

ILLINOIS BUSINESS LAW JOURNAL

**FORUM SHOPPING IN ILLINOIS FORUM NON-CONVENIENS JURISPRUDENCE:
TURNING A BLIND EYE ON A PERVASIVE PRACTICE**

❖ Article ❖

*William G. Beatty**

I. INTRODUCTION

“Forum shopping,” the practice by which a plaintiff seeks to fix venue in a jurisdiction, thought to be more favorable to his or her interests, despite being a non-resident of the chosen forum, or despite the absence of significant connections between the chosen forum and the case at hand. Case law describes forum shopping in various pejorative terms: “disfavored”,¹ “contrary to the purpose behind the venue rules,”² even “impermissible”,³ injurious to both the integrity of the courts and the rights of defendants,⁴ and “against Illinois’ public policy.”⁵

Nevertheless, the practice is widespread, said to be the custom of both plaintiffs and defendants, and described by one judge as “a national legal pastime”.⁶ Yet, for all the negative implications associated with the practice, neither the courts nor the court rules in Illinois have ever specifically prohibited forum shopping in this State,

* B.A., Augustana College, J.D., Chicago-Kent College of Law, C.P.D. University of Edinburgh School of Law. William G. Beatty recently retired from a preeminent Chicago trial firm in which he practiced for forty-five years, predominantly in the fields of product liability defense, employment law litigation at the administrative and trial levels, asbestos litigation defense, and ERISA litigation in federal district courts throughout the country and before the United States Court of Appeals for the Seventh Circuit.

¹ See, e.g., *Lutzenkirchen v. OSF Healthcare Sys.*, 276 N.E.3d 605, 615 (Ill. App. 1st Dist. 2025).

² See, e.g., *Smith v. Walgreen Co.*, 261 N.E.3d 133, 142 (Ill. App. 5th Dist. 2024).

³ See, e.g., *Czarnecki v. Uno-Ven Co.*, 791 N.E.2d 164, 169 (Ill. App. 1st Dist. 2003).

⁴ See, e.g., *Fennell v. Ill. Cent. R.R. Co.*, 987 N.E.2d 355, 360–61 (Ill. 2012).

⁵ See, e.g., *Merritt v. Golderberg*, 841 N.E.2d 1003, 1011 (Ill. App. 5th Dist. 2005).

⁶ Friedrich K. Juenger, *Forum Shopping, Domestic and International*, 63 TUL. L. REV. 553 (1989) (quoting Judge Skell Wright).

and in fact, have consistently ruled that courts may not consider the practice of forum shopping in conducting their forum non conveniens analysis.

This article examines the courts' recognition of forum shopping, its prevalence, and the rationale for prohibiting courts from considering even blatant forum shopping when conducting a forum non conveniens analysis of the merits of a defendant's motion to transfer or dismiss on those grounds.⁷

Next, this paper examines the impact of forum shopping on Illinois' businesses,⁸ and concludes with a proposal that the courts no longer turn a blind eye to forum shopping, to recognize it when it occurs, and to integrate it in their forum non conveniens analysis using a "sliding scale" approach, whereby the more evident that the plaintiff's forum choice was shaped by forum shopping rather than considerations of convenience for the parties, the more likely it is for the court to deny the plaintiff his or her choice of forum, and the easier it is for a defendant to prevail on a motion to dismiss or to transfer on grounds of forum non conveniens.⁹

II. BACKGROUND

A. *Forum Shopping Considered*

"Forum shopping" is defined as "the practice of choosing the court in which to bring an action from among those courts that could properly exercise jurisdiction based upon a determination of which court is likely to provide the most favorable outcome."¹⁰ Similarly, BLACK'S LAW DICTIONARY defines "forum shopping" as "[t]he practice of choosing the most favorable jurisdiction . . . in which a claim might be heard."¹¹

Forum shopping has its detractors,¹² with one reviewing court comparing forum shopping to "vexatious litigation,"¹³ as well as its defenders, with another reviewing court saying that "[t]here is nothing inherently evil about forum shopping,"¹⁴ and that it is "no different from the litigation strategy of countless

⁷ See *infra* Part II.

⁸ See *infra* Part III.

⁹ See *infra* Part IV.

¹⁰ Merriam-Webster Dictionary of Law, Forum Shopping, <https://www.merriam-webster.com/legal/forum%20shopping> (last visited Nov. 22, 2025).

¹¹ BLACK'S LAW DICTIONARY 666 (Byran A. Garner ed., 7th ed. 1999) (defining "forum shopping").

¹² See *North Shore Gas Co. v. Salomon, Inc.*, 152 F.3d 642, 647 (7th Cir. 1998) (referring to forum shopping as "blatant").

¹³ *Esposito v. Piatrowski*, 223 F.3d 497, 501 (7th Cir. 2000).

