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How Recent Illinois Personal Jurisdiction Developments May Impact Toxic Tort Defendants

Illinois toxic tort litigation sometimes seems like a game of whack-a-mole. Defendants successfully pursue a defense strategy and obtain a favorable ruling. The Illinois legislature amends or enacts legislation to make the litigation more difficult for defendants. Defendants then adopt new defense strategies, resulting in new legislation. In the last decade, this pattern can be seen through the legislature eliminating the workers' compensation exclusivity provision for asbestos-related illnesses and injuries, allowing for prejudgment interest in personal injury cases, and making punitive damages recoverable in wrongful death and survival claims.

Despite the challenges posed in this litigation, one strategy defendants could seemingly rely on was to challenge personal jurisdiction. This was due to a series of opinions from the United States Supreme Court beginning in 2011. Recently, however, the Illinois legislature has tipped the scales in favor of plaintiffs on this issue. Additionally, a recent Illinois appellate court opinion seemingly conflicts with Supreme Court precedent and may give plaintiffs ammunition against personal jurisdiction challenges.

General Jurisdiction

Before clarification from the United States Supreme Court, in Illinois, courts could exercise general jurisdiction over defendants that maintained continuous and systematic general business contacts with the State. Some courts equated this level of contacts with "doing business" in Illinois. Doing business sufficient to trigger general jurisdiction could include regularly selling products into Illinois and meeting with Illinois customers on multiple occasions. Not surprisingly, this standard invited plaintiffs' attorneys to file toxic tort lawsuits in Illinois having no connection to the State against foreign corporations.

Daimler AG v. Bauman

Beginning in 2011, the United States Supreme Court issued several opinions clarifying the narrow scope of general jurisdiction and high threshold that must be met to warrant the exercise of this jurisdiction. The Seventh Circuit Court of Appeals noted that these opinions "raised the bar" for general jurisdiction.

Of those opinions, *Daimler AG v. Bauman* may have been the most significant for foreign corporations named in Illinois toxic tort legislation. In that case, twenty-two Argentinian residents filed suit in California against Daimler, a German company that manufactured vehicles in Germany. The plaintiffs alleged that during Argentina’s “Dirty War,” Daimler’s Argentinian subsidiary, MB Argentina, conspired to kidnap, detain, torture, and kill certain MB Argentina employees. Specific jurisdiction clearly was inappropriate because neither the plaintiffs’ claims nor Daimler’s alleged tortious conduct had any connection to California.

The plaintiffs, therefore, attempted to establish general jurisdiction. They argued that Daimler, through an American subsidiary, maintained significant contacts with California. For example, they cited that Daimler’s subsidiary had multiple California-based facilities and was the largest supplier of luxury vehicles to the California market. The plaintiffs further noted that over 10 percent of all sales of new vehicles in the United States at the time occurred in California, with California accounting for 2.4 percent of Daimler’s worldwide sales.

Despite Daimler’s contacts with California, the United States Supreme Court found that general jurisdiction was inappropriate. According to the Court, the plaintiffs were asking the Court to “approve the exercise of general jurisdiction in every state in which a corporation engages in a substantial, continuous, and systematic course of business.” The Court deemed this proposed standard “unacceptably grasping.”

In response to the plaintiffs’ overly broad argument, the Court clarified the standard for exercising general jurisdiction. Specifically, only a limited set of affiliations with a forum will render a defendant subject to general jurisdiction. For corporations, the place of incorporation and principal place of business are the “paradigm bases” for general jurisdiction. Otherwise, there may be “an exceptional case” warranting the exercise of general jurisdiction over a foreign corporation. The corporation, however, must maintain such extensive affiliations with the forum state that it is “essentially at home” there.

Daimler’s Impact

The *Daimler* opinion had a significant impact on toxic tort litigation. The opinion, characterized by some as a “watershed case,” allowed defendants to contest personal jurisdiction in cases where that defense previously was not viable. More specifically, defendants could contest general jurisdiction in cases filed by non-resident plaintiffs whose alleged exposures and injuries occurred outside of Illinois, even if the defendants maintained significant, but non-suit-related, contacts with Illinois. Judge Dooling of the Circuit Court of Cook County recognized *Daimler*’s importance in rejecting a plaintiff’s attempt to establish general jurisdiction based on the defendant’s substantial Illinois sales revenue.

In 2017, the Illinois Supreme Court rejected a plaintiff’s argument that general jurisdiction could be exercised based on a defendant’s continuous and substantial business activity in Illinois. In that case, the defendant, an Indiana corporation doing business in Illinois through a limited liability company organized under Indiana law, maintained its principal place of business in Indiana, was registered to do business in Illinois since 1988, and operated a warehouse in Joliet, Illinois. The court found that, although the plaintiff established that defendant was doing business in Illinois through its warehouse in Joliet, this fact fell far short of showing that Illinois was a surrogate home for defendant sufficient to meet the “exceptional case” standard articulated in *Daimler*.

The Court further rejected plaintiff’s contention that 735 ILCS 5/2-209(b)(4) constitutionally authorized the Court to exercise jurisdiction over a defendant “doing business within this State [Illinois].” The Court reasoned that in light of *Daimler*, subsection (b)(4) of the long-arm statute could not be constitutionally applied to the defendant when there was no evidence that the defendant’s contacts with Illinois rendered it “essentially at home” in Illinois.

In 2018, the First District Appellate Court rejected the exercise of general jurisdiction over a defendant in an asbestos lawsuit. The plaintiff alleged he was exposed to asbestos in Illinois, Alabama, Louisiana, and Texas. In evaluating whether the defendant was subject to general jurisdiction, the court noted the standard for finding general jurisdiction is “very high.” The defendant’s state of incorporation was New York, and its principal place of business was in Massachusetts. It had been licensed to conduct business in Illinois since 1897, employed 3,000 employees at 30 facilities in Illinois, and based up to 6 business units in Illinois. Despite these fairly significant contacts, the defendant’s business in Illinois constituted a relatively small portion of its worldwide operations. Thus, the court did not view the defendant’s Illinois contacts as sufficient to render it “at home” in Illinois or constitute “exceptional circumstances” warranting the exercise of general jurisdiction. *Daimler* also prompted numerous district court rulings rejecting the exercise of general jurisdiction over defendants that were not incorporated and did not maintain their principal place of business in Illinois. In one case, the District Court for the Southern District of Illinois refused to exercise general jurisdiction over a defendant that had conducted business in Illinois since 1897, employed more than 4,300 employees in Illinois, and leased more than 500,000 square feet of property in the State.

Recent General Jurisdiction Opinions

Toles v. Mead Johnson

On December 11, 2025, the Fifth District Appellate Court issued a troubling opinion for defendants on the issue of personal jurisdiction, some of which is discussed more fully below in the specific jurisdiction section. In *Toles v. Mead Johnson & Co., LLC*, the plaintiff filed suit on behalf of herself and her minor child. She alleged that her child developed necrotizing enterocolitis (“NEC”) after ingesting the defendants’ cow’s milk-based infant feeding products. Subsequently, the circuit court entered a case management order for coordination of 20 NEC lawsuits involving 90 plaintiff infants. Mead Johnson moved to dismiss for lack of personal jurisdiction, but the circuit court denied the motion.

On appeal, Mead Johnson argued that it was not subject to general jurisdiction because its “nerve center,” which is the definition of a corporation’s principal place of business, was not in Illinois at the time the NEC lawsuits were filed. Mead Johnson is a Delaware limited liability company. Mead Johnson Nutrition Company is a Delaware corporation and sole member of Mead Johnson. Prior to 2009, both Mead Johnson entities’ principal places of business were located in Indiana. In May 2009, Mead Johnson moved its corporate headquarters and principal place of business to Illinois. According to Mead Johnson, all actual management functions that had been conducted in Illinois were moved out of the State by the end of 2018. Mead Johnson also changed its Illinois corporate registration status on October 13, 2021. Mead Johnson Nutrition Company had not had an active registration in Illinois since February 2019.

The plaintiffs argued that Mead Johnson was subject to general jurisdiction because it was “at home” in Illinois for nearly a decade during the relevant period leading up to the NEC litigation. Additionally, the plaintiffs claimed that Mead Johnson continued to hold itself out as an Illinois company to the government, the courts, and the public after it allegedly moved its operations to a different state. Mead Johnson indicated that it simply made clerical errors in corporate filings and a handful of pleadings in other lawsuits by mistakenly continuing to identify as an Illinois corporation.

The appellate court agreed with the plaintiffs, noting that of the 64 infant plaintiffs subject to the circuit court’s jurisdiction order, 38 were born during the time Mead Johnson admitted its corporate headquarters and principal place

of business were located in Illinois (*i.e.*, May 2009 through the end of 2018). According to the court, the inquiry into general jurisdiction is not a snapshot of a defendant only at the time of filing. Rather, the court believed that the defendant's contacts with the forum over a continuous period of time should be examined. The relevant time period to be reviewed begins when suit was filed and service of process was attempted, with the critical point of inquiry being the time the defendant was made a party to the suit and was served.

In reviewing Mead Johnson's contacts with Illinois during the relevant time period, the court noted that the office space for its former Chicago headquarters remained a Mead Johnson office. Mead Johnson also continued to employ dozens of people who resided in Illinois, many of whom previously were employed at Mead Johnson's Illinois headquarters, including its global director of hospital marketing responsible for the strategic planning of Mead Johnson's hospital marketing efforts, a national accounts team lead responsible for supervising staff and managing sales relationships with hospitals across the United States, and a manager responsible for nationwide commercial training. Moreover, some Illinois employees were responsible for offering in-person and virtual training in Illinois to sales representatives from across the United States regarding sales of Mead Johnson's products to neonatal intensive care units.

Ultimately, the court concluded that Mead Johnson was not a nonresident defendant from May 2019 through the end of 2018 and, therefore, its argument regarding the 38 infant plaintiffs born during that time period failed. Additionally, the court found that even after Mead Johnson claimed to have moved its principal place of business out of Illinois, it continued to have substantial and continuous contacts with Illinois as to render it essentially at home in Illinois.

Coudrain v. Walgreen Co.

Recently, the First District Appellate Court determined that general jurisdiction did not exist over defendants alleged to have consented to jurisdiction. The plaintiffs argued that the defendants consented to jurisdiction by registering to do business in Illinois. The plaintiffs relied on the Illinois long-arm statute, which, as discussed below in the consent jurisdiction section, was recently amended to provide that a defendant consents to general jurisdiction by registering to business in Illinois. Further, the plaintiffs cited the Supreme Court's opinion in *Mallory v. Norfolk Southern Railway*, also discussed below.

Interestingly, despite the language of the amended long-arm statute, which became effective prior to this opinion, the court determined that neither the long-arm statute nor the Illinois Business Corporation Act ("BCA") has any provision that would support a claim that by registering to do business, a foreign corporation consents to general jurisdiction. Instead, the court relied on the Illinois Supreme Court's opinion in *Aspen American Insurance Company v. Interstate Warehousing, Inc.*, in which the Illinois Supreme Court concluded that registering to do business in Illinois does not provide a basis for exercising general jurisdiction.

Considerations for Defense Counsel

The *Toles* opinion is troubling for a variety of reasons. Regarding general jurisdiction, the appellate court stated that the relevant time period to examine for purposes of general jurisdiction begins when suit was filed and service of process was attempted, with the critical point of inquiry being when the defendant was served. The court, however, seemingly gave considerable weight to Mead Johnson's pre-suit contacts with Illinois.

The First District Appellate Court previously explained that when analyzing whether general jurisdiction exists, the focus must be upon the time the nonresident defendant became a party to the suit or was served with process. The court further indicated that in a general jurisdiction analysis, the time the claim arose or occurred would not be the proper determinative point in time. While the court acknowledged that a defendant's contacts should be examined from the time the claim arose to the time the defendant was made a party and service of process was attempted, the critical focus of inquiry must be upon the time the defendant is named and served with process. At this critical point of inquiry, if the defendant is no longer maintaining the type of affiliations with Illinois necessary to establish general jurisdiction, then the court should decline to exercise jurisdiction.

