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## TWISTED CURRENTS: NAVIGATING THROUGH CORPORATE VENUE IN MISSOURI AND THE QUEST TO SIMPLIFY ITS CONSTRUCTION

### INTRODUCTION

“I am convinced that there is nothing radically wrong with [Missouri] venue statutes *if they are properly construed*.”<sup>1</sup> For nearly fifty years, though, Missouri courts have consistently failed to properly construe the state’s venue statutes with respect to corporate residence for venue purposes. The case of *State ex rel. O’Keefe v. Brown*<sup>2</sup> in 1951 presented the Supreme Court of Missouri with its first opportunity to decide the novel question as to whether the court should adhere to prior statutory interpretation regarding corporate venue, or instead venture forth with a new statutory construction. The court chose to take the latter course of action in *O’Keefe*, setting forth a new statutory construction and thus effectively changing the construction of corporate residence for venue purposes.

Since then, Missouri courts have continued to wander down the road paved by the *O’Keefe* court. The journey down this road, however, has been fraught with unnecessary complexity and confusion. Judge Wolff made reference to this complexity when he noted in his concurring opinion in *State ex rel. Smith v. Gray*<sup>3</sup> that “[n]early all Missouri venue statutes can be readily understood by reading the language of the statutes themselves. By contrast, [however], venue provisions relating to corporations require an understanding of the statutory language, the Missouri business corporations statute, and decisions of [the Supreme Court of Missouri].”<sup>4</sup> In addition to the unnecessary complexity and confusion that has been perpetuated by the court’s improper construction, occasionally there have been illogical results in corporate venue oriented cases.<sup>5</sup> Hence, it is time for the complexity, confusion and illogical results that have plagued Missouri courts since *O’Keefe* to be lessened by invoking a new

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1. *State ex rel. Bowden v. Jensen*, 359 S.W.2d 343, 355 (Mo. 1962) (en banc) (Storckman, J. dissenting) (emphasis added).

2. 235 S.W.2d 304 (Mo. 1951) (en banc).

3. 979 S.W.2d 190, 194 (Mo. 1998) (en banc) (Wolff, J. concurring).

4. *Id.*

5. See *O’Keefe*, 235 S.W.2d at 304; *State ex rel. Whiteman v. James*, 265 S.W.2d 298 (Mo. 1954) (en banc); *State ex rel. Bowden v. Jensen*, 359 S.W.2d 343 (Mo. 1962) (en banc); *State ex rel. DePaul Health Ctr. v. Mummert*, 870 S.W.2d 820 (Mo. 1994) (en banc).

form of statutory interpretation. The current construction of corporate residence for venue purposes should be replaced with a simplified and more logical formula; one which would lessen the need for procedural posturing by plaintiffs by establishing a corporation's residence for venue purposes as *either* the location of its office or agent for the conduct of its usual and customary business *or* the location of its agent for the service of process.

Part I of this Comment presents a hypothetical that reveals how the current statutory construction regarding corporate residence for venue purposes can lead to illogical results. This section also surveys some aspects of procedural posturing that have now become commonplace as a result of the court's current corporate venue law interpretation. Parts II and III briefly canvass the history of venue in Missouri and analyze the development of Missouri venue statutes concerning corporate residence, respectively. Part IV discusses the development of law regarding corporate residence and examines recent cases that perpetuate prior law. These cases contain certain dissents and concurrences that allude to the need for the simplification of corporate venue law interpretation. Part V examines why the present approach fails to adequately resolve the problem outlined in Part I and proposes that the Supreme Court of Missouri undertake a new interpretive stance when deciding corporate venue issues. In conclusion, Part VI establishes that the residence of a corporation for venue purposes should be *either* the location of its office or agent for the conduct of its usual and customary business *or* the location of its registered agent for the service of process.

## I. THE PROBLEM

### A. *Suit is Brought Against a Corporation as the Sole Defendant*

Assume that A is an individual plaintiff who wishes to bring suit against Z for a cause of action that accrued in Pope County.<sup>6</sup> A is a resident of Ralls County. Z is a Missouri corporation that maintains an office for the transaction of its business in the City of St. Louis<sup>7</sup> and has its registered agent located in St. Louis County. A wants to bring suit against the corporation in the City of St. Louis due to the preconceived notion that a City of St. Louis jury will be

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6. All counties used in this hypothetical problem are in Missouri.

7. According to the Missouri Constitution, the City of St. Louis is recognized as both a city and as a separate and independent county apart from St. Louis County. MO. CONST. art. VI, § 31. For an in-depth discussion on the separation of the City of St. Louis from St. Louis County, see JAMES NEAL PRIMM, *LION OF THE VALLEY: ST. LOUIS, MISSOURI FROM 1764 TO 1980* (3d ed. 1998).

more sympathetic to A.<sup>8</sup> The issue that presents itself is whether the City of St. Louis is the appropriate venue for a suit against corporation Z.

If plaintiff A brings suit solely against the corporation, section 508.040 of the Missouri Revised Statutes becomes the applicable venue statute because “[w]here all of the defendants are corporations, . . . the corporate venue statute applies.”<sup>9</sup> Section 508.040 provides in relevant part:

Suits against corporations shall be commenced either in the county where the cause of action accrued, . . . or in any county where such corporations shall have or usually keep an office or agent for the transaction of their usual and customary business.<sup>10</sup>

Thus, A has a choice of venue in this particular instance. A can bring suit against corporation Z in Pope County where the cause of action accrued, or in the City of St. Louis since that is where Z maintains an office for the transaction of its business.<sup>11</sup> Because “[t]he primary purpose of Missouri’s venue statutes is to provide a convenient, logical and orderly forum for the resolution of disputes,”<sup>12</sup> it seems only logical that one may bring suit against a corporation in any county where that corporation has an office for the transaction of its business.

One point of relevance should be mentioned to provide clarification. Just because a corporation conducts business in a particular county does not mean that venue is proper in that county.<sup>13</sup> The Missouri Court of Appeals held in *Wadlow v. Donald Lindner Homes, Inc.*<sup>14</sup> that “[t]he venue statute . . . does not

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8. Judge Robertson observed that there have been an “unending series of [cases] in which civil tort plaintiffs and defendants enter protracted procedural plotting to embrace or avoid the generous juries of the City of St. Louis.” State *ex rel.* DePaul Health Ctr., 870 S.W.2d at 821. See also <http://www.verdictreporter.com>. Discrepancies between counties in regard to jury verdict amounts is not a “problem” confined solely to the state of Missouri. “[T]here 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.” Gregory B. Westfall, *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*, 26 TEX. TECH L. REV. 903, 906 (1995).

9. State *ex rel.* Dick Proctor Imps., Inc. v. Gaertner, 671 S.W.2d 273, 274 (Mo. 1984) (en banc).

10. MO. REV. STAT. § 508.040 (1998) (emphasis added).

11. *Id.*

12. State *ex rel.* Elson v. Koehr, 856 S.W.2d 57, 59 (Mo. 1993) (en banc).

13. See Craig A. Adoor & Joseph J. Simeone, *The Law of Venue in Missouri*, 32 ST. LOUIS. U. L.J. 639, 655 (1988).

14. 654 S.W.2d 644 (Mo. Ct. App. 1983). In *Wadlow*, the plaintiff brought suit against a corporate defendant in St. Charles County based on the fact that: (1) twenty percent of the corporation’s work was done in St. Charles County; (2) the president of the corporation was a resident of St. Charles County; (3) a few of the corporate defendant’s business cards listed a St. Charles County address; (4) some of the corporate defendant’s mail was received in St. Charles County; and (5) some company records were stored in St. Charles County. The court determined

consider the amount of business transacted by a domestic corporation in a specific county. It focuses, instead, on the office of the agent for the transaction of business.”<sup>15</sup>

*B. Suit is Brought Against a Corporation and an Individual*

Thus far, it is clear that a corporation’s residence for venue purposes when the corporation is the sole defendant in a suit is in any county where that particular corporation maintains an office or agent for the transaction of its usual and customary business. To complicate matters, though, assume further that plaintiff *A* wanted to bring suit against both corporation *Z* and an additional defendant, *B*, who is an individual and a resident of St. Louis County. When an individual is joined with a corporation, “the general venue statute, rather than [section] 508.040, which deals with suits against corporations, has been held to be the applicable statute . . . .”<sup>16</sup> The general venue statute, codified at section 508.010, provides in relevant part:

Suits instituted by summons shall, except as otherwise provided by law, be brought:

- (1) When the defendant is a resident of the state, either in the county within which the defendant resides, or in the county within which the plaintiff resides, and the defendant may be found;
- (2) *When there are several defendants, and they reside in different counties, the suit may be brought in any such county;*
- (3) When there are several defendants, some residents and others nonresidents of the state, suit may be brought in any county in this state in which any defendant resides;
- (4) When all the defendants are nonresidents of the state, suit may be brought in any county in this state; . . . .<sup>17</sup>

In this situation, because there are two defendants and neither of them are nonresidents of the state, section 508.010(2) applies. Hence, the suit may be brought in any county where any one of the defendants resides. The crucial question becomes in which county is the corporation’s residence located. One might assume that a corporation’s residence for venue purposes would be any county where it maintains an office or agent for the transaction of its business pursuant to section 508.040. This assumption would allow *A* to bring suit

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that there did not exist an agent or office for the transaction of the corporate defendant’s business in St. Charles County. *Id.* at 647.

15. *Wadlow*, 654 S.W.2d at 647. *See also* *Judy v. Insurance Co. of Pennsylvania*, 892 S.W.2d 647 (Mo. Ct. App. 1994).

16. *State ex rel. Turnbough v. Gaertner*, 589 S.W.2d 290, 291 (Mo. 1979) (en banc).