¹⁴ *Goad v. Celotex Corp.*, 831 F.2d 508, 512 n.12 (4th Cir. 1987), *cert. denied*, 487 U.S. 1218 (1988).

plaintiffs who seek a forum with favorable substantive or procedural rules or sympathetic local populations.”¹⁵

While forum shopping has taken on a negative connotation among some scholars and other writers who have characterized the practice as “procedural gamesmanship [that] undermines the courts’ legitimacy,”¹⁶ others have referred to it as simply “the natural consequence of litigants being able to select from a number of potential forums to bring a case, and thus naturally selecting the forum they think will provide the most favorable outcome.”¹⁷

Defenders of the practice have said: “For lawyers, helping their clients locate the most favorable forum is not unethical; on the contrary, they would not be fulfilling their legal duties towards their clients if they failed to make use of jurisdictional options.”¹⁸

“A court will call a practice ‘forum shopping’ when it wishes to paint it [as] an unsavory machination designed to thwart public policy and achieve an unmerited goal. By contrast, some courts will avoid the label when it considers the reasons behind the forum selection to be reasonable and justified.”¹⁹

One United States District Judge, commenting on forum shopping, said that: “In reality, every litigant who files a lawsuit engages in forum shopping when he chooses the place to file suit. The Court is concerned only with whether the choice of forum is a proper one under the law, and not with the motives of the parties selecting the forum.”²⁰

Illinois courts have said that forum shopping, in its classic form, occurs “[w]hen the plaintiff is foreign to the chosen forum and the action that gives rise to the litigation did not occur in the chosen forum.”²¹

Indicia of forum shopping, described as “justice blended with some harassment,”²² include: “[1] attempts to win a tactical advantage resulting from local laws that favor the plaintiff’s case, [2] the habitual generosity of juries in . . . the forum district, [3] the plaintiff’s popularity or the defendant’s unpopularity in

¹⁵ *Keeton v. Hustler Mag. Inc.*, 465 U.S. 770, 779 (1984); *See also, Forum Shopping Reconsidered*, 103 HARV. L. REV. 1677 (1990).

¹⁶ Tejas N. Narechania, *Forum Crowding*, 112 CAL. L. REV. 327, 327 (2024).

¹⁷ Forum shopping, *Wikipedia*, https://en.wikipedia.org/wiki/Forum_shopping (last visited Mar. 10, 2026).

¹⁸ Markus Petsche, *What’s Wrong with Forum Shopping? An Attempt to Identify and Assess the Real Issues of a Controversial Practice*, 45 INT’L LAW. 1005, 1005 (2011); *see also* Mary Garvey Alegro, *In Defense of Forum Shopping: A Realistic Look at Selecting a Venue*, 78 NEB L. REV. 79 (1999) (observing that, if an attorney does not seek the most advantageous venue for his client, he or she could face a malpractice claim).

¹⁹ Richard Maloy, *Forum Shopping? What’s Wrong With That?*, 24 QLR 25, 27 (2005).

²⁰ *Texas Instruments Inc. v. Micron Semiconductor, Inc.*, 815 F. Supp. 994, 996 (E.D. Tex. 1993).

²¹ *Dawdy v. Union Pac. R.R. Co.*, 797 N.E.2d 687, 694 (Ill. 2003)(quoting *Certain Underwriters at Lloyd’s, London v. Illinois Cent. R.R. Co.*, 768 N.E.2d 779, 785 (Ill. App. Ct 2002)).

²² *Gilbert*, 330 U.S. at 507 (1947).

the region, or [4] the inconvenience and expense to the defendant resulting from litigation in that forum[.]”²³

While Illinois’ general venue statute²⁴ allows plaintiffs to commence an action against a defendant in any county in which the defendant resides or, in the event of a commercial defendant, in any county in which the defendant is doing business, or in the county in which the transaction or some part thereof occurred, such statutory latitude can result in a situation in which the case is commenced in a venue having little or no nexus to the claim. When the claim is commenced in a county that is foreign to the plaintiff’s residence, or other than the location of the incident or transaction giving rise to the claim, “it is reasonable to conclude that the plaintiff [has] engaged in forum shopping to suit his individual interests, a strategy contrary to the purposes behind the venue rules.”²⁵

“Courts have never favored forum shopping.”²⁶ In fact, it has been said that “[d]ecent judicial administration [cannot] tolerate forum shopping as a persuasive or even legitimate reason for burdening communities with [litigation] which arose elsewhere and should in all justice be tried there.”²⁷ “Indeed, the courts have held that ‘[a] concern animating our *forum non conveniens* jurisprudence is curtailing forum shopping by plaintiffs.’”²⁸