Moreover, the Fifth District's conclusion that Mead Johnson was essentially at home in Illinois after 2018 conflicts with United States Supreme Court precedent. As discussed above, in *Daimler*, the Supreme Court explained that the paradigm bases for exercising jurisdiction over a foreign corporation are the state of incorporation and location of the principal place of business. There also may be an "exceptional case" in which a corporation is subject to general jurisdiction in a forum other than its state of incorporation or location of its principal place of business. The Court cited as an example the facts in *Perkins v. Benguet Cons. Mining Co.* This appears to be the sole case identified as an "exceptional case" warranting a deviation from the general rule that a corporation is subject to general jurisdiction in its state of incorporation or the state of its principal place of business.

In *Perkins*, a mining company from the Philippines stopped its activities during World War II and moved its operations entirely to Ohio. The corporation's president maintained his office there, kept the company files in that office, and supervised from the Ohio office the company's limited wartime activities. In *Daimler*, the Court indicated that the *Perkins* decision turned on the fact that all of Benguet's activities were directed by the company's president from within Ohio. In a separate opinion, the Supreme Court noted that in *Perkins*, to the extent Benguet was conducting any business during and immediately after the Japanese occupation of the Philippines, it was doing so in Ohio.

In *Toles*, the court noted that Mead Johnson maintained office space in Illinois; employed dozens of people in Illinois, some of whom appeared to perform high level job duties; and conducted training in Illinois. The court, however, did not indicate how those activities compared to Mead Johnson's nationwide operations. The Supreme Court has explained that in examining whether an "exceptional case" exists warranting the exercise of general jurisdiction, the inquiry does not focus solely on the magnitude of the defendant's in-state contacts. Rather, the inquiry calls for an appraisal of a corporation's activities in their entirety.

Moreover, it is unclear how Mead Johnson's activities in Illinois after 2018 constitute more than the type of continuous and systematic contacts courts have routinely deemed insufficient to warrant the exercise of general jurisdiction. Mead Johnson's contacts with Illinois seem less significant than those at issue in one district court case in which the court found a foreign corporation was essentially at home in Illinois. In that case, the defendant was the largest private employer in Illinois, it maintained nearly 200 stores in Illinois, employed over 50,000 associates at those stores, and provided another 167,000 supplier jobs in Illinois. The defendant did more business and hired more workers in Illinois than it did in almost every other state in the country, including its paradigmatic home states. Even that case has been criticized in other cases as not warranting the exercise of general jurisdiction.

Unfortunately, the Illinois Supreme Court denied Mead Johnson's petition for leave to appeal on March 25, 2026. As of this writing, the authors are monitoring whether Mead Johnson seeks relief from the United States Supreme Court.

Defense counsel challenging general jurisdiction should be prepared to argue that the court placed improper emphasis on Mead Johnson's pre-suit contacts with Illinois. Again, the critical point of inquiry is when the defendant was made a party to the suit and served with process. Moreover, counsel should distinguish *Toles* from *Perkins*. As

discussed, Benguet did not just conduct substantial business in Ohio. Rather, all of Benguet’s activities were directed by the company’s president from Ohio.

Regarding the *Coudrain* opinion, counsel arguing that their client has not consented to general jurisdiction should probably treat this as an anomalous opinion. As discussed below, foreign corporations now have to contend with the amended provisions of the long-arm statute that provide for consent jurisdiction if the corporations take certain actions. If, however, the amended long-arm statute provisions regarding consent jurisdiction do not apply, such as if the defendant is a limited liability company, *Coudrain* reaffirms that non-corporate entities do not consent to general jurisdiction simply by registering to do business in Illinois.

Specific Jurisdiction

Absent a showing of general or “all purpose” jurisdictions, courts may also exercise jurisdiction over a defendant when the defendant’s connection to the specific claim is sufficient to satisfy the Due Process requirements. When a defendant does not have the continuous and systematic relationship with the forum state as a means of rendering the company subject to jurisdiction within the state, plaintiffs attempt to establish jurisdiction within their chosen forum via specific jurisdiction. Specific jurisdiction covers defendants less intimately connected with a State, but only as to a narrower class of claims. For a court to establish specific jurisdiction over a plaintiff’s claims against a defendant, the defendant must act in a manner which, “purposefully avails itself of the privilege of conducting activities within the forum State” and the plaintiff’s claims “must arise out of or relate to the defendant’s contacts” with the forum.

Walden v. Fiore

In its initial interpretation of a state’s reach over a defendant when general jurisdiction is lacking, the United States Supreme Court made it clear in *Walden v. Fiore* that for a court to establish specific personal jurisdiction over a plaintiff’s claim against a defendant, specific personal jurisdiction must be based on the defendant’s contacts with the forum state. Specific personal jurisdiction cannot be based on the actions of the plaintiff or a third party. In *Walden v. Fiore*, the respondents filed suit against the petitioner in Nevada, alleging violations of their Fourth Amendment rights. Namely, the respondents alleged that the petitioner committed an unlawful search, unlawfully seized funds, and submitted a false probable cause affidavit. The petitioner committed these acts in the State of Georgia. The respondents claimed that they suffered harm in Nevada, however, because while living in Nevada they were unable to access funds seized from them by the petitioner.

The United States Supreme Court explained that for minimum contacts to exist in a case involving specific jurisdiction, the relationship between the defendant and the forum state must arise out of contacts between the defendant and the forum state, not between the plaintiff and the forum state. The Court explained that it has, “consistently rejected attempts to satisfy the defendant-focused ‘minimum contacts’ inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum state.” “Put simply, however significant the plaintiff’s contacts with the forum may be, those contacts cannot be ‘decisive in determining whether the defendant’s due process rights are violated.’”

The court made it clear that specific jurisdiction cannot be based solely on a defendant’s contacts with a forum state resident. According to the Supreme Court, “the plaintiff cannot be the only link between the defendant and the forum.” “Rather, it is the defendant’s conduct that must form the necessary connection with the forum state that is the basis for its jurisdiction over him.” While a defendant’s contacts with the forum state may be intertwined with its transactions

or interactions with the plaintiff, a defendant's relationship with a plaintiff, standing alone, is an insufficient basis for jurisdiction. "Due process requires that a defendant be hauled into court in a forum State based on his own affiliations with the State, not based on the 'random, fortuitous, or attenuated' contacts he makes by interacting with other persons affiliated with the State."

As to the facts at issue in that case, the Court explained that all of the petitioner's conduct occurred in Georgia. The respondents, relying on *Calder v. Jones*, 465 U.S. 783 (1984), argued that jurisdiction was appropriate because they suffered the "injury" caused by the petitioner's conduct while they were residing in Nevada. The Court rejected this argument, calling the plaintiff's reliance on *Calder* "misplaced." According to the Court, "*Calder* made clear that mere injury to a forum resident is not a sufficient connection to the forum." "The proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way." Given the lack of contact between the petitioner and Nevada, the Court concluded that specific jurisdiction did not exist.

Bristol-Myers Squibb Co. v. Superior Court of California

In *Bristol-Myers Squibb Co. v. Superior Court of California*, 86 California residents and 592 non-residents filed suit against Bristol-Myers in California, alleging injury through ingesting the drug Plavix. Bristol-Myers moved to dismiss the non-residents' claims based upon lack of jurisdiction. The trial court denied Bristol-Myers' motion, and the intermediate appellate court similarly concluded that Bristol-Myers was subject to specific jurisdiction.

The California Supreme Court affirmed the lower courts, determining specific jurisdiction existed under a "sliding scale approach to specific jurisdiction." Under that approach, the court permitted the exercise of specific jurisdiction because the non-residents' claims were similar in several ways to the California residents' claims, as to which specific jurisdiction was uncontested. The California Supreme Court noted that the plaintiffs' claims were based on the same allegedly defective product and the purportedly misleading marketing and promotion of that product. Moreover, while Bristol-Myers did not design and develop Plavix in its California research facilities, the court believed it conducted other significant research in California.

On appeal, the United States Supreme Court began by explaining that specific jurisdiction requires an "affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State." "When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." The Court indicated that those facts "illustrate[d] the danger of the California approach." According to the Court, a connection between California and the specific claims at issue was missing. Specifically, the non-residents were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured by Plavix in California. The Court found it irrelevant that other plaintiffs were prescribed, obtained, and ingested Plavix in California.

The Court also noted that Bristol-Myers' research on matters unrelated to Plavix was not sufficient or relevant to the issue of specific jurisdiction. Further, the Court remarked upon the lack of connection between the non-residents' claims and their chosen forum by stating, "[t]he relevant plaintiffs are not California residents and do not claim to have suffered harm in that State." Finally, the Court found specific jurisdiction could not be established because Bristol-Myers contracted with a California company to distribute Plavix, as there was no evidence linking the distribution relationship to the Plavix ingested by the non-residents.

The *Bristol-Myers* holding makes it clear that lawsuit must have a connection to defendant's contacts with forum state for the state to exercise jurisdiction over a foreign defendant.

Ford Motor Co. v. Montana Eighth Judicial District Court

Three years after *Bristol-Myers Squibb Co.*, the United State Supreme Court revisited the issue of when a state could exercise specific personal jurisdiction over a defendant manufacturer in *Ford Motor Co. v. Montana Eighth Judicial District Court*. The plaintiffs in *Ford* alleged that their injuries resulted when their Ford vehicles malfunctioned. The first plaintiffs were the family of Markkaya Gullett, who was killed in an accident that arose from when her 1996 Ford Explorer malfunctioned in Montana. The second plaintiff, Adam Bandemer, sustained injuries resulting from an accident in Minnesota involving a Ford Crown Victoria.

Ford argued that it designed both vehicles in Michigan, manufactured them in Kentucky and Canada, and originally sold the vehicles outside of the forum states (the Explorer in Washington and the Crown Victoria in North Dakota). Both the Montana and Minnesota Supreme Courts found that Ford was subject to specific personal jurisdictions, thereby affirming the lower court rulings denying Ford's motions to dismiss for lack of personal jurisdiction.

Ford admitted that it "purposefully avail[ed] itself of the privilege of conducting activities in both forums," and Ford did not contest that it conducted substantial business in Montana and Minnesota. Despite these connections with Montana and Minnesota, Ford argued on appeal that its activities in the forum states did not sufficiently connect to the plaintiffs' suits. Specifically, Ford contended that for specific jurisdiction to exist, the vehicles at issue either had to be purchased or designed and manufactured in the forum states.

In rejecting Ford's argument, the Supreme Court noted that Ford had advertised, sold, and serviced the same vehicle models as the type involved in the plaintiffs' accidents in Montana and Minnesota for many years. According to the Court, Ford, therefore, had systematically served a market in Montana and Minnesota for the same vehicles that the plaintiffs alleged malfunctioned and injured the plaintiffs in those states. Thus, the Court found a strong relationship among the defendant, the forum, and the litigation. The Court further reasoned that when an automaker regularly markets a vehicle in a state, the manufacturer has "clear notice" that it will be subject to jurisdiction in that state when the vehicle malfunctions in that state.

The Supreme Court distinguished the facts in *Ford* from those present in *Bristol-Myers*. *The Court explained that it found that specific jurisdiction was improper in Bristol-Myers* because the forum state, and the defendant's activities there, lacked any connection to the plaintiffs' claims. Specifically, the *Bristol-Myers* plaintiffs were not residents of the forum state, had not been prescribed the alleged injury-causing product in the forum state, had not ingested the product in the forum state, and had not sustained their injuries in the forum state. "In short, the plaintiffs were engaged in forum-shopping—suing in California because it was thought plaintiff-friendly, even though their cases had no tie to the State."

In *Ford*, the Supreme Court re-iterated that its "most common formulation of the rule demands that the suit 'arise out of or relate to the defendant's contacts with the forum.'" It cautioned against expansion of this rule, stating, "relate to" "does not mean anything goes." The majority rejected Justice Gorsuch's "apparent (if oblique) view" that a state court should have jurisdiction over a nationwide corporation on any claim, no matter how unrelated to the State or the defendant's activities there.



Recent Illinois Opinions Finding that Illinois Lacked Specific Jurisdiction

Coudrain v. Walgreen Co.

