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THE NATURE OF THIS DEBATE: A LOOK AT THE
TEXAS FOREIGN CORPORATION VENUE RULE AND
A METHOD FOR ANALYZING THE PREMISES
AND PROMISES OF TORT REFORM

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By Gregory B. Westfall**

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"Explosive." "Critical." "A system out of control." These are terms routinely used by tort reform advocates to describe the Texas civil justice system.¹ A significant part of the problem, according to them, is the foreign

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1. See Tape of Debate On Tort Reform Between Citizens Against Lawsuit Abuse and Citizens Against Lawsuit Misinformation, Saint Mary's School of Law (Apr. 7, 1994) (on file with author) [hereinafter Debate on Tort Reform]. Copies are also available by writing to Citizens Against Lawsuit Misinformation at P.O. Box 1178, San Antonio, Texas 78294.

corporation venue rule which currently allows suit against a foreign corporation wherever it may have an "agency" or a "representative."² In contrast, tort reform advocates seek a provision which would only allow suit where the cause of action arose or where the corporation's "principal place of business" is located.³ Of course, changing this rule is just one of the many "improvements" suggested by the advocates of tort reform.⁴ These suggestions invariably come with the promise that jobs will be created if they are implemented, or, alternatively, with the threat that jobs will be lost or the Texas economy will suffer if they are ignored.⁵

With all the excitement it may be easy to forget that this rule has existed, basically unchanged, since 1885.⁶ Nonetheless, groups such as the Texans For Lawsuit Reform credit these words with allowing unlimited venue shopping, creating a gold mine for plaintiffs' lawyers and their clients, chasing away corporations that might otherwise do business in Texas (thereby costing jobs), and generally making Texas a joke in the eyes of the national and international business community.⁷ But if Texas has indeed recently become a "plaintiff's gold mine," it has not been because of our

2. TEX. CIV. PRAC. & REM. CODE ANN. § 15.037 (Vernon Supp. 1995). The immediate precursor to this provision was TEX. REV. CIV. STAT. ANN. art. 1995, § 27, which was essentially identical to section 15.037.

The first sentence of the current foreign corporation venue rule is as follows:

Foreign corporations, private or public, joint-stock companies or associations, not incorporated by the laws of this state, and doing business in this state, may be sued in any county in which all or a part of the cause of action accrued, or in any county in which the company may have an agency or representative, or in the county in which the principal office of the company may be situated, or, if the defendant corporation has no agent or representative in the state, then in the county in which the plaintiffs or either of them reside.

TEX. CIV. PRAC. & REM. CODE ANN. § 15.037 (Vernon 1986).

3. See, e.g., Texans For Lawsuit Reform, *Tort Reform In Texas: Can We Do More?* 4 (1994) (unpublished manuscript, on file with author) [hereinafter *Can We Do More?*].

4. See, e.g., Texans For Lawsuit Reform, *Legislative Agenda 1995* (rev. July 15, 1994) (unpublished manuscript, on file with author) [hereinafter *Legislative Agenda*].

5. See *infra* note 105.

6. Act approved Mar. 31, 1885, 19th Leg., R.S., ch. 83, § 1, 1885 Tex. Gen. Laws 79, 79, reprinted in 9 H.P.N. GAMMEL, LAWS OF TEXAS 699, 699 (1885), amended by Act of April 4, 1887, 20th Leg., R.S., ch. 137, § 1, 1887 Tex. Gen. Laws 131, 131-32, reprinted in 9 H.P.N. GAMMEL, LAWS OF TEXAS 929, 929-30 (1898). The relevant portion reads as follows:

[F]oreign, private, or public corporations, joint stock companies or associations, not incorporated by the laws of this State, and doing business within the State, may be sued in any court within this State having jurisdiction over the subject matter, in any county where the cause of action or a part thereof accrued, or in any county where such company may have an agency or representative, or in the county in which the principal office of such company may be situated. . . .

Act of April 4, 1887, 20th Leg., R.S., ch. 137, § 1, 1887 Tex. Gen. Laws 131, 131-32, reprinted in 9 H.P.N. GAMMEL, LAWS OF TEXAS 929, 929-30 (1898).

7. *Can We Do More?*, *supra* note 3, at 4; see also Kimberly Reeves, *Need For Tort Reform Hits Home With Houston Realtors Group*, 23 HOUSTON BUS. J. No. 50, at 23 (1994) (discussing the "11 point plan" set forth by the Texans For Lawsuit Reform).

foreign corporation venue rule.⁸ The rule simply has not changed in over a hundred years. If the reader is surprised by this fact, it is probably because we have been led to believe that the structure of our civil justice system has somehow recently changed so that litigation is more encouraged now than it once was.⁹ This type of misrepresentation typifies the strategy used by tort reformers to push their platform. It is the nature of this debate.

This Article will therefore examine the foreign corporation venue rule as it now exists, as well as the effects that the rule proposed by tort reform advocates would have on the citizens of Texas. By the same token, however, the basic arguments asserted by tort reformers will also be addressed. These include the three most common claims: (1) our "venue shopping problem" (and abuse of the civil justice system by plaintiffs in general) is pervasive, widespread, and common;¹⁰ (2) Texas is somehow unique in its preference for personal injury plaintiffs, in its venue statute as in all its law generally;¹¹ and (3) our civil justice system discourages businesses from moving into or starting up in Texas, and for this reason, extensive tort reform would actually be good for consumers, workers, and the others who generally make up the class of people most likely to be personal injury plaintiffs.¹²

Thus, in the end, the foreign corporation venue rule is only a vehicle for examining the claims of tort reform. These same basic arguments, or variations thereof, are used by the advocates of tort reform to support each proposal in their platform. Through the process of examining these arguments, this Article will set up a method for analysis which can be used to test the credibility of each of their claims. In a nutshell, the method is as follows: (1) define, measure and verify the complained of "problem;" (2) test the tort reformers' claims regarding our current system; and (3) examine their proposed "solutions" and the claimed benefits which would supposedly flow therefrom.

8. This Article will focus on the foreign corporation venue rule found in TEX. CIV. PRAC. & REM. CODE ANN. § 15.037 (Vernon Supp. 1995) and its counterparts, whenever such exist, in other states. The domestic corporation rule, section 15.036, in the vast majority of practical applications, requires venue at the place where the cause of action arose or where the corporation has its principal place of business. *Id.* § 15.036.

9. *Cf.*, e.g., Legislative Agenda, *supra* note 4, at 1, 3 ("Current law permits virtually unlimited venue shopping. . ."); *Tort Reform*, FORT WORTH STAR-TELEGRAM, Nov. 20, 1994, at C1 ("We take a back seat to no one in resisting many of the egregious abuses of the U.S. civil justice system—especially as they have occurred in Texas—that have sprung from the fertile minds of creative lawyers and judges during the last two decades."); Bernard Weinstein, *Tort tax lifts big bucks from Texans' wallets*, FORT WORTH STAR-TELEGRAM, Dec. 19, 1992, at A34 ("Texas has become a happy hunting ground for the plaintiff's bar and their clients. . .").

10. *See*, e.g., Legislative Agenda, *supra* note 4, at 3.

11. *See*, e.g., Reeves, *supra* note 7, at 23 ("Texas is the No. 1 state in the nation when it comes to litigation. It stymies the growth of the state economically. If you're a company moving here to Texas, that's what you'll be looking at.').

12. *See* Reeves, *supra* note 7, at 23.

I. VENUE SHOPPING: DEFINING AND MEASURING THE "PROBLEM"

The "problem" as tort reform advocates define it in relation to our foreign corporation venue rule is that there are certain counties in Texas that routinely render verdicts out of proportion with those rendered in similar cases in other counties in this state, and, presumably, far in excess of the value of the cases tried.¹³ In connection with this assertion, the terms "explosive verdicts" and "blockbuster verdicts" are often heard.¹⁴ Further, enterprising plaintiffs and plaintiffs' lawyers (routinely) carry what are assumed to be run-of-the-mill lawsuits to these counties and convert them into such "blockbusters."¹⁵

At the most basic level, however, it seems obvious that if certain counties in Texas could actually make or break a lawsuit, those counties would be literally flooded with new filings which would create huge backlogs. But the data does not bear this out,¹⁶ and common sense dictates that there is no place in this state where juries will routinely give huge awards with no basis in fact, nor is there an appellate district in this state that would uphold such awards. Patently unmeritorious lawsuits will be patently unmeritorious no matter where they are brought.

But if the "problem" is not that worthless lawsuits bring huge verdicts in certain counties, then the "problem" must be that otherwise meritorious lawsuits may be (or are) imported into these counties and converted into "blockbusters."¹⁷ Human nature being what it is, however, this should *still* result in an inordinate number of suits being filed in these "plaintiff's counties." If a plaintiff could turn even an "average" verdict into a "blockbuster" simply by relocating the case, it should still follow that these counties would have a number of suits filed which far exceeds the average from other counties and which far exceeds the number commensurate with the population bases of the favorable counties. Once again, however, the

13. Can We Do More?, *supra* note 3, at 4.

14. See Can We Do More?, *supra* note 3, at 4.

15. Can We Do More?, *supra* note 3, at 4.

16. See *infra* notes 18-33 and accompanying text.

17. Note that this "problem" could be stated another way: That some lawsuits can only achieve their fair or true value in certain counties because bias or prejudice against the plaintiffs, the classes in which the plaintiffs belong, or plaintiffs in general, cause verdicts in other counties which are substantially less than the true or fair value of these lawsuits.

Regardless of how the "problem" is stated, the "problem" itself is curious in at least one respect: How do we measure the value of a meritorious lawsuit in a county in which it was never brought? If we assume that a particular lawsuit has value, how do we determine that a verdict termed a "blockbuster" in one county would not be equally as large in any other county? The same lawsuit will never be brought in another county. Thus, the "problem" is not amenable to even approximate measurement. Obviously, such a situation lends itself to overstatement. McCarthy's "communist threat" of 1950 seems an apt example.

data, in the form of new personal injury cases filed, simply does not indicate that this is happening.

Section 74.042 of the Texas Government Code establishes nine "Administrative Judicial Regions."¹⁸ Each "Administrative Judicial Region" is charged with reporting case data to the Office of Court Administration, which compiles and disseminates the data in its "Texas Judicial System Annual Report."¹⁹ The report provides comprehensive data (not only for the state, but for individual counties) which should give the reader more perspective into just how "explosive" this "problem" really is.²⁰

In its 1993 (and most recent) report, the Office of Court Administration stated that all personal injury cases (including worker's compensation cases) comprised 11.6 percent of all new civil district court filings in fiscal year 1993, accounting for 52,218 of the 450,163 new cases filed in the district courts of Texas.²¹ What follows is a listing of Texas counties by Administrative Judicial Region for regions two through six (covering, generally, South Texas), along with each county's 1993 personal injury filings.²² For further comparison, the total number of new personal injury filings is given

18. TEX. GOV'T CODE ANN. § 74.042 (Vernon 1988).

19. *Id.*; see also OFF. OF CT. ADMIN., TEX. JUD. SYS. ANN. REP. (1993) (compiling and disseminating data in accordance with the statute).