One method by which the courts have attempted to address the practice of forum shopping is to reduce the degree of deference afforded to the plaintiff’s choice of forum when forum shopping is evident.²⁹ While a plaintiff’s choice of forum is usually given strong deference, and thus “should rarely be disturbed,”³⁰ when the plaintiff resides outside of the forum the courts afford the plaintiff’s choice less

²³ *Iragorri v. United Technologies Corp.*, 274 F.3d 65, 72 (2d Cir. 2001); *Norex Petroleum Ltd. v. Access Indus.*, 416 F.3d 146, 155 (2d Cir. 2005); Paxton Blair, *The Doctrine of Forum Non Conveniens in Anglo-American Law*, 29 COLUM. L. REV. 1, 34, n.155 (1929) (advocating *forum non conveniens* dismissals when plaintiff’s attempt “to sue where verdicts are largest” or “to avoid some principle of law which would impede recovery in the proper forum.”).

²⁴ 735 ILCS 5/2-101 *et seq.*

²⁵ *Dawdy*, 797 N.E.2d at 694 (quoting *Certain Underwriters*, 768 N.E.2d at 785); *Botello v. Illinois Cent. R.R. Co.*, 809 N.E.2d 197 (Ill. App. Ct. 2004).

²⁶ *Fennell*, 2012 IL 113812, ¶ 19 (quoting *Dawdy*, 797 N.E.2d at 695).

²⁷ *Dawdy*, 797 N.E.2d at 695 (citing *Pruitt Tool & Supply Co. v. Windham*, 379 P.2d 849, 850 (Okla. 1963)).

²⁸ *Fennell*, 2012 IL 113812 at ¶ 19 (quoting *First American Bank v. Guerine*, 764 N.E.2d 54, 61 (Ill. 2002)).

²⁹ *See, e.g., Smith v. Walgreen Co.*, 2024 IL App. (5th) 240394 ¶¶ 36, 37 (“Accordingly, it is reasonable to conclude that plaintiff engaged in forum shopping to suit her interests . . . and her choice of forum is accorded less deference.”); *See also Czarnecki*, 791 N.E.2d at 170.

³⁰ *Dawdy*, 797 N.E.2d at 694.

deference.³¹ Moreover, “[a] plaintiff’s choice of forum will also be accorded less deference if the action giving rise to the litigation did not occur there.”³²

In *Gross v. Wright*³³ the First District Appellate Court of Illinois said that “this reduced deference [to the plaintiff’s choice of forum] is in line with judicial concern about parties engaging in forum shopping for strategic advantage. A plaintiff’s private tactical considerations cannot be allowed to override the public interest in the orderly administration of justice that is served when cases are heard in appropriate forums.”³⁴

Nevertheless, while the plaintiff’s right to choose a forum “cannot be permitted to override [an] efficiently operated judicial system,”³⁵ the solution of reducing the deference afforded to plaintiff’s choice of forum has had only limited impact in the reduction of forum shopping because deference has been termed as only “a matter of degree,”³⁶ thereby leaving the degree of deference to the court’s discretion.³⁷

B. Judicial Recognition of the Pervasiveness of Forum Shopping

Courts have long recognized the practice of forum shopping and its intended effect:

[A]ll choices of tribunal are commonly used by plaintiffs to get away from judges who are considered to be unsympathetic, and to get before those who are considered to be more favorable; to get away from juries thought to be small-minded in the matter of verdicts, and to get to those thought to be generous; to escape courts whose procedures are burdensome to the plaintiff, and to seek out courts whose procedures make the going easy.³⁸

In two earlier examples of judicial recognition of forum shopping under the Federal Employers’ Liability Act (“F.E.L.A.”),³⁹ which empowers plaintiffs injured on the job as railroad workers to bring an action for damages against the railroad in any jurisdiction in which the railroad is operating, the Illinois Supreme Court,

³¹ *Id.*

³² *Lutzenkirchen v. OSF Healthcare Sys.*, 2025 IL App (1st) 250028, ¶ 23 (citing *Fennell*, 2012 IL 113812, ¶ 18; *Wieser v. Mo. Pac R.R. Co.*, 456 N.E.2d 98, 102 (Ill. 1983)).

³³ *Gross v. Wright*, 2013 IL App (1st) 122024 at ¶ 25 (citing *Dawdy*, 797 N.E.2d at 695).

³⁴ *Id.*; *Espinosa v. Norfolk & W. Ry. Co.*, 427 N.E.2d 111, 117 (Ill. 1981) (speaking of judicial efforts to protect defendants from “the practice of seeking out soft spots in the judicial system in which to bring particular kinds of litigation”).

³⁵ *Dawdy*, 797 N.E.2d at 695 (quoting *Espinosa*).