In the previously discussed *Coudrain* opinion, the First District Appellate Court also examined whether specific jurisdiction existed. The plaintiffs in *Coudrain* were comprised of five separate lawsuits filed against the manufacturers and marketers of Zantac, a heartburn medication. The lawsuits involved over 300 plaintiffs from 39 states.

In support of their joint motion to dismiss for lack of personal jurisdiction, the defendants posited that they were not subject to specific jurisdiction in this case because it involved non-resident plaintiffs who did not purchase or consume Zantac in Illinois and whose injuries did not occur in Illinois. Additionally, the Zantac was not manufactured in Illinois. The plaintiffs argued that defendants were subject to specific personal jurisdiction because they developed, marketed, and sold Zantac in Illinois and contracted with Walgreens, an Illinois company, and other Illinois corporations, for product sales and distribution. Ultimately, the court held that it did have jurisdiction over claims made by the non-resident defendants and affirmed the circuit court's order granting the defendant's motion to dismiss for lack of personal jurisdiction.

Zamora v. Lewis

In *Zamora v. Lewis*, the First District held that it lacked jurisdiction over a defendant smoke detector manufacturer for injuries alleged sustained by an Illinois resident for injuries that occurred at an Airbnb rental in Maine. During the plaintiff's stay, the house caught fire, killing her son and boyfriend. The plaintiff argued specific jurisdiction existed because the defendant allegedly: 1) directed misleading advertising regarding smoke detectors to Illinois consumers; 2) sold inadequate smoke detectors to Illinois residents; 3) advertised and sold smoke detectors to Illinois residents through many retailers, with sales of over 3 million smoke detectors in Illinois from 2012-2016; 4) sent employees to Illinois for conferences and meetings related to fire safety and sales of the smoke detectors; and 5) extensively marketed the smoke detectors in Illinois through television, the Internet, and in-store displays.

The First District acknowledged that the defendants conducted "substantial business" in Illinois related to the smoke detectors at issue and had purposefully directed activities toward Illinois. The court, however, found the activities unconnected to the litigation. The court reasoned that the injury-causing smoke detectors were not purchased in Illinois, were not purchased by Illinois residents, were not installed in a house located in Illinois, and did not cause a fire in Illinois.

Campbell v. ACME Insulation

In the previously discussed *Campbell v. ACME Insulation* opinion, the Illinois Appellate Court reaffirmed that for specific personal jurisdiction to exist in an Illinois asbestos case, the plaintiff's injury must arise from its contacts in Illinois. The appellate court agreed that GE's motion to dismiss for lack of specific personal jurisdiction should have been granted because the plaintiff's injury did not arise from GE's contacts with Illinois.

The plaintiff claimed that he was exposed to asbestos from GE equipment at Republic Steel in Illinois. In his deposition, the plaintiff first denied knowing what manufacturers produced the equipment used at Republic Steel in Illinois, but he later expressed his belief that the electric furnaces used for melting steel were manufactured by GE

because his brother “worked on furnaces.” He also admitted that no “tags” or “writing” on the furnaces “suggested” they were GE products. In his evidence deposition, the plaintiff admitted that he had no way of knowing who made the furnaces used at Republic Steel.

The plaintiff’s deposition testimony, taken in its entirety, showed that he could not competently testify that the furnaces used at Republic Steel were manufactured by GE. Other than his deposition testimony, the plaintiff did not introduce any other evidentiary material supporting his claim that he was exposed to a product produced by GE containing asbestos during his employment in Illinois. The court ultimately found that the plaintiff failed to make a *prima facie* showing of specific jurisdiction because the evidentiary material did “not support even an inference that the plaintiff was exposed to asbestos from [the defendant’s] products in Illinois.”

Morrison v. JSK Transp., Ltd

The Illinois Appellate Court Fourth District rejected a plaintiff’s attempt to improperly expand the Supreme Court’s *Ford* opinion in *Morrison v. JSK Transportation, Ltd*. In that case, an Arkansas resident alleged that the defendant negligently performed maintenance on her vehicle in Arkansas. After leaving Arkansas, the plaintiff drove to Illinois, where her vehicle was struck by another driver after plaintiff’s vehicle broke down on the shoulder of the highway. The circuit court granted the defendant’s motion to dismiss, finding that the defendant was not subject to specific jurisdiction.

The defendant had service centers in Illinois and performed vehicle maintenance at those centers similar to that performed on the plaintiff’s vehicle in Arkansas. However, those Illinois service centers never serviced nor had any contact with the plaintiff. The Fourth District distinguished the case from *Ford* because in *Morrison*, the plaintiff, not the defendant, established a relationship between the forum and the litigation. As a result, the Fourth District affirmed the circuit court’s grant of the defendant’s motion to dismiss for lack of jurisdiction.

Lishman v. Air & Liquid Sys. Corp.

In *Lishman v. Air & Liquid Systems Corp.*, the plaintiff, a life-long Illinois resident, alleged that he was exposed to asbestos through the defendant’s lube oil purifiers while he served in the Navy outside of Illinois. The defendant manufactured the purifiers in Pennsylvania, and the plaintiff’s exposure to those products occurred outside of Illinois. Relying on *Ford*, the plaintiff argued that the defendant maintained sufficient minimum contacts with Illinois because it owned manufacturing plants and maintained a sales office in Illinois. However, the defendant did not manufacture the purifiers at the Illinois plants or sell the purifiers from the Illinois sales office. Further, the plaintiff was not injured in the forum state by a product that malfunctioned there, so the actions resulting in plaintiff’s alleged injury occurred entirely outside of Illinois. Ultimately, the court granted the defendant’s motion to dismiss for lack of jurisdiction.

Romig v. MW Custom Papers, LLC

In *Romig v. MW Custom Papers, LLC*, the District Court for the Southern District of Illinois similarly found that it lacked specific jurisdiction over a claim involving an Ohio resident’s alleged exposure to asbestos through her father’s automotive repair work in Ohio. While she lived and worked in Illinois, she did not allege exposure to products or equipment attributable to the defendant while she worked or resided in Illinois.



Harden v. Mead Johnson & Co., LLC

The District Court for the Northern District of Illinois previously held that Illinois lacked jurisdiction over defendant Mead Johnson in a claim involving injuries allegedly sustained by a Connecticut infant after consuming formula powder manufactured by Mead Johnson in Michigan and Minnesota. The plaintiff argued that the defendant was subject to specific jurisdiction because it “conduct[ed] business in” and had “sold, marketed, and/or distributed contaminated Nutramigen Powder products” in Illinois.

The court explained that while the plaintiffs sufficiently alleged purposeful ailment by the defendant, the allegations did not support an inference that the plaintiff’s alleged injury arose out of or related to the defendant’s forum-related activities. The court explained that Mead Johnson’s ties to Illinois generally or to customers based in Illinois do not help plaintiffs establish a *prima facie* showing of specific jurisdiction.

Wood v. Samsung SDI Co.

The Fourth Circuit Appellate Court rejected the application of the “stream of commerce” theory to establish specific personal jurisdiction over a South Korean battery manufacturer for injuries sustained by a plaintiff in Illinois in *Wood v. Samsung SDI Co.* The plaintiff alleged that he sustained third-degree burns after an e-cigarette containing an 18650 lithium-ion battery cell manufactured by Samsung exploded in his pocket in Illinois. There was no dispute that Samsung’s 18650 lithium-ion battery cells were present in Illinois and available for sale from third parties. However, the court found those facts were insufficient to establish specific jurisdiction. The Fourth District noted that there was no evidence that Samsung shipped any batteries to Illinois, much less the type of battery specifically at issue. While the plaintiff identified numerous third parties in the distribution chain whose unauthorized, unilateral acts may have invoked the benefits and protections of Illinois, under the stream of commerce theory, a seller’s amenability to suit does not travel with the products, even when those products are highly mobile.

Citing *World-Wide Volkswagen*, the court reiterated that the United States Supreme Court has emphasized that “the mere ‘unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum state.’” The focus of the court’s analysis lies on the defendant’s contact with the forum state itself. For a defendant to be subject to specific jurisdiction, the defendant must have purposefully availed “itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.”

Recent Illinois Opinions Finding that the Defendants Were Subject to Specific Jurisdiction

Toles v. Mead Johnson

In addition to finding that Mead Johnson was subject to general jurisdiction, the Fifth District Appellate Court also found that Mead Johnson was subject to specific jurisdiction for the claims of the non-Illinois residents. Mead Johnson argued that its general business activities in Illinois were not related to the plaintiffs’ specific injuries because the non-Illinois infants did not ingest Mead Johnson products in Illinois and were not born, treated, or injured in Illinois.

The court determined that Mead Johnson maintained sufficient minimum contacts with Illinois under a broad stream of commerce theory. In reaching this conclusion, the court noted that Mead Johnson delivered its formula products intended for premature or very low birthweight infants into the stream of commerce in Illinois continuously since 2000. The record also revealed that Mead Johnson actively marketed those products for NICU use in Illinois since 2000. There was no evidence that Mead Johnson discontinued its sales or marketing of the products in Illinois after it was purchased in 2018 and began its transition out of Illinois.

The court next rejected Mead Johnson’s argument that there was no basis for specific personal jurisdiction because none of the plaintiffs alleged that any infant at issue consumed any Mead Johnson product in Illinois, became ill in Illinois, or was treated in Illinois. In rejecting this argument, the court distinguished the case from *Rios v. Bayer Corp.* In *Rios*, the Illinois Supreme Court held that nationwide marketing and clinical trials conducted from Illinois were insufficient to create specific personal jurisdiction where the plaintiffs and their doctor received the marketing materials and products in their home states and not in Illinois.

In distinguishing *Rios*, the appellate court noted that the *Rios* plaintiffs did not make any Illinois-specific allegations. By contrast, the plaintiffs in *Toles* asserted several claims related to the plaintiff infants’ use of the defendants’ allegedly defective feeding products. Specifically, the plaintiffs alleged that Mead Johnson managed its preterm formula business, conducted research and development of its preterm formula products, developed its preterm product marketing strategy in Illinois, and did so in partnership with Illinois companies. These were the same products that Mead Johnson marketed for the same use in Illinois during the time frame when the infant plaintiffs used the products.

After concluding that Mead Johnson had the requisite minimum contacts with Illinois, the court looked to whether “subjecting [Mead Johnson] to litigation in Illinois is reasonable under traditional notions of fair play and substantial justice.” The court stated that, “[o]nce it has been determined that a defendant has purposefully directed his activities at a forum, the defendant must present a compelling case to defeat jurisdiction. The court found that Mead Johnson failed to present sufficient evidence that litigation in the NEC lawsuits in Illinois would place a “meaningful cost and burden” on Mead Johnson.

NBA Properties v. HANWJH

The Seventh Circuit Court of Appeals previously found specific jurisdiction over a Chinese-based retailer based on the retailer’s sale of one pair of shorts sent to an investigator for the plaintiff in Illinois. The plaintiff, a professional and collegiate sports association, filed a copyright infringement claim against the Chinese-based retailer, alleging that the defendant infringed on NBA trademarks by selling counterfeit products in its online shop. This sale of one pair of shorts was the defendant’s only connection with Illinois. The court, however, reasoned that the defendant should have foreseen that this one transaction—which involved shipping a counterfeit product into Illinois—could subject it to the jurisdiction of Illinois. The court further rejected the defendant’s argument for a bright-line rule that a single transaction cannot be a sufficient basis to establish jurisdiction.

The Seventh Circuit also determined that the plaintiff satisfied a three-prong test to establish specific personal jurisdiction over the defendant. First, that the defendant purposefully availed itself of the privilege of conducting business in the forum state or purposefully directed its activities at the state. While the mere availability of a retailer’s website in the forum is insufficient to confer jurisdiction, the court found that the defendant’s readiness to do business with the forum, specifically shipping the shorts that were the subject of the lawsuit to Illinois, was a crucial factor. Second, that the plaintiff’s alleged injury arose out of or related to the defendant’s forum-related activities. The plaintiff



satisfied this prong because the defendant sold the alleged counterfeit product to the plaintiff's investigator in Illinois. Third, that the exercise of jurisdiction comported with traditional notions of fair play and substantial justice. The court found there was no unfairness in making a seller defend a lawsuit in a state where it structured its business to easily serve the state's consumers.