17. MO. REV. STAT. § 508.010 (1998) (emphasis added).

against both the individual and the corporation in the City of St. Louis. Section 508.040 dictates the locale of corporate residence when the corporation is the sole defendant, so surely there would not be a different result merely because an individual was joined with the corporation. According to *O'Keefe*, however, the residence of corporation Z for venue purposes is no longer where it maintains an office for the transaction of its business, but rather it is the location of its registered agent.<sup>18</sup>

It should be noted that “the agent for purposes of corporate venue is not the same as the corporation’s registered agent for purposes of service of process.”<sup>19</sup> The Missouri Court of Appeals held in *State ex rel. Pagliara v. Stussie*<sup>20</sup> that agent, “as used in [section] 508.040 need not be defined in the same [narrow] way as it has been defined in service of process cases.”<sup>21</sup> In *State ex rel. Elson v. Koehr*,<sup>22</sup> the Supreme Court of Missouri advanced the Restatement (Second) of Agency definition of agent to more fully develop the definition that was set forth in *Pagliara*.<sup>23</sup> The court held that the requisite elements of an agency relationship are:

- (1) that an agent holds a power to alter legal relations between the principal and a third party; (2) that an agent is a fiduciary with respect to matters within the scope of the agency; [and] (3) that a principal has the right to control the conduct of the agent with respect to matters entrusted to the agent.<sup>24</sup>

Furthermore, in a case subsequent to *Elson*, entitled *State ex rel. Bunting v. Koehr*,<sup>25</sup> the court made perfectly clear that all three of the requisite agency elements must be established for there to exist an agency relationship sufficient to support corporate venue.<sup>26</sup>

The rules governing registered agents, on the other hand, do not succumb to the necessity that certain requirements derived from case law be fulfilled, as is the case with mere agency relationships. Rather, registered agents for the service of process are provided for in Missouri statutory law.<sup>27</sup> As a result, all corporations in Missouri are required by statute to maintain a registered agent

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18. *State ex rel. O'Keefe v. Brown*, 235 S.W.2d 304, 306 (Mo. 1951) (en banc).

19. *Adoor & Simeone*, *supra* note 13, at 654.

20. 549 S.W.2d 900 (Mo. Ct. App. 1977).

21. *Id.* at 903.

22. 856 S.W.2d 57 (Mo. 1993) (en banc).

23. James A. Endicott, *Finding Corporate Venue in Unlikely Places*, 55 J. MO. B. 343, 344 (1999).

24. *Elson*, 856 S.W.2d at 60 (citing RESTATEMENT (SECOND) OF AGENCY §§ 12, 13 and 14 (1959)).

25. 865 S.W.2d 351 (Mo. 1993) (en banc).

26. *See* Endicott, *supra* note 23, at 353.

27. *See* MO. REV. STAT. §§ 351.370-.380 (1998) (regarding domestic corporations); MO. REV. STAT. § 351.588 (1998) (regarding foreign corporations). Insurance corporations, however, are not required by statute to have a registered agent for the service of process.

for the service of process in the state. The registered agent can be either an individual or a corporate entity, but primarily the basic duty of the registered agent is to handle the legal affairs of the corporation.<sup>28</sup> It is often the case that a corporation will designate as its registered agent another corporation skilled in the handling of such legal affairs.<sup>29</sup> With an understanding of the difference between agent and registered agent for the service of process now achieved, let us delve back into the analysis of our problem.

### C. *Rationale for the Corporate Residence Discrepancy*

The above-mentioned example wherein an individual and a corporation are sued as defendants is actually analogous to a line of cases that have come before the Missouri courts.<sup>30</sup> The Supreme Court of Missouri has determined that when an individual is joined with a corporation, the corporation's residence for venue purposes pursuant to section 508.010 is the location of its registered agent. The court has based this determination on their interpretation of section 351.375, which provides in relevant part:

The location or residence of any corporation shall be deemed *for all purposes* to be in the county where its registered office is maintained.<sup>31</sup>

It is the court's interpretation of section 351.375 that is really at the center of the dispute over corporate venue.<sup>32</sup> The court's current interpretation of section 351.375 fixes the residence of a corporation at the location of its registered agent pursuant to the applicability of section 508.010. Although this interpretation does not necessarily defeat a plaintiff's chances that it might still bring suit in a county where the corporate defendant maintains an office for the transaction of its business, it does make it much more difficult. Hence, in our problem if *A* wants to bring suit against *Z* and *B* in the City of St. Louis, *A* will be required to find a way around having the court place reliance on section 351.375. To keep the court from looking to section 351.375, *A* must render section 508.010 inapplicable.

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28. See, e.g., MO. REV. STAT. § 351.370 (1998).

29. The Company Corporation is one such corporation that provides registered agent services to corporations around the country. See The Company Corporation, at <http://www.corporate.com/about.cfm> (last visited Feb. 20, 2001).

30. See *State ex rel. O'Keefe v. Brown*, 235 S.W.2d 298 (Mo. 1951) (en banc); *State ex rel. Whiteman v. James*, 265 S.W.2d 298 (Mo. 1954) (en banc); *State ex rel. Bowden v. Jensen*, 359 S.W.2d 343 (Mo. 1962) (en banc); *State ex rel. Dick Proctor Imps., Inc. v. Gaertner*, 671 S.W.2d 273 (Mo. 1984) (en banc); *State ex rel. Rothermich v. Gallagher*, 816 S.W.2d 194 (Mo. 1991) (en banc); *State ex rel. DePaul Health Ctr. v. Mummert*, 870 S.W.2d 820 (Mo. 1994) (en banc); *State ex rel. Smith v. Gray*, 979 S.W.2d 190 (Mo. 1998) (en banc).

31. MO. REV. STAT. § 351.375 (1998) (emphasis added).

32. See *infra* notes 80-82 and accompanying text.

*D. Procedural Posturing*

In *State ex rel. DePaul Health Center v. Mummert*,<sup>33</sup> that is exactly what the plaintiff attempted to do. The plaintiff brought suit against an individual and two corporations for a cause of action that accrued in St. Louis County. The individual defendant was a resident of St. Louis County, and the two corporate defendants were deemed to be residents of St. Louis County pursuant to the court's reliance on section 351.375 as the means of determining corporate residence under section 508.010.<sup>34</sup> The suit was filed in the City of St. Louis, but one of the corporate defendants filed a motion to dismiss for improper venue. Prior to the judge's ruling on the motion to dismiss, the plaintiff dismissed the individual defendant without prejudice. The plaintiff then asserted that venue was proper in the City of St. Louis pursuant to section 508.040 since the sole defendants were both corporations and one of the corporations maintained an office for the transaction of its business in the City of St. Louis. The court held, however, that "venue is determined as the case stands when brought,<sup>35</sup> not when a motion challenging venue is decided."<sup>36</sup> Hence, proper venue was found to still lie in St. Louis County.

The issue that was raised in *DePaul Health Center* regarding when venue is to be determined has recently been at the center of a profusion of cases in Missouri.<sup>37</sup> Although the plaintiff did not succeed in its attempt to locate venue in the county in which he wanted, the plaintiff did open the door to a variety of other means of circumventing the one-two-punch combination of sections 351.375 and 508.010 (designating the residence of a corporate defendant at the location of the corporation's registered agent when that corporate defendant is joined with an individual). Hence, the decision rendered in *DePaul Health Center* has resulted in a variety of ingenious (albeit controversial) procedural posturing techniques.

The *DePaul Health Center* decision leaves the impression that A cannot do anything subsequent to the filing of the suit to destroy venue. Thus, A cannot

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33. 870 S.W.2d 820 (Mo. 1994) (en banc).

34. *See id.* at 821.

35. To more fully understand what the court meant by "when brought," BLACK'S LAW DICTIONARY defines "bring suit" as:

To 'bring' an action or suit has a settled customary meaning at law, and refers to the initiation of legal proceedings in a suit. A suit is 'brought' at the time it is commenced . . . . Under the Federal Rules of Civil Procedure, and also most state courts, filing a complaint with the court commences a civil action.

BLACK'S LAW DICTIONARY 192 (6th ed. 1990) (citations omitted).

36. *State ex rel. DePaul Health Ctr. v. Mummert*, 870 S.W.2d 820, 823 (Mo. 1994) (en banc) (emphasis added).

37. *See, e.g., State ex rel. Breckenridge v. Sweeney*, 920 S.W.2d 901 (Mo. 1996) (en banc); *State ex rel. Bunker Res., Recycling and Reclamation, Inc. v. Dierker*, 955 S.W.2d 931 (Mo. 1997) (en banc).



dismiss the suit against *B* for the purpose of shifting the applicable venue statute from section 508.010 to section 508.040 once *A* has already brought suit against *Z* and *B*. Yet, as the case of *State ex rel. Breckenridge v. Sweeney*<sup>38</sup> illustrates, *A* may have another avenue to pursue in an attempt to maintain the corporate defendant's residence in the City of St. Louis for venue purposes.

In *Breckenridge*, the procedural posturing concept at issue centered on "pretensive joinder." In that case, the defendant argued that the plaintiffs joined the individual defendant solely as a means of obtaining venue in the county where one of the corporate defendants' registered agent was located. The court in *Breckenridge* noted that "[v]enue is pretensive if (1) the petition on its face fails to state a cause of action against the resident defendant; or (2) the petition does state a cause of action against the resident defendant, but . . . there is, in fact, no cause of action against the resident defendant . . ."<sup>39</sup> Yet, it is the party asserting pretensive joinder that bears the burden of proof and the burden of persuasion.<sup>40</sup> This is because the court presumes that any allegations made by the plaintiff against a defendant are based on an honest belief held by the plaintiff that a valid cause of action exists against the defendant.<sup>41</sup> The case of *Breckenridge* does not really apply to our problem, because *A* does not want to join an individual to get venue placed in the county of the corporation's registered agent. If the tables were reversed, however, and the registered agent of corporation *Z* was located in the City of St. Louis while its business office was located in St. Louis County, *A* might indeed want to join *B* as an additional defendant. And it could do so as long as *A* showed the joinder was not pretensive. In our problem, however, *A* wants venue placed in the county of the corporation's business office while still bringing suit against individual *B*.