³⁶ *Deppa v. Abbott Labs., Inc.*, 2025 IL App (1st) 241795, ¶ 18; *Benedict v. Abbott Labs., Inc.*, 2018 IL App (1st) 180377, ¶ 33; *Langenhorst v. Norfolk S. Ry. Co.*, 848 N.E.2d 927, 938 (Ill. 2006); *Gridley v. State Farm Mut. Auto. Ins. Co.*, 840 N.E.2d 269, 277 (Ill. 2005); *Elling v. State Farm Mut. Auto. Ins. Co.*, 683 N.E.2d 929 (Ill. App. Ct.1997).

³⁷ *Elling*, 683 N.E.2d at 929.

³⁸ *Espinosa*, 427 N.E.2d at 117 (quoting *Miles*, 315 U.S. at 707 (Jackson, J., concurring)).

³⁹ Federal Employers’ Liability Act, 45 U.S.C. §§ 51-59.

commenting on the tendency of plaintiffs to bring suit in the most favorable jurisdiction, said: “There is nothing that requires a plaintiff to whom such a choice is given to exercise it in a self-denying or large-hearted manner.”⁴⁰

Several Illinois appellate court opinions have specifically recognized that “courts acknowledge that plaintiffs forum shop,”⁴¹ but nothing in the case law encourages the practice. On a more practical level, one commentator discussing *forum non conveniens* has noted:

The truth of the matter is that both plaintiffs’ counsel and defendants’ counsel are jockeying for position by seeking a judge, jury, and forum that will enable them to achieve the best possible result for their clients. There is no doubt that in the personal injury context, the plaintiff is seeking a forum where he can receive the most money and the defendant is seeking a forum where it will have to pay the least. All other considerations are secondary to both sides.⁴²

Discussing the bilateral nature of forum shopping, courts have stated that: “We would add that ordinarily plaintiffs’ zeal [in selecting favorable fora] is matched only by defendants’ efforts in seeking to avoid such fora.”⁴³

C. Judicial Prohibition Against Consideration of Forum Shopping in the Forum Non Conveniens Analysis.

The mere acknowledgment of the existence of forum shopping has by no means come to be construed as an endorsement of the practice. Courts have said that a “plaintiff’s use of forum shopping to suit his individual interest is a strategy contrary to the purpose behind the venue rules and is against Illinois’s public policy.”⁴⁴ In fact, reviewing courts in Illinois have gone so far as to declare forum

⁴⁰ See *Cotton v. Louisville & Nashville R.R. Co.*, 152 N.E.2d 385, 393 (Ill. 1958) (quoting *Miles* at 707 (Jackson, J., concurring)); *Baltimore & Ohio R.R. Co. v. Mosele*, 368 N.E.2d 88, 97 (Ill. 1977) (Dooley, J., dissenting).

⁴¹ See, e.g., *Lentz v. Kuhlman*, 2025 IL App (1st) 241350, ¶ 20; see also *Wieser*, 456 N.E.2d at 102; *Espinosa*, 427 N.E.2d at 117.

⁴² Gregory. Maag, *Forum Non Conveniens in Illinois: A Historical Review, Critical Analysis, and a Proposal for Change*, 25 S. ILL. U. L. J. 461, 510 (2001).

⁴³ *Dawdy*, 797 N.E.2d at 694 (citing *Espinosa*, 427 N.E.2d at 117 (quoting *Miles* at 707 (1942) (Jackson, J., concurring))); *Starr v. Presence Cent. & Suburban Hosp. Network*, 2024 IL App (1st) 231120, ¶ 19; *Estate of Rath v. Abbott Labs, Inc.*, 2012 IL App (5th) 100096, ¶ 29.

⁴⁴ *Merritt*, 841 N.E.2d at 1011 (“decent judicial administration could not tolerate forum-shopping as a legitimate reason for burdening communities with litigation that arose elsewhere.”).

shopping “impermissible.”⁴⁵ But that simply begs the question, “impermissible” by whom or by what, since Illinois has never specifically banned the practice, either by statute, court rule or common law.

Concern about the integrity of the judiciary and the protection of litigants has led the courts to say that: “The judiciary has never favored this sort of shopping for a forum. It has sought to protect its own good name as well as to protect defendants... against the practice of seeking out soft spots in the judicial system in which to bring particular kinds of litigation,”⁴⁶ such as F.E.L.A. cases, asbestos litigation, medical malpractice cases and product liability litigation, which tend to gravitate to, and are highly concentrated in, certain counties in Illinois.⁴⁷

And yet, for all of the negative implications attached to the practice of forum shopping, such as it being declared against the public policy of the State,⁴⁸ and being characterized as a threat to the integrity of Illinois’ judicial system,⁴⁹ it is paradoxical that courts of Illinois have consistently held that though “relatively commonplace,”⁵⁰ “courts may not consider this practice [of forum shopping in their] *forum non conveniens* analysis”⁵¹

The analysis begins with a decision of how much deference is to be afforded the plaintiff’s choice of forum.⁵² This issue must be decided before weighing the well-known private and public interest factors.⁵³

