres lived in St. Louis, Missouri and the Clinton County courthouse was twice as far away from St. Louis as the St. Clair County courthouse.[82]

The Fifth District Court of Appeals found that some of the alleged malpractice occurred in St. Louis which was significantly closer to the St. Clair County courthouse than the Clinton County courthouse.[83] The court found court congestion was not as significant of a factor because the other factors did not strongly favor transfer.[84] The court also found that the interest in local controversy factor did not favor transfer because Urology Consultants practiced medicine in St. Clair County, and thus, residents of St. Clair County would have an interest in determining if they met the standard of care.[85]

Even more recently, the Fifth District Court of Appeals decided another medical malpractice case with a similar fact pattern, *Brandt v. Shekar et al*.[86] In *Brandt*, the plaintiff presented to St. Mary's Hospital in Marion County, Illinois for yearly screenings and diagnostic mammograms from 2012 to 2015.[87] The radiological services were provided by Mid-America Radiology, S.C., an Illinois corporation headquartered in Jefferson County, Illinois.[88] Plaintiff's screenings were reviewed by two radiologists, Dr. Shekar and Dr. Carmody.[89] Dr. Shekar was a resident of St. Clair County but practiced medicine in Marion County.[90] Dr. Carmody lived in Iowa but practiced in Marion County.[91] Plaintiff filed a cause of action against each defendant alleging that the defendants failed to timely diagnose cancer which caused plaintiff to suffer injury and damage.[92] Dr. Shekar conceded venue was proper but moved to transfer the case pursuant to forum *non conveniens*.[93] The co-defendants joined the motion.[94]

The trial court issued an order denying the transfer noting that Dr. Shekar was a resident of St. Clair County, that plaintiff's choice of forum was entitled to deference, and that defendants failed to meet their burden.[95] The Fifth District reversed the trial court and found the record clearly demonstrated that the litigation had no practical connection to St. Clair County and a balance of relevant factors strongly favored transfer to Marion County.[96] The court further found it was undisputed that the alleged interpretation of the mammograms, which was the basis for the lawsuit, occurred in Marion County.[97] The local interest in local controversies and the imposition of jury duty upon residents of the pending forum were also found to strongly favor transfer to Marion County.[98]

The opinion in *Brandt* drew a dissent. The dissenting opinion argued that because the majority disagreed with the trial court's reasonable conclusion, the court effectively lowered the standard of review in order to reverse.[99] The dissenting justice argued the appellate court was simply substituting its judgment for that of the trial court.[100]

Of note, all the cases discussed above contain some discussion of *Langenhorst v. Norfolk Southern Ry. Co.*[101] *Langenhorst* arose out of a railroad crossing collision that occurred in Clinton County, Illinois near the St. Clair/Clinton County line.[102] In affirming the trial court and appellate court's decision to deny transfer from St. Clair to County Clinton, the Illinois Supreme Court noted that a viewing of the premises would not help because the condition of the crossing had changed.[103] The Illinois Supreme Court also noted that witnesses were scattered amongst many counties and states.[104] The Illinois Supreme Court found that residents of St. Clair County would have an interest in the case because defendant had a registered agent in St. Clair County and defendant had railroad crossings and tracks throughout St. Clair County.[105] Therefore, the court found the totality of the circumstances did not strongly favor transfer to St. Clair County.[106]

Langenhorst remains good law; however, the recent Fifth District opinions reveal how fact specific the forum *non conveniens* analysis is under the current standards. Plaintiffs' attorneys opposing transfer cannot rely on *Langenhorst* for general principles that require transfer where witnesses are scattered or where the incident occurred close to the county line. Instead, the broader body of recent case law supports that plaintiffs must show a real connection to the county where the case is filed even if it is a neighboring county.

Legislation was Introduced to Eliminate Intrastate Forum *Non Conveniens* in the Last Legislative Session

Following on their success in reducing civil juries to six persons, effectively eliminating special interrogatories, and reshaping the relationship between employers and employees with regard to asbestos claims, the plaintiffs' bar took aim at ending intrastate forum *non conveniens* through legislative action in the last legislative session, which was cut short by the COVID-19 pandemic. This legislative effort is being made despite the fact the controlling forum *non conveniens* rule is established under the Illinois Supreme Court Rules and further developed through common law, and not any action of the General Assembly.