20. *Cf. generally* OFF. OF CT. ADMIN., TEX. JUD. SYS. ANN. REP. (1993) (providing in concise terms data on case filings for 1993).

21. OFF. OF CT. ADMIN., TEX. JUD. SYS. ANN. REP. 177 (1993). The other categories and percentages are as follows:

Divorce: 122,504 (27.2%); Other family matters: 134,603 (29.9%); Other civil matters: 43,305 (9.6%); Tax cases: 63,372 (14.1%); Debt collection: 22,162 (4.9%); Reciprocal: 11,999 (2.7%).

Id. Note that when "show cause motions" are not included in the total civil district court filings, personal injury filings (including worker's compensation cases) increase to 13.1 percent of total filings. *Id.* at 176.

22. See APPENDIX A: ADMINISTRATIVE JUDICIAL REGIONS. Of the nine Administrative Judicial Regions (see TEX. GOV'T CODE ANN. § 74.042 (Vernon 1988); OFF. OF CT. ADMIN., TEX. JUD. SYS. ANN. REP. 97 (1993)), regions two through six were chosen because they generally represent South Texas, which historically has been labelled as the most "plaintiff friendly." Most if not all of the so-called "worst counties" for defendants are included in these regions.

The figures presented are all based upon the numbers provided in the *Texas Judicial System Annual Report* by using the following formula:

$$\begin{array}{r} \text{New Cases Filed Involving Injury or Damage Involving Motor Vehicle} \\ + \\ \text{New Cases Filed Involving Injury or Damage Other Than Motor Vehicle} \\ + \\ \text{New Worker's Compensation Cases Filed} \\ = \end{array}$$

Total New Personal Injury Cases Filed in the County

for each region as well as the total population for each region²³ based upon the 1990 census data.²⁴

*Administrative Judicial Region 2:*²⁵

<u>County</u>	<u>New PI Filings</u>	<u>County</u>	<u>New PI Filings</u>
Angelina	224	Bastrop	29
Brazoria	649	Brazos	164
Burleson	21	Chambers	38
Fort Bend	272	Freestone	17
Galveston	588	Grimes	26
Hardin	105	Harris	11,250
Jefferson	2,064	Jasper	97
Lee	25	Leon	18
Liberty	123	Limestone	51
Madison	76	Matagorda	121
Montgomery	336	Newton	18
Orange	376	Polk	91
Robertson	16	Sabine	38
San Augustine	33	San Jacinto	21
Trinity	31	Tyler	35
Walker	143	Waller	29
Washington	38	Wharton	85

Total New PI Filings: 17,248

Population (by 1990 census count): 4,734,904

23. The most recent population count for Texas, from the 1990 census, is 16,986,510. OFF. OF CT. ADMIN., TEX. JUD. SYS. ANN. REP. 187 (1993).

24. This data is set out by county in OFF. OF CT. ADMIN., TEX. JUD. SYS. ANN. REP. 188-90 (1993).

Note that what is given here is the number of filings, not the amounts of verdicts. While it is true that tort reform advocates are complaining *not* about the *number* of lawsuits filed in certain counties, but about the *verdicts returned* on the lawsuits filed there, it seems obvious that the former naturally follows the latter. If huge verdicts, or even above average verdicts, are routinely returned in certain counties, one could reasonably expect to see the number of filings increase sharply in those counties. Thus, the numbers which follow are clearly helpful, possibly more so than dollar amounts of verdicts, which are subject to many more variables.

25. See *id.* at 97.

Administrative Judicial Region 3:²⁶

<u>County</u>	<u>New PI Filings</u>	<u>County</u>	<u>New PI Filings</u>
Austin	14	Bell	167
Blanco	3	Bosque	16
Burnet	52	Caldwell	16
Colorado	21	Comal	86
Comanche	16	Coryell	34
Falls	14	Fayette	17
Gonzales	18	Guadalupe	75
Hamilton	5	Hays	86
Hill	57	Johnson	227
Lampasas	13	Lavaca	22
Llano	7	Mason	1
McLennan	501	Milam	32
Navarro	80	San Saba	11
Somervell	36	Travis	1,683
Williamson	82		

Total New PI Filings: 3,392

Population (by 1990 census count): 1,772,417

Administrative Judicial Region 4:²⁷

<u>County</u>	<u>New PI Filings</u>	<u>County</u>	<u>New PI Filings</u>
Aransas	50	Atascosa	7
Bee	46	Bexar	3,026
Calhoun	50	De Witt	9
Dimmit	39	Frio	35
Goliad	4	Jackson	24
Kames	5	La Salle	12
Live Oak	14	Maverick	164
McMullen	3	Refugio	9
San Patricio	136	Victoria	156
Webb	228	Wilson	16
Zapata	22	Zavala	45

26. *See id.*

27. *See id.*

Total New PI Filings: 4,100

Population (by 1990 census count): 1,722,647

*Administrative Judicial Region 5:*²⁸

<u>County</u>	<u>New PI Filings</u>	<u>County</u>	<u>New PI Filings</u>
Brooks	44	Cameron	546
Duval	78	Hidalgo	906
Jim Hogg	14	Jim Wells	151
Kenedy	2	Kleberg	37
Nueces	1,166	Starr	85
Willacy	36		

Total New PI Filings: 3,065

Population (by 1990 census count): 1,087,677

*Administrative Judicial Region 6:*²⁹

<u>County</u>	<u>New PI Filings</u>	<u>County</u>	<u>New PI Filings</u>
Bandera	18	Brewster	11
Crockett	9	Culberson	5
Edwards	1	El Paso	3,243
Gillespie	14	Hudspeth	2
Jeff Davis	3	Kendall	17
Kerr	46	Kimble	6
Kinney	1	Medina	17
Pecos	25	Presidio	6
Reagan	4	Real	4
Sutton	3	Upton	10
Terrell	1	Uvalde	53
Val Verde	46		

Total New PI Filings: 3,545

Population (by 1990 census count): 828,406

An important observation should be made regarding the data set out by the Office of Court Administration: The number of new personal injury filings in each county generally tracks the size of the county's resident

28. *See id.*

29. *See id.*

population. Indeed, regions two through six, which contained sixty percent of the state's population in 1990, accounted for about sixty percent of the new personal injury filings in 1993.³⁰ This fact clearly militates against the claim that a great number of cases are being imported into South Texas. However, the true measure of the "problem" can be even more effectively discerned from looking at the numbers of cases filed in individual counties.³¹ Cameron County, for instance, often cited as a "plaintiff's county," had only 546 new personal injury filings in 1993, although it has a population of over 260,000. Hidalgo County, with a population of over 383,000, had a total of 906 new filings. Furthermore, Matagorda County, possibly the most notorious "defendant killing field" of them all, boasted only 121 new personal injury filings in 1993.³²

Clearly, the "problem" as the proponents of tort reform define it and the "problem" as demonstrated by the facts are two different things. The numbers generated by the Office of Court Administration do not support the claimed run of cases going into South Texas counties. Any venue shopping that is going on is not nearly as widespread as tort reformers would have us believe.³³

One of the common characteristics of each "solution" in the tort reform platform is the extreme nature of the remedy; reformers would use a meat axe where a scalpel is more appropriate.³⁴ Their "solution" to the foreign corporation venue "problem" is no exception. These extreme "solutions" are considered because they are discussed in the context of a "problem" which is distorted to appear much larger than it actually is. It is hoped that the analysis above has provided the reader with some perspective on the actual breadth of the venue shopping "problem." Now,

30. The population figure was derived by dividing the total population of Texas, 16,986,510, into the sum of the district population figures shown above. All population figures were obtained from OFF. OF CT. ADMIN., TEX. JUD. SYS. ANN. REP. 188-90 (1993).

31. Note that aside from the number of suits filed, any specific statistical analysis for each county really cannot be accomplished because the standard deviation is so high that such analysis would be meaningless. In many if not most counties, one lawsuit filed or not filed will have a dramatic impact on the statistical numbers generated. This is why numbers such as "percentage of new personal injury lawsuits filed per county" and "one lawsuit per x number of people in each county" are not presented.

32. Tort reform advocates sometimes cite as an example of general venue malaise a case out of Matagorda County wherein a jury awarded one million dollars for the wrongful death of a bull. See, e.g., Can We Do More?, *supra* note 3, at 2; Legislative Agenda, *supra* note 4, at 3.

33. This Article in no way suggests that venue shopping does not occur, only that its incidence has been overstated.

34. See, e.g., Legislative Agenda, *supra* note 4, at 2-4 (presenting solutions ranging from doing away with joint and several liability to becoming the only state in the nation to currently employ the "English Rule" (a.k.a. "loser pays" rule)); *Tort Reform*, FORT WORTH STAR-TELEGRAM, Nov. 20, 1994, at C1 (advocating a scheme whereby a plaintiff could receive only twenty percent of his punitive damage award (the other eighty percent going to the state), with the plaintiff's lawyer's fee limited to ten percent of the twenty percent the plaintiff gets to keep).

let us examine in *this* context the tort reform "solution" to this "problem" and the claims which underlie it.

II. TESTING THEIR CLAIMS AND EXAMINING THEIR "SOLUTIONS"

In this case, the tort reform "solution" is to create a scheme whereby a foreign corporation could only be sued in the county where the cause of action arose or in the county where the corporation has its "principal place of business."³⁵ This scheme would statutorily mandate that a foreign corporation being sued alone³⁶ could only be sued in, at most, two counties, regardless of the hardship imposed upon the plaintiff. By design, this "solution" is quite drastic, especially when compared to the current Civil Practice and Remedies Code section 15.037³⁷ and the great majority of state venue rules from across the country, and when compared to the "problem" itself, not as described by tort reformers but as supported by the evidence. Their claims invariably begin with the "uniqueness" argument.