Recently, in *Richardson v. Husain*,⁵⁴ regarding concerns about forum shopping, the court stated that while “in general, forum shopping is disfavored,⁵⁵... [w]e feel

⁴⁵ See, e.g., *Bruce v. Atadero*, 939 N.E.2d 110, 121 (Ill. App. Ct. 2010); *All Am. Roofing, Inc., v. Zurich Am. Ins. Co.*, 934 N.E.2d 679, 683 (Ill. App. Ct. 2010); *Wagner v. Eagle Food Ctrs, Inc.*, 925 N.E.2d 243, 249 (Ill. App. Ct. 2010); *Hackl v. Advocate Health and Hospitals Corp.*, 887 N.E.2d 726, 732 (Ill. App. Ct. 2008); *Glazer’s Dist. of Ill, Inc. v. NWS-Illinois, LLC*, 876 N.E.2d 203, 216 (Ill. App. Ct. 2007); *Czarnecki*, 791 N.E.2d at 169.

⁴⁶ *Espinosa*, 427 N.E.2d at 117 (quoting *Miles* at 706 (Jackson, J., concurring)).

⁴⁷ See KCIC, *Asbestos Litigation: 2024 Year in Review* 4 (2024), https://www.kcic.com/media/2462/kcic_report_asbestos-annual-report_2024-1.pdf.

⁴⁸ *Merritt*, 841 N.E.2d at 1011 (citing *Dawdy*, 797 N.E.2d at 695).

⁴⁹ *Espinosa*, 427 N.E.2d at 117.

⁵⁰ *Starr*, 2024 IL App (1st) 231120 at ¶ 19.

⁵¹ *Dawdy*, 797 N.E.2d at 695; *O’Brien v. Advanced Urology Assoc.*, 2026 IL App (1st) 250608, ¶ 15; *Lutzenkirchen* at ¶ 24; *Richardson v. Husain*, 2025 IL App (5th) 240916, ¶ 53; *Cain v. Chatterji*, 2025 IL App (1st) 231744, ¶ 39; *Lentz*, 2025 IL App (1st) 241350 at ¶ 20; *Lehram Cap. Invs., Ltd. v. Baker & McKenzie Int’l*, 2023 IL App (1st) 230095 at ¶ 22; *Starr*, 2024 IL App (1st) 231120 at ¶ 19; *Gregory v. Forest City Rehab and Nursing Ctr., LLC*, 2023 IL App (1st) 230369 at ¶ 22; *Pierce v. Cherukuri*, 2022 IL App (1st) 210339 at ¶ 23; *Doe v. Hyatt Hotels Corp.*, 2021 IL App (1st) 201216 at ¶ 22; *Evans v. Patel*, 2020 IL App (1st) 200528 at ¶ 37.

⁵² *Langenhorst*, 848 N.E.2d at 934; *Vivas v. Boeing Co.*, 911 N.E.2d 1057, 1068 (1st Dist. 2009).

⁵³ *Guerine*, 764 N.E.2d at 58.

⁵⁴ *Richardson v. Husain*, 2025 IL App (5th) 240916, ¶ 52.

⁵⁵ *Id.*

it is important to state that this is not a ‘factor’ for *forum non conveniens* analysis.”⁵⁶ In a specially concurring opinion, one of the appellate court justices said that “[w]hile it is true that ‘forum shopping’ is not a factor established by precedential *forum non conveniens* cases, it is a concept which should be given consideration in light of the facts presented in this case,”⁵⁷ thereby at least opening the door to considering the reality of forum shopping in the *forum non conveniens* analysis.

It appears that Illinois may be the only state that expressly prohibits consideration of forum shopping in the *forum non conveniens* analysis. The rationale for this distinction has never been fully examined or explained in the case law. For the origins of this prohibition, one has to go back over half a century and to examine case law from Illinois as well as other jurisdictions.

D. Origins of the Prohibition Against Consideration of Forum Shopping in the Forum Non-Conveniens Analysis.

The origins of the judicial prohibition against consideration of forum shopping as part of the *forum non conveniens* analysis do not start with *Dawdy*, although that is the case most often cited as the source of the prohibition. *Dawdy* cites the *Wiesner*⁵⁸ and *Espinosa*,⁵⁹ cases as standing for the prohibition. While *Weisner* simply re-states the prohibition, citing the earlier case of *Espinosa*, the later case cited two out-of-state decisions⁶⁰ that focused on the potential for greater verdicts as the prime motivating factor for forum shopping.