Article VI, Sec. 16 of the Illinois Constitution provides that "[g]eneral administrative and supervisory authority over all courts is vested in the Supreme Court and shall be exercised by the Chief Justice in accordance with its rules."[107] Among the powers the Illinois Supreme Court has found its courts have under the Illinois Constitution is the power to transfer cases from one county to another county.[108] The Illinois Supreme Court has held that "if a statute conflicts with a rule that involves a matter within the judicial authority, the statute must yield to the rule."[109]

Codifying the power granted to the court in the Illinois Constitution, the Supreme Court has enacted Supreme Court Rule 187 that governs transfer under forum *non conveniens* and Supreme Court Rule 384 that allows the Court to consolidate cases that are filed in different judicial circuits. Forum *non conveniens* has been noted by the courts to be an equitable doctrine that is "founded in considerations of fundamental fairness and sensible and effective judicial administration."[110] "This doctrine allows a trial court to decline jurisdiction when trial in another forum 'would better serve the ends of justice.'"[111]

The courts, not the General Assembly, are tasked with balancing equities and doing justice between parties in determining, among other things, where a particular piece of litigation is most conveniently litigated. The factors for

determining whether a given case should be transferred under forum *non conveniens* demonstrate the means to accomplish the central interest of Illinois courts in accomplishing their constitutionally mandated role of managing their dockets. When it comes to the allocation of judicial resources, courts are best suited to make these decisions, as compared to attorneys who file individual lawsuits that suit their individual interests or the General Assembly who legislates on a sweeping, statewide basis. The effort to eliminate intrastate forum *non conveniens* would violate the Illinois Constitution as the General Assembly would usurp the role of the courts and place the power to manage court dockets with plaintiffs' attorneys instead of Illinois courts.

Under Illinois' generous venue statute, if intrastate forum *non conveniens* were eliminated, cases could be filed in any county in which any defendant had a registered agent or "other office."[112] Such a change will have dilatory practical effects that would likely concentrate cases in certain counties, such as Cook, Madison, and St. Clair, and strain the courts and the budgets of those counties. Such congestion and the burden it would impose on the taxpayers and jurors of those counties are precisely the public interest factors that the doctrine of forum *non conveniens* is designed to alleviate.

Not only are many businesses and attorneys located in Madison, St. Clair, and Cook Counties, but also these counties are known to be very favorable counties for plaintiffs. The safeguards of forum *non conveniens* are necessary to prevent the imposition of litigation in counties far away from where the incident occurred based solely on what is best for plaintiffs. As an example, without intrastate forum *non conveniens*, a Pulaski County resident sued after an automobile accident that happened blocks from her home would have no recourse to prevent the lawsuit and trial from proceeding more than 350 miles away in Cook County. A fact as simple as another vehicle in the accident being owned by a Cook County resident would make that a real possibility. Depriving the courts of the ability to transfer such a case to the county where the accident occurred would harm the civil justice system in Illinois.

In this regard, it is important to note the high standard that the movant must meet on a motion to transfer a matter pursuant to forum *non conveniens*. Not only must the movant show that the factors, taken as a whole, "strongly" favor transfer (merely favoring transfer is insufficient), but also should the motion be denied, the standard of review is abuse of discretion.[113] Indeed, even obtaining review of a denial of motion to transfer under forum *non conveniens* is discretionary in the appellate court.[114] The hurdles that must be overcome to obtain transfer are high and protections for the plaintiff's choice of forum already are in place both procedurally and practically. The burdens on the system and to defendants of doing away with the doctrine of forum *non conveniens* would be substantial.

It may be argued that in the new remote manner of litigation practice following the pandemic any difficulty in litigating a matter at a distance far from the locus of the dispute has been significantly reduced. While that may be true, the public interest factors, in particular, will not be affected as jurors in a county far from the location of the dispute will be saddled with jury service and in cases where the scene of the incident is relevant, at least one of the private interest factors remains unchanged.

Without Forum *Non Conveniens*, There is No Protection Against Forum Shopping

If intrastate forum *non conveniens* were abolished, then the tactic of "forum-shopping" would quite literally become permissible. Forum-shopping is, according to the Illinois Supreme Court, "contrary to the purposes behind venue rule."[115]

The plaintiffs' bar has endorsed abolishing the doctrine of intrastate forum *non conveniens*, arguing that, in essence, technology has obviated the need to transfer a case out of a chosen venue. However, advances in technology do not cure all the issues the doctrine of forum *non conveniens* is intended to protect against. Moreover, the argument regarding

advances in technology appears to be a wolf in sheep's clothing – hiding the true purpose of the movement to eliminate intrastate transfers of cases, which is to allow plaintiffs to avail themselves of their most preferable venires without check or balance from defendants.