If a plaintiff has chosen to join an individual to achieve venue in a county where a corporation's registered agent is located, it seems only natural that a plaintiff might choose *not* to join an individual so as to achieve venue in a county where a corporation's office for the transaction of its business is located. An example of this type of procedural posturing can be found in the case of *State ex rel. Armstrong v. Mason*.<sup>42</sup> This method of procedural posturing is one that *A* could potentially employ as a means of attaining City of St. Louis venue. In *Armstrong*, the plaintiff brought suit solely against the corporate defendant as a means of achieving venue in the City of St. Louis pursuant to section 508.040. The plaintiff relied on the language in *DePaul*

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38. 920 S.W.2d 901 (Mo. 1996) (en banc).

39. *Breckenridge*, 920 S.W.2d at 902.

40. *See id.*

41. *See* Adoor & Simeone, *supra* note 13, at 648.

42. *State ex rel. Armstrong v. Mason*, No. SC82669 (Mo. filed Nov. 14, 2000) (en banc).

*Health Center* that venue is determined “as the case stands when brought.”<sup>43</sup> The plaintiff subsequently amended its petition the next day to include an additional individual defendant. The defendant corporation alleged that plaintiff engaged in a venue maneuvering practice akin to “pretensive nonjoinder,” whereby the plaintiff did not join the individual defendant so as to avoid destroying City of St. Louis venue.<sup>44</sup> The plaintiff, however, in its brief to the Supreme Court of Missouri advanced the argument that Missouri law grants plaintiffs—not defendants—the right to choose venue from a number of permissible choices specified in the venue statutes.

Theoretically, *A* could do the same thing by filing suit solely against the corporation *Z*, rather than against *Z* and the individual *B* concurrently. *A* would then later add *B* as an additional defendant once venue had already been determined to lie in the City of St. Louis pursuant to section 508.040. The addition of *B* as an individual defendant in the suit would theoretically not destroy section 508.040 venue in the City of St. Louis because, according to *DePaul Health Center*, venue was proper in the City of St. Louis at the time the suit was brought against the sole corporate defendant. The plaintiff in *Armstrong* relied heavily on this proposition and also on the dissent issued by Judge White in *State ex rel. Bunker Resource, Recycling & Reclamation, Inc. v. Dierker*,<sup>45</sup> where he succinctly restated the law outlined in *DePaul Health Center* that “if venue properly lies when suit is filed, subsequent events do not make venue improper.”<sup>46</sup>

This method of procedural posturing, however, has its critics.<sup>47</sup> Yet, it is evident that with a proper construction of Missouri venue laws, the need for such procedural posturing in cases in which an individual is joined with a corporation would no longer be necessary. The problem set forth in the above-mentioned example is clear—due to prior court interpretations of corporate residence in regard to venue, the application of one venue statute instead of the other changes a corporation’s residence and is thus overly complex and illogical. The decision rendered in *O’Keefe*, and in subsequent cases dealing with the issue of corporate residence when a corporation is joined with an individual, seems contrary to the primary purpose of the venue statutes—to provide a “logical . . . forum for the resolution of disputes.”<sup>48</sup>

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43. *State ex rel. DePaul Health Ctr. v. Mummert*, 870 S.W.2d 820, 823 (Mo. 1994) (en banc).

44. See Relator’s Brief at 5-6, *State ex rel. Armstrong v. Mason*, No. SC82669 (Mo. filed Nov. 14, 2000).

45. 955 S.W.2d 931 (Mo. 1997) (en banc).

46. *Id.* at 934 (White, J., dissenting).

47. See Brief of *Amicus Curiae* Missouri Organization of Defense Lawyers, *State ex rel. Armstrong v. Mason*, No. SC82669 (Mo. filed Nov. 14, 2000).

48. *DePaul Health Ctr.*, 870 S.W.2d at 822 (quoting *State ex rel. Elson v. Koehr*, 856 S.W.2d 57, 59 (Mo. 1993) (en banc)).

In order to garner a more complete understanding of the primary purpose of the venue statutes, it is necessary to delve into a history of venue in Missouri. Once the history of venue in Missouri is understood, only then can one grasp how the statutory language has come to be interpreted in such a complex and illogical manner, and ultimately how the statutory interpretation needs to be changed.

## II. HISTORY OF VENUE

Venue is a concept whose origin dates to the foundation of the English judicial system.<sup>49</sup> Venue originally referred to the locality from which jurors were selected.<sup>50</sup> Jurors once played an integral role in the questioning of witnesses.<sup>51</sup> The exercise of this function was found to be most effective if the jurors were drawn from the area where the dispute arose or where the land was located.<sup>52</sup> As the English judicial system began to develop, the active participatory role that jurors once played lessened and greater focus was placed on the distinction between transitory and local actions.<sup>53</sup>

Today, “[t]he typical state statute distinguishes, expressly or effectively, between ‘transitory’ actions . . . [and] ‘local’ actions . . . .”<sup>54</sup> A transitory action is often associated with personal injury claims because venue can follow the parties, while a local action involves disputes over fixed subjects, such as real property.<sup>55</sup> As greater focus was placed on the distinction between local versus transitory actions, the venue practice in England changed. Venue came to be “a designation of the location or geographical situs where the court has jurisdiction to act in a particular lawsuit.”<sup>56</sup>

It is important to note that venue should be distinguished from jurisdiction, which stands for the power of the court to decide the case. According to *Richardson v. Richardson*,<sup>57</sup> however, “[t]here is no longer any requirement that the suit be filed in a ‘proper’ court and filing in a court of improper venue does not deprive the court of jurisdiction over the defendant.”<sup>58</sup> If the court

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49. See Adoor & Simeone, *supra* note 13, at 641.

50. See *id.*; see also William Wirt Blume, *Place of Trial of Civil Cases*, 48 MICH. L. REV. 1, 35-39 (1949).

51. See Adoor & Simeone, *supra* note 13, at 641.

52. See *id.*

53. See *id.*

54. Alan J. Lazarus, *Jurisdiction, Venue, and Service of Process Issues in Litigation Involving a Foreign Party*, 31 TORT & INS. L.J. 29, 67 (1995); see also Adoor & Simeone, *supra* note 13, at 641.

55. Lazarus, *supra* note 54, at 67. For a more in-depth discussion on the distinction between transitory and local actions, see Blume, *supra* note 50, at 36-9.

56. State *ex rel.* Rothermich v. Gallagher, 816 S.W.2d 194, 196 (Mo. 1991) (en banc).

57. 892 S.W.2d 753 (Mo. Ct. App. 1994)

58. *Richardson*, 892 S.W.2d at 755-56 (citing State *ex rel.* DePaul Health Ctr. v. Mummert, 870 S.W.2d 820, 822 (Mo. 1994) (en banc)).

has jurisdiction over the defendant's person or property, but venue is improper, "it inures to the benefit of the parties and the judicial system, for the purpose of efficient administration of justice, to bring the issue to the trial court's attention at the earliest possible time."<sup>59</sup> If the trial court determines that venue is improper, it must transfer the case to a court where venue is proper.<sup>60</sup> Yet, if a court lacks jurisdiction over an action and improper venue exists, the court is deemed to be powerless to transfer the case.<sup>61</sup> "Instead, the court must dismiss the case without prejudice, allowing plaintiff the opportunity to file the action in the appropriate court."<sup>62</sup> Thus, jurisdiction and venue can be distinguished by the fact that jurisdiction relates to the court's power to hear and determine a case, while venue is the place where a case is to be tried.<sup>63</sup>

Venue statutes are designed to "protect defendants from being haled into distant courts . . . [and] discourage plaintiffs from shopping for the most generous jury pool . . ."<sup>64</sup> The place where a case is to be tried, however, has proven to be a catalyst for litigation in Missouri for as long as Missouri has recognized the concept of venue. The reason for this litigation is that locating the site of a cause of action in the most hospitable forum is important to both plaintiffs and defendants. The importance of finding an advantageous forum causes plaintiffs (and to a lesser extent defendants) to enter into protracted procedural posturing. Yet, regardless of all the creative arguments and procedural techniques utilized by the parties to a lawsuit, both parties are still ultimately constrained by the language of the Missouri venue statutes and the court's interpretation of those statutes. To understand how the Supreme Court of Missouri has arrived at its current interpretation of corporate venue, it is necessary to further expound upon the development of the corporate venue statute in Missouri.

### III. STATUTORY ANALYSIS OF THE DEVELOPMENT OF VENUE IN MISSOURI

"Venue in Missouri is determined solely by statute."<sup>65</sup> Missouri venue statutes can be traced back to a period when Missouri had not yet even achieved statehood.<sup>66</sup> Yet, even today Missouri venue statutes still manage to adhere to the local versus transitory distinction, which was established and relied upon centuries ago in England.<sup>67</sup> Suits brought against individuals or corporations are today considered to be transitory in nature and may be filed in

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59. State *ex rel.* Johnson v. Griffin, 945 S.W.2d 445, 446-47 (Mo. 1997) (en banc).

60. *Rothermich*, 816 S.W.2d at 197.

61. Adoor & Simeone, *supra* note 13, at 643.

62. *Id.* at 643-44.

63. See *Rothermich*, 816 S.W.2d at 197.

64. Lazarus, *supra* note 54, at 67.

65. *Rothermich*, 816 S.W.2d at 196.

66. See, e.g., LAWS OF THE TERRITORY OF LOUISIANA, ch. 38 (1807).

67. See Blume, *supra* note 51.

the county of the defendant's residence or in the county where the defendant may be found.<sup>68</sup>

There are eight general venue provisions found in Chapter 508 of the Missouri Revised Statutes.<sup>69</sup> "The applicability of these provisions depends primarily on the type of defendant being sued, and . . . on the types of entities that are sued."<sup>70</sup> It should be noted, however, that there are also a wide variety of special venue provisions that are relevant to specific acts.<sup>71</sup> For our purposes, only sections 508.010 and 508.040 will be discussed. In addition to these sections, section 351.375 also requires analysis because the court has relied upon it to place corporate residence at the location of the corporation's registered agent when section 508.010 is the applicable venue statute. Before delving into a historical analysis of section 508.040, though, it is necessary to mention a few words regarding section 508.010.