In *Hemmergarn v. Boeing Co.*⁶¹ and *St. Louis-San Francisco Ry. Co. v. Superior Court*,⁶² the reviewing courts in California and Oklahoma had to address efforts by the defendants to dismiss these two cases on *forum non conveniens* grounds based upon plaintiffs’ contentions that the chosen fora would respectively, in all probability, be “more generous in its award than the proper forum,”⁶³ and that their “chances of securing a large verdict are better”⁶⁴ in the courts they had chosen than in the fora urged by the defendants. In both cases, the courts concluded that the stated “expectation of receiving a substantially higher verdict”⁶⁵ from a “more

⁵⁶ *Id.*

⁵⁷ *Id.* (Sholar, J., concurring).

⁵⁸ *Wiesner*, 456 N.E.2d at 102.

⁵⁹ *Espinosa*, 427 N.E.2d at 117.

⁶⁰ *Hemmergarn v. Boeing Co.*, 165 Cal. Rptr. 190, 195 (1980) and *St. Louis-San Francisco Ry. Co. v. Superior Court*, 290 P.2d 118 (Okla. 1955).

⁶¹ *See supra* Note 40.

⁶² *See supra* Note 40.

⁶³ *Hemmergarn*, 165 Cal. Rptr. at 195.

⁶⁴ *St. Louis-San Francisco Ry. Co.*, 290 P.2d at 120.

⁶⁵ *Id.* at 121.

generous”⁶⁶ jury was a factor that they could not consider in their respective *forum non conveniens* analyses.

The *Hemmelgarn* court found support for this prohibition in the case of *Great Northern Ry. Co. v. Superior Court* involving an accident in which a freight train brakeman collided with a bridge girder near Spokane, Washington, killing him instantly.⁶⁷ His widow appointed a California resident to serve as administratrix of the estate of her late husband, who filed an F.E.L.A. action on behalf of the decedent’s estate in Alameda County, California.⁶⁸ Among the contentions raised by the plaintiff in opposition to the railroad’s motion to dismiss on *forum non conveniens* grounds because the case was not filed in Washington state was the probability “that courts and juries in large metropolitan areas will be more generous in their awards,”⁶⁹ than those of the site of the accident in rural Washington, a factor that the court said it could not consider in its *forum non conveniens* analysis.⁷⁰

Similarly, the *St Louis-San Francisco Ry. Co.* court found support for the prohibition against considering the forum shopping factor while conducting a *forum non conveniens* analysis in the case of *Tuck v. Pennsylvania R. Co.*⁷¹ in which the plaintiff’s sole argument against the transfer of his case from the plaintiff’s chosen forum of Philadelphia to Trenton, New Jersey was because of “the possibility of a higher verdict” there, about which the court refrained from any such speculation.⁷²

Both the *Tuck* case and the *Great Northern Ry.* case referenced a passage from the Supreme Court’s opinion in *Gilbert* wherein the Court dismissed notions that a jury in Lynchburg, Virginia would be too “provincial”⁷³ to accurately assess the damages arising from a large-loss warehouse fire, saying:

“This unproven premise that jurors in New York live on terms of intimacy with \$400,000 transactions is not an assumption we easily make. Nor can we assume that a jury from Lynchburg and vicinity would be ‘staggered’ by contemplating the value of a warehouse building that stood in their region, or of merchandise and fixtures such as were used there, nor are they likely to be staggered by the value of chattels which the people of that neighborhood put in storage. It is a strange argument on behalf of a Virginia plaintiff that the community which gave him patronage to make his business valuable is not capable of furnishing jurors who know the value of the goods they store, the building they are stored in, or the business their patronage creates.”⁷⁴

⁶⁶ *Hemmergarn*, 165 Cal. Rptr. at 195.

⁶⁷ *Great Northern*, 90 Ca. Rptr. at 463.

⁶⁸ *Id.*

⁶⁹ *Id.* at 466.

⁷⁰ *Id.* (citing *Gilbert*, 330 U.S. 501, 509–10).

⁷¹ *Tuck v. Pennsylvania*, 122 F. Supp. 527 (E.D. Pa. 1954).

⁷² *Id.* at 529.

⁷³ *Gilbert*, 330 U.S. at 510.

⁷⁴ *Id.*

III. ANALYSIS

A. Impact of Forum Shopping on the Illinois Business Community.

Forum shopping, if left unchecked, tends to concentrate litigation in the courts that presents certain strategic advantages to plaintiffs, most notably, the potential for higher verdicts. In the consumer arena, higher verdicts generally mean higher prices, as the cost and consequences of expensive litigation are passed down to purchases of the effected goods or services. The proliferation of so-called “nuclear verdicts” in Illinois counties such as Cook, Madison and St. Clare show the impact of concentrated litigation from permissive forum shopping⁷⁵ while a trio of legislative actions accentuates the potential for outsized verdicts, as explained below.