Eliminating such a vital bulwark as the forum *non conveniens* doctrine, reserved for limited circumstances, including where there may be manipulation or exploitation of venue rules, will cause more problems than it hopes to remedy. The outsized power given to a plaintiff to choose their venue, without safeguard or restraint, would allow for cases in what may be an otherwise inappropriate, yet technically valid, venue, potentially at great cost and prejudice to opposing parties. The scales of justice, which are meant to balance between the litigants, would be greatly tipped in favor of plaintiffs.

If intrastate forum *non conveniens* were to become no longer available, then venue would be the only hurdle to overcome when a plaintiff decides where to file the case. The bar for establishing venue is so low that any opposing motion would likely be considered frivolous. A forum *non conveniens* analysis presumes venue is technically proper yet serves the purpose of obviating abuse of the venue rules to select a more favored locality. It is for the trial court to analyze whether to decline jurisdiction if another forum "would serve the ends of justice."[116] Without this backstop, it is possible that many Illinois lawsuits would be filed in only a handful of counties.

That being the case, plaintiffs are afforded deference in their choice of venue. "The plaintiff has a substantial interest in choosing the forum where his rights will be vindicated, and the plaintiff's forum choice should rarely be disturbed unless the other factors strongly favor transfer."[117] If both the occurrence and plaintiff are foreign to the chosen forum, then less deference is given, however, it does not mandate transfer.[118] The trial court must consider the location of the witnesses.[119] Historically, if witnesses are scattered across various counties (or other states), Illinois courts have found that this factor does not weigh in favor of transfer since no single county enjoys a predominant connection to the litigation.[120]

In *First American Bank v. Guerine*, the Illinois Supreme Court reaffirmed the validity of the doctrine of intrastate *forum non conveniens,* while also reversing a grant of motion to transfer venue based on the doctrine.[121] In *Guerine,* the plaintiff died in an automobile accident in DeKalb County when the defendant's trailer carrying a speedboat unhooked and collided with the vehicle driven by plaintiff.[122] Plaintiff, a resident Kane County, filed suit in Cook County.[123] The defendant resided in Cook County, along with one other witness.[124] No other trial witnesses were located in Cook County.[125]

In *Guerine,* the Illinois Supreme Court stated that "[a] concern animating our *forum non conveniens* jurisprudence is curtailing forum shopping by plaintiffs.[126]" The court went on to note that in intrastate *forum non conveniens* matters both parties "'are jockeying for position by seeking a judge, jury, and forum that will enable them to achieve the best possible result for their clients,'" and that all other considerations underlying the *forum non conveniens* analysis are secondary.[127]

Ultimately, the Illinois Supreme Court found that because the case involves parties and witnesses dispersed among several counties in the same area of the state, no single location has a predominant interest, and the balance of factors must strongly favor transfer of the case before plaintiff can be deprived of his chosen forum.[128] When venue is challenged, the court must apply what has been called an "unequal balancing test," giving deference to the plaintiff's choice of forum.[129] Applying that test and deferring to the plaintiff's choice of forum usually results in decisions that favor the plaintiff's forum selection. Most often, "'the plaintiff's initial choice of forum will prevail, provided venue is proper and the inconvenience factors attached to such forum do not greatly outweigh the plaintiff's substantial right to try the case in the chosen forum.'"[130]

In *Dawdy v. Union Pacific R.R. Co.*, the plaintiff, a resident of Green County, Illinois, was driving a tractor in Macoupin County when he was involved in a traffic collision with a truck driver, who was a resident of Macoupin County and employed by Union Pacific Railroad Company.[131] Plaintiff filed suit in Madison County against both the truck driver and Union Pacific.[132] Union Pacific maintained a principal place of business in Omaha, Nebraska, and did business in both Macoupin and Madison counties.[133] There were 18 witnesses who were located in various counties, none of whom were located in Madison County.[134]

The Illinois Supreme Court overturned the appellate court ruling which affirmed the trial court's denial of the defendants' forum *non conveniens* motion to transfer venue from Madison County to Macoupin County.[135] In its reasoning for the reversal, the Illinois Supreme Court considered the potential for a jury view of the scene of the accident favored transfer to Macoupin County.[136] The fact that Madison and Macoupin counties were adjacent to one another did not significantly factor into the court's analysis.[137]