A. Venue Rules From Across the Country: A Survey (or The Problem with the "Texas Civil Justice System is Uniquely Pro-Plaintiff" Argument)

The assertion (or implication) that in terms of civil justice Texas is unique in its preference for personal injury plaintiffs is a thread that runs through most of the tort reformers' arguments.³⁸ The perception among reformers concerning the foreign corporation venue rule is no exception.³⁹ An examination of the venue rules from other states, however, absolutely does not support this argument. Instead, the fact is that right now, with section 15.037⁴⁰ as it is currently written, forty-one states have venue provisions at least as broad as or broader than Texas' foreign corporation venue provision. Only five states currently have in effect express statutory rules as narrow as or narrower than that proposed by tort reform advo-

35. See Legislative Agenda, *supra* note 4, at 3.

36. It should be noted that tort reformers seek to change the "venue for one is venue for all" rule as well. Legislative Agenda, *supra* note 4, at 3.

37. TEX. CIV. PRAC. & REM. CODE ANN. § 15.037 (Vernon Supp. 1995).

38. "Texas is the No. 1 state in the nation when it comes to litigation. It stymies the growth of the state economically. If you're a company moving here to Texas, that's what you'll be looking at." Reeves, *supra* note 7, at 23 (quoting Shad Bogany). Although this is not true, it has become a mantra over the last decade and a half. See, e.g., Legislative Agenda, *supra* note 4, at 3-4; Tort Reform, FORT WORTH STAR-TELEGRAM, Nov. 20, 1994, at C1.

39. See, e.g., Legislative Agenda, *supra* note 4, at 3.

40. TEX. CIV. PRAC. & REM. CODE ANN. § 15.037 (Vernon Supp. 1995).

cates.⁴¹ In one other state, Idaho, the courts have construed "residence" to be as narrow as the express statutory provision proposed.⁴²

The words "agency or representative" in section 15.037⁴³ have always been subject to interpretation by the Supreme Court of Texas.⁴⁴ While most other states do not use these exact words, they define and interpret terms such as "residence" to generally the same effect.⁴⁵ In fact, Texas is among the vast majority of states that use a "contacts" analysis in determining where a foreign corporation may be sued.⁴⁶ When a corporation's contacts with a county surpass some threshold, it is deemed able to defend a lawsuit there. What tort reform advocates want is a hard and fast statutory rule that would preclude such analysis, thus rendering the major presence of a corporation in a county irrelevant to a venue determination. This, as we shall see, is a distinctly minority rule.

What follows is a short summary of all of the states' venue provisions. The provisions are set forth in three broad categories based upon how foreign corporations are treated. The first and third categories include states that by statute expressly treat foreign corporations specifically or corporations in general. These states are further divided between those with express statutory treatment at least as broad as Texas' (first category) and those with express statutory treatment narrower than Texas' (third category). The second category consists of those states that do not expressly address corporations by statute, but instead speak to the "residence" of one party or the other, presumably leaving the particulars for court interpretation. Where possible, those interpretations have been provided here.

1. "Broad" Express Statutory Provision

There are twenty-one states that have express statutory venue provisions governing foreign corporations, or both foreign and domestic

41. These states consist of Georgia, Mississippi, Nevada, New York, and Utah; *see infra* part II.A.3.

42. IDAHO CODE § 5-404 (1990); *Banning v. Minidoka Irrigation Dist.*, 406 P.2d 802, 804 (Idaho 1965).

43. TEX. CIV. PRAC. & REM. CODE ANN. § 15.037 (Vernon Supp. 1995).

44. *See, e.g., Ruiz v. Conoco, Inc.*, 868 S.W.2d 752, 758 (Tex. 1993); *Milligan v. Southern Express, Inc.*, 250 S.W.2d 194, 197-99 (Tex. 1952).

45. *See infra* notes 48-101 and accompanying text.

46. The following states engage in some kind of "contacts" analysis in deciding where a lawsuit may be brought against a corporation in general, or a foreign corporation in particular, by express statute: Arizona, Arkansas, Florida, Illinois, Kansas, Kentucky, Maine, Maryland, Minnesota, Missouri, Nebraska, New Jersey, North Carolina, Oklahoma, Oregon, Pennsylvania, Texas, Virginia, Washington, West Virginia, Wisconsin. *See infra* notes 51-52, 54-72 and accompanying text. Nineteen states allow their courts to interpret the term "residence" in determining where a corporation may be sued. *See infra* notes 74-92 and accompanying text.

corporations, that are as broad as or broader than Texas' section 15.037.⁴⁷ Most define applicable venue by statutorily defining where a corporation (or a foreign corporation) "resides."⁴⁸ Many times, the courts in each state will then interpret the statutory words as the need to do so arises.⁴⁹ Here are the states, along with the statutory language:⁵⁰

- Arizona: "Suit may be maintained against a foreign corporation in the county where an agent of such corporation may be found. . . ."⁵¹
- Arkansas: "any county in which such person . . . maintains any office, branch office, sub-office or place of business."⁵²
- Delaware: "every action shall be tried in the county in which it shall be commenced. . . ."⁵³
- Florida: "where such [foreign] corporation has an agent or other representative."⁵⁴

47. TEX. CIV. PRAC. & REM. CODE ANN. § 15.037 (Vernon Supp. 1995).

48. In addition to the language quoted, nearly every state listed also provides for venue where the cause of action accrued.

49. See, e.g., *Piper Aircraft Corp. v. Schwendemann*, 564 So. 2d 546, 547 (Fla. Dist. Ct. App. 1990); *Amick v. Hanousek*, 323 So. 2d 49, 50 (Fla. Dist. Ct. App. 1975); *Hill v. Cumberland Dairies*, 288 S.W.2d 341, 342 (Ky. 1956); *Dodge Park Enters. v. Welsh*, 207 A.2d 503, 504 (Md. 1965); *Gulf Oil Co. v. Woodson*, 505 P.2d 484, 486-87 (Okla. 1972); *Monaco v. Montgomery Cab Co.*, 208 A.2d 252, 255-56 (Pa. 1965); *Ruiz v. Conoco, Inc.*, 868 S.W.2d 752, 758-60 (Tex. 1993); *Milligan v. Southern Express, Inc.*, 250 S.W.2d 194, 196 (Tex. 1952); *Westmoreland Coal Co. v. Kaufman*, 399 S.E.2d 906, 907-08 (W. Va. 1990); *Enpro Assessment Corp. v. Enpro Plus, Inc.*, 492 N.W.2d 325, 326 (Wis. Ct. App. 1992).

50. Most of these states also allow for venue where the cause of action arose.

51. ARIZ. CONST. art. 14, § 8; see also ARIZ. REV. STAT. ANN. § 12-401(18) (1992) ("Actions against . . . corporations may be brought in any county in which the . . . defendant has an agent or representative, owns property, or conducts business."). The Arizona constitutional provision is construed as giving a right to a plaintiff to sue in a particular county, while section 12-401 is construed as giving a right to a defendant to be sued in a particular county. See *Wray v. Superior Court*, 308 P.2d 701, 702-04 (Ariz. 1957).

52. ARK. CODE ANN. § 16-60-105 (Michie 1987). A corporation is considered a "person" under Arkansas law, and this section has been held to apply to foreign and domestic corporations. *Zolper v. AT & T Info. Sys., Inc.*, 709 S.W.2d 74, 75-76 (Ark. 1986); *Cavette v. Ford Motor Credit Co.*, 545 S.W.2d 612, 613 (Ark. 1977).

53. DEL. CONST. art. I, § 9. This incredibly broad venue rule, which applies to all persons and corporations, is tempered somewhat by DEL. CODE ANN. tit. 10, § 5102 (Supp. 1994), which states that a victorious plaintiff may not recover his court costs when he sues a defendant in a county other than the county of the defendant's or a codefendant's residence. See also *Zazanis v. Jarman*, 1990 WL 58158 (Del. Super. Ct., Mar. 20, 1990) (denying plaintiff costs because he sued in a county which was not the residence of any defendant).

54. FLA. STAT. ANN. § 47.051 (West 1994). Note that "agent" and "representative" are treated as two separate things in Florida. *Piper Aircraft Corp. v. Schwendemann*, 564 So. 2d 546, 547-48 (Fla. Dist. Ct. App. 1990). This presumably is also still the rule in Texas. See *Ruiz v. Conoco, Inc.*, 868 S.W.2d 752, 759 (Tex. 1993). The Florida statute is identical to Texas' in respect to the "agency or representative" language, although it is interpreted more liberally than section 15.037 now is in Texas. Compare *Premier Cruise Lines, Ltd. v. Gavrilis*, 554 So. 2d 659 (Fla. Dist. Ct. App. 1990) with *Ruiz v. Conoco, Inc.*, 868 S.W.2d 752 (Tex. 1993) *withdrawn, reh'g granted*, *Ruiz v. Conoco*, 37 Tex. Sup. Ct. J. 524 (Tex. 1994) (illustrating the relatively liberal approach taken by Florida in defining agent and

- Illinois: "any county in which [the foreign corporation] is doing business."⁵⁵
- Kansas: "in the county in which: . . . the [corporation] is transacting business at the time of the filing of the petition;"⁵⁶
- Kentucky: "[A]n action against a corporation which has an office or place of business in this state . . . must be brought in the county in which such office or place of business is situated."⁵⁷
- Maine: "All . . . corporations may sue and be sued in the county in which they have an established place of business or in which the plaintiff or defendant, if a natural person, lives."⁵⁸
- Maryland: "in a county where the defendant . . . carries on a regular business."⁵⁹
- Minnesota: "any county wherein it has an office, resident agent, or business place."⁶⁰

representative). This liberal interpretation, however, is tempered by an in-state forum non-conveniens mechanism, something that Texas does not now have. *See Mann v. Goodyear Tire & Rubber Co.*, 300 So. 2d 666 (Fla. 1974).

55. ILL. ANN. STAT. ch. 5, §§ 2-101, 2-102(a) (Smith-Hurd 1993). The Supreme Court of Illinois has construed this phrase to mean that the defendant must be "conducting its usual and customary business within the county in which venue is sought." *Baltimore & Ohio R.R. Co. v. Mosele*, 368 N.E.2d 88, 92 (Ill. 1977); *see Bucklew v. G.D. Searle & Co.*, 562 N.E.2d 186, 189-90 (Ill. 1990). This, the court says, is a higher minimum contacts standard than that needed for personal jurisdiction. *Bucklew*, 562 N.E.2d at 189-90. This differs from states such as West Virginia, which uses the same standard for jurisdiction and venue. *See, e.g., Westmoreland Coal Co. v. Kaufman*, 399 S.E.2d 906, 907-08 (W. Va. 1990). Nonetheless, it is a minimum contacts analysis.

56. KAN. CIV. PROC. CODE ANN. § 60-604(3) (Vernon Supp. 1993); *see also Sterling v. Marathon Oil Co.*, 576 P.2d 635 (Kan. 1978) (interpreting this provision).