1. Punitive Damage Awards in Wrongful Death Cases.

In 2023, Illinois amended its Wrongful Death Act⁷⁶ authorizing the award of punitive damages, without caps or amount limitations, in wrongful death actions, which had long been prohibited in Illinois as a matter of common law.⁷⁷ The amendment provides, however, that punitive damages “are not available in an action for healing art malpractice or legal malpractice or in an action against the State or unit of local government or an employee of the State or an employee of a unit of local government in his or her official capacity.”⁷⁸

2. Prejudgment Interest in Personal Injury and Wrongful Death Cases.

Two years earlier, in 2021, Illinois enacted legislation establishing a 6% prejudgment interest rate on verdicts in personal injury and wrongful death cases.⁷⁹ This amendment applies to all causes of action, whether occasioned by negligence, willful and wanton misconduct, intentional conduct or strict liability, but does not apply to any portion of the judgment attributable to punitive damages, sanctions, statutory attorney’s fees or statutory costs. Under the amendment, prejudgment interest begins to accrue on the date the action is filed, and not on the date the judgment was entered. The statute establishes a relationship between the amount of

⁷⁵ U.S. Chamber of Commerce Institute for Legal Reform, *Nuclear Verdicts: An Update on Trends, Causes, and Solutions* 25–27 (2024), <https://instituteforlegalreform.com/research/nuclear-verdicts-an-update-on-trends-causes-and-solutions/>.

⁷⁶ See Pub. Act 103-0514 (H.B. 219), amending 740 ILCS §§ 180/1, 180/2.

⁷⁷ See *Mattyasovszky v. West Towns Bus Co.*, 330 N.E.2d 509, 510-12 (Ill. 1975).

⁷⁸ 740 ILCS 180/2(a).

⁷⁹ See Pub. Act 102-006 (S.B. 72) adding 735 ILCS 5/2-1303(c).

prejudgment interest to be awarded, and the amount of any settlement offer made by a defendant. If the judgment rendered is greater than the amount of the highest written settlement offer made by the defendant not accepted by the plaintiff within 90 days after the date of the offer, or if it is rejected by the plaintiff, then prejudgment interest shall be added to the judgement, at the rate of 6% per annum, on the difference between the amount of the judgment (minus any punitive damages, sanctions, statutory attorney's fees or statutory costs) and the amount of the highest written settlement offer. If, however, the judgment is equal to or less than the amount of the highest written settlement offer and not accepted by the plaintiff within 90 days after the date of the offer, or if the offer is rejected by the plaintiff, then no prejudgment interest shall be added to the amount of the judgement. In any event, the statute provided that prejudgment interest shall accrue for no longer than 5 years.

3. *Forum Shopping Invited – Illinois Senate Bill 328.*

More recently, in July of 2025, Illinois enacted legislation that raises the practice of forum shopping in toxic tort cases, such as asbestos litigation, to unprecedented levels in this State. Senate Bill 328 expands the reach of Illinois courts over cases involving harm allegedly caused by exposure to toxic substances, regardless of whether or not the plaintiff is a resident of Illinois, and regardless of where the alleged exposure is claimed to have occurred. This amendment to § 2-209 of the Illinois Code of Civil Procedure⁸⁰ converts Illinois from a specific jurisdiction state to a general jurisdiction state for lawsuits of this type, based upon the premise that by registering to do business in Illinois, or by conducting business in the State without registering, a corporation thereby submits to the general jurisdiction of the Illinois courts.

As long as at least one of the defendants in a multi-defendant toxic tort case is subject to jurisdiction in Illinois pursuant to § 2-209(a) of the Illinois Code of Civil Procedure,⁸¹ an out-of-state plaintiff, alleging injury from an out-of-state exposure from a toxic substance may pursue recovery in an Illinois court room.⁸²

⁸⁰ 735 ILCS 5/2-201(b)(5).

⁸¹ 735 ILCS 5/2-209(a) subjects to the jurisdiction of the State of Illinois any person, whether or not a citizen or resident of Illinois, who transacts any business within the State or commits a tortious act within the State.

⁸² The amendments to 735 ILCS 5/2-201 brought about by S.B. 328 are as follows: “A court may exercise general jurisdiction in any action arising within or without this State who . . . (3) Is a corporation organized under the laws of this State or having its principal place of business in this State; or. . . (5) Is a foreign business corporation that has consented to general jurisdiction in this State . . . but only if (i) the action alleges injury or illness resulting from exposure to a substance defined as toxic under the Uniform Hazardous Substances Act of Illinois, whether the cause of

Proponents of Senate Bill 328 said that the sole intent of the amendment is to provide justice for those injured by exposure to toxic substances, while detractors criticize the amendment as promoting “litigation tourism” which will make the asbestos dockets of plaintiff-friendly venues even more crowded.⁸³

IV. RECOMMENDATION

A. *A Proposed Alternative: Judicial Recognition of Forum Shopping and the Application of a “Sliding Scale” Approach to the Degree of Deference to be Afforded to a Plaintiff’s Choice of Forum.*

As previously referenced, Illinois case law prohibits the courts from considering forum shopping as a factor in undertaking a *forum non conveniens* analysis.⁸⁴ Requiring the courts to turn a blind eye to the practice of forum shopping makes little sense, and its rationale has never been fully explained in the case law.