In sum, the court reduced its deference to plaintiff's choice of venue of Madison County because he did not reside there, nor did the occurrence take place there, and after examination of the public and private interest factors, held accordingly that the circuit court of Madison County abused its discretion in denying the defendants' motion to transfer to Macoupin County based on the doctrine of intrastate *forum non conveniens*.[138] The Supreme Court wrote in *Dawdy*: "[W]hen the plaintiff is foreign to the forum chosen and the action that gives rise to the litigation did not occur in the chosen forum, this assumption [of convenience] is no longer reasonable. Instead, it is reasonable to conclude that the plaintiff is engaged in forum shopping to suit his individual interests, a strategy contrary to the purposes behind the venue rules."[139]

Often, the decisions to deny dismissal or transfer of cases pursuant to forum *non conveniens* within a given forum can hinge on seemingly trivial factual circumstances. For example, many companies who do business outside of Cook County nevertheless maintain registered agents or post office boxes therein. In practice, it is not uncommon to have an Illinois court deny a defendant's forum *non conveniens* motion for those weak linkages to the county even if the other factors favored another forum. Put simply, it is significantly difficult under the Illinois courts' current interpretation of Rule 187 for defendants to prove cases are worthy for transfer, unless the disconnect between the action and the forum is so stark that transfer is mandated.

The *Dawdy* court observed that "[a]n integral part of forum non conveniens analysis is fairness to the litigants and convenience to those that will be called to testify at trial. Realigning parties for the purposes of fixing venue in a county where there may be a more favorable outcome to plaintiffs does not reinforce or complement the principles of forum *non conveniens*. Instead, it perverts them."[140] The *Dawdy* court also recognized the disconnect and reasoned that, "none of the [18] witnesses reside in Madison County, and Macoupin County has a predominant connection to this case. The sole fact that one defendant maintains a post-office box in Madison County does not give Madison County a legitimate interest in or connection to this case."[141]

Forum *Non Conveniens* Transfers Are Sufficiently Difficult and the Doctrine Must Be Maintained

The practical reality of forum *non conveniens* motion practice is that dismissal or transfer will not happen unless the factors overwhelmingly favor it. Nevertheless, it is vital that the option of forum *non conveniens* motion practice remain intact. It is the mere threat of forum *non conveniens* motion practice that deters plaintiffs from completely flouting the

rules of choosing their respective fora. However, without the doctrine, the deterrence is no longer present and there is no longer a way to oppose a chosen venue if it satisfies the basic venue requirements but is otherwise inconvenient or inappropriate as the chosen forum.

Forum *non conveniens* is a well-established principle of both American and Illinois law that must be maintained. The ability to seek transfer of a case under the doctrine is a fundamental protection for defendants and a vital tool for the courts to manage their dockets. As the Illinois Supreme Court has seen fit to incorporate intrastate and interstate forum *non conveniens* into a Supreme Court Rule, proposed legislation seeking to eliminate intrastate forum *non conveniens* would infringe on the role of the courts and violate the Illinois Constitution. Elimination of the doctrine, and therefore elimination of Illinois courts' ability to transfer a case to a more convenient and appropriate jurisdiction, would harm the delicate balance that must be protected in Illinois' civil justice system.

(Endnotes)

[1] *American Dredging Co. v. Miller*, 510 U.S. 443, 449 (1994) (citing *Macmaster v. Macmaster*, 11 Sess. Cas. 685, 687 (No. 280) (2d Div. Scot.)(1833); *McMorine v. Cowie,* 7 Sess.Cas. (2d ser.) 270, 272 (No. 48) (1st Div.Scot.) (1845); *La Société du Gaz de Paris v. La Société Anonyme de Navigation "Les Armateurs Français,"* [1926] Sess.Cas. (H.L.) 13 (1925)).

[2] *See The Maggie Hammond*, 76 U.S. 435 (1869); *The Belgenland*, 114 U.S. 355 (1885).

[3] *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947).

[4] *Gulf Oil Corp*., 330 U.S at 502-03.

[5] *Id.* at 503.

[6] *Id.*

[7] *Id.* at 507, 512.

[8] *Id.* at 508.

[9] *Id.* at 508-09.

[10] *See American Dredging Co., v. Miller*, 510 U.S. 443 (1994); *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981).

[11] *Adkins v. Chicago, Rock Island & Pac. R.R. Co.*, 54 Ill.2d 511 (1973),

[12] *Adkins*, 54 Ill.2d at 513.

[13] *Id.* at 513-14.

[14] *Id.* at 514.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.* at 515-16.