57. KY. REV. STAT. ANN. § 452.450 (Michie/Bobbs-Merrill 1985). "It may be said that [section 452.450] contemplates that the corporation is doing business in the particular county to such an extent that it is actually present there and has such a responsible agent in the county as would presumptively bring home to the corporation notice of summons served upon him as its representative." *Hill v. Cumberland Dairies, Inc.*, 288 S.W.2d 341, 343 (Ky. 1956). However, this is not construed to mean the corporation's "principal place of business." *Hill*, 288 S.W.2d at 343; *Kem Mfg. Corp. v. Kentucky Gem Coal Co.*, 610 S.W.2d 913, 914 (Ky. Ct. App. 1980).

58. ME. REV. STAT. ANN. tit. 14, § 505 (West 1980). The cause of action may also be brought where the cause of action arose. *Id.* § 501.

59. MD. CTS. & JUD. PROC. CODE ANN. § 6-201(a) (1989). "It is not necessary for a defendant to maintain an office or have his or her principal place of business in a certain county in order for the defendant to carry on a regular business in that county." *Pacific Mortgage & Inv. Group, Ltd. v. Horn*, 641 A.2d 913, 918 (Md. Ct. Spec. App. 1994) (using a "minimum contacts" analysis).

60. MINN. STAT. ANN. § 542.09 (West 1988); *see also Smith v. Utah Home Fire Ins. Co.*, 47 N.W.2d 785, 788-89 (Minn. 1951) (holding a "general agent" of an insurance company to be a "resident agent" under section 542.09). "It would indeed be difficult for any corporation, especially a foreign one, to acquire a residence in any county through the presence of a 'resident agent' within the meaning of § 542.09 if an agent possessed of the broad managerial and contractual powers of a general insurance agent does not qualify as a 'resident agent.'" *Smith*, 47 N.W.2d at 788-89.

- Missouri: "[wherever the corporation] shall have or usually keep an office or agent for the transaction of [its] usual and customary business."⁶¹
- Nebraska: "any county in which it has its registered office or other office or is doing business."⁶²
- New Jersey: "any county in which it is actually doing business"⁶³
- North Carolina: "where the corporation maintains a place of business."⁶⁴
- Oklahoma: "any county in which there may be property of or debts owing to [the foreign corporation]."⁶⁵
- Oregon: "any county where the [foreign] corporation . . . conducts regular, sustained business activity."⁶⁶
- Pennsylvania: "a county where it regularly conducts business;"⁶⁷
- Texas: "any county in which the company may have an agency or representative."⁶⁸
- Virginia: "wherein the defendant regularly conducts affairs or business activity."⁶⁹
- Washington: "[wherever the corporation]: (a) Transacts business; (b) has an office for the transaction of business; (c) transacted business at the time the cause of action arose."⁷⁰
- West Virginia: "any county . . . wherein [the foreign corporation] does business;"⁷¹

61. MO. ANN. STAT. § 508.040 (Vernon 1986). "[T]raditional rules of agency articulated in the Restatement of Law (Second) Agency determine the existence of [an 'agent in the transaction of its usual and customary business' in the context of § 508.040]." *Bunting v. Koehr*, 865 S.W.2d 351, 353 (Mo. 1993) (en banc) (citing *Elson v. Koehr*, 856 S.W.2d 57, 60 (Mo. 1993) (en banc)).

62. NEB. REV. STAT. §§ 25-403.01, 25-403.02(1) (1993).

63. N.J. STAT. ANN. § 4:3-2(b) (West 1994).

64. N.C. GEN. STAT. § 1-79 (1975). This provision applies when the foreign corporation is "domesticated," hence, registered. *Travelers Indem. Co. v. Marshburn*, 371 S.E.2d 310, 312 (N.C. 1988). For treatment of "non-domesticated" foreign corporations, see N.C. GEN. STAT. § 1-79 (1983).

65. OKLA. STAT. ANN. tit. 12, § 137 (West 1988); see also OKLA. STAT. ANN. tit. 18, § 471 (West 1988) (stating that venue may be had in "any county . . . where the plaintiff resides or where said corporation has its principal place of business, or has property, or in any county where said corporation has an agent appointed upon whom service of summons or other process may be had").

66. OR. REV. STAT. § 14.080(2) (1993).

67. PA. R. CIV. P. ANN. 2179(a)(2) (West 1987).

68. TEX. CIV. PRAC. & REM. CODE ANN. § 15.037 (Vernon Supp. 1995); see also *Ruiz v. Conoco, Inc.*, 868 S.W.2d 752, 758-59 (Tex. 1993) (interpreting the terms "agency" and "representative").

69. VA. CODE ANN. § 8.01-262(3) (Michie 1992).

70. WASH. REV. CODE ANN. § 4.12.025(1) (West 1988); see also *Davidson v. Weyerhaeuser Co.*, 672 P.2d 767, 768-69 (Wash. Ct. App. 1983) (construing section 4.12.025(1) and upholding plaintiff's venue choice in a county where the corporation "transacted business").

71. W. VA. CODE § 56-1-1(2) (1994). "Wherein [the foreign corporation] does business" is subject to a minimum contacts analysis. *E.g.*, *Westmoreland Coal Co. v. Kaufman*, 399 S.E.2d 906, 907 (W. Va. 1990); *Kidwell v. Westinghouse Elec. Co.*, 358 S.E.2d 420, 422 (W. Va. 1986).

Wisconsin: "the county where a defendant resides or does substantial business;"⁷²

2. "Residence" Open For Court Interpretation

The second category consists of the nineteen states that attach venue to the "residence" of one party or the other but do not expressly define "residence" by statute.⁷³ These nineteen states can be further broken down into groups of states according to their similar approaches.

Ten states allow venue wherever the defendant resides or where the cause of action or a part thereof accrued. These states are: Alaska,⁷⁴ California,⁷⁵ Colorado,⁷⁶ Hawaii,⁷⁷ Idaho,⁷⁸ Iowa,⁷⁹ Montana,⁸⁰ Ohio,⁸¹ South Dakota,⁸² and Tennessee.⁸³

72. WIS. STAT. ANN. § 801.50(2)(c) (West 1994). "Substantial business" is given a minimum contacts analysis. *E.g.*, *Enpro Assessment Corp. v. Enpro Plus, Inc.*, 492 N.W.2d 325, 327-29 (Wis. Ct. App. 1992).

73. Most of these statutes also allow for venue where the cause of action accrued in addition to where one party resides.

74. ALASKA C.R. 3(c). Note that the rule actually allows venue "where the defendant may be personally served." *Id.*

75. CAL. CIV. PROC. CODE § 395 (West 1979 & Supp. 1995). A foreign corporation may be sued in any county of the state. *Long v. General Petroleum*, 54 P.2d 1147, 1148-49 (Cal. Dist. Ct. App. 1936). A domestic corporation, on the other hand, is deemed to reside in the county of its principal place of business. CAL. CIV. PROC. CODE § 395.5 (West 1973). Note also that a "forum non-conveniens-type" mechanism is available to a judge to transfer venue. *Id.* §§ 395, 395.5.

76. COLO. R. CIV. P. 98(c)(1), (5).

77. HAW. REV. STAT. § 604-7(d) (1985).

78. IDAHO CODE § 5-404 (1990). Note that "resident" in this case has been restrictively construed by the courts of the state to mean only the county where the foreign corporation has its principal place of business. *E.g.*, *Banning v. Minidoka Irrigation Dist.*, 406 P.2d 802, 804 (Idaho 1965). This is a minority construction.

79. IOWA CODE ANN. § 616.18 (West Supp. 1994).

80. MONT. CODE ANN. § 25-2-122 (1993).

81. OHIO R. CIV. P. 3(B)(1), (6). Venue may also lie where a corporation has its principal place of business or in any county in which the defendant "conducted activity which gave rise to the claim for relief." *Id.*

82. S.D. CODIFIED LAWS ANN. § 15-5-6 (Supp. 1994). The courts, however, have determined that a foreign corporation is not a "resident" under this section, and thus it may be sued in any county designated in the plaintiff's complaint. *Id.*; *Ivanusch v. Great N. Ry. Co.*, 128 N.W. 333, 334 (S.D. 1910). This rule is subject to a "forum non-conveniens-type" remedy whereby a court may transfer venue to another county. S.D. CODIFIED LAWS ANN. § 15-5-6 (Supp. 1994). A domestic corporation "resides" in the county of its principal place of business. *McHarg v. Commonwealth Fin. Corp.*, 182 N.W. 705, 706 (S.D. 1921).

83. TENN. CODE ANN. § 20-4-101 (1980). "[A] foreign corporation has no 'home' or principal office in Tennessee." *Louisville & Nashville R.R. Co. v. Hooper*, 375 S.W.2d 868, 872 (Tenn. Ct. App. 1963) (citing *Skaggs v. Tennessee Cent. Ry. Co.*, 246 S.W.2d 55, 56 (Tenn. 1952)). The court goes on to list a number of ways in which a foreign corporation may establish a "residence" for purposes of the Code. *Hooper*, 375 S.W.2d at 872-73.

One state, Wyoming,⁸⁴ allows venue wherever the plaintiff resides or where the cause of action or a part thereof accrued.

One state, Vermont,⁸⁵ allows venue where either party resides or where the cause of action arose.

Two states, North Dakota⁸⁶ and South Carolina,⁸⁷ allow venue where the defendant resides, with no provision regarding where the cause of action arose.

Finally, five states, Connecticut,⁸⁸ Indiana,⁸⁹ New Hampshire,⁹⁰ Massachusetts,⁹¹ and Rhode Island,⁹² allow venue wherever the plaintiff or defendant resides, again without regard to where the cause of action arose.

3. "Restrictive" Express Statutory Provision

What remains are the states which have "restrictive" statutory venue rules expressly addressing the venue of corporations generally or foreign corporations in particular. These states, by statute, have venue rules for foreign corporations that are more restrictive than section 15.037 as it is currently written. There are nine:

Alabama: "All actions against a domestic [or foreign] corporation for personal injuries must be commenced in the county where the injury occurred or in the county where the plaintiff resides if such corporation does business by agent in the county of the plaintiff's residence."⁹³

84. WYO. STAT. § 1-5-107 (1988).

85. VT. STAT. ANN. tit. 12, §§ 402(a), 405 (1973 & Supp. 1993).

86. N.D. CENT. CODE § 28-04-05 (1991). Note that in North Dakota a domestic corporation may be sued wherever it "transacts business." *Id.* § 28-04-04 (Supp. 1993). For foreign corporations, venue appears to be proper in any county in the state. *Dillage v. Lincoln Nat'l Life Ins.*, 209 N.W. 656, 656 (N.D. 1926). Note also that a "forum non-conveniens-type" mechanism, by which a judge may transfer the cause to another county, is available. N.D. CENT. CODE at § 28-04-05 (1991).