Considerations for Defense Counsel

While *Ford* seemed to initially create ambiguity regarding the scope of specific personal jurisdiction, the case law consistently provides that specific jurisdiction over a defendant should only be exercised in limited cases when the defendant's actions have a connection with the plaintiff's claims and the forum. Unfortunately, in *Toles*, the court seemed to stray from the lessons of *Bristol-Myers Squibb* and *Ford*. Again, in *Ford*, specific jurisdiction was appropriate because the defendant had systematically served a market in the forum states for the same type of vehicles that malfunctioned and injured the plaintiffs *in those states*. By contrast, in *Bristol-Myers Squibb*, the plaintiffs were engaged in forum shopping, as they were not forum state residents, were not prescribed the injury-causing product in the forum state, and did not sustain injuries in the forum state. Toxic tort defense counsel should rely on this distinction to push back on claims involving out-of-state exposures and injuries.

The *Toles* opinion also seems to conflict with the Illinois Supreme Court's *Rios* opinion. In *Toles*, the court distinguished *Rios* by explaining that the plaintiffs in that case did not make any Illinois-specific allegations. As discussed, the *Toles* plaintiffs alleged that Mead Johnson managed its preterm formula business, conducted research and development of those products, and developed its preterm product marketing strategy in Illinois. In *Rios*, however, the plaintiffs did allege Illinois-specific allegations. Specifically, they alleged that Bayer used Illinois to develop, label, or work on the regulatory approval for Essure (the product at issue) and created the Essure Accreditation Program and the Essure marketing strategy in Illinois. In fact, Bayer did not dispute that it conducted clinical trials, held a physician training program for Essure, and coordinated a marketing strategy in Illinois. Therefore, in cases involving similar allegations, defense counsel must be prepared to argue that the rationale set forth in *Rios* should control.

Consent Jurisdiction

As discussed above, through a series of opinions, the United States Supreme Court clarified that general jurisdiction exists over foreign companies only in exceptional circumstances. Subsequently, however, the Court gave legislatures an opening to expand the scope of general jurisdiction through the doctrine of consent jurisdiction. In *Mallory v. Norfolk Southern Railway*, the Court recognized that a state may require foreign corporations to consent to personal jurisdiction to do business within the state. In 2025, the Illinois General Assembly recognized this opening and enacted Public Act 104-0352. Below, we discuss the background leading to the enactment of PA 104-0352, the provisions of the Act, and potential defenses to raise.

History of Consent Jurisdiction in Illinois

Although PA 104-0352 is significant legislation, consent jurisdiction is not a new concept in Illinois. Rather, Illinois courts have routinely found that defendants can contractually consent to jurisdiction. Specifically, forum selection clauses are considered a consent to the exercise of jurisdiction in the particular forum designated in the contract.

Illinois courts also have recognized that defendants can waive a jurisdiction defense. Prior to 2000, defendants seeking to contest jurisdiction were required to file a “special appearance” before filing any other pleading or motion. Defendants waived a jurisdiction defense either by filing a “general appearance” or by taking any action “which recognize[d] the case as in court.” Moreover, if a defendant raised any defense other than jurisdiction in its appearance, the defendant waived its jurisdiction defense, even if its appearance was designated as a “special appearance.”

In 2000, Illinois eliminated the distinction between general and special appearances. Now, a defendant waives a jurisdiction defense by filing a responsive pleading or motion, other than a motion seeking an extension of time to answer or otherwise appear, before filing a motion objecting to jurisdiction. Illinois courts have recognized that defendants are no longer required to file special appearances to preserve a jurisdiction defense, and defendants may combine a motion challenging jurisdiction with additional motions seeking relief on different grounds.

Please note that despite the unambiguous language used in the amended version of Section 5/2-301, some courts still have relied on the outdated principle that defendants can waive a jurisdiction defense by filing a general appearance and not a special appearance solely to contest jurisdiction. One court referred to the now-moot distinction between general and special appearances when explaining that a defendant waived its jurisdiction defense by proceeding in the merits of a case, even after filing such a special appearance. The First District Appellate Court recently characterized waiver as applying when a defendant participates in the merits of a case.

While these cases appear anomalous, counsel should be aware of them if waiver is an issue and be prepared to argue that such cases are based on “an obsolete legal framework.” Additionally, participation in a case should not constitute waiver so long as a defendant contests jurisdiction in its initial pleading or motion.

Consent Jurisdiction Through Registration

After Illinois eliminated the distinction between general and special appearances, plaintiffs’ attorneys seeking to establish general jurisdiction against a defendant had to establish that the defendant was doing business in Illinois with a fair measure of permanence and continuity. In 2014, as discussed above, the United States Supreme Court “raised the bar for” general jurisdiction through its opinion in *Daimler*. Following *Daimler*, plaintiffs’ attorneys faced a daunting challenge when seeking to establish general jurisdiction against foreign corporations.

Some plaintiffs’ attorneys in toxic tort litigation shifted their focus away from defendants’ level of contacts with the forum state and instead focused on their corporate registration status in the forum state. The plaintiffs’ attorneys argued that defendants consented to jurisdiction by registering and maintaining a registered agent in the forum state. In 2017, the Illinois Supreme Court rejected this argument, finding that a defendant does not consent to general jurisdiction by maintaining a registered agent in Illinois. Subsequently, the Illinois Appellate Court similarly determined that a defendant who has a registered agent in Illinois neither consents to jurisdiction nor waives its jurisdiction defense. Thus, until the enactment of PA 104-0352, general jurisdiction seemed to apply to foreign corporations only in exceptional circumstances.

Supreme Court Paves the Way for Public Act 104-0352

By 2023, the United States Supreme Court and Illinois courts endorsed the narrow scope of general jurisdiction espoused in *Daimler*. As discussed above, Illinois courts also had rejected the argument that foreign corporations consented to jurisdiction in Illinois by registering to do business or maintaining a registered agent in the State. In 2023,

however, the United States Supreme Court issued an opinion that ultimately paved the way for PA 104-0352. In *Mallory v. Norfolk Southern Railway*, the Supreme Court determined that Pennsylvania courts could exercise general jurisdiction over foreign corporations that registered to do business in Pennsylvania pursuant to a state statute. The Pennsylvania statute at issue expressly required foreign entities to consent to personal jurisdiction as a condition of registering to do business.

The *Mallory* lawsuit arose out of Mallory's alleged exposure to asbestos in Ohio and Virginia. Mallory filed suit in Pennsylvania against Norfolk Southern, a Virginia corporation whose principal place of business was located in Virginia. Norfolk Southern argued that the exercise of personal jurisdiction over it would violate due process principles. In response, Mallory argued that Norfolk Southern was subject to general jurisdiction pursuant to 42 Pa. Cons. Stat. § 5301(a)(2)(i), (b). According to that statute, corporations that qualify as foreign corporations under the laws of Pennsylvania are subject to general jurisdiction. Norfolk Southern had taken the necessary steps to qualify as a foreign corporation in Pennsylvania, including registering to do business in the State. Therefore, the Court believed that Norfolk Southern had agreed to be "found in Pennsylvania and answer any suit there."

In *Mallory*, the Supreme Court relied heavily on, and refused to overturn, a Supreme Court opinion from 1917. In *Pennsylvania Fire Insurance Co. v. Gold Mining & Milling Co.*, the Court affirmed the constitutionality of a Missouri statute that required out-of-state insurance companies desiring to transact business in Missouri to appoint a state official to serve as a registered agent and accept service on that official in any suit. Similarly, the Court in *Mallory* found that the exercise of general jurisdiction over Norfolk Southern pursuant to the Pennsylvania statute did not violate due process principles.

While *Mallory* has proven significant to Illinois toxic tort litigation, at the time of its issuance, its impact seemed limited. The Supreme Court indicated that its decision was based on the express wording of the Pennsylvania statute at issue. The Court noted that it would "not speculate whether any other statutory scheme and set of facts would suffice to establish consent to suit." Illinois courts recognized the limited nature of the holding. For example, the District Court for the Northern District of Illinois noted that *Mallory* held only that states *may* require corporations to consent to general jurisdiction by registering to do business. The court saw no evidence that Illinois actually imposed such a requirement in its business registration law. The Northern District had previously declined to exercise general jurisdiction based on the defendant's registration in Illinois from 2012 to 2021, despite the plaintiffs' reliance on *Mallory*, because of the wording of the Illinois registration law.

Mallory Emboldens the Illinois Legislature

Following *Mallory*, the plaintiffs' bar still faced difficulty establishing general jurisdiction over foreign companies since the Illinois business registration statute did not make consent to jurisdiction a condition of registering to do business. In 2025, Illinois legislators moved to remedy this issue through Senate Bill 328. Likely recognizing the controversial nature of the final version of the bill, legislators used what is known as the "gut-and-replace" procedure. This procedure is intended to avoid Illinois' constitutional requirements for the reading of bills, as amendments do not have the same reading requirements as bills.

The original language of Senate Bill 328, a "shell bill", proposed one change to the Illinois Code of Civil Procedure; specifically, deleting the word "and" and replacing it with the identical word "and." After passage in the Senate, the bill was read twice in the House before an amendment was introduced to include the language that is in the final version of the bill. The bill was not sent to a substantive committee, but instead, was debated on the next-to-last day of the

legislative session. The House debate counted as the final required reading, so the bill was sent to the Senate upon passage. The Senate then voted to pass the bill after midnight at the close of the legislative session.

Following this legislative chicanery, a group of Illinois lawmakers filed a lawsuit challenging the bill and asking the court to prohibit the legislature from using the “gut-and-replace” procedure. Unfortunately, the circuit court dismissed the complaint in August 2025. Plaintiff McCombie filed a notice of appeal on September 11, 2025. As of this writing, the appellate court has not yet heard oral arguments. A group of Republican legislators filed a separate lawsuit challenging the “gut-and-replace” procedure, which remains pending in the Circuit Court of Sangamon County as of this writing.

Ultimately, Governor Pritzker signed Senate Bill 328 into law on August 15, 2025. With his signature, PA 104-0352 went into effect on the same date.

The Text of Public Act 104-0352

PA 104-0352 amends the Illinois long-arm statute. The long-arm statute now provides that a foreign business corporation is subject to general jurisdiction if it consents to general jurisdiction in Illinois in accordance with Section 13.20(b) or Section 13.70(c-5) of the BCA, but only if: 1) the lawsuit alleges injury or illness resulting from exposure to a substance defined as toxic under the Illinois Uniform Hazardous Substances Act (“UHSA”); and 2) jurisdiction is proper as to one or more co-defendants under subsection (a) of the long-arm statute.

If faced with the issue of whether consent general jurisdiction exists under the amended long-arm statute, consider conducting the analysis set forth below. Only if you answer yes to all five questions should consent general jurisdiction exist.

- 1) Is the defendant a foreign business corporation;
- 2) Does the lawsuit allege injury or illness resulting from exposure to a substance defined as “toxic” by the UHSA;
- 3) Did the defendant consent to general jurisdiction under 805 ILCS 5/13.20(b) or 805 ILCS 5/13.70(c-5);
- 4) Is the consent to general jurisdiction effective; and
- 5) Is at least one co-defendant subject to jurisdiction under subsection (a) of the long-arm statute.

1. Foreign Corporation Requirement

Beginning with the first question, the amendment to the long-arm statute states that it applies only to foreign business corporations. In Illinois, foreign business corporations are governed by Article 13 of the BCA. Based on the plain language of the amendment, it does not seem to apply to other types of foreign entities, such as limited liability companies or partnerships.

Foreign limited liability companies and foreign partnerships are governed by separate laws. Accordingly, if a plaintiff’s attorney attempts to argue that a foreign entity other than a business corporation is subject to consent general jurisdiction, it will be important to argue that Section 209(b)(5) does not apply to such entities. Under Illinois law, courts will not depart from the plain language of a statute if the language is clear and unambiguous.