#### A. *The General Venue Statute*

Dating back to 1825,<sup>72</sup> the Missouri code specified that venue was proper in any county in which any individual defendant resided or in the county where the plaintiff resided at the time of service if defendant could be found in that county.<sup>73</sup> The language of section 508.010(2) has remained relatively unchanged since its inception. In fact, "[t]here has been relatively little litigation over the literal interpretation of the various provisions of section 508.010."<sup>74</sup> The same cannot be said, however, for section 508.040. And while "[t]he development of the statute over the years does not throw much light on the situation, other than to display a consistent pattern of broadly subjecting corporations to suit,"<sup>75</sup> it is nevertheless important to see how in fact the corporate venue statute developed.

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68. See *Rothermich*, 816 S.W.2d at 197.

69. See MO. REV. STAT. §§ 508.010-.072 (1994).

70. Adoor & Simeone, *supra* note 13, at 639.

71. There are numerous special venue provisions that indicate where a suit may be brought upon a cause of action filed pursuant to a particular law. For example, section 210.829.4 of the Uniform Parentage Act, MO. ANN. STAT. §§ 210.817-.852 (West 1996), is a special venue statute which provides that a paternity action (or any other action brought under the Act) "may be brought in the county in which the child resides, the mother resides, or the alleged father resides. . . ." MO. REV. STAT. § 210.829.4 (1994). This Comment will only focus on those venue statutes relating to corporate residence. Hence, it is necessary that "attorneys filing suit in Missouri pursuant to a particular act should look to the venue provisions of that act, rather than to the general venue provisions of chapter 508." Adoor & Simeone, *supra* note 13, at 639 n.4.

72. MO. REV. STAT. ch. 2, § 3 (1825).

73. *Id.*

74. Adoor & Simeone, *supra* note 13, at 652.

75. State *ex rel.* Webb v. Satz, 561 S.W.2d 113, 114 (Mo. 1978) (en banc). The *Webb* case provides an abbreviated, yet informative, discussion on the development of section 508.040. See *id.* at 114-15.

### B. *The Corporate Venue Statute*

The first corporate venue statute in Missouri can be traced back to the Revised Statutes of 1845.<sup>76</sup> Chapter 34 of that statute was divided into two articles. Article I concerned a corporation's general powers, while Article II spoke to corporate venue.<sup>77</sup> Article II, section 4 provided:

Suits against corporations shall be commenced in the proper court of the county wherein the general meetings of the members, or the officers of such corporation, have usually been holden, or by law, ought to have been holden.<sup>78</sup>

A revision of Article II, section 4 occurred in 1855 and drastically changed the language of the corporate venue statute. The revised Article II, section 4 read as follows:

Suits against corporations shall be commenced, either in the county where the cause of action accrued, or in any county where such corporation shall have, or usually keep, an office or agent for the transaction of their usual and customary business.<sup>79</sup>

The change represented by the 1855 revision is very similar to the current corporate venue statute codified at section 508.040. In fact, since 1855 only two changes have occurred to the actual statutory language. The first of these changes occurred in 1866, when the Missouri legislature decided to delete the comma following the word "commenced" and to change the final clause's mentioning of the word "corporation" to the plural "corporations."<sup>80</sup> Thus, the 1866 revision provided:

Suits against corporations shall be commenced either in the county where the cause of action accrued, or in any county where such corporations shall have or usually keep an office or agent for the transaction of their usual and customary business.<sup>81</sup>

While the change to the plural form "corporations" may be thought of as relatively minor at face value, it was actually a very significant change because it instigated litigation, albeit more than a century later, that forced the Supreme Court of Missouri to confront the issue of whether section 508.040 applied when each of the several defendants were corporations. In *State ex rel. Webb v. Satz*,<sup>82</sup> the court held that "[t]he statute applies . . . when the only defendant

76. MO. REV. STAT. ch. 34 (1845) (current version at MO. REV. STAT. § 508.040 (1998)).

77. *State ex rel. Webb v. Satz*, 561 S.W.2d 113, 114 (Mo. 1978) (en banc).

78. MO. REV. STAT. ch. 34, art. II., §4 (1845) (current version at MO. REV. STAT. § 508.040 (1998)).

79. MO. REV. STAT. ch. 34, art. II., §4 (1855) (current version at MO. REV. STAT. § 508.040 (1998)).

80. *Webb*, 561 S.W.2d at 114.

81. MO. REV. STAT. tit. XXIV, ch. 62, §26 (1866) (current version at MO. REV. STAT. § 508.040 (1998)).

82. *Webb*, 561 S.W.2d 113.

is a single corporation, but to declare that it has no application when there are plural defendants, all corporations, is to ignore the broad language with which the statute begins.”<sup>83</sup> Thus, a suit filed against one or more corporate defendants may be brought in any county where at least one of the corporate defendants maintains an office or agent for the transaction of business.<sup>84</sup> The court’s reliance in *Webb* on the statutory history of section 508.040 evidences why it is an important aspect of our discussion. Without a firm understanding as to how the statutory language has evolved since its inception, one cannot begin to understand how and why the court has arrived at their current statutory interpretation.

The second change to the 1855 version occurred in 1903 when provisions were added pertaining to suits against railroad companies. The addition of this language, though, did not affect the prior corporate venue provisions. And since 1903, the corporate venue statute has remained unchanged and currently reads in full as follows:

Suits against corporations shall be commenced either in the county where the cause of action accrued, or in case the corporation defendant is a railroad company owning, controlling or operating a railroad running into or through two or more counties in this state, then in either of such counties or in any county where such corporations shall have or usually keep an office or agent for the transaction of their usual and customary business.<sup>85</sup>

Now that it has been shown how the corporate venue statute has developed in Missouri, let our focus of attention turn to the development of section 351.375. It is this section that has come to be interpreted as the designator of corporate residence when section 508.010 is deemed to be the applicable venue statute.

### C. *The Registered Agent Concept*

The concept of a registered agent for the service of process was not introduced to Missouri law until 1943. The General Assembly adopted The General and Business Corporation Act of Missouri in 1943.<sup>86</sup> Complexity concerning the issue of corporate residence began to spread upon the introduction of this concept; it did not stem from the venue statutes themselves, as they in all actuality are relatively clear. Sections 9, 10 and 11 of the 1943 Act related to the registered agent for service of process and were entitled as follows:

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83. *Id.* at 115.

84. *Id.*

85. MO. REV. STAT. § 508.040 (1998).

86. The General and Business Corporation Act of Missouri, 1943 Mo. Laws 410, 414 (current version at MO. REV. STAT. § 351.010 (1998)).

Section 9. Each corporation shall continuously maintain a registered office and a registered agent—address shall be stated in articles of incorporation.

Section 10. A corporation may change address of its registered office, how.

Section 11. Capacity of registered agent of corporation.<sup>87</sup>

Section 10, which is now codified under section 351.375, contains the alleged venue culprit provision:

The location or residence of any corporation shall be deemed *for all purposes* to be in the county where its registered office is maintained.<sup>88</sup>

Section 351.375 was actually derived from section 12 of the 1933 Illinois Business Corporation Act.<sup>89</sup> The alleged venue culprit sentence, however, was not found in the Illinois statute. Instead, it was introduced in section 10 of House Bill 64 and remained unchanged until the law was passed in 1943.<sup>90</sup>

It is important to note that the term “corporation” as used today in Chapter 351 does not apply to foreign corporations pursuant to 351.015(6).<sup>91</sup> A foreign corporation is defined under section 351.015(7) as “a corporation for profit organized under laws other than the laws of this state . . .”<sup>92</sup> Hence, section 351.375 only applies to domestic corporations.<sup>93</sup> Although section 351.375 states that “the location or residence of any corporation shall be deemed for all purposes to be in the county where its registered office is maintained,” the equivalent provision applicable to foreign corporations, section 351.588,<sup>94</sup> contains no such language concerning the residence of foreign corporations. Prior to the enactment of section 351.588, section 351.625<sup>95</sup> was the applicable statute, and it actually referenced section 351.375. When the General Assembly enacted section 351.588 in 1990, the legislature not only repealed section 351.625 and its reference to section 351.375, but it enacted the provision without language establishing the residence of a foreign corporation to be “for all purposes” the county in which it maintained its registered office.<sup>96</sup> Therefore, one should remember that prior to 1990, sections 351.375

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87. *Id.* at 419-20.

88. *Id.* at 420. *See* MO. REV. STAT. § 351.375(2) (emphasis added).

89. State *ex rel.* Stamm v. Mayfield, 340 S.W.2d 631, 634 (Mo. 1960) (en banc); *see also* Business Corporation Act, 1933 Ill. Laws 316.

90. *Stamm*, 340 S.W.2d at 634.

91. MO. REV. STAT. § 351.015(6) (1998).

92. MO. REV. STAT. § 351.015(7) (1998).

93. *See* MO. REV. STAT. §§ 351.620, 351.625 and 351.630 (1998) (statutes apply to foreign corporations).

94. MO. REV. STAT. § 351.588 (1998).

95. MO. REV. STAT. § 351.625 (repealed 1990).

96. *See* H.R. 1432, 85th Leg., 2nd Reg. Sess. (Mo. 1990).



and 351.625 were ensconced together in the amalgam of statutory interpretation.