87. S.C. CODE ANN. § 15-7-30 (Law. Co-op. 1976). A foreign corporation will be deemed to reside in any county in which it has an "agent" or a "place of business" or an office where it transacts business. See *Lucas v. Atlantic Greyhound Fed. Credit Union*, 231 S.E.2d 302, 303-04 (S.C. 1977); *Shelton v. Southern Kraft Corp.*, 10 S.E.2d 341, 342 (S.C. 1940).

88. CONN. GEN. STAT. § 51-345(a)(3) (1993).

89. IND. CT. R. 75(A)(1), (5). Note that a cause of action may be brought where it arose if it is a car accident. *Id.* at (3).

90. N.H. REV. STAT. ANN. § 507:9 (1993).

91. MASS. GEN. LAWS ANN. ch. 223, §§ 1, 2 (Law. Co-op. 1985).

92. R.I. GEN. LAWS § 9-4-4 (1956). Note that the language of the statute allows the defendant corporation to be sued in any county in which it "shall be found." *Id.*

93. ALA. CODE § 6-3-7 (1993); see ALA. CONST. of 1901, art. XII, § 232, amended by ALA. CONST. amend 473 (ratified 1988). Amendment 473 states that foreign corporations are to be treated, for venue purposes, the same as domestic corporations.

Note that in all other matters besides suits involving "personal injuries," a foreign corporation may be sued in "any county in which it does business by agent." ALA. CODE § 6-3-7 (1993). Under this provision, a corporation "'does business' in the county if it performs there, with some degree of

- Georgia: The statute is worded so that suit is brought in the county in which the foreign corporation has its registered office or the county in which the tort occurred, if the corporation has an office and transacts business in that county.⁹⁴
- Louisiana: "an action against a person having a business office or establishment in a parish other than that where he may be sued under Article 42 [the general venue rule which states that suits must be commenced in the parish of the defendant's residence], on a matter over which this office or establishment had supervision, may be brought in the parish where this office or establishment is located."⁹⁵
- Michigan: The statute is worded in such a way as to require the vast majority of tort suits to be brought where the cause of action arose.⁹⁶

regularity, some of the business functions for which it was created." *Ex parte Toyota Motor Credit*, 644 So. 2d 870, 871 (Ala. 1994) (quoting *Ex parte Joiner*, 486 So. 2d 402, 403 (Ala. 1986)). "It is not necessary, however, for a corporation to have an agent physically present and conducting business in a county for venue to be proper there." *Id.* (quoting *Ex parte Finance Am. Corp.*, 507 So. 2d 458, 461 (Ala. 1987)). Because this provision also allows venue where the plaintiff resides, it is not as harsh as that proposed by tort reform advocates.

94. GA. CODE ANN. § 14-2-510(b), (c) (1985); see also *WBC Holdings, Inc. v. Thornton*, 443 S.E.2d 686, 687 (Ga. Ct. App. 1994) (discussing this statute); *Gault v. National Union Fire Ins. Co.*, 430 S.E.2d 63, 64-66 (Ga. Ct. App. 1993) (discussing and analyzing venue provisions); *McLendon v. Albany Warehouse Co.*, 418 S.E.2d 130, 133 (Ga. Ct. App. 1992) (discussing this statute). This provision is possibly harsher than that proposed by the tort reformers, as suit could not be brought where the tort occurred in some cases. This would depend upon how broadly the courts of Georgia interpret the phrase "transacts business."

95. LA. CIV. PROC. ANN. art. 77 (West 1960); see also *Travis v. Waste Management of Miss., Inc.*, 509 So. 2d 192, 193-94 (La. Ct. App. 1987) (construing article 77). This provision, while at least facially narrower than section 15.037, is not nearly as narrow as the provision proposed by the business lobby.

96. MICH. COMP. LAWS ANN. § 600.1629 (West Supp. 1994). The statute provides that venue will lie in:

- (a) A county in which all or part of the cause of action arose and in which either of the following apply. . . :
 - (i) The defendant resides, has a place of business, or conducts business . . .
 - (ii) The registered office of a defendant corporation is located . . .
- (b) If no county satisfies the criteria under subdivision (a), a county in which all or part of the cause of action arose and in which either of the following apply . . .
 - (i) The plaintiff resides, has a place of business, or conducts business . . .
 - (ii) The registered office of a plaintiff is located . . .
- (c) If no county satisfies the criteria under subdivision (a) or (b), a county in which both of the following is proper . . .
 - (i) The plaintiff resides, has a place of business, or conducts business . . . , or [has its] registered office . . .
 - (ii) The defendant resides, has a place of business, or conducts business . . . , or [has its] registered office . . .

Id.

Note that "conducts business" is subject to a minimum contacts analysis. See, e.g., *Marposs Corp. v. Autocam Corp.*, 454 N.W.2d 194, 197 (Mich. Ct. App. 1990). Note also that this is not a hard and

- Mississippi: "the county in which said corporation is domiciled or in the county where the cause of action may occur or accrue."⁹⁷
- Nevada: When a person has contracted to perform an obligation at a particular place, and resides in another county, the action must be commenced, and, subject to the power of the court to change the place of trial as provided in this chapter, must be tried in the county in which such obligation is to be performed or in which he resides.⁹⁸
- New Mexico: Suits against foreign corporations admitted to do business and which designate and maintain a statutory agent in this state [for service of process] shall only be brought in the county where the plaintiff[] or any one of them . . . resides or . . . where the cause of action originated . . . or . . . where the statutory agent . . . resides.⁹⁹
- New York: "A foreign corporation authorized to transact business in the state[] shall be deemed a resident of the county in which its principal office is located. . . ."¹⁰⁰
- Utah: "[A]ny county in which [a] corporation has its principal office or place of business shall be deemed the county in which such corporation resides. . . ."¹⁰¹

Predictably, it is in this third category that Texas would find itself if it were to enact a foreign corporation rule like the one proposed by groups

fast rule, such as the one proposed by tort reform groups, which locks plaintiffs into only one or two possible counties, largely at the convenience of the defendant.

97. MISS. CODE ANN. § 11-11-3 (Supp. 1994). For purposes of venue, domestic corporations and foreign corporations with a designated resident agent for process are treated the same. *Hartford Fire Ins. Co. v. Producer's Gin of Hemando, Inc.*, 326 So. 2d 807, 809 (Miss. 1976). The "domicile" of a corporation is construed as its principal place of business. *Plummer-Lewis Co. v. Francher*, 71 So. 907 (Miss. 1916). Thus, with this construction, the Mississippi statute is the same as that proposed by the Texans For Lawsuit Reform. See Legislative Agenda, *supra* note 4, at 3.

98. NEV. REV. STAT. § 13.010 (1993). A foreign corporation which has not registered to do business in the state may be sued in any county designated in the plaintiff's complaint. *Marshall Earth Resources, Inc. v. Parks*, 661 P.2d 875, 876-77 (Nev. 1983).

99. N.M. STAT. ANN. § 38-3-1(F) (Michie Supp. 1994). Note that, presumably, a foreign corporation that did not have a statutory agent could be sued in any county. *Id.*; *Aetna Fin. Co. v. Gutierrez*, 632 P.2d 1176, 1178-79 (N.M. 1981). Note also that this statute is broader than the one proposed by the Texans For Lawsuit Reform to the extent that it allows a plaintiff to bring a suit where *he* resides. N.M. STAT. ANN. § 38-3-1 (Michie Supp. 1994); Legislative Agenda, *supra* note 4, at 3.

100. N.Y. CIV. PRAC. L. & R. 503(c) (McKinney 1976). This rule is tempered by a mechanism by which a case may be moved to promote the convenience of material witnesses or to promote the ends of justice, etc. *Id.* § 510(2)-(3); see also *Weiss v. Saks Fifth Ave.*, 549 N.Y.S.2d 400, 401 (N.Y. App. Div. 1990) (stating that venue may be changed for the convenience of witnesses); *Kochany v. Chrysler Corp.*, 412 N.Y.S.2d 152, 153 (N.Y. App. Div. 1979) (denying a change of venue motion based, *inter alia*, on convenience); *Dubiak v. Travelers Ins. Corp.*, 469 N.Y.S.2d 541, 543 (N.Y. Sup. Ct. 1983) (stating that contrary to the defendant's claims, a change of venue was not justified for the convenience of material witnesses, nor would it have promoted the ends of justice).

101. UTAH CODE ANN. § 78-13-7 (1953). The Utah Code also allows suit where the cause of action arose. *Id.*

such as the Texans For Lawsuit Reform. With a rule allowing venue only where the cause of action arose or where the defendant's principal place of business is situated, Texas would in fact be among a minority of six states.¹⁰² This may be surprising given the passion with which the proponents of tort reform argue that just the opposite is true. The survey above shows clearly that, far from being unique, Texas is currently in line with the vast majority of states regarding the breadth of its foreign corporation venue rule. Uniqueness would follow only if the tort reformers' proposal was enacted. Thus, in their "uniqueness" claim, we again see facts misrepresented to appear drastic and extreme so that we will believe that drastic and extreme "solutions" are necessary.

B. A Look at The Business News (or The Problem With The "Business Is Scared of Texas" Argument)

The most basic claim in the tort reformers' arsenal, however, is that our tort system is hurting the state's business climate.¹⁰³ According to this familiar contention, Texas cannot compete on a national or international level because our civil justice system is "out of control."¹⁰⁴ With this claim usually comes the promise that if we were to make several changes to our system of civil justice (most of them dramatic), so many jobs would be created and so much additional wealth would be generated that the citizens of this state would be at least fairly compensated for the additional risks we would endure and the decreased levels of compensation we would be able to obtain through civil remedies.¹⁰⁵ Modifying the foreign corporation venue rule, of course, is just one of those suggested changes.¹⁰⁶ But like the claims already examined, the claim that our system of civil justice discourages businesses from locating in or relocating to Texas is simply not supported by the evidence.

First of all, Texas is the second largest state in the Union, the largest in the "continental" United States, is situated in the "Sunbelt," equidistant between the coasts, and has a population of over sixteen million. We have no

102. See *supra* notes 94, 96-97, and 100-01 and accompanying text.

103. See *supra* note 38; Debate On Tort Reform, *supra* note 1; Weinstein, *supra* note 9, at A34.

104. See Debate On Tort Reform, *supra* note 1; Can We Do More? *supra* note 3, at 4; Reeves, *supra* note 11; Weinstein, *supra* note 9, at A34.