[20] *Foster v. Chicago and Northwestern Transp. Co.*, 102 Ill.2d 378 (1984); *Satkowiak v. Chesapeake and Ohio R.Y Co.*, 106 Ill.2d 224 (1985); *Wieser v. Missouri Pac. R.R. Co.*, 98 Ill.2d 359 (1983).

[21] *Id*.

[22] *Fennell v. Illinois Central R.R. Co.*, 2012 IL 113812, ¶¶ 1-4, 27 (2012).

[23] *Fennell*, 2012 IL at ¶¶ 14, 48-51.

[24] *Torres v. Walsh*, 98 Ill.2d 338, 350 (1983).

[25] *Torres*, 98 Ill.2d at 351.

[26] *Id.*

[27] Kristen M. Smith, *Illinois' Evolving Doctrine of Intrastate Forum Non Conveniens*, 90 Ill. B.J. 638, 639 December 2002.

[28] See *Bland v. Norfolk & Western R.Y Co.*, 116 Ill.2d 217 (1987); *Peile v.* Skelgas, Inc., 163 Ill.2d 323 (1994).

[29] See 735 ILCS 5/2-101; Illinois Supreme Court Rule 187, (eff. Jan. 1, 2018).

[30] *Baltimore & Ohio Railroad Co. v. Mosele*, 67 Ill.2d 321, 328 (1977).

[31] *Chappelle v. Sorenson*, 11 Ill.2d 472, 475-76 (1957).

[32] *Bucklew*, 138 Ill. 2d 282, 288 (1990).

[33] 735 ILCS 5/2-101 *et seq*.

[34] *Baltimore & O. R. Co.*, 67 Ill.2d at 328.

[35] See *Kerry No. 5, LLC v. Barbella Group*, LLC, 2012 IL App (1st) 102641, ¶ 24; *Lake County Riverboat L.P., ex rel. FRGP, L.P. v. Illinois Gaming Bd.*, 313 Ill. App. 3d 943, 951 (2nd Dist. 2000).

[36] *Bucklew*, 138 Ill. 2d 282, 289.

[37] *Lake County Riverboat L.P.*, 313 Ill. App. 3d at 951.

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

[39] 735 ILCS 5/2-104(b).

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

[41] *Id.*

[42] 735 ILCS 5/2-104(c),

[43] *Corral*, 217 Ill.2d at 154-55.

[44] *Glass v. DOT Transportation, Inc.*, 393 Ill. App. 3d 829, 832 (1st Dist. 2009) (citing *Langenhorst v. Norfolk Southern Railway Co.*, 219 Ill.2d 430, 441 (2006)).

[45] *Glass*, 393 Ill. App. 3d at 832.

[46] Ill. S. Ct. R. 187.

[47] Ill. S. Ct. R. 187(a).

[48] *New Planet Energy Dev. LLC v. Magee*, 2020 IL App (4th) 200043.

[49] *Id*. at ¶ 26.

[50] *Id*. at ¶¶ 28-29.

[51] 735 ILCS 5/2-107; but see Ill. S. Ct. R. 187(c)(1).

[52] 735 ILCS 5/2-104(c); Ill. S. Ct. R. 187(b).

[53] *Shaw v. Haas*, 2019 IL App (5th) 180588, ¶ 3.

[54] *Shaw*, 2019 IL App (5th) 180588, ¶¶ 24-25.

[55] *Id*. at ¶ 30.

[56] *Id*. at ¶¶ 32-33.

[57] *Id*. at ¶ 34.

[58] *Id*. at ¶ 33; *see also Hale v. Odman*, 2018 IL App (1st) 180280 (2018) (a lawsuit involving an accident occurring in Kane County, one mile from the Cook County line, which was transferred from Cook County to Kane County where accident occurred and where most of witnesses resided.)

[59] *Kuhn v. Nicol*, 2020 IL App (5th) 190225 (2020).

[60] *Id*. at ¶¶ 1, 20-22.

[61] *Id*. at ¶ 12.

[62] *Id.* at ¶ 14.

[63] *Id*. at ¶ 5.

[64] *Bland*, 116 Ill.2d 217 (1987).

[65] *Kuhn*, at ¶¶ 13.

[66] *Id*. at ¶ 16.

[67] *Id.* at ¶ 18.

[68] *Id*. at ¶ 16.

[69] *Id*.

[70] *Id*. at ¶ 16-18.

[71] *Id*. at ¶ 17

[72] *Id*. at ¶ 18.

[73] *Id*. at ¶ 19.