2. Toxic Substance Requirement

To trigger consent jurisdiction under the amended long-arm statute, the lawsuit must allege injury or illness resulting from exposure to a substance defined as “toxic” by the UHSA. According to the Act, “toxic” means any substance, other than a radioactive substance, which has the capacity to produce bodily injury or illness to man through ingestion, inhalation, or absorption through anybody surface. The federal Hazardous Substances Act (“FHSA”) contains a nearly identical definition of “toxic.”

The UHSA does not provide any examples of a toxic substance. Moreover, there is a dearth of case law interpreting that term either as used in the UHSA or the FHSA. The Code of Federal Regulations provides some guidance on the term “toxic” as used in the FHSA. For example, one regulation supplements the FHSA’s definition of toxic. Additionally, there is a regulation that sets forth guidelines for determining if a substance is considered toxic due to risk of a chronic hazard. This includes substances considered toxic because of their carcinogenicity, neurotoxicity, or developmental/reproductive toxicity.

For additional guidance, the UHSA’s definition of “hazardous substance” includes any substance that is toxic. There are multiple court opinions discussing what constitutes a hazardous substance under the UHSA and the FHSA. Additionally, there are multiple federal regulations that either supplement the definition of hazardous substances, identify specific hazardous substances, or identify certain products that are exempt from a hazardous substance classification.

Experienced toxic tort litigators probably can anticipate the types of substances the plaintiffs’ bar will characterize as “toxic” and the arguments they will make to support such a classification. While the toxic substance requirement in the amended long-arm statute limits the scope of subsection (b)(5), it is likely no coincidence that Illinois is home to three of the top five jurisdictions for asbestos lawsuit filings in the nation. Certainly, the primary goal of PA 104-0352 seems to be expanding Illinois’ already robust toxic tort docket. One argument defense counsel should consider when litigating this issue is that the UHSA does not apply to certain products and substances that otherwise might satisfy the Act’s definition of “toxic.”

3. Consent under the Business Corporation Act

PA 104-0352 amended two sections of the BCA. First, Section 5/13.20 now provides that a corporation that obtains or continues to maintain the right to transact business in Illinois consents to the exercise of general jurisdiction in Illinois. A corporation can obtain the right to transact business in Illinois by filing an Application for Authority to Transact Business in Illinois.

Section 5/13.20 also was amended to state that a corporation consents to general jurisdiction by registering to do business in Illinois at any time following the effective date of PA 104-0352 (August 15, 2025). A corporation that previously registered to do business in Illinois consents to general jurisdiction on the next date after August 15, 2025, on which the corporation’s annual report filing is due, regardless of whether or not the corporation then files the report. As an example, if a foreign corporation was registered to do business in Illinois prior to August 15, 2025, and its next annual report is due on August 1, 2026, the corporation will be deemed to have consented to general jurisdiction on August 1st, even if the corporation does not file the report.

PA 104-0352 also amended Section 5/13.70 of the BCA. Under subsection (c-5), a foreign corporation that transacts business in Illinois without authority is deemed to have consented to general jurisdiction to the same extent as if it were

registered to do business in Illinois. In this situation, consent to general jurisdiction commences upon committing an act constituting the transaction of business in Illinois without authority at any time after August 15, 2025. The consent remains effective for 180 days following the commission of each and every such act constituting the transaction of business in Illinois. Stated differently, each time a foreign corporation transacts business in Illinois after August 15, 2025, a new 180-day cycle begins.

Subsection (c-5) raises the question of what constitutes the “transaction of business” in Illinois. Multiple courts have addressed this issue. Additionally, the BCA expressly identifies certain acts that do not constitute the transaction of business by foreign corporations.

4. Effectiveness of Consent

If the defendant has taken one of the actions identified in Section 13.20(b) or Section 13.70(c-5), you must determine if the consent is effective at the time of contesting jurisdiction. For example, if the defendant has obtained authority to transact business in Illinois, then the consent appears to be effective so long as the defendant maintains that authority. If a defendant registers to do business in Illinois after August 15, 2025, the defendant consents to general jurisdiction upon registering.

If the defendant has not obtained authority to transact business in Illinois, but previously registered to do business in the state, recall that consent is not effective until the next date after August 15, 2025, on which the corporation’s annual report filing is due. Therefore, a defendant in this situation has a window of time during which it will not be deemed to have consented to general jurisdiction. Unfortunately, on the deadline for filing its annual report, the defendant will be deemed to have consented to general jurisdiction regardless of whether it actually files the report.

Section 13.20(b) indicates that consent to general jurisdiction terminates only upon formally withdrawing from Illinois. This can be accomplished by filing an Application for Withdrawal and Final Report.

Under Section 13.70(c-5), consent is premised on a foreign corporation transacting business in Illinois without authority. Consent through this section does not commence until the foreign corporation commits an act constituting the transaction of business after August 15, 2025. Such an act will remain effective for purposes of consent for 180 days. As discussed, however, each additional act constituting the transaction of business appears to trigger a new 180-day consent period.

5. Co-Defendant Jurisdiction Requirement

For consent general jurisdiction to exist, at least one co-defendant must be subject to jurisdiction under subsection (a) of the long-arm statute. Under that subsection, jurisdiction exists for any cause of action arising from the commission of acts specifically enumerated in that subsection, including the transaction of business within Illinois, the commission of a tortious act within Illinois, and the making or performance of a contract or promise substantially connected with Illinois, among other acts. Subsection (a) is a specific jurisdiction provision. Thus, for consent general jurisdiction to exist, at least one co-defendant must be subject to specific jurisdiction under subsection (a).

This places a difficult burden on defendants in toxic tort litigation, which sometimes involves dozens of co-defendants, to determine if any of the co-defendants are subject to specific jurisdiction under subsection (a). A co-defendant’s suit-related contacts with Illinois, if any, may be difficult to determine in toxic tort cases involving non-resident plaintiffs alleging out-of-state exposures and injuries. This would require an analysis of whether any of the co-

defendants committed an act enumerated in subsection (a), the act was purposefully directed at Illinois, and the act gave rise to the plaintiff's cause of action.

Defense counsel should remember that, even after PA 104-0352, plaintiffs have the burden of establishing a basis for personal jurisdiction. Plaintiffs must allege sufficient factual allegations in their complaints to make a *prima facie* showing of jurisdiction. Under Illinois law, plaintiffs cannot rely on vague, conclusory, or generalized allegations to meet their burden.

If a plaintiff seeks to establish consent jurisdiction against a defendant in toxic tort litigation, the defendant should force the plaintiff to meet their initial burden of alleging facts sufficient to make a *prima facie* showing of jurisdiction. This includes requiring the plaintiff to plead facts, not conclusions, supporting their claim that at least one co-defendant is subject to specific jurisdiction under subsection (a) of the long-arm statute. If a plaintiff is alleging that a defendant consented to general jurisdiction, this would force the plaintiff to show their cards and reveal why they believe at least one of the co-defendants is subject to specific jurisdiction under the long-arm statute.

Considerations for Defense Counsel

As discussed below, there are grounds to challenge PA 104-0352. With that said, corporate defendants challenging the law face an uphill battle given the legal landscape in Illinois. The challenge, however, may be worthwhile given the negative consequences that may arise from PA 104-0352.

For example, in toxic tort cases, the law all but abolishes the distinction between general and specific jurisdiction, thus encouraging forum-shopping. Recall that, prior to PA 104-0352, if a plaintiff filed a lawsuit in Illinois unrelated to the defendant's contacts with Illinois, the plaintiff had to establish that the defendant maintained such affiliations with Illinois to be considered "essentially at home" (*i.e.*, general jurisdiction). By contrast, to establish specific jurisdiction, a plaintiff had to show that their lawsuit arose out of or related to the defendant's contacts with Illinois. Now, plaintiffs can file toxic tort lawsuits having little-to-no connection with Illinois, without the need to establish constitutionally sufficient minimum contacts against foreign corporations, simply because they have registered to do business, obtained authority to transact business, or conducted unrelated—and possibly trivial—business in Illinois.

Additionally, PA 104-0352 forces companies to make a difficult decision: continue doing business in Illinois, with the risk of being sued in toxic tort lawsuits having no connection to the company's Illinois activities and that bring with them the risk of massive verdicts, or cease doing business in the state. To say Illinois is an unfavorable venue for defendants in toxic tort litigation is an understatement. It is unfortunate that corporations must consider whether to cease doing business in the nation's sixth most populous state because of this law.

A slight silver lining may be that the United States Supreme Court's *Mallory* opinion does not foreclose challenges to PA 104-0352. In that case, the Supreme Court focused only on the language of certain Pennsylvania statutes. The Supreme Court noted that in deciding the case, it did not need to speculate whether any other statutory scheme and set of facts would suffice to establish consent jurisdiction.

The amended versions of the Illinois long-arm statute and BCA are worded differently from the Pennsylvania statutes at issue in *Mallory*. There are different prerequisites that must exist for each state's laws to apply. Therefore, comparing the Pennsylvania and Illinois laws is not an apples-to-apples comparison.

From a factual perspective, in *Mallory*, the defendant had been registered to do business in Pennsylvania for many years. It maintained an office in Pennsylvania for receiving service of process, employed nearly 5,000 people in Pennsylvania (more than in the state where its headquarters was located), maintained more than 2,400 miles of track in

Pennsylvania (more than it did in any other state), and operated the largest locomotive repair shop in North America in Pennsylvania. That is certainly different from a small business that may transact only nominal business in Illinois.

1. Dormant Commerce Clause

In *Mallory*, Justice Alito issued a concurring opinion. In it, he discussed whether Pennsylvania violated the dormant Commerce Clause with its consent jurisdiction statutory scheme. The Commerce Clause grants Congress the power to regulate commerce among the states. The Supreme Court has recognized a “negative component” in the Clause—the dormant Commerce Clause—that prohibits state laws that unduly restrict interstate commerce.

According to Justice Alito, the Supreme Court and other courts have long-examined assertions of jurisdiction over foreign companies in light of interstate commerce concerns. Therefore, he believed analyzing whether the Pennsylvania statutes violated the dormant Commerce Clause was appropriate. He then explained that a state may violate the Clause in two circumstances: 1) when a law discriminates against interstate commerce; or 2) when a law imposes undue burdens on interstate commerce.

Justice Alito indicated there was reason to believe Pennsylvania’s registration-based jurisdiction discriminated against foreign companies. He also believed, at the very least, the statutes imposed a significant burden on interstate commerce by requiring a foreign company to defend itself with reference to all transactions, including those with no forum connection. Justice Alito highlighted the impact Pennsylvania’s consent jurisdiction law could have on small companies. Specifically, large companies may utilize creative restructuring to avoid jurisdiction, while small companies may choose not to enter Pennsylvania, or may do business in the state without registering, risking the consequences rather than consenting to general jurisdiction.

In *Mallory*, the defendant raised the dormant Commerce Clause in the lower courts, but the Pennsylvania Supreme Court did not address the issue. Consequently, the U.S. Supreme Court did not consider the issue, leaving it unresolved. Defendants in Illinois facing the issue of consent general jurisdiction should certainly consider raising this argument. Although not identical to the Pennsylvania statutes, PA 104-0352 imposes a similar burden on foreign corporations, particularly small businesses.

The United States Supreme Court previously struck down as unconstitutional an Ohio law that tolled the statute of limitations for any period that an out-of-state corporation had not designated a registered agent. To benefit from Ohio’s statute of limitations, foreign corporations would have to consent to general jurisdiction by appointing a registered agent for service of process in the State. Therefore, jurisdiction would extend to any suit against a foreign corporation whether or not the transaction at issue had any connection to Ohio. The Court noted that Ohio’s statutory scheme forced foreign corporations to choose between exposure to the general jurisdiction of Ohio courts or forfeiture of the limitations defense, remaining subject to suit in Ohio in perpetuity. Thus, the Court reasoned that the statute imposed a greater burden on foreign corporations than it did on Ohio companies in violation of the Commerce Clause.