105. The following recent excerpt from the *Houston Business Journal* is typical:

State Sen. Jerry Patterson, R-Pasadena, intends to introduce a tort reform package during the next legislative session. An insurance agent in a Senate typically populated by lawyers, Patterson says tort reform creates a less litigious, more business-friendly environment in the state to attract new business. "Tort reform means more jobs, more taxpayers and lower taxes," says Patterson, adding that more jobs also means a lower crime rate. "It's a win-win proposition."

Reeves, *supra* note 7, at 23.

106. Legislative Agenda, *supra* note 4, at 1 (outlining "11 Point Plan" for reforms to our civil justice system).

personal income tax, we border Mexico, we have a coast for shipping, rails and highways for ground transportation, and major international airports.¹⁰⁷ Further, when compared to most of the nation, the Texas economy is booming.¹⁰⁸ These are the things that businesses consider when deciding whether to operate in Texas.¹⁰⁹ The claim that foreign corporations are going to stay away from this market and these resources because of the threat of litigation is, like the other arguments examined, contrary to the facts.¹¹⁰ Apparently, the risk of getting sued is not enough to outweigh the benefits of doing business in Texas.

The corollary to the "chasing business away" claim is the argument that tort reform is good for *all* Texas citizens (or everyone who does not own an insurance company or a large corporation). Necessarily implicit in this argument is a basic utilitarian proposition: The burdens in the micro sense (more persons are injured or more injured persons are uncompensated) would be outweighed by the benefits in the macro sense (more jobs, higher wages, more money spent by corporations in the manner of capital investment, etc.).¹¹¹ A change in the system presumably would create the opposite of what has been recently referred to by some tort reform advocates as the "tort tax."¹¹² The savings, it is assumed, would be at least equal to the amount paid by personal injury defendants now, which would not have to be paid after enactment of a tort reform scheme; sort of a "tort reform dividend," if you

107. See APPENDIX B: SURVEY OF BUSINESS NEWS.

108. See *id.*

109. See *id.*

110. "[M]any large businesses have moved to Texas in recent years and the Dallas area has led the nation in corporate relocations from across the country for the past five years." Laura Castaneda, *California Pleadin'; Ads Urge Companies Not to Move to Texas, Other States*, DALLAS MORNING NEWS, Aug. 9, 1994, at 1A, 7A.

Additionally, over the last twenty-five years, Texas has experienced a phenomenal 311% increase in Fortune 500 industrial corporation relocations or establishments. *The Fortune 500*, FORTUNE, Apr. 18, 1994, at 285. Texas is currently fifth in the nation in regard to the number of Fortune 500 Industrials headquartered here (thirty-seven). *Id.* California is first with forty-eight, a twenty percent increase over the last twenty-five years. *Id.* Illinois is second with forty-four, approximately a twenty-five percent decrease over the same period, and Ohio is fourth with forty-two, a two percent decrease. *Id.* New York, third with forty-three headquarters, has suffered approximately a seventy-two percent decrease over the last twenty-five years. *Id.*

111. One flaw in this argument, however, is that it is a "false utilitarian" argument. Under tort reform there is still a distinct class (albeit a different class) which benefits to the detriment of the "many." This is the class which is protected by tort reform, such as business owners and insurance companies. Even if not one job is created, nor one dollar spent in the Texas economy, the class favored by tort reform will *always* benefit from tort reform. Thus, the "utilitarian" argument asserted by tort reform advocates is merely the reverse of the situation they claim now exists.

112. "Tort tax" refers to the additional amount that consumers must pay for products and services which reflects the cost of personal injury lawsuits. See Weinstein, *supra* note 9, at A34. An economist at the University of North Texas, Weinstein estimates the "tort tax" in Texas to exceed \$25 billion annually. Included in his calculations are such seeming immeasurables as "the practice of defensive medicine," "foregone economic opportunities," and "the dampening of innovation." *Id.*; see Reeves, *supra* note 7, at 23.

will. Not surprisingly, there are a couple of basic problems with this argument.

First of all, like the elusive "peace dividend" from which the name was borrowed, there is no guarantee that the "tort reform dividend" would benefit any but those who actually received it—mainly insurance companies. As the vast majority of judgments or settlements are paid under insurance policies, it follows that the first effect of tort reform is always a reduction in claims. Therefore, in order for the "macro benefits" of a tort reform scheme to be felt, insurance companies must first pass these savings on to their insureds. A recent news story regarding the worker's compensation insurers has shown just how tenuous this very basic premise is likely to be.¹¹³

Next, once the savings have been passed on by the insurance companies, it would have to be assumed that (1) the savings would actually be used for creating jobs, building plants, etc., and (2) the effect would be something more than negligible.¹¹⁴ The first assumption we must take on faith. Of course, reasonable minds (and economic theories) will differ as to the second assumption. The point, however, is that the bald assertion that tort reform is good for the citizens of Texas should be questioned. The statement is not as easily proven (or even provable) as the fervor of those who assert it might indicate.

III. TESTING THEIR "SOLUTION:" ON INJUSTICE, THE "REMOTE FORUM" PROBLEM, AND THE TRUE NATURE OF THIS DEBATE

Under the tort reformers' provision, if an oil field accident resulting in a death in Crockett County involves a foreign corporate defendant with its "principal place of business" in Dallas, the only places available for trial would be Dallas County or Crockett County.¹¹⁵ This would be so whether the heirs lived in Dallas County or Cameron County, even if the foreign corpora-

113. See, e.g., Walt Borges, *Comp Writers Get Incentive to Reduce Rates*, TEX. LAW., June 27, 1994, at 6 ("[T]he performance of the workers' comp system over the past four years has made workers' comp 'a highly — perhaps excessively — profitable line of insurance' in Texas. Workers' comp rates, which should have fallen as the amount of claims paid by insurers fell, have lagged behind. . ."). As of June 20, 1994, a consultant for the Texas Department of Insurance declared comp rates to be excessive by fifteen to twenty-five percent. *Id.*

114. Essentially, the "created jobs" would be created by funds that were otherwise spent on litigation costs connected with personal injury (and *only* personal injury) litigation. The assumption, of course, would be that any money not spent on personal injury litigation would be used for business expansion (to directly create jobs) or would indirectly contribute to job growth through business spending, wages, dividends, etc. (the old "trickle down" theory). We have never seen any such calculations from the business interests, and if we ever did, I suspect that the numbers would be modest at best.

The "created jobs" would also be created, presumably, by the sudden rush of corporations, who once were afraid to move into or even to do business in Texas, coming across our borders. Again, this is a bit difficult to measure. But my guess is that there are not many such corporations.

115. See *Can We Do More?*, *supra* note 3, at 4.

tion had a substantial corporate existence in Cameron County. In short, the tort reformers' provision would make any inquiry regarding the presence of a corporation in a county irrelevant, replacing it instead with a lockstep choice of no more than two venue locations.

The venue statute as it exists today reflects a long-standing public policy decision that a corporation is in a position to defend a lawsuit wherever it has a substantial corporate existence. Undoubtedly, most lawsuits are tried where the defendant resides or where the cause of action arose anyway. The problem with the new scheme is that it will create a grave injustice in those relatively few instances where the plaintiff does not live in or near the county where the cause of action arose or the corporation has its principal place of business.

Thus, we compare the abuses. As the system currently stands, some cases are going to get filed in counties that have little connection with the litigation or convenience for the parties. Rather, they will be filed where the corporation has an agency or representative based upon the perception that that county is a better venue for the plaintiff. On the other hand, if the venue rule becomes one where the foreign corporation may be sued only where the cause of action accrued or where the corporation's principal place of business is situated, there will be an institutional bias against every plaintiff who is injured by a foreign corporation in a distant county and does not happen to live in the county of that corporation's principal place of business.

Forum shopping happens. Clearly, cases have been taken to South Texas to be tried. No doubt every abuse that tort reform advocates claim is routine has some verifiable examples,¹¹⁶ even if the *actual extent* of the abuse has been exaggerated.¹¹⁷ If we assume for the sake of argument that filing a case in a remote forum for no other reason than to fix venue is "abusive,"¹¹⁸ a venue provision like that put forth by the business and insurance interests would be just as abusive, if not more so, and would be more harmful.

At its bottom, like most of the rest of their "suggestions," the venue rule proposed by groups such as the Texans For Lawsuit Reform is not a remedial measure but a stilted trade-off which exchanges one form of abuse for another. One would hope that all things being equal, the Texas Legislature would say that a tie should go to the health and safety of the citizens of this State and to the preservation of their ability to seek recourse when they are harmed. But all things are not equal. What may be called "expensive" or "inconvenient" for a corporation would more appropriately be labelled

116. Also, insurance companies can, and often do, "fix" venue by filing a declaratory judgment action. Likewise, section 15.037 is available to businesses just as it is available to individuals.

117. See *supra* part I.

118. The Texas Legislature has sanctioned this "abuse" for over a hundred years. See *supra* note 6.

“prohibitive” for an individual plaintiff. The proposed rule is not a fair compromise at all, but merely a barrier to litigation.

Dramatic tort reform clearly would improve the business climate; so, too, would the removal of all environmental regulation or federal taxes. But to say that tort reform helps those citizens in the classes that are likely to be civil plaintiffs is just dishonest. The tort reform debate really boils down to a simple policy question: Do we favor the interests of business over the interests of those harmed thereby, or vice versa. Because the interests are for the most part so diametrically opposed, the solution will always be, at best, a compromise. But it must be a compromise; we must admit that both sides’ interests are important and we must strike a balance. The foreign corporation venue rule should be no exception.

IV. POSSIBLE SOLUTIONS: A NEW APPROACH TO PROBLEM SOLVING

What could such a compromise be in regard to the Texas foreign corporation venue rule? A possible solution might be an “intrastate forum non-conveniens rule.” This safety valve is already used in other states.¹¹⁹ Such a provision would create a mechanism whereby a defendant sued in a county having no connection whatsoever with the suit could “transfer” the litigation to another county more connected with the litigation. This would keep in check the threat of a suit in a county not reasonably connected with the litigation, while not creating in every case the threat of injustice inherent in the tort reformers’ proposal.¹²⁰ Note, however, that such a change would assume a policy decision by Texans that a corporation is *not* in fact equipped to defend a lawsuit wherever it may have a presence such that it satisfies the “agency or representative” requirement of section 15.037. Significantly, a long-standing policy in Texas law of over a hundred years’ duration would be reversed.¹²¹ Therefore, it is hoped that such a shift would be preceded by at least cursory debate.