Since *O'Keefe*<sup>97</sup> in 1951, the court has held that section 351.375 dictates where a corporation's residence is to be located when that corporation is brought into a suit pursuant to section 508.010. Yet, the court's construction of corporate residence has not always been this way. Prior to the introduction of the registered agent concept in 1943, the case of *State ex rel. Henning v. Williams*<sup>98</sup> firmly settled all questions of corporate residence for venue purposes. Thus, it is now time to revisit the period prior to 1943 in which no predecessor statutes spoke of a registered agent. From there, it will become apparent exactly when the Supreme Court of Missouri lapsed into the quagmire of confused statutory construction regarding corporate residence. Once one understands how and why the court has continued to perpetuate such an illogical construction, one can then understand why the need for change beckons so loudly today.

#### IV. THE DEVELOPMENT OF LAW REGARDING CORPORATE RESIDENCE

##### A. *Application of the General Venue Statute*

The 1926 case of *State ex rel. Columbia National Bank of Kansas City v. Davis*<sup>99</sup> was a landmark case that squarely presented the Supreme Court of Missouri with the opportunity to decide whether the general venue statute (section 508.010) or the corporate venue statute (section 508.040) fixed venue of civil actions against corporations when they are joined with individual defendants. The case of *Columbia National Bank* centered on a plaintiff who attempted to bring suit against both a corporation and individual defendants in a county where one of the individual defendants resided, notwithstanding the fact that the corporate defendant did not maintain an office or agent for the transaction of its business in that county.<sup>100</sup>

The defendant in *Columbia National Bank* advanced the argument that when a corporation is a defendant, section 508.040 is the applicable venue statute regardless of whether the corporation is joined as a defendant with one or more individual defendants. The plaintiff conceded, and the court acknowledged, that had the plaintiff brought suit solely against the corporation, section 508.040 would have applied and suit could not have been brought in the same county since the corporation did not maintain an office or agent in that county.<sup>101</sup> Yet, the plaintiff argued that when both a corporation and

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97. *State ex rel. O'Keefe v. Brown*, 235 S.W.2d 304 (Mo. 1951) (en banc).

98. 131 S.W.2d 561 (Mo. 1939) (en banc).

99. 284 S.W. 464 (Mo. 1926) (en banc).

100. *Id.* at 465-66.

101. *Id.* at 466.

individuals are defendants to a suit, section 508.010 should be the applicable venue statute. And in fact, that is exactly what the court held—“section [508.010] fixes the venue of civil actions against corporations where they are joined as defendants with one or more other defendants, and . . . section [508.040] fixes such venue only in actions where the corporation defendant is the sole defendant.”<sup>102</sup> The court also stated that “[sections 508.010] and [508.040] should be construed together and a meaning given to each which will not destroy the other . . . .”<sup>103</sup>

*B. The General Venue Statute and Corporate Residence*

In 1939, *Henning* further expounded on the decision rendered in *Columbia National Bank*. In *Henning*, the plaintiff brought suit against an individual resident of St. Charles County and a foreign corporation licensed to do business in Missouri.<sup>104</sup> The corporation had an office for the transaction of its business in the City of St. Louis. Section 508.010 was the applicable venue statute in *Henning*, according to the previous holding in *Columbia National Bank*, since there was a mixture of corporate and individual defendants. Yet, while the issue in *Columbia National Bank* was which statute applied, the issue in *Henning* was where the corporate defendant’s residence was pursuant to section 508.010.<sup>105</sup>

Forced to reconcile sections 508.010 and 508.040, the court in *Henning* held that because a corporation’s residence when sued alone was in any county where the corporation had an office or agent for the transaction of its business under section 508.040, the corporation’s residence should be regarded as established in the same way when it is joined as a defendant with another under section 508.010. Referring to the general venue statute, the court stated that it could “see no reason why [the corporate defendant’s] residence should not be regarded as established in the same way when, perchance, they are joined as defendants with another, thereby fixing the venue under [section 508.040].”<sup>106</sup>

Notice that the holding in *Henning* is in stark contrast to the decision rendered in *O’Keefe* only a few years later. The rationale given in *Henning* for the court’s reliance on section 508.040 as the means of dictating corporate residence pursuant to section 508.010 can actually be traced back to that given in *Columbia National Bank*: “Said sections of the statute should be held in pari

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102. *Id.* at 470.

103. *Id.*

104. *Henning*, 131 S.W.2d at 562.

105. *Id.*

106. *Id.* at 565.

materia.”<sup>107</sup> The court in *Columbia National Bank* endeavored to present the following definition regarding *pari materia*:

Statutes in *pari materia* are those which relate to the same person or thing, or to the same class of persons or things. In the construction of a particular statute, or in the interpretation of any of its provisions, all acts relating to the same subject, or having the same general purpose, should be read in connection with it, as together constituting one law. The endeavor should be made, by tracing the history of legislation on the subject . . . . So far as reasonably possible the statutes, although seemingly in conflict with each other, should be harmonized, and force and effect given to each, as it will not be presumed that the Legislature, in the enactment of a subsequent statute, intended to repeal an earlier one, unless it has done so in express terms; nor will it be presumed that the Legislature intended to leave on the statute books two contradictory enactments.<sup>108</sup>

The decision handed down in *Henning* was short-lived. No longer would a corporation’s residence for venue purposes when joined with an individual be in the county where it maintained an office of the transaction of its business. *O’Keefe*, which came before the court after the registered agent concept had been introduced to Missouri law, was the case that effectively changed the construction of corporate residence.<sup>109</sup> In *O’Keefe*, suit was brought in Dade County against an individual defendant who was a resident of Gentry County and a Missouri corporation.<sup>110</sup> The corporation was a common carrier and had its registered office and registered agent located in Jasper County.<sup>111</sup> The plaintiff premised venue in Dade County because the corporation operated a bus line in Dade County.<sup>112</sup> The cause of action, however, actually accrued in Vernon County.<sup>113</sup> The issue before the court was the same as in *Henning*: What is the residence of a corporation for venue purposes when both a corporation and an individual are sued together? While the issues might have been the same, the decisions rendered could not have been more different.

### C. *Overturing Henning: A New Statutory Construction*

The court in *O’Keefe* recognized that the plaintiff was operating under the theory that “the residence of a corporation is wherever it operates and has an office and agent.”<sup>114</sup> The court did not agree with that theory, however. To that effect, the holding in *Henning* was overruled as the court in *O’Keefe* held

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107. *Columbia National*, 284 S.W. at 470.

108. *Id.* at 470.

109. State *ex rel.* *O’Keefe v. Brown*, 235 S.W.2d 304 (Mo. 1951) (en banc).

110. *Id.* at 305-06.

111. *Id.* at 306.

112. *Id.*

113. *Id.* at 305.

114. *O’Keefe*, 235 S.W.2d at 306.

that the legal residence of a corporation is fixed by the location of its registered agent when a corporation is sued together with an individual.<sup>115</sup> The court looked to the registered agent concept as outlined in section 351.375 to provide the location of corporate residence under section 508.010. The court stated that section 351.375 “applies with equal force to venue statutes.”<sup>116</sup> Thus, venue was found to be improper in Dade County.

Just three years after *O’Keefe*, *State ex rel. Whiteman v. James*<sup>117</sup> presented the court the opportunity to drive home the notion that when section 508.010 is the applicable venue statute, a corporation’s residence is located in the county of its registered agent for the service of process. In *Whiteman*, the cause of action accrued in Holt County and plaintiff brought suit in Jackson County against an individual defendant who was a resident of Andrew County and a foreign corporation. The foreign corporation maintained an office for the transaction of its business in Jackson County and had a registered agent located in the City of St. Louis. The court noted that essentially the only difference between *O’Keefe* and *Whiteman* was the fact that the corporation in *O’Keefe* was a domestic corporation while the corporation in *Whiteman* was foreign.<sup>118</sup> The court deemed this distinction insignificant. Rather, the focus in *Whiteman* was the “for all purposes”<sup>119</sup> language contained in section 351.375.

During the period of time in which *Whiteman* was considered, section 351.625 was the applicable statute in regard to foreign corporations. Since it referenced section 351.375, the court was allowed to construe section 351.375 as dictating corporate residence regardless of whether the corporation was domestic or foreign. As shall soon become apparent, though, sections 351.625 and 351.375 were found to be replete with wrinkles that allowed for applicative maneuverability.

The issue in *Whiteman* was practically the same as that presented in *Henning*: “[W]hether a foreign corporation licensed to do business in [Missouri] and having an office and place of business in some county is a resident of that county” under section 508.010.<sup>120</sup> The plaintiff in *Whiteman* relied on the decision rendered in *Henning* because it answered the issue in the affirmative. The defendant, though, asserted that the holding in *Henning* was prior to when the residence provisions of section 351.375 were enacted. The court held that this issue was properly settled in *O’Keefe*, whereby it was determined that section 351.375 dictates a corporation’s residence at the

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115. *Id.*

116. *Id.*

117. 265 S.W.2d 298 (Mo. 1954) (en banc).

118. *Id.* at 300.

119. MO. REV STAT. § 351.375 (1998).

120. *Whiteman*, 265 S.W.2d at 299 (citing *State ex rel. Henning v. Williams*, 131 S.W.2d 561, 562 (Mo. 1939) (en banc)).

location of its registered agent.<sup>121</sup> Basically, while *O'Keefe* stood for the proposition that section 351.375 applied to domestic corporations when section 508.010 was applicable, *Whiteman* extended this theory to also apply to foreign corporations.

Yet, it is in *Whiteman* that one can see the first signs of reproach concerning the court's corporate venue statutory construction. Judge Hyde, in his dissent, noted that "[w]hile [section 351.375] is sufficient to authorize service on a corporation at its registered office, it is not a venue statute."<sup>122</sup> Continuing, Judge Hyde stated: "I do not think this general provision should be held to control over the specific provisions of sections 508.010 and 508.040, which were intended as venue statutes and which were left unamended."<sup>123</sup> Furthermore, he explained that "the most reasonable construction is that [section 351.375] only adds another office (the registered office) to those where service can be made and venue established."<sup>124</sup> Thus, "while by [section 351.375], a corporation may have a residence at its registered office for all purposes including venue . . . it may also have other residences created by statute for purposes of service and venue."<sup>125</sup>

In fact, even the majority in *Whiteman* conceded that its statutory construction would result in the anomaly of a plaintiff being able to sue a corporation alone in one county under section 508.040, but not in that same county if the corporation was joined with an individual resident of another county.<sup>126</sup> The majority questioned the accuracy of its holding. This admonition, as well as Judge Hyde's dissent, rendered the court's prior statutory construction vulnerable to future criticism. Before more criticism could be engendered, though, the case of *State ex rel. Stamm v. Mayfield*<sup>127</sup> occasioned a new wrinkle for corporate venue construction.