2. Due Process Clause

A troubling aspect of PA 104-0352 is that it seemingly authorizes the exercise of personal jurisdiction against certain corporations without requiring minimum contacts. Since the United States Supreme Court issued its landmark opinion in *International Shoe v. Washington*, courts have typically framed their personal jurisdiction analysis around the Federal Due Process Clause. Specifically, courts would not exercise personal jurisdiction unless the defendant

maintained sufficient minimum contacts with the forum state such that maintenance of the suit would not offend traditional notions of fair play and substantial justice.

As discussed above, courts have recognized that defendants could consent to jurisdiction. In Illinois, however, defendants were not required to consent to jurisdiction in order to do business within the State. Rather, defendants could contractually agree to waive the issue of jurisdiction through contract, or defendants could recognize the jurisdiction of courts by failing to properly contest jurisdiction.

In the case of forum selection clauses, these are reached through arm's-length negotiation between experienced and sophisticated entities, unlike PA 104-0352, which has been unilaterally imposed upon foreign corporations. Additionally, forum selection clauses do not warrant the exercise of general jurisdiction, but rather, for claims arising from or otherwise connected to the contract in which the clause appears. As to waiver, this arises from case-specific conduct; namely, failing to preserve a jurisdiction defense in an initial responsive pleading or motion. By contrast, PA 104-0352 links general jurisdiction with a foreign corporation's overall business practices and not case-specific conduct.

In *Mallory*, the Court brushed away due process concerns by finding that "all *International Shoe* did was stake out an *additional* road to jurisdiction over out-of-state corporations." According to the Court, *International Shoe* applies to defendants that have *not* consented to jurisdiction. In other words, minimum contacts appear to be relevant only if the defendant has not consented to jurisdiction. The Court also characterized *International Shoe* as increasing the ability of state courts to exercise jurisdiction over non-resident defendants.

The dissent in *Mallory* thoroughly addressed the due process concerns arising from the Pennsylvania statute at issue. For example, the dissent explained that the statute allowed for the exercise of general jurisdiction based upon registering to do business. Supreme Court precedent, however, "makes crystal clear, simply doing business is *insufficient*." According to the dissent, under the Pennsylvania statute, every corporation would be subject to general jurisdiction in every state in which it is registered, robbing the *Daimler* opinion of any meaning.

The dissent also highlighted the troubling implications of the majority's rationale. The dissent gave as an example a state amending its long-arm statute to provide that any corporation doing business in the state is subject to the general jurisdiction of its courts. Supreme Court precedent establishes that in-state business is not sufficient to permit the exercise of general jurisdiction.

Consent jurisdiction like the type approved in *Mallory* also raises federalism concerns. The Due Process Clause protects more than the rights of defendants, but also interstate federalism. Restrictions on personal jurisdiction are "more than a guarantee of immunity from inconvenient or distant litigation," but also the consequence of territorial limitations on the power of the States. The dissent believed the Pennsylvania statute imposed a blanket claim of authority over controversies with no connection to the Commonwealth, thus intruding on the prerogatives of other jurisdictions to adjudicate the rights of their citizens and enforce their own laws.

Finally, the dissent addressed how the majority's opinion conflicted with jurisdictional precedent. Most significantly, the dissent explained that the 1917 opinion relied on by the majority pre-dated and conflicted with *International Shoe*. The Court had previously stated that prior decisions that were inconsistent with *International Shoe* were overruled. Courts in other jurisdictions also have noted the due process concerns raised by a finding that a foreign corporation consents to general jurisdiction simply by complying with a mandatory registration statute.

Obviously, the dissent is not controlling law. However, it details due process arguments to make if seeking to overturn *Mallory*. If the makeup of the Court changes, the Court's position on this issue may evolve.

While probably a long-shot argument, defendants also may want to consider whether the Illinois Due Process Clause provides greater protection to defendants than the federal clause. Historically, when analyzing personal jurisdiction, Illinois courts examined whether the exercise of jurisdiction comported with the Federal Due Process Clause and the

Illinois Due Process Clause, contained in Article I, Section 2 of the Illinois Constitution. Following a 1989 amendment to the Illinois long-arm statute, Illinois courts collapsed their due process inquiry into one question: whether a defendant maintained minimum contacts with Illinois sufficient to satisfy federal and Illinois due process.

The Illinois Supreme Court previously explained that the Illinois long-arm statute is to be given a definite meaning and scope “which does not fluctuate with every new pronouncement on the limits of Federal due process.” The court further noted that the Illinois long-arm statute “may well restrict the power that the courts of this State have to bring nonresidents before them to a greater extent than do the Federal due process clause and the ‘minimum contacts’ standard...” The U.S. Supreme Court deems the federal Due Process Clause as setting “the outer-boundaries” of a state court’s authority to proceed against a defendant, suggesting that states may impose narrower boundaries.

If you intend to raise this argument, however, be aware that the Illinois Supreme Court has not resolved the issue of whether the Illinois Due Process Clause affords greater protection than its federal counterpart regarding personal jurisdiction. In one case, the Illinois First District Appellate Court seemingly rejected a defendant’s argument that Illinois due process requirements are “more rigorous” than federal standards, yet still conducted a separate Illinois due process analysis. At the federal level, the Seventh Circuit Court of Appeals previously noted that “Illinois courts have given little guidance as to how state due process protection differs from federal protection in the context of personal jurisdiction.”

3. Special Legislation

Another challenge to consider is that PA 104-0352 is unconstitutional “special legislation.” Article IV, Section 13 of the Illinois Constitution provides that the Illinois legislature shall pass no special or local law when a general law is or can be made applicable. The clause prohibits the legislature from conferring a benefit or privilege upon one group while excluding other similarly situated groups.

The legislature chose to limit PA 104-0352 to cases involving exposure to substances defined as toxic by the UHSA to the exclusion of plaintiffs pursuing other types of bodily injury and wrongful death claims. Additionally, the law only creates consent jurisdiction over foreign corporations to the exclusion of other business entities, and only when such corporations are named in toxic tort lawsuits. Not surprisingly, there is no language in PA 104-0352 explaining the distinctions.

4. Forum Non Conveniens

As discussed, overturning PA 104-0352 is likely going to be an uphill battle. Therefore, defense counsel in toxic tort litigation should be mindful of other defenses particularly suited to this litigation. For example, *forum non conveniens* offers defendants the opportunity to move toxic tort litigation from pro-plaintiff venues, often having no connection to the litigation, to more appropriate venues. Under the doctrine of *forum non conveniens*, a court may decline jurisdiction and transfer a case when it appears that another forum can better serve the convenience of the parties and the ends of justice. Illinois recognizes intrastate and interstate *forum non conveniens*.

In evaluating *forum non conveniens*, courts will examine and weigh private and public interest factors. The defendant bears the burden of establishing that the balance of relevant factors strongly favors transfer. One factor that weighs heavily is the plaintiff’s choice of forum, which should not be disturbed unless the public and private interest

factors greatly outweigh that choice. Unfortunately, while forum shopping is an issue in toxic tort litigation, defendants cannot assert that forum shopping should be considered when pursuing *forum non conveniens*.

In cases involving intrastate *forum non conveniens*, a trial court abuses its discretion in granting a motion to transfer where no single county enjoys a predominant connection to the litigation. Therefore, if witnesses are scattered among several counties or relevant documents can be accessed electronically, rather than in-person, such a predominant connection may not exist.

Defense counsel should be aware of the flurry of court activity involving *forum non conveniens* in Illinois since 2025. A full discussion of these opinions could warrant its own article, but some noteworthy points from these opinions are as follows. First, defendants must show not only that the chosen forum is inconvenient to them, they also must show that another forum is more convenient to *all parties*. For example, in multi-defendant litigation, failing to present evidence that the chosen forum is inconvenient to all co-defendants, including those not seeking transfer, is fatal to a *forum non conveniens* defense.”

Additionally, the Illinois Appellate Court has stressed that technological advances, including remote depositions and hearings, have neutralized the ease of access to documentary evidence factor and has almost equally neutralized the ease of access to testimony factor. Therefore, if defendants are claiming that it would inconvenience witnesses to testify or appear for hearings in the plaintiff’s forum, they must be prepared to overcome this issue. This is particularly true for treating physicians because the First District Appellate Court recently emphasized that remote depositions have minimized the impact of accessing treating physician testimony. As to physician trial testimony, in that case, the court noted that it was the fact that physicians had to testify at trial, rather than the location of the trial, that inconvenienced the physicians.

In one recent opinion, however, the First District found that ease of access to testimonial, documentary, and real evidence favored transfer based on interstate *forum non conveniens*. The court emphasized the lack of connection between the plaintiffs’ claims, the relevant witnesses, and Illinois. The court also noted the difficulty in obtaining in-person trial testimony from out-of-state third-party medical witnesses, whose testimony was important based on the nature of the plaintiffs’ claims. While acknowledging the impact of technology on obtaining witness testimony, the court explained that the presentation of in-person testimony “remains of utmost importance in trial and evidentiary hearings.” Additionally, the court considered the use of evidence depositions to obviate the need for physicians to testify at trial an “inadequate substitute for in-person testimony.” As to having physicians testify via Zoom, the court indicated that reasonable debate exists over whether Zoom is equivalent to in-person testimony.

In weighing whether there was a local interest in deciding the non-resident plaintiffs’ claims, the court noted that merely conducting business in a county or having a corporate headquarters in a state does not give a forum a natural nexus to all litigation. Since the non-resident plaintiffs’ claims centered on the defendant’s conduct directed at non-resident plaintiffs, out-of-state hospitals, and out-of-state healthcare providers, the local interest of the plaintiffs’ forum was “tenuous.” As to the unfairness of expense and burden of jury duty factor, the court found that, taken to the extreme, the plaintiffs’ forum would bear the expense and burden of jury trials for all similar claims against the defendant from all over the world regardless of the inconvenience. Not surprisingly, the court found this to be contrary to the purpose of *forum non conveniens*.

In an intrastate forum case, the First District similarly recognized the importance of having localized controversies resolved in the forum most closely connected to the events at issue. In that case, the plaintiff filed suit in Cook County, but the medical treatment at issue occurred in Winnebago County, the plaintiff resided in Kane County, and all defendants worked in or near Winnebago County. While two of the six defendants lived in Cook County, the court determined that Winnebago County would be a far more convenient forum for the majority of the parties. As in the

Deppa opinion, the court acknowledged that technology minimized the consideration of ease of access to evidence, but noted the importance of live testimony.

In considering public interest factors, the court recognized that case filings are down significantly across the state, but this would mean that filings in Winnebago County are down as well. In other words, a uniform decrease in case filings would not impact the considerable disparity between the caseloads of Cook County and Winnebago County. Additionally, the court emphasized that requiring jurors to resolve a controversy rooted in an unrelated jurisdiction undermines the core function of having jurors adjudicate disputes that affect their communities.

The court concluded by recognizing the lack of connection between the plaintiff's claims and Cook County. While the defendant conducted business in Cook County, Illinois courts have repeatedly held that conducting the same business in the forum does not establish a substantial connection to litigation arising from events elsewhere. Although one of the defendants maintained a practice in Cook County, such an incidental connection did not outweigh the strong ties to Winnebago County or justify burdening Cook County jurors.

The Fifth District Appellate Court recently addressed a case of first impression before it. The court analyzed how much deference to afford a plaintiff's chosen forum where the plaintiff previously filed her case in one Illinois county, moved her residence to another Illinois county, voluntarily dismissed her case in the original county in which it was filed, and subsequently refiled her case in the county in which she currently resided. The court determined that the plaintiff's chosen forum was entitled to substantial deference. In doing so, the court relied on several principles of Illinois law, including that a plaintiff has a right to voluntarily dismiss their lawsuit, the reason for which is immaterial, and a right to refile a lawsuit. Importantly, the plaintiff's original lawsuit had not been transferred to another circuit court on *forum non conveniens* grounds.

In that case, the court also considered the plaintiff's medical condition in weighing the relevant factors. The plaintiff suffered severe incapacities, including short-gut syndrome, which significantly restricted her ability to travel. This made her chosen forum, in which she resided, a more convenient forum. As discussed, defendants pursuing a forum defense must establish that the chosen forum is inconvenient to *all parties*.