[74] *Evans v. St. Joseph's Hospital*, 2020 IL App (5th) 190414 (2020).

[75] *Evans*, 2020 IL App (5th) 190414, ¶ 1.

[76] *Id*. at ¶ 3.

[77] *Id.*

[78] *Id*.

[79] *Id*. at ¶ 4.

[80] *Id.*

[81] *Id*. at ¶ 7.

[82] *Id*.

[83] *Id*. at ¶ 12, 15.

[84] *Id*. at ¶ 14.

[85] *Id*. at ¶ 15.

[86] *Brandt v. Shekar et al.*, 2020 IL App (5th) 190137.

[87] *Brandt*, 2020 IL App (5th) 190137, ¶ 4.

[88] *Id.*

[89] *Id*.

[90] *Id*. at ¶ 11.

[91] *Id.*

[92] *Id*. at ¶ 8.

[93] *Id*. at ¶ 10.

[94] *Id.*

[95] *Id*. at ¶ 15.

[96] *Id*. at ¶ 51.

[97] *Id*. at ¶ 34.

[98] *Id*. at ¶ 50.

[99] *Id*. at ¶ 57.

[100] *Id*.

[101] *Langenhorst v. Norfolk Southern Ry. Co.*, 219 Ill.2d 430 (2006).

[102] *Id.* at 434.

[103] *Id*. at 448-49.

[104] *Id*. at 449.

[105] *Id*. at 451.

[106] *Id*. at 454.

[107] Ill. Const. 1970, art. VI, § 16.

[108] *See Horn v. Rincker*, 84 Ill.2d 139, 149-51 (1981).

[109] *Peile,* 163 Ill.2d at 334.

[110] *Vinson v. Allstate*, 144 Ill.2d 306, 310 (1991) (quoting *Adkins v. Chicago, Rock Island & Pacific R.R. Co.* 54 , Ill.2d 511, 514, 301 N.E.2d 729 (1973)).

[111] *Langenhorst*, 219 Ill.2d at 441 (*quoting Vinson*, 144 Ill.2d at 310).

[112] See 735 ILCS 5/2-102(a).

[113] *Langenhorst*, 219 Ill.2d at 443, 453-54.

[114] See Illinois Supreme Court Rule 306(a)(2).

[115] *Dawdy v. Union Pacific R.R. Co.,* 207 Ill. 2d 167, 174 (2003) (citing *Certain Underwriters at Lloyds, London v. Illinois Central R.R. Co.*, 329 Ill. App. 3d 189, 196 (2002)).

[116] *Langenhorst*, 219 Ill.2d at 441(quoting *Vinson,* 144 Ill.2d at 310).

[117] *Langenhorst*, 219 Ill.2d at 442 (quoting *First Am. Bank v. Guerine*, 198 Ill. 2d 511, 517, 764 N.E.2d 54, 58 (2002)).

[118] *Id.* at 442-43.

[119] *Fennell*, 2012 IL 113812 at ¶¶ 28-29.

[120] *Dawdy*, 207 Ill. 2d at 183-84.

[121] *First American Bank v. Guerine,* 198 Ill.2d 511 (2002).

[122] *Id.* at 512.

[123] *Id.* at 512-13.

[124] *Id.*

[125] *Id.*

[126] *Id.* at 521.

[127] *Id.* (quoting G. Maag, *Forum Non Conveniens in Illinois: A Historical Review, Critical Analysis and Proposal for Change*, 25 So. Ill. L.J. 461 (2001)).

[128] *First American Bank,* 198 Ill.2d at 525-26.

[129] *Id.* at 521(citing *Griffith v. Mitsubishi Aircraft International, Inc.*, 136 Ill.2d 101, 107(1990)).

[130] *First American Bank*, 198 Ill. 2d at 520 (quoting *Peile*, 163 Ill.2d at 335-36 (Emphasis added)).

[131] *Dawdy* 207 Ill. 2d at 169.

[132] *Id.*

[133] *Id.* at 170.

[134] *Id.*

[135] *Id.* at 185.

[136] *Id.* at 179.

[137] *Id.* at 180.

[138] *Id.* at 184-85.

[139] *Id.* at 174 (citing *Certain Underwriters at Lloyds, London v. Illinois Central R.R. Co.*, 329 Ill. App. 3d 189, 196 (2nd Dist. 2002)).

[140] *Id.* at 184 (citing *Certain Underwriters*, 329 Ill. App. 3d at 199 (Emphasis added.))

[141] *Dawdy*, 207 Ill.2d at 184.

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