Another possible solution might be to tighten up the “agency or representative” requirement, possibly to the extent that the tort reformers desire, and in return make corporations amenable to suit where the *plaintiff* resides. Along with this rule, of course, would be some safety measure which would prevent plaintiffs from moving to a particular county simply to initiate

119. See CAL. CIV. PROC. CODE §§ 395, 395.5 (West 1973); N.D. CENT. CODE ANN. § 28-04-05 (1991); N.Y. CIV. PRAC. L. & R. 510(2)-(3) (McKinney 1976); S.D. CODIFIED LAWS ANN. § 15-5-6 (Supp. 1994); Premier Cruise Lines, Ltd. v. Gavrilis, 554 So. 2d 659 (Fla. 1990); Mann v. Goodyear Tire & Rubber Co., 300 So. 2d 666 (Fla. 1974); Weiss v. Saks Fifth Ave., 549 N.Y.S.2d 400 (1990).

120. This is already done to some extent through defining and redefining the meaning of “agency or representative.” See Ruiz v. Conoco, Inc., 868 S.W.2d 752, 758-60 (Tex. 1993); Milligan v. Southern Express, 250 S.W.2d 194, 198 (1952).

121. See *supra* note 6 and accompanying text.

a lawsuit, such as a requirement that the plaintiff live in a county a certain period of time prior to filing the suit. However, this would be asking corporate defendants to do exactly what they would have plaintiffs do: undertake the litigation process in a potentially "distant forum" where *it* would not otherwise have any connection. For that reason, this option would probably not be as attractive as the "intrastate forum non-conveniens" idea.

Regardless of the solution ultimately implemented, the first step should be to engage in a thoughtful debate on the imperfections in our civil litigation system and what we might do about them. We could begin by testing each of the claims and proposals of the tort reformers against the facts, measuring the "problems" they have identified, and putting the whole "liability crisis" into perspective. Then we should fashion compromises and make adjustments as necessary *in proportion with the true measure of the problems identified*. This would be a new approach to problem solving in this arena, an approach based upon reason and common sense, rather than fear and misinformation, and conducted with a modicum of responsibility.

V. CONCLUSION: PERCEPTION AND RESPONSIBILITY

"Tort reform" is truly in vogue.¹²² The perception has evolved that corporations and insurance companies are the victims rather than those who are harmed by them. More than likely, there are two basic reasons for this. The first is the apparent success of a long advertising campaign by businesses and insurance companies intended to poison the thinking of the general public toward civil (personal injury) plaintiffs. It continues today through the likes of Rush Limbaugh, Newt Gingrich, et al. This in turn laid the groundwork for the second reason: Many people simply do not question the claims of tort reformers (just as many people do not question the claims of Rush Limbaugh). When they say our laws are uniquely plaintiff-oriented when compared to the other states, when they misrepresent the size of "problems" such as venue shopping, and when they say that tort reform would (mysteriously) create jobs,¹²³ many Texans simply believe it to be true. Paradoxically, this includes a great number of people who are most likely at some point to be personal injury plaintiffs.

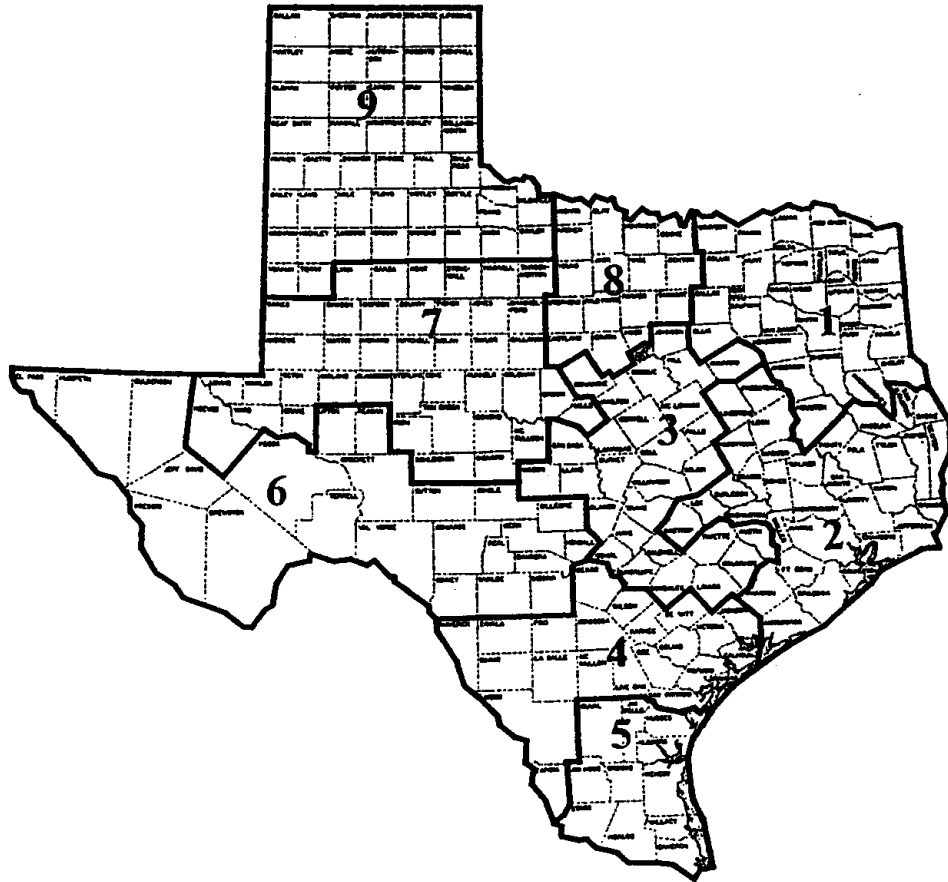
One would hope that our elected officials would at least raise these questions and analyze the tort reform debate for what it is. There *are* flaws in

122. See, e.g., *Of Tobacco, Torts and Tusks*, NEWSWEEK, Nov. 28, 1994, at 30; Harrison Osborne, *Sweeping 'Tort Reform' Is Headed for Congress*, LAW. WKLY. USA, Nov. 21, 1994, at 1; *Tort Reform*, FORT WORTH STAR-TELEGRAM, Nov. 20, 1994, at C1. The currently reconstituted music group, *The Eagles*, even sings about tort reform and engages in some casual plaintiff-bashing in its recent song *Get Over It*.

123. Senator Jerry Patterson (R-Pasadena) even promises that tort reform will reduce the crime rate. Reeves, *supra* note 7, at 23.

our civil justice system, no doubt. These flaws, however, can be addressed without implementing draconian "all or nothing" solutions. The citizens of Texas deserve some thoughtful and responsible analysis and debate before decisions so critical to their safety and welfare are made.

**APPENDIX A:
THE ADMINISTRATIVE JUDICIAL REGIONS**



**APPENDIX B:
SURVEY OF BUSINESS NEWS**

What follows is a brief survey¹²⁴ of headlines featuring foreign corporations either moving to or building plants or divisions in Texas.¹²⁵ All of the stories describe corporations establishing "agencies" or "representatives" in counties where venue could be fixed, even under the new, stricter standards enunciated in *Ruiz v. Conoco, Inc.*¹²⁶ A good number of these relocations are going into South Texas:

San Antonio gains engine repair facility

Pratt & Whitney, one of the country's premier military and commercial jet-engine manufacturers, has selected San Antonio for its newest repair facility. The facility will . . . employ up to 100 people. . . . The number of highly-skilled jobs created by the Connecticut-based company is encouraging news to the area's aerospace industry.¹²⁷

Kraft announces move to San Antonio

Kraft General Foods, the nation's largest food company with more than \$20 billion in annual sales, has selected San Antonio as the site of its new, consolidated financial service center.¹²⁸

Seguin welcomes new business

Reliable Tool & Stamping, Inc. has decided to move its tool and die building and repair company from Lombard, Illinois to Seguin. Seguin's economic climate, mild weather, and employment base convinced the company to do so.¹²⁹

Bayport to get new plant

Rohm and Haas Company has announced plans to build a biocide manufacturing facility at its Bayport site. . . . Company representatives were quoted as saying the Bayport site is strategically important because of its location along the U.S. Gulf Coast and

124. All but two of the following headlines come from the publication *The State of Texas* published by the Texas Department of Commerce, from a span of time from November, 1993, through May, 1994. Relevant excerpts from the articles are put in footnotes. Where they were given, the corporation's reasons for moving to Texas are included.

125. Even under the stricter standard for "agency or representative" which was recently enunciated by the Texas Supreme Court in *Ruiz v. Conoco, Inc.*, a plant, division, or other similar operation would certainly subject a foreign corporation to suit in the county in which it was located. 868 S.W.2d 752, 759 (Tex. 1993). With that in mind, note how many of these corporations are locating such entities in South Texas.

126. 868 S.W.2d 752 (Tex. 1993).

127. TEX. DEP'T OF COMMERCE, *THE STATE OF TEXAS*, May 1994, at 6.

128. *Id.*

129. *Id.* at 7.

because it has a work force that is skilled in handling specialty chemicals.¹³⁰

German subsidiary building on Texas Coast

Hoechst Celanese Corp. and Molten Metal Technology, Inc. have agreed to build a plant in Texas. . . . Molten Metal, a Massachusetts-based environmental technology company, will own the factory.

. . .¹³¹

San Antonio gets Idaho headquarters

Morrison Knudsen Corp. has announced plans to relocate its Boise-based Mining Group headquarters to San Antonio. . . . The company cited NAFTA and its planned expansion into Mexico as benefits of relocating to San Antonio.¹³²

Plano welcomes California company

Countrywide Funding Corporation of Pasadena, California, has begun renovation of the recently purchased 250,000 square foot office building in Plano. The nation's largest residential mortgage lender will operate its Central Office out of Plano, creating approximately 1,000 jobs over the next five years.¹³³

Good news from Texas foreign offices

Steag Industries, a well-known German semiconductor company, announced plans to open an office in Austin; and Quarton, a Taiwanese laser technology firm, plans to open a North American office in San Antonio.¹³⁴

Cessna selects San Antonio

Cessna Aircraft Company has selected San Antonio for its newest U.S. authorized service center. The 60,000-square-foot facility will employ approximately 75 people in the aircraft and service and support areas.¹³⁵

Bus plant coming to Bryan/College Station

Officials of North America Transit, Inc., have announced plans to build a facility in Bryan/College Station to manufacture state-of-the-art public transit buses. . . . The plant will employ 75 workers when manufacturing begins.¹³⁶

Midland selected for pump facility

Oil Dynamics, Inc. has announced the opening of a new manufacturing and repair facility in Midland, which will serve as the

130. TEX. DEP'T OF COMMERCE, THE STATE OF TEXAS, Apr. 1994, at 6.

131. *Id.*

132. *Id.*

133. *Id.* at 7.