#### D. *The Foreign Corporation Distinction*

In *Stamm*, the issue presented was whether an action might be maintained against a foreign insurance corporation and an individual in the county where the corporation maintains an office for the transaction of its business. The fact that the corporation was an insurance company created an opportunity to construe corporate venue anew. The court noted that at the time the case was brought, sections 351.370, 351.375 and 351.380 governed domestic corporations, while sections 351.620, 351.625 and 351.630 applied to foreign

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121. *Id.* at 300.

122. *Id.* at 301 (Hyde, J. dissenting).

123. *Id.*

124. *Id.*

125. *Whiteman*, 265 S.W.2d at 302 (Hyde, J. dissenting).

126. *Id.* at 300.

127. 340 S.W.2d 631 (Mo. 1960) (en banc).

corporations.<sup>128</sup> Yet, “insurance companies are not within the purview of these statutes because they are among the corporations specifically excepted by [the] provisions of [section] 351.690.”<sup>129</sup>

The court in *Stamm* relied on the following provisions of section 351.690, which read in relevant part:

The provisions of this chapter shall be applicable to existing corporations as follows:

- (1) Those provisions of this law . . . shall be applicable, to the same extent and with the same effect, to all existing corporations, domestic and foreign. . . ;
- (2) No provision of this law, other than those mentioned in subdivision (1), shall be applicable to banks, trust companies, *insurance companies*, building and loan associations, savings bank and safe deposit companies, mortgage loan companies, and nonprofit corporations; . . .<sup>130</sup>

Further, section 375.210 required insurance companies to appoint the superintendent of insurance as their registered agent for service of process. The court held, however, that section 375.210 was a service statute, not a venue statute.<sup>131</sup> Hence, while venue in a suit against a foreign insurance corporation and an individual was indeed governed by section 508.010, the residence of the foreign insurance corporation was in the county where it maintained an office for the transaction of its business. In accordance with this holding, the court overruled *Whiteman* to the extent that it held section 351.375 was applicable to foreign corporations.<sup>132</sup> With *Whiteman* now overruled in part by *Stamm*, *State ex rel. Bowden v. Jensen*<sup>133</sup> became a case that once again concerned the residence of a foreign corporation for venue purposes when both a corporation and an individual are sued together.

Prior to *Bowden*, *Whiteman* dictated that the residence of both domestic and foreign corporations under section 508.010 was controlled by section 351.375. But with the decision rendered in *Stamm*, the court in *Bowden* found it necessary to further elaborate on the domestic versus foreign corporation distinction. The plaintiff in *Bowden* contended that the residence of a foreign corporation, when joined with an individual defendant, should be governed by section 508.040.<sup>134</sup> The court was quick to point out, however, that section 508.040 only applies when a corporation is the sole defendant.<sup>135</sup> Thus,

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128. *Id.* at 633.

129. *Id.*

130. *Id.* at 633 (quoting 1943 Mo. laws 410) (emphasis added).

131. *Id.* at 634.

132. *Stamm*, 340 S.W.2d at 634.

133. 359 S.W.2d 343 (Mo. 1962) (en banc).

134. *Bowden*, 359 S.W.2d at 345.

135. *Id.*

regardless of whether the corporation is domestic or foreign, section 508.040 will only apply if that corporation is sued alone.

The court went on to mention that “[a]s far as domestic corporations organized under the general business laws of Missouri are concerned that issue is settled by the closing sentence of [section 351.375].”<sup>136</sup> Regarding foreign corporations, though, sections 351.620, 351.625 and 351.630 are the applicable statutes.<sup>137</sup> The court held that a foreign corporation resides in the county where its registered office and registered agent is located under section 351.620.<sup>138</sup> While a different statute was utilized to confer corporate residence for a foreign corporation pursuant to section 508.010, the court noted its conclusion was supported by *Whiteman* and that *Bowden* did not overrule *Whiteman* to any further extent than did *Stamm*.<sup>139</sup>

Judge Storckman, however, did not agree with the majority. He opined of *O’Keefe*, *Whiteman* and *Bowden* that none of them correctly construed section 351.375.<sup>140</sup> He agreed with Judge Hyde’s dissent in *Whiteman* that section 351.375 merely adds another potential place in which venue might be established.<sup>141</sup> “The O’Keefe and *Whiteman* cases seem to regard the provision [section 351.375] as if it reads ‘for all purposes of venue,’ but it does not have that effect. At best, venue is only one of several purposes involved.”<sup>142</sup> Judge Storckman believed that “the legislative intent was to make sure that another place of venue and service was designated or continued as it was under the prior law; it was not the legislative intent to destroy the effectiveness of [section 508.010(2)] as it had been interpreted and construed in the *Henning* case.”<sup>143</sup> Finally, Judge Storckman cautioned that the majority opinion could give rise to implicit corporate forum shopping, whereby “corporations, by a judicious choice of a registered office, will be given greater control over the place where they can be sued with other defendants . . . .”<sup>144</sup>

Since Judge Storckman had written the majority opinion in *Stamm* holding that section 375.210 was merely a service statute with respect to insurance corporations, he wanted to adopt that rationale to support the conclusion that section 351.375 was also a service statute and not a venue statute with respect to business corporations. Yet, while Judge Storckman’s majority opinion in

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136. *Id.* at 349.

137. *See* MO. REV. STAT. §§ 351.620, 351.625, 351.630 (1998) (pertaining to foreign corporations).

138. *Bowden*, 359 S.W.2d at 351.

139. *Id.*

140. *See State ex rel. Bowden v. Jensen*, 359 S.W.2d 343, 351 (Mo. 1962) (en banc) (Storckman, J., dissenting).

141. *See id.*

142. *Id.* at 353.

143. *Id.* at 354.

144. *Id.*

*Stamm* had provided that the residence of a foreign insurance company under section 508.010(2) was not governed by section 375.210 and therefore not in the county of the corporation's registered agent, he failed to articulate just where that insurance corporation's residence should be.

*E. The Insurance Corporation Distinction*

Consequently, the case of *State ex rel. Rothermich v. Gallagher*<sup>145</sup> presented the court with the opportunity to decide that very issue. *Rothermich* was a landmark case because, as the court realized, "Missouri courts have heretofore established no definitive definition of residence of foreign insurance corporations for purposes of [section] 508.010(2)."<sup>146</sup> In *Rothermich*, the cause of action accrued in St. Charles County.<sup>147</sup> Suit was brought in the City of St. Louis against an individual defendant who resided in St. Louis County and a foreign insurance corporation authorized to do business in Missouri.<sup>148</sup> The insurance corporation maintained an office for the transaction of its business in the city of St. Louis, and had designated the Director of Insurance to receive service of process on the corporation's behalf.<sup>149</sup> Service of process on the Director occurred in Cole County.<sup>150</sup>

This issue was analogous to that in *Stamm*: Where to locate the residence of a foreign insurance corporation for venue purposes under section 508.010 when one or more corporations are being sued together with one or more individuals? Before delving into this issue, the court sought to make a few points clear: (1) when any corporation is the sole defendant, regardless of whether it is foreign or domestic, insurance or business, section 508.040 is the applicable venue statute;<sup>151</sup> (2) when one or more corporations are sued together with one or more individuals, section 508.010 is the applicable venue statute;<sup>152</sup> and (3) with regard to venue under section 508.010, foreign insurance corporations are treated differently than both domestic and foreign general business corporations.<sup>153</sup>

With these three key points in mind, the court then answered the question as to where the foreign insurance corporation's residence was located under section 508.010. "Since Chapter 351 excludes insurance corporations from applicability, the definition of residence for business corporations taken from [section 351.375] has been found to be inapplicable to insurance

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145. 816 S.W.2d 194 (Mo. 1991) (en banc).

146. *Id.* at 197.

147. *See id.* at 196.

148. *See id.*

149. *See id.*

150. *See Rothermich*, 816 S.W.2d at 196.

151. *See id.* at 197.

152. *See id.*

153. *See id.*



corporations.”<sup>154</sup> In addition, statutory law does not mandate that insurance corporations maintain a registered agent in Missouri. As mentioned in *Stamm*, “[s]ince foreign insurance corporations are not required to designate a registered office and registered agent under the general corporation laws, the construction placed upon [section] 351.375 . . . has no application . . . .”<sup>155</sup>

“Accordingly, this court holds the language of [section] 508.040 . . . to be persuasive in determining the definition of ‘residence’ of a foreign insurance corporation, pursuant to [section] 508.010.”<sup>156</sup> Therefore, the location of a foreign insurance corporation’s residence under section 508.010 is “in any county where such corporations shall have or usually keep an office or agent for the transaction of their usual and customary business.”<sup>157</sup> The court in *Rothermich* apparently wished to cover all of the bases regarding its new interpretative stance on an insurance corporation’s residence. Consequently, the court even advanced a definition of “agent” for venue purposes with respect to insurance corporations that was set forth in *State ex rel. Cameron Mutual Insurance Company v. Reeves*.<sup>158</sup> The court determined that “‘one who is employed under an agreement to accomplish results on behalf of his principal whom he represents [is an insurance agent for venue purposes]’ . . . .”<sup>159</sup> Utilizing this rationale, the court found venue to be proper in the City of St. Louis because the residence of a foreign insurance corporation is in any county where it maintains an office or agent for the transaction of its business, that is, the selling of insurance policies.<sup>160</sup>

The insurance corporation in *Rothermich* was a foreign corporation.<sup>161</sup> And that is why the defendant in *State ex rel. Smith v. Gray*<sup>162</sup> argued that the *Rothermich* holding did not control. In *Smith*, suit was brought in Jackson County against a Missouri insurance corporation, a general business corporation, and an individual.<sup>163</sup> It was conceded that section 508.010 was the applicable venue statute, but at issue was the residence of a domestic insurance corporation pursuant to section 508.010.<sup>164</sup> The insurance corporation had listed in its articles of incorporation that the location of its principal office was in Boone County, but it also maintained an office in

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154. *Id.* at 198.