In the previously discussed *Toles* opinion, the Fifth District emphasized the importance of the location of a defendant's headquarters and business activities when pursuing *forum non conveniens* in a products liability case. In that case, the defendants not only pursued a personal jurisdiction defense, but also a *forum non conveniens* defense. According to the defendants, Illinois had no real interest in the litigation. Instead, they argued that residents of the communities where the infants were born and treated had the greatest interest in the adequacy of care, treatment, and nutrition provided to the infants. The court, however, indicated that the general rule that the county where an injury occurred has the strongest interest in the outcome of litigation may not apply in product liability cases.

The court deemed Abbot being headquartered in Illinois as significant to its analysis. In product liability cases, the forum where the defendant corporation is headquartered has an interest in ensuring the safety of the products that its corporations build and ship throughout the world. Abbott also maintained a research center in Illinois.

As to Mead Johnson, the court agreed with the circuit court's finding that St. Clair County residents had an interest in the litigation because Mead Johnson had an exclusive WIC contract with the State of Illinois such that Illinois residents who were beneficiaries of the WIC program could only select Mead Johnson products for their infants. Moreover, three of the five infants were born prior to 2018 while Mead Johnson's headquarters were still located in Illinois.

The Fifth District agreed with the circuit court's reasoning that while the infants' alleged injuries may have occurred in other states or a different county, Illinois had an interest in deciding whether a corporation, whose principal place of

business and headquarters were there, sent forth a product that may have injured citizens across the nation. Ultimately, the court concluded that the circuit court did not err in denying the defendants' *forum non conveniens* motions.

Overall, defense counsel in toxic tort litigation planning to pursue a *forum non conveniens* defense should analyze the cases discussed above and understand the specific factors that weighed in favor of, or against, transfer. Counsel should be prepared to present evidence that the chosen forum is inconvenient to all parties, including co-defendants. Additionally, when appropriate, counsel should emphasize the importance of and preference for live testimony in response to claims that remote hearings and depositions are sufficient. Where a defendant is headquartered in Illinois, counsel should focus heavily on proving that other public and private interest factors weigh in favor of transfer given the court's reasoning in *Toles*.

5. Removal

Another consideration for defense counsel when a personal jurisdiction defense is unavailable is whether to pursue "snap removal." Complete diversity of citizenship is often lacking in multi-party toxic tort litigation. Removal to federal court, however, is often difficult to pursue because plaintiffs' attorneys typically know to name at least one defendant that is considered a citizen of the forum state, thus triggering what is known as the "forum defendant rule." Snap removal may provide a basis for avoiding this result.

Snap removal refers to when a defendant that is not considered a citizen of the forum state removes a case to federal court: 1) after the lawsuit has been filed; but 2) before a forum state resident defendant has been served. After snap removal of a case, the question facing courts is whether to allow the case to remain in federal court even though forum state resident defendants are later served, or to remand the case simply because forum state resident defendants were named in the lawsuit. The Seventh Circuit has yet to weigh in on the propriety of snap removal. In several cases, however, Illinois district courts have authorized snap removal. The courts primarily reasoned that the plain language of the forum defendant rule applies only to defendants who were properly joined *and served*. Thus, if a diverse defendant removes a case before any forum resident defendant has been served, removal is appropriate.

By contrast, several Illinois district court judges have rejected snap removal. The reasoning articulated is that snap removal perverts the forum defendant rule. In one case, the court indicated that the forum defendant rule was not intended to create a race to action between the plaintiff seeking to serve defendants and unserved defendants seeking to remove their case before a forum resident defendant is served. The District Court for the Northern District of Illinois also has rejected removal of a case before any defendant, including the removing defendant, has been served or otherwise appeared.

When considering removal, defense counsel also should evaluate whether removal under the "federal officer defense" is appropriate. The federal officer defense allows for removal when a defendant is sued for acts undertaken at the direction of a federal officer. It is an exception to the well-pled complaint rule, which requires federal jurisdiction to arise on the face of the complaint. Federal officer removal also permits removal of an entire case, even though the federal officer defense may not apply to all claims.

Federal officer removal may be particularly appropriate in toxic tort cases, where plaintiffs may be alleging that they were exposed to hazardous substances decades ago, possibly while serving in the military. Please note, however, that plaintiffs may, if worded properly, be able to disclaim injuries arising from or related to military service to support remand. Additionally, in asbestos litigation, courts prefer remand when one defendant out of many removes the case based on a federal contractor defense. Thus, if a plaintiff in an asbestos lawsuit dismisses the only defendant with a federal officer defense, the court likely will remand the case.

Finally, defense counsel in toxic tort litigation must be mindful of when the 30-day removal period is triggered. The removal period begins to run when grounds for removal are “ascertainable,” not when the grounds become “uncontestable.” Numerous courts have found that once a plaintiff identifies specific worksite locations, time periods, and asbestos-containing products allegedly manufactured by defendant companies, nothing further is necessary to ascertain removability under the federal officer removal statute. Defendants also cannot ignore facts that are readily available to it, such as the brands they control and the items they manufacture.

6. Application of Foreign Law

Defense counsel also should consider moving for application of foreign law if their clients cannot pursue a personal jurisdiction defense due to PA Section 104-0352. Specifically, if a plaintiff alleges that the facts giving rise to the claim occurred in another state, counsel should determine if those states’ relevant laws are more favorable than the comparable Illinois laws. Some particular issues defense counsel should evaluate include whether the alternative state: 1) includes settled defendants and non-parties on the verdict form; 2) allows defendants to admit evidence that a plaintiff’s medical bills have been paid by a third-party or reduced by the providers; 3) allows jurors to hear evidence of alternative exposures from settled defendants and non-parties; 4) requires pre-trial disclosure of the amounts the plaintiff received in settlement from co-defendants and non-parties; 5) has any type of damages cap; 6) places any limitation on recovery of punitive damages; 7) provides for spoliation of evidence causes of action; 8) prohibits consortium claims if the marriage did not occur until after the alleged exposure to the defendant’s products or at its or premises; 9) allows civil suits against current or former employers; 10) has enacted any statutes of repose applicable to toxic tort litigation; and 11) imposes a heightened causation standard in toxic tort cases.

Counsel also should determine if other states have enacted laws that specifically apply to toxic tort litigation and, if so, be familiar with the legislation. Some states that have enacted legislation aimed at curbing lawsuit abuse or requiring transparency in toxic tort litigation include Arizona, Florida, Iowa, Michigan, North Dakota, Ohio, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wisconsin. Please note that states also may have more comprehensive “tort reform” legislation that would apply to toxic tort litigation.

Conclusion

For the reasons detailed above, defense counsel in Illinois toxic tort litigation must remain aware of legislative developments and court rulings pertaining to personal jurisdiction. The Illinois legislature has, on multiple occasions, shown its willingness to enact pro-plaintiff legislation negatively impacting toxic tort defendants. Additionally, some courts have issued opinions that seemingly conflict with United States Supreme Court precedent on the issue of jurisdiction. Therefore, counsel needs to know about such developments so they can develop an appropriate strategy for their clients.

As to general and specific jurisdiction, defense counsel should familiarize themselves with the *Toles* opinion and be prepared to argue that the opinion does not comport with due process principles articulated by the United States Supreme Court. Regarding consent jurisdiction, counsel must determine whether the law applies to their clients and the cases in which they are named. If so, counsel should consider challenging PA 104-0352. Additionally, counsel should evaluate other strategies, such as removal, *forum non conveniens*, and application of foreign law.

(Endnotes)

- ¹ *Alderson v. S. Co.*, 321 Ill. App. 3d 832, 857 (1st Dist. 2001).
- ² *Alderson*, 321 Ill. App. 3d at 858; *Spartan Motors, Inc. v. Lube Power, Inc.*, 337 Ill. App. 3d 556, 561 (2d Dist. 2003).
- ³ *Quaker Oats Co. v. Chelsea Industries, Inc.*, 496 F. Supp. 85, 87-88 (N.D. Ill. 1980).
- ⁴ Victor Schwartz, Mark Behrens, Kimberly Sandner, *Asbestos Litigation in Madison County, Illinois: The Challenge Ahead*, 16 Wash. U. J.L. & Pol’y 235, 240 (2004).
- ⁵ *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011); *Daimler AG v. Bauman*, 571 U.S. 117 (2014); *BNSF R. Co. v. Tyrell*, 581 U.S. 402 (2017).
- ⁶ *Kipp v. Ski Enter. Corp. of Wis., Inc.*, 783 F.3d 695, 698 (7th Cir. 2015).
- ⁷ *Daimler*, 571 U.S. at 120-121.
- ⁸ *Id.* at 121.
- ⁹ *Id.*
- ¹⁰ *Id.* at 123.
- ¹¹ *Id.*
- ¹² *Id.* at 137.
- ¹³ *Daimler*, 571 U.S. at 137.
- ¹⁴ *Id.*
- ¹⁵ *Id.* (quoting *Goodyear*, 564 U.S. at 924).
- ¹⁶ *Id.* at 139, n. 19.
- ¹⁷ *Id.* at 137.
- ¹⁸ See *Famular v. Whirlpool Corp.*, No. 16 CV 944 (VB), 2017 U.S. Dist. LEXIS 8265, *13 (S.D. N.Y. Jan. 19, 2017); and *Nicely v. PLIVA, Inc.*, 181 F. Supp. 3d 451, 457 (E.D. Ky. 2016).
- ¹⁹ See *Jeffs v. Ford Motor Co.*, 2018 IL App (5th) 150529-U, ¶ 18 (explaining that conducting substantial business in Illinois is not the proper standard for exercising general jurisdiction).
- ²⁰ See *In re Plavix Related Cases*, No. 2012 L 5688, 2014 Ill. Cir. LEXIS 1 (Cir. Ct. Cook Co. Aug. 11, 2014).
- ²¹ *Aspen Am. Ins. Co. v. Interstate Warehousing, Inc.*, 2017 IL 121281, ¶¶ 15-16.

- ²² *Aspen Am. Ins. Co.*, 2017 IL 121281, ¶¶ 7-8.
- ²³ *Id.* ¶¶ 19-20.
- ²⁴ *Id.* ¶ 21.
- ²⁵ *Id.*
- ²⁶ *Campbell v. ACME Insulations, Inc.*, 2018 IL App (1st) 173051, ¶ 26.
- ²⁷ *Campbell*, 2018 IL App (1st) 173051, ¶ 3.
- ²⁸ *Id.* ¶ 14.
- ²⁹ *Id.* ¶ 15.
- ³⁰ *Id.*
- ³¹ *Id.*
- ³² *Id.* ¶ 16.
- ³³ *Romig v. MW Custom Papers, LLC*, No. 22-cv-1101-SMY, 2022 U.S. Dist. LEXIS 129915 (S.D. Ill. July 21, 2022); *Reinbold v. Advanced Auto Parts, Inc.*, No. 18-cv-605-SMY-DGW, 2018 U.S. Dist. LEXIS 246886 (S.D. Ill. Aug. 28, 2018); *Begin v. Air & Liquid Sys. Corp.*, No. 15-CV-830-SMY-DGW, 2016 U.S. Dist. LEXIS 7895 (S.D. Ill. Jan. 19, 2016); *Clark v. Lockheed Martin Corp.*, No. 15-CV-995-SMY-PMF, 2016 U.S. Dist. LEXIS 1000 (S.D. Ill. Jan. 6, 2016); *Surita v. AM Gen. LLC*, No. 15 C 7164, 2015 U.S. Dist. LEXIS 189883 (N.D. Ill. Nov. 4, 2015); *Rozumek v. Union Carbide Corp.*, No. 15-cv-441-SMY-SCW, 2015 U.S. Dist. LEXIS 85779 (S.D. Ill. July 1, 2015); and *McAlvey v. Atlas Copco Compressors, L.L.C.*, No. 14-cv-064-SMY-PMF, 2015 U.S. Dist. LEXIS 86941 (S.D. Ill. July 1, 2015).
- ³⁴ *Perez v. Air & Liquid Sys. Corp.*, No. 3:16-CV-00842-NJR-DGW, 2016 U.S. Dist. LEXIS 166645, *11-*12 (S.D. Ill. Dec. 2, 2016).
- ³⁵ *Toles v. Mead Johnson & Co., LLC*, 2025 IL App (5th) 231205, ¶ 1.
- ³⁶ *Toles*, 2025 IL App (5th) 231205, ¶ 2.
- ³⁷ *Id.* ¶¶ 4-5.
- ³⁸ *Id.* ¶ 15.
- ³⁹ *Id.* ¶ 16.
- ⁴⁰ *Id.*
- ⁴¹ *Id.*

42 *Toles*, 2025 IL App (5th) 231205, ¶ 16.