A more logical solution would be to allow the courts to recognize the reality of forum shopping and to assess it, along with the other private and public factors, in determining whether to transfer, or depending on the nature of the defendant’s motion, to dismiss a case on the grounds of *forum non conveniens*. The United States Court of Appeals for the Second Circuit adopted such an approach in the case of *Iragorri v. United Technologies Corp.*,⁸⁵ recognizing forum shopping when it existed, and applying a “sliding scale” to the degree of deference to be assigned to the plaintiff’s choice of forum. In formulating this approach, the court said:

[T]he degree of deference to be given to a plaintiff’s choice of forum moves on a sliding scale depending on several relevant considerations . . . The greater the plaintiff’s or the lawsuit’s bona fide connection to . . . the forum of choice and the more it appears that considerations of convenience favor the conduct of the lawsuit in [the chosen forum], the more difficult it will be for the defendant to gain dismissal [or transfer] for *forum non conveniens* . . . On the other hand, the more it appears that the plaintiff’s choice of . . . forum was motivated by forum-shopping reasons – such as attempts to win a tactical advantage resulting from local laws that favor the

action arises within or without this State, and (ii) jurisdiction is proper as to one or more named co-defendants under subsection (a) of this Section.”

⁸³ see e.g., *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122 (2023) (discussing and providing an example of “litigation tourism”).

⁸⁴ See *infra* Section III.

⁸⁵ *Iragorri*, 274 F.3d at 71-73; see also *Norex Petroleum Ltd. v. Access Indus., Inc.*, 416 F.3d 146,154 (2d Cir. 2005).

plaintiff's case, the habitual generosity of juries in the [chosen forum], the plaintiff's popularity or the defendant's unpopularity in the region, or the inconvenience and expense to the defendant resulting from litigation in that forum – the less deference the plaintiff's choice of forum commands and, consequently, the easier it becomes for the defendant to succeed on a *forum non conveniens* motion by showing that convenience would be better served by litigating in another [location's] courts.⁸⁶

The sliding scale approach to the plaintiff's forum choice, based upon the degree of apparent forum shopping, has been followed by courts in the Second Circuit and has been adopted elsewhere as well.⁸⁷

Judicial recognition of the reality of forum shopping, and its inclusion as a factor in the *forum non conveniens* analysis, may help to curb a persistent practice that the courts have described as “a strategy contrary to the purposes behind the venue rules.”⁸⁸

V. CONCLUSION

The existence of forum shopping is both a practice and a problem well-known to Illinois courts that is conducted, in various forms, by both plaintiffs and defendants, with each side manipulating the venue rules to obtain the maximum benefit for their respective clients. Turning a blind eye on this practice while making a *forum non conveniens* determination makes little sense, and the prohibition against consideration of the forum shopping factor should be abolished, either by formal amendment to the venue rules or as a matter of common law. Instead, the reality of forum shopping should be candidly recognized by the courts and made an integral factor in the *forum non conveniens* analysis. Plaintiff's choice of forum should be actively assessed for evidence of forum shopping, with strict scrutiny being applied to instances in which the chosen forum is foreign to the plaintiff's residence, to the situs of the injury or transaction, or both, and the degree of deference accorded to the plaintiff's forum choice adjusted accordingly. When evident forum shopping is present, a sliding scale approach should be adopted whereby the greater the evidence of forum shopping, the greater likelihood of success for the motion to transfer or dismiss, as the case may be. Only then can the adverse impact of forum shopping on the Illinois business community be reduced,

⁸⁶ *Iragorri*, 274 F.3d at 72.

⁸⁷ See, e.g., *Rabinowitz v. Kelman*, 75 F.4th 73 (2d Cir. 2023); *Celestin v. Caribbean Air Mail, Inc.*, 30 F.4th 133 (2d Cir. 2022); *Otto Candies, LLC v. Citigroup, Inc.*, 963 F.3d 1331 (11th Cir. 2020); *Pollux Holding Ltd. v. Chase Manhattan Bank*, 329 F.3d 64 (2d Cir. 2003); *BP Chemicals Ltd. v. Jiangsu Sopo Corp.*, 429 F. Supp. 2d 1179 (E.D. Mo. 2006).

⁸⁸ *Dawdy*, 797 N.E.2d at 694 (quoting *Certain Underwriters*, 768 N.E.2d at 785).

and the negative aspects of the practice be eliminated, or minimized, from Illinois *forum non conveniens* jurisprudence.