155. *State ex rel. Stamm v. Mayfield*, 340 S.W.2d 631, 633 (Mo. 1960) (en banc).

156. *State ex rel. Rothermich v. Gallagher*, 816 S.W.2d 194, 200 (Mo. 1991) (en banc).

157. MO. ANN. STAT. § 508.040 (West 1998).

158. 727 S.W.2d 916 (Mo. Ct. App. 1987).

159. *Rothermich*, 816 S.W.2d at 201 (quoting *State ex rel. Cameron Mut. Ins. Co. v. Reeves*, 727 S.W.2d 916, 918 (Mo. Ct. App. 1987)).

160. *See Rothermich*, 816 S.W.2d at 201.

161. *See id.* at 196.

162. *State ex rel. Smith v. Gray*, 979 S.W.2d 190 (Mo. 1998) (en banc).

163. *See id.* at 191.

164. *See id.*

Jackson County for the sale of insurance policies.<sup>165</sup> The plaintiff brought suit in Jackson County because the insurance corporation had an office in that county. The question before the court was whether that county was the proper residence for the insurance corporation under section 508.010, or whether Boone County was the location of residence for venue purposes.

In response to this issue, the court stated, “unlike general and business corporations, no statute makes [the location of the principal office] the residence of an insurance corporation.”<sup>166</sup> The court then proceeded to discuss how the 1943 law only affected general business corporations. Following this discussion, the court held that

[b]y changing the law for general and business corporations but not for insurance companies, the legislature left intact this Court’s definition of ‘residence’ for insurance corporations. Under sections 508.010(2) and 508.040, *foreign and domestic insurance corporations* ‘reside’ for venue purposes in any county where they have or usually keep an office or agent for the transaction of their usual and customary business.<sup>167</sup>

*F. An Opportunity for Change: An Opportunity Lost*

Since *O’Keefe*,<sup>168</sup> the Supreme Court of Missouri has heard a multitude of cases concerning a corporation’s residence for venue purposes. Many of these cases have attempted to change the court’s interpretation of the venue statutes by introducing new ripples into the stream of corporate venue. The court has consistently managed to calm these ripples, albeit with the one exception regarding insurance corporations. Yet, just because the stream of corporate venue may appear to be smooth on the surface does not mean that twisted currents are not lurking beneath. And that is exactly what the cases of *State ex rel. Armstrong v. Mason*<sup>169</sup> and *State ex rel. Taylor v. Clark*<sup>170</sup> sought to expose—the twisted currents of an overly complex and illogical interpretation underneath the stream of corporate venue decisions.

In *Armstrong*, the cause of action accrued in Webster County.<sup>171</sup> The plaintiff brought suit against an individual and a corporate defendant. The individual defendant was a resident of Greene County, while the corporate defendant was a Delaware corporation that maintained its registered office and agent for service of process in St. Louis County.<sup>172</sup> The corporate defendant,

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165. *See id.* at 191-92.

166. *State ex rel. Smith v. Gray*, 979 S.W.2d 190, 192 (Mo. 1998) (en banc).

167. *Id.* at 193 (emphasis added).

168. *State ex rel. O’Keefe v. Brown*, 235 S.W.2d 304 (Mo. 1951) (en banc).

169. *State ex rel. Armstrong v. Mason*, No. SC82669 (Mo. filed Nov. 14, 2000) (en banc).

170. *State ex rel. Taylor v. Clark*, No. SC82915 (Mo. 2000) (en banc).

171. Relator’s Brief at 2, *State ex rel. Armstrong v. Mason*, No. SC82669 (Mo. filed Nov. 14, 2000).

172. *Id.*

however, maintained an office for the transaction of its usual and customary business in the City of St. Louis. Plaintiff initially brought suit solely against the corporate defendant in the City of St. Louis, basing venue on the corporate venue statute. The next day, however, the plaintiff filed a First Amended Petition whereby the individual defendant was joined. While *Armstrong* dealt in part with the concept of ‘pretensive nonjoinder’ as discussed above in the section on procedural posturing,<sup>173</sup> the case really centered on the issue of corporate venue.

The defendants sought to transfer the case from the City of St. Louis based upon improper venue. Judge David C. Mason of the Circuit Court of the City of St. Louis, however, denied the motion to transfer.<sup>174</sup> So too did the Eastern District Court of Appeals, as it denied the defendants’ petition for writ of prohibition.<sup>175</sup> Hence, the case came before the Supreme Court of Missouri.

The defendants/relator contended that the respondent judge erred in holding that venue was proper in the City of St. Louis.<sup>176</sup> They argued using the *O’Keefe* rationale that section 351.375 determines corporate residence when section 508.010 has been invoked as the applicable venue statute due to there being a mix of corporate and non-corporate defendants.<sup>177</sup> The relator stated that “[i]t is self-evident that, by enacting two separate statutes, the legislature of Missouri intended that a distinction be made between corporate defendants and individual defendants when determining proper venue.”<sup>178</sup> Furthermore, the relator stated that “[i]f Missouri’s venue statutes are to be changed, the General Assembly is the proper forum for change, not the Court.”<sup>179</sup>

The respondent, however, maintained that “[c]onstruction of [s]ection 508.010, [s]ection 508.040 and the business corporation statute *in pari materia* indicate that the ‘all purposes’ language of [s]ection 351.375 merely creates an additional venue choice.”<sup>180</sup> The respondent sought to have the court reconsider its prior holdings in such cases as *O’Keefe*, *Whiteman* and *Bowden* and to construe the “for all purposes of venue” provision in section 351.375 to

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173. *See supra* Part I.D and text accompanying notes 41-46.

174. Relator’s Brief at 3, *State ex rel. Armstrong v. Mason*, No. SC82669 (Mo. filed Nov. 14, 2000).

175. *Id.*

176. *Id.* at 17.

177. *Id.* at 20.

178. *Id.* at 18.

179. Relator’s Brief at 23-24, *State ex rel. Armstrong v. Mason*, No. SC82669 (Mo. filed Nov. 14, 2000).

180. Respondent’s Brief at 28, *State ex rel. Armstrong v. Mason*, No. SC82669 (Mo. filed Nov. 14, 2000). *See also* *State ex rel. Smith v. Gray*, 979 S.W.2d 190, 195 (Mo. 1998) (Wolff, J., concurring); *State ex rel. Bowden v. Jensen*, 359 S.W.2d 343, 351 (Mo. 1962) (Storckman, J., dissenting); *State ex rel. Whiteman v. James*, 265 S.W.2d 298, 301 (Mo. 1954) (Hyde, J., dissenting).

stand not as a preclusionary provision against any other location for the purpose of venue, but rather as an inclusionary provision whereby the location of the corporation's registered agent is simply an additional venue choice.<sup>181</sup>

In *Taylor*, which was actually a companion case to *Armstrong*, corporate residence for venue purposes was once again the central issue. Yet, Judge Thomas C. Clark of the Sixteenth Judicial Circuit of Missouri held opposite that of Judge Mason in *Armstrong*. Thus, two cases with virtually identical venue issues were decided differently at the circuit court level. Hence, the Supreme Court of Missouri became the appropriate body to determine the outcome and resolve the discrepancy.

An opportunity was before the court to look upon its prior holdings, to notice the unnecessary complexity that has been perpetuated and to set forth a new statutory construction. The court, though, failed to capitalize on this opportunity. In an amazing and unique turn of events, the court ruled in favor of the respondent in *Armstrong* and also in favor of the respondent in *Taylor*. Remember, the respondent judge in *Armstrong* declined to transfer venue whereas the judge in *Taylor* did transfer venue. This judicial anomaly resulted from the Supreme Court of Missouri rotating the judges after hearing oral arguments for each case. Thus, four justices heard arguments for both cases while the other three judges were different for each case. The lack of uniformity on the court resulted in a split decision. And as a result, an opinion was not written and neither case carries any precedential value.

### G. Analysis

During the course of navigation down the stream of corporate venue, from its inception to its current interpretation by the Supreme Court of Missouri, it is apparent that somewhere along the stream a divergence occurred. It was a divergence between philosophies, between what the legislature originally intended when it enacted the corporate venue statute and what the court now perceives to be the correct interpretation of that statute. Luckily, when this divergence occurred can be pinpointed with exactness. Furthermore, the reason for that separation can even be identified; it was the introduction of section 351.375 into Missouri law in 1943. Once section 351.375 came to be interpreted by the court as the statute that provides for a corporation's residence in the county where its registered agent is located under section 508.010, illogical results began to occur.

For purposes of section 508.010, sections 508.040 and 351.375 are in conflict. Section 508.040 dictates venue when a corporation is the sole defendant. Yet, section 351.375 negates that statute when a corporation is joined with an individual defendant. Hence, "the determination of proper

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181. Respondent's Brief at 25-26, *State ex rel. Armstrong v. Mason*, No. SC82669 (Mo. filed Nov. 14, 2000).

venue for a corporation turns on the essentially inconsequential presence of a single unincorporated defendant.”<sup>182</sup> This is illogical.

A plaintiff should be able to bring suit against a corporate defendant in the county where the corporation maintains an office for the transaction of its business, regardless of whether an individual defendant is joined in the suit. The majority’s rationale in *Bowden*, however, attempts to refute this interpretative stance. But as Judge Storckman expressed in his dissent in *Bowden*, “[s]tatutes should not be construed so as to render another statute meaningless unless the legislative intent to do so is clearly expressed . . . .”<sup>183</sup> The current construction of section 351.375 when section 508.010 is the applicable venue statute does in fact render another statute (section 508.040) meaningless. Yet, the majority of the court in *Bowden* found this to be acceptable.<sup>184</sup>

As support for their holding that section 508.040 should not provide the residence of a corporation for venue purposes when section 508.010 is the applicable venue statute, the court in *Bowden* posited the following question, which will be applied to the characters in the example from section II:

[I]f plaintiff ‘A’ brings a suit against corporation ‘Z’ and individual defendant ‘B’ in the City of St. Louis, how would defendant ‘B’ go about determining whether the venue of the suit in the City of St. Louis was or was not proper as to him?<sup>185</sup>

The court asked this question because it believed that were corporation *Z* to “reside” in any county in the state in which it had an office for the transaction of its business, then defendant *B* would be faced with an uncertain issue of fact. And that issue would be whether *Z* was doing business as usual and customary in that county.

This rationale, however, is superfluous. The court’s later decision in *Webb* regarding multiple corporate defendants does a great deal of damage to the *Bowden* court’s reasoning. When the court in *Webb* held that section 508.040 applied to multiple corporate defendants, must not the additional corporate defendant pursuant to section 508.040 undergo the same discovery to ascertain whether venue is appropriate to it? Since section 508.040 applies when one corporation is the sole defendant and when one or more corporations are the sole defendants, an individual defendant under section 508.010 is placed in the same shoes as an additional corporate defendant under section 508.040. It is not any more difficult for an individual defendant to determine whether a

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182. Brief of *Amicus Curiae* Missouri Association of Trial Attorneys at 19, *State ex rel. Armstrong v. Mason*, No. SC82669 (Mo. filed Nov. 14, 2000).

183. *State ex rel. Bowden v. Jensen*, 359 S.W.2d 343, 354 (Mo. 1962) (en banc) (Storckman, J., dissenting).

184. *See id.*

185. *Id.* at 350.

corporation is doing business as usual and customary in one county than it is for another corporation seeking to determine the same thing.

While *Webb* may have poked the first hole in the *Bowden* majority's rationale, the holding in *Rothermich* dealt it a crushing blow. In *Rothermich*, it was held that section 508.040 located venue for insurance corporations regardless of whether or not an individual was joined.<sup>186</sup> Thus, if an individual is sued along with an insurance corporation, that individual cannot rely on the *Bowden* rationale that locating venue in the county where the insurance corporation maintains an office for the transaction of its usual and customary business would burden the individual defendant with an uncertain issue of fact as to whether that insurance corporation was doing business as usual and customary in that county. If the *Bowden* rationale cannot apply when an insurance corporation is a party, why should it be allowed to have merit when a general business corporation is a defendant? Is the burden on the individual defendant that much greater when a general business corporation is involved rather than an insurance corporation? The answer is clearly no.

While the decisions in *Webb* and *Rothermich* may have swept the *Bowden* majority's rationale out of the stream of corporate venue, it unfortunately did not negate the holding of *Bowden*. Something more was needed to overturn the precedent established long ago in *O'Keefe* and perpetuated by its progeny. And that something more has finally arrived. As this Comment has shown, there is little if any rationale remaining to support the court's current interpretative stance. The court's statutory construction has navigated the court down the stream of corporate venue. The decisions resulting from this statutory construction have built a seemingly solid ship for sailing down that stream. The ship's sails, however, have become flaccid as a result of there no longer being the wind of rationale to keep them full. Rather, the wind of change now blows. And it is a harsh wind. A wind stirring as a consequence of the illogical results promulgated by the court's current interpretative stance. This wind has created ever-heightening waves lunging at the chance to sink that ship. The ship now sits slowly listing. And it is only when that ship sinks that the wind of change will subside and the twisted currents of corporate venue will finally be quelled.

#### V. PROPOSED SOLUTION

While illogical results can be found in such cases as *O'Keefe*, *Whiteman*, *Bowden* and in the companion cases of *Armstrong* and *Taylor*,<sup>187</sup> another

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186. See *State ex rel. Rothermich v. Gallagher*, 816 S.W.2d 194 (Mo. 1991) (en banc).

187. See also *State ex rel. Dick Proctor Imps., Inc. v. Gaertner*, 671 S.W.2d 273 (Mo. 1984) (en banc), where suit was brought against four corporations and one individual. The court held that section 508.010 was the applicable venue statute and that venue was proper in the City of St. Louis since one corporation maintained a registered agent at that location. *Id.*

example whereby the court's interpretation of corporate venue has an anomalous effect can be found in the example outlined in Part I of this Comment. For it is in that example that venue is proper in the City of St. Louis if *A* brings suit solely against the corporation, but venue will be improper in the City of St. Louis if *A* brings suit against both *Z* and the individual defendant *B*. In all of these cases, venue was found to be improper in the county where the corporation had an office for the transaction of its business. This is an anomaly of statutory construction, because had any of the corporations been the sole defendant in any of those cases, venue would have been found to be proper. The plaintiff should be able to bring suit against corporation *Z* in the county where *Z* maintains an office for the transaction of its business, regardless of whether or not individual defendant *B* is joined in the suit.

Even after the court acknowledged this anomalous result years ago in *Whiteman*, why does the statutory construction allowing for this anomalous result persist? Answering this question becomes even more difficult when one considers how the court in *Rothermich* declared that "it is desirable to arrive at a result where venue is applied more uniformly so that a myriad of venue rules do not exist contributing to and encouraging litigation relating to venue problems."<sup>188</sup> Unfortunately, a myriad of venue rules does exist. And it is this myriad that places an unnecessary burden on the plaintiff to determine which venue rules apply.

If the sole defendant is a corporation, then section 508.040 is the applicable venue statute and the corporation's residence is located in any county where it maintains an office for the transaction of its usual and customary business.<sup>189</sup> Yet, if there is a corporate defendant and an individual defendant, then section 508.010 governs.<sup>190</sup> When section 508.010 governs, the plaintiff must then look to section 351.375. But if the corporation is an insurance corporation, section 351.375 is no longer applicable.<sup>191</sup> Rather, it is once again section 508.040. If there should happen to be a mix of general business corporations and insurance corporations, in addition to individual defendants, then section 508.040 only applies to the insurance corporations whereas section 508.010 and section 351.375 determine the residence of the general business corporations.

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188. *Rothermich*, 816 S.W.2d at 200.

189. See *State ex rel. O'Keefe v. Brown*, 235 S.W.2d 304, 306 (Mo. 1951) (en banc); *State ex rel. Whiteman v. James*, 265 S.W.2d 298, 299 (Mo. 1954) (en banc); *State ex rel. Bowden v. Jensen*, 359 S.W.2d 343, 345 (Mo. 1962) (en banc); *State ex rel. Webb v. Satz*, 561 S.W.2d 113, 114 (Mo. 1978) (en banc).

190. See *O'Keefe*, 235 S.W.2d at 306; *Whiteman*, 265 S.W.2d at 299; *Bowden*, 359 S.W.2d at 345.

191. See *Rothermich*, 816 S.W.2d at 198; *State ex rel. Smith v. Gray*, 979 S.W.2d 190, 193 (Mo. 1998) (en banc).

Instead of wondering why this illogical statutory construction has been allowed to advance throughout the decades, it is more appropriate to delve into how that statutory construction can be changed. A proposed solution, echoed by Judges Hyde, Storckman and Wolff, is that sections 508.040 and 351.375 be interpreted so as to promote harmony among the two. Rather than having section 351.375 negate section 508.040, section 351.375 should be construed to provide *another* place of venue—not the exclusive place of venue under section 508.010.

As Judge Wolff succinctly stated in his concurrence in *Smith*:

[T]he most logical way to reconcile the venue statutes and the business corporation statute is to hold that a business corporation for venue purposes is a resident of a county where it maintains an office for the transaction of its usual business (section 508.040) and a resident of a county where it maintains its registered office (section 351.375). To interpret sections 508.040 and 351.375 as each defining residence for venue purposes not only is logical, but eliminates the strategic choice of joining an individual defendant for venue purposes where, ordinarily, a plaintiff would not otherwise be inclined to do so.<sup>192</sup>

It is illogical to hold that a corporation's residence is in one county when the corporation is the sole defendant, but that its residence is in a different county when the corporation is joined with an individual. It is even more illogical when one considers that it is often the case that the county where a corporate defendant maintains its registered agent possesses no other nexus to the underlying claim.

By eliminating the competition between sections 508.040 and 351.375 when section 508.010 is the applicable venue statute, controversial procedural posturing by plaintiffs would be greatly decreased. A reduction in the need for procedural posturing would result in a reduction in procedural-oriented litigation. If the residence of a corporate defendant under section 508.010 was either in the county where the corporation maintained an office for the transaction of business or in the county where the corporation's registered agent was located, plaintiffs would not need to add or dismiss defendants solely for the purpose of obtaining a hospitable forum, and defendants would not need to question every action by the plaintiff.

This construction would also not harm defendant corporations, as it merely combines the two statutorily designated locales where corporations can be sued. It does not inflict upon them a new or altered location of corporate residence. An insurance corporation's residence pursuant to section 508.010 is dictated by section 508.040. Hence, there is no reason that this concept cannot be expanded to cover all corporations under section 508.010. A corporation's residence for venue purposes should therefore be *either* the location of its

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192. *Id.* at 196.



office or agent for the conduct of its usual and customary business *or* the location of its agent for the service of process.

## VI. CONCLUSION

The bifurcated decision rendered in the *Armstrong* and *Taylor* cases evidences the court's recognition of a need for change. Yet, it also evidences an unwillingness to break from the precedent established by *O'Keefe* and its progeny. When the court's ship finally sinks under the rolling waves of unnecessary complexity and illogical results, perhaps then will the court take action in instilling a new statutory construction. This new statutory construction