134. *Id.*

135. TEX. DEP'T OF COMMERCE, THE STATE OF TEXAS, Feb. 1994, at 7.

136. TEX. DEP'T OF COMMERCE, THE STATE OF TEXAS, Jan. 1994, at 6.

company's southern regional headquarters. The Tulsa-based company . . . selected Midland due to its international airport, interstate highway, skilled labor force, available technical training, and affordable cost of living for employees, in addition to Midland's importance in oil-related industries.¹³⁷

Building manufacturer chooses Midland

Barnmaster, Inc. has begun hiring welders, machine operators and laborers to work in its 23,000-square-foot facility in Midland. The company chose Midland over El Cajon, California to expand its fencing business and take advantage of other business expansion opportunities. . . . The company chose Midland due to its reasonably-priced real estate, work force reputation, and the opportunity for the company to more effectively market to the east coast.¹³⁸

Firms expand in San Marcos

Two firms recently expanded in San Marcos. Cellex Manufacturing Company celebrated its grand opening of a 19,000 square-foot plant, an expansion of its operation in Ontario, Canada. . . . In addition, Graphic Finishers of America, Inc. recently chose the Central Texas market to expand its Dallas operation. The 25-year old St. Louis, Missouri firm's decision was driven by the Austin computer and software industry, the city's central location and the fact that it expects to one day provide service to Mexican markets.¹³⁹

California company moving to San Antonio

Integrated Cargo Management Systems, Inc. has announced it will relocate its headquarters from Sausalito, California to San Antonio this month. . . . Company executives cited the city's

137. *Id.*

138. TEX. DEP'T OF COMMERCE, THE STATE OF TEXAS, Dec. 1993, at 6.

139. TEX. DEP'T OF COMMERCE, THE STATE OF TEXAS, Nov. 1993, at 6. On the general subject of Austin, the president of the San Jose, California, Chamber of Commerce recently said, "We've got to be more competitive because Austin is kicking our butt. . . . It's like playing the Dallas Cowboys with my old high school team." Martin Zimmelman, *Capital Spending: Austin Strives to Keep Development From Exacting Too High Cost on Environment*, DALLAS MORNING NEWS, Sept. 2, 1993, at 1D. "Mary P. Curtis, president of Pacifico Advertising & PR, San Jose Calif., is seeing business move to Texas from the Silicon Valley because of lower costs." Susen Taras, *South Spurts Past West For Agency Pay Hikes: Survey; California Woes Continue as 27% of Western Shops See Billings Decline*, ADVERTISING AGE, Dec. 6, 1993, at S-6 to S-7.

"In a related item, insiders note that Apple has purchased a lot of property in the Austin area, and people assume that the company is going to move there. Well, I suppose if it's serious about getting into the PC side of the industry it may as well move to Texas where most of the players are located." John C. Dvorak, *Inside Track*, PC MAG., Dec. 21, 1993, at 97 (emphasis omitted).

It has gotten so bad in California that the state has begun an advertising campaign calculated to discourage businesses from moving to Texas. Castaneda, *supra* note 110, at 1A. "If California is feeling threatened by Texas, it should, but not because of what we are doing, but because of what we are," said Kathy Schwartz, a spokeswoman for the Texas Department of Commerce. *Id.* at 8A. Curiously, no mention was made in any of these articles of the Texas civil justice system.

proximity and business ties to Mexico, distribution channels, highway systems and telecommunications industry as reasons for selecting San Antonio.¹⁴⁰

Bell Subsidiary Moves to Texas; Company Says Dallas is Home to Big Customers

Southwestern Bell Corp. is moving the 50-person headquarters of its equipment subsidiary to Dallas [from St. Louis]. . . . Southwestern Bell said the move "makes business sense" because Dallas is home to some of Telecom's biggest customers. . . . [T]he move results from a study . . . that showed Texas to be the fastest-growing market for telephone equipment in the five states Telecom serves. . . . Telecom will join two other Southwestern Bell subsidiary headquarters in Dallas.¹⁴¹

A top PC maker looking at Texas

Gateway 2000 Inc., a leading personal computer manufacturer in South Dakota, said yesterday that it is considering sites in North Texas for a possible expansion of its operations.¹⁴²

Nor does the alleged "tort crisis" seem to affect the general business climate in Texas. In fact, "[f]or the past three years, . . . Texas has led the country in the number of jobs created, with 79,400 in 1991, 94,400 in 1992 and 209,800 last year, according to a study by the Arizona State University Economic Outlook Center."¹⁴³ The following is a small sample of headlines

140. TEX. DEP'T OF COMMERCE, THE STATE OF TEXAS, Nov. 1993, at 6-7.

141. ST. LOUIS POST-DISPATCH, May 27, 1993, at 1B. Note also that Southwestern Bell moved its corporate headquarters from St. Louis to San Antonio in late 1992. In connection with the move, Southwestern Bell Chairman Edward E. Whitacre, Jr. was heard to say:

We're very excited to call Texas and San Antonio home. . . . [A] move to Texas [will] best position our corporation for increased growth and for new business opportunities. And that's what we're after, because growth benefits our customers, our shareowners and our employees. . . . This move will put us closer to more of our major growth markets and customers. Another consideration is our work with Telmex, the Mexican telephone company. That's an important market for us, and San Antonio serves as the gateway to Mexico.

Southwestern Bell to Move Corporate Headquarters to Texas, BUSINESS WIRE, Sept. 28, 1992.

142. Steven Vonderhaar, *A Top PC Maker Looking at Texas; Gateway 2000 Considers Expansion*, FORT WORTH STAR-TELEGRAM, Aug. 6, 1994, at 1B.

143. Castaneda, *supra* note 110, at 1A, 7A.

The following excerpt is from the January 1994 issue of *The State of Texas*:

November figures on Texas non-farm employment indicate a gain of nearly 153,000 jobs over the past twelve months, for a growth rate of 2.1 percent. . . . McAllen-Edinburg-Mission ranked first with a growth rate of 5.4 percent in non-farm employment. . . . Victoria was a close second in employment growth at 5.3 percent, followed by Laredo (4.5 percent) and Brownsville-Harlingen and Bryan-College Station (both at 4.3 percent). Sixth-ranked Killeen-Temple . . . has seen employment growth moderate but remain quite healthy at 3.6 percent through November.

TEX. DEP'T OF COMMERCE, THE STATE OF TEXAS, Jan. 1994, at 6. Every one of these areas is surely on the list of "bad" counties for defendants. As of June, 1994, the news was even brighter. The following excerpts are from John Sharp, Comptroller of Public Accounts:

[S]tatewide nonfarm employment was up 3.2 percent over the previous year. This marks

pulled from the same sources as those outlined above:

McAllen leads nation in job growth

A recent study reveals that McAllen had the nation's highest job growth rate in 1993. . . . Texas locales captured four of the top 10 spots and eight of the top 35. Texas communities ranked in the top 10 were: Austin (2), Killeen-Temple (5), and Brownsville-Harlingen-San Benito (6).¹⁴⁴

Fort Bend County—one of nation's fastest-growing

Using 1990 Census data, American Demographics, Inc. identified 20 of the fastest-growing, wealthiest, and most educated areas of the country, and one of them was Fort-Bend County. The area ranked third in attracting businesses and families. . . .¹⁴⁵

Plastics industry report released

Texas leads the nation in production of plastics and is the fastest-growing producer of plastics products.¹⁴⁶

California firms like Texas

According to a survey, 9.4 percent of manufacturers expanding or relocating out of California since 1980 chose Texas, followed closely by Nevada with 9.2 percent. California companies chose Texas for its lower operating, labor, and living costs, friendly regulators, and the lack of a state personal income tax. Its location between the East and West coasts and proximity to growing Mexican markets, as well as its high quality of life, also sold the state to California companies.¹⁴⁷

Houston & Dallas favorites for relocations

PHH Homequity Corporation recently conducted a survey of the top U.S. cities for corporate relocations, and both Houston and Dallas ranked in the top four.¹⁴⁸

Texas projected to lead in job growth

Texas job growth will exceed the national average this year and next according to First Interstate Bancorp. Economist Lynn Reaser predicts Texas will gain 2.4 percent in non-farm jobs this year, and 2.1 percent in 1994, compared to a national average of 1.5 percent

the highest job growth rate since 1990. Since 1989, Texas has consistently outperformed the national economy, resulting in the migration of workers and their families into the state. . . . A combination of factors are supporting today's healthy state economy. . . . [S]tate economic output is expected to increase by around 4 to 4.5 percent in 1994 and 1995. This is above the national growth rate of 3 to 3.5 percent. . . .

TEX. ECON. Q., June 1994, at 1.

144. TEX. DEP'T OF COMMERCE, THE STATE OF TEXAS, May 1994, at 6.

145. *Id.* at 7.

146. TEX. DEP'T OF COMMERCE, THE STATE OF TEXAS, Apr. 1994, at 6.

147. TEX. DEP'T OF COMMERCE, THE STATE OF TEXAS, Jan. 1994, at 6-7.

148. *Id.* at 7.

for both 1993 and 1994. According to Reaser, Austin and San Antonio will lead the state in job growth.¹⁴⁹

DIFW ranks third in job growth

With the addition of 34,600 jobs in the year ending June 30, the Dallas/Fort Worth area ranks third in the country as one of the fastest growing job markets. According to M/PF Research, Inc., most of the job growth is happening in small and medium-sized companies.
...

Texas cities named on "best of" lists

Houston, Austin, Fort Worth, San Angelo, Killeen and Brownsville were recently listed as some of the best cities to live in according to *Money* magazine, while Austin and Fort Worth were listed as two of the top 20 cities to locate a business in according to *Entrepreneur* magazine.¹⁵¹

Business barometer statistics soar in Harlingen

Data for the first eight months of 1993 in Harlingen reflect residential building permits of \$9.4 million, which is higher than any full year since 1985 and on track for breaking 1983's record of \$15.7 million. In addition, . . . total employment in Cameron County rose 2,567 over a year ago.¹⁵²

Tarrant growth rate ranks 10th

Tarrant County had the 10th largest population growth of any U.S. county from 1980 to 1992, a news report shows, and analysts credit Dallas/Fort Worth Airport, available land for housing and convenient commuter highways. . . . Harris was No. 6, . . . Dallas County was 11th, Bexar was 17th and Travis was 24th.¹⁵³

149. TEX. DEP'T OF COMMERCE, THE STATE OF TEXAS, Dec. 1993, at 7.

150. *Id.*

151. TEX. DEP'T OF COMMERCE, THE STATE OF TEXAS, Nov. 1993, at 6.

152. *Id.*

153. Barbara Powell, *Tarrant Growth Rate Ranks 10th*, FORT WORTH STAR-TELEGRAM, Sept. 2, 1994, at A1, A6.