43 *Id.*

44 *Id.*

45 *Id.*

46 *Id.* ¶ 17.

47 *Id.*

48 *Toles*, 2025 IL App (5th) 231205, ¶ 16.

49 *Id.* ¶ 18.

50 *Id.* ¶ 21 (citing *Riemer v. KSL Recreation Corp.*, 348 Ill. App. 3d 26, 35 (1st Dist. 2004)).

51 *Id.*

52 *Id.*

53 *Toles*, 2025 IL App (5th) 231205, ¶ 22.

54 *Id.*

55 *Id.*

56 *Id.* ¶ 23.

57 *Id.*

58 *Coudrain v. Walgreen Co.*, 2026 IL App (1st) 250614-U, ¶ 43.

59 *Coudrain*, 2026 IL App (1st) 250614-U, ¶ 43.

60 *Id.* ¶ 39.

61 *Id.*

62 *Id.* ¶ 41.

63 *Id.* (citing *Aspen Am. Ins. Co.*, 2017 IL 121281, ¶ 22).

64 *Reeves v. Balt. & Ohio R.R. Co.*, 171 Ill. App. 3d 1021, 1027 (1st Dist. 1988).

65 *Reeves*, 171 Ill. App. 3d at 1027.

66 *Id.*

67 *See Morecambe Mar., Inc. v. Nat'l Bank of Greece, S.A.*, 354 Ill. App. 3d 707, 713 (1st Dist. 2004).

- ⁶⁸ *Daimler*, 571 U.S. at 137.
- ⁶⁹ *Id.* at 139, n. 19.
- ⁷⁰ *Id.*
- ⁷¹ *Thomas v. Walmart Inc.*, 720 F. Supp. 3d 650, 661, n. 3 (N.D. Ill. 2024).
- ⁷² *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 447-48 (1952).
- ⁷³ *Daimler*, 571 U.S. at 130, n.8.
- ⁷⁴ *Goodyear*, 564 U.S. at 928.
- ⁷⁵ *Tyrrell*, 581 U.S. at 414.
- ⁷⁶ *Id.*
- ⁷⁷ *Borders v. Wal-Mart Stores, Inc.*, No. 17-cv-0506-MJR-DGW, 2018 U.S. Dist. LEXIS 138830, *12 (S.D. Ill. March 29, 2018).
- ⁷⁸ *Borders*, 2018 U.S. Dist. LEXIS 138830, *13.
- ⁷⁹ *Thomas*, 720 F. Supp. 3d at 662; and *Sweet v. BJC Health Sys.*, No. 20 C 947, 2021 U.S. Dist. LEXIS 120763, *6-*7 (S.D. Ill. June 29, 2021).
- ⁸⁰ *Toles v. Mead Johnson & Co., LLC*, No. 132713, 2026 Ill. LEXIS 309 (Ill. March 25, 2026).
- ⁸¹ *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 352 (2021).
- ⁸² *Hanson v. Denckla*, 357 U. S. 235, 253 (1958).
- ⁸³ 571 U.S. 277, 284 (2014).
- ⁸⁴ *Walden v. Fiore*, 571 U.S. 277, 284 (2014).
- ⁸⁵ *Walden*, 571 U.S. 277281 at 284.
- ⁸⁶ *Id.*
- ⁸⁷ *Id.* at 280-281.
- ⁸⁸ *Id.*
- ⁸⁹ *Id.* at 284.
- ⁹⁰ *Id.*
- ⁹¹ *Walden*, 571 U.S. 277281 at 284.

92 *Id.* at 285.

93 *Id.*

94 *Id.*

95 *Id.* at 286.

96 *Walden*, 571 U.S. 277281 at 286.

97 *Id.* at 288.

98 *Id.* at 289.

99 *Id.* at 289-290.

100 *Id.* at 290.

101 *Bristol-Myers Squibb Co. v. Sup. Ct.*, 582 U.S. 255, 259 (2017).

102 *Bristol-Myers Squibb*, 582 U.S. at 259.

103 *Id.* at 260.

104 *Id.*

105 *Id.*

106 *Id.*

107 *Id.* at 260-61.

108 *Bristol-Myers Squibb*, 582 U.S. at 264 (quoting *Goodyear*, 564 U.S. 915 at 919).

109 *Id.*

110 *Id.* at 265.

111 *Id.* at 264.

112 *Id.* at 265.

113 *Id.*

114 *Bristol-Myers Squibb*, 582 U.S. at 265.

115 *Id.* at 268.

116 *Ford Motor Co.*, 592 U.S. at 351.

117 *Id.*

118 *Id.*

119 *Id.*

120 *Id.* at 356-57.

121 *Id.* at 357.

122 *Ford Motor Co.*, 592 U.S. at 361.

123 *Id.*

124 *Id.* at 365.

125 *Id.*

126 *Id.*

127 *Id.* at 368.

128 *Ford Motor Co.*, 592 U.S. at 356-57.

129 *Id.* at 369.

130 *Id.*

131 *Id.* at 369-70 (emphasis added).

132 *Id.*

133 *Id.* at 362.

134 *Coudrain*, 2026 IL App (1st) 250614-U, ¶ 43.

135 *Id.* ¶ 2.

136 *Id.*

137 *Id.* ¶ 6.

138 *Id.* ¶ 7-8.

139 *Zamora v. Lewis*, 2019 IL App (1st) 181642, ¶ 4.

140 *Zamora*, 2019 IL App (1st) 181642, ¶ 5.

141 *Id.* ¶¶ 26, 29, 69.

142 *Id.* ¶ 70.

143 *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Campbell*, 2018 IL App (1st) 173051, ¶ 9.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* ¶ 19.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* ¶ 22.

¹⁵⁰ *Id.*

¹⁵¹ *Campbell*, 2018 IL App (1st) 173051, ¶ 23.

¹⁵² *Morrison*, 2022 IL App (4th) 210542-U.

¹⁵³ *Id.* ¶ 7.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* ¶ 15.

¹⁵⁶ *Id.* ¶ 41.

¹⁵⁷ *Id.*

¹⁵⁸ *Morrison*, 2022 IL App (4th) 210542-U, ¶ 51.

¹⁵⁹ No. 21-cv-001570, 2022 U.S. Dist. LEXIS 66120, *6 (N.D. Ill. April 11, 2022).

¹⁶⁰ *Lishman*, No. 21-cv-001570, 2022 U.S. Dist. LEXIS 66120, *12.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.* ¶13.

¹⁶⁴ *Id.*

¹⁶⁵ *Romig*, No. 22-cv-1101-SMY, 2022 U.S. Dist. LEXIS 129915, *2-*3 (S.D. Ill. July 21, 2022).

¹⁶⁶ *Romig*, No. 22-cv-1101-SMY, 2022 U.S. Dist. LEXIS, *3.

¹⁶⁷ *Harden v. Mead Johnson & Co., LLC*, No. 24 CV 108, 2024 U.S. Dist. LEXIS 101963, *4 (N.D. Ill. June 7, 2024).

¹⁶⁸ *Harden*, No. 24 CV 108, 2024 U.S. Dist. LEXIS 101963, *15-*16.

¹⁶⁹ *Id.* at *16

- ¹⁷⁰ *Id.*
- ¹⁷¹ *Wood v. Samsung SDI Co.*, 2024 IL App (4th) 230994.
- ¹⁷² *Wood*, 2024 IL App (4th) 230994, ¶ 2.
- ¹⁷³ *Id.* ¶ 19.
- ¹⁷⁴ *Id.* ¶ 23.
- ¹⁷⁵ *Id.*
- ¹⁷⁶ *Id.*
- ¹⁷⁷ *Id.* ¶ 22 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298 (1980)).
- ¹⁷⁸ *Wood*, 2024 IL App (4th) 230994 (quoting *Russell v. SNFA*, 2013 IL 113909, ¶ 81).
- ¹⁷⁹ *Toles*, 2025 IL App (5th) 231205, ¶ 1.
- ¹⁸⁰ *Id.* ¶ 25.
- ¹⁸¹ *Id.* ¶¶ 33-42.
- ¹⁸² *Id.* ¶ 33.
- ¹⁸³ *Id.*
- ¹⁸⁴ *Id.*
- ¹⁸⁵ *Toles*, 2025 IL App (5th) 231205, ¶ 38.
- ¹⁸⁶ *Rios v. Bayer Corp.*, 2020 IL 125020, ¶¶ 25-27.
- ¹⁸⁷ *Toles*, 2025 IL App (5th) 231205, ¶ 40.
- ¹⁸⁸ *Id.* ¶ 26.
- ¹⁸⁹ *Id.* ¶ 40.
- ¹⁹⁰ *Id.* ¶ 42.
- ¹⁹¹ *Id.* ¶ 42.
- ¹⁹² *NBA Prop., Inc. v. HANWJH*, 46 F.4th 614 (7th Cir. 2022).
- ¹⁹³ *NBA Prop.*, 46 F.4th at 618.
- ¹⁹⁴ *Id.* at 617.
- ¹⁹⁵ *Id.* at 625.

- ¹⁹⁶ *Id.* at 624.
- ¹⁹⁷ *Id.* at 623.
- ¹⁹⁸ *Id.* at 625.
- ¹⁹⁹ *NBA Prop.*, 46 F.4th at 627.
- ²⁰⁰ *Id.* at 626-27.
- ²⁰¹ *Id.* at 627.
- ²⁰² *Id.*
- ²⁰³ *Rios*, 2020 IL 125020, ¶ 21.
- ²⁰⁴ *Id.*
- ²⁰⁵ 600 U.S. 122, 146 (2023).
- ²⁰⁶ *Solargenix Energy, LLC v. Acciona, S.A.*, 2014 IL App (1st) 123403, ¶ 41.
- ²⁰⁷ *In re Marriage of Buchanio*, 262 Ill. App. 3d 910, 914 (1st Dist. 1994).
- ²⁰⁸ *In re Marriage of Buchanio*, 262 Ill. App. 3d at 914.
- ²⁰⁹ *Id.*
- ²¹⁰ 735 ILCS 5/2-301(a-6).
- ²¹¹ *Cardenas Mktg. Network v. Pabon*, 2012 IL App (1st) 111645, ¶ 23.
- ²¹² *King v. Find-a-Way Shipping, LLC*, 2020 IL App (1st) 191307, ¶ 20.
- ²¹³ *In re Estate of Ostrom v. Sunnen*, 2019 IL App (2d) 180602-U, ¶ 30.
- ²¹⁴ *In re Jade J.*, 2025 IL App (1st) 241803, ¶¶ 20-22.
- ²¹⁵ *KSAC Corp. v. Recycle Free, Inc.*, 364 Ill. App. 3d 593, 596 (2d Dist. 2006).
- ²¹⁶ *KSAC Corp.*, 364 Ill. App. 3d at 597.
- ²¹⁷ *Riemer v. KSL Rec. Corp.*, 348 Ill. App. 3d 26, 35 (1st Dist. 2004).
- ²¹⁸ *Kipp*, 783 F.3d at 698.
- ²¹⁹ *Torrent Pharms. Ltd. v. Daiichi Sankyo, Inc.*, 196 F. Supp. 3d 871, 878 (N.D. Ill. 2016).
- ²²⁰ *Perez v. Air & Liquid Sys. Corp.*, No. 3:16-CV-00842-NJR-DGW, 2016 U.S. Dist. LEXIS 166645, *16 (S.D. Ill. Dec. 2, 2016).

- 221 *Aspen Am. Ins. Co.*, 2017 IL 121281, ¶ 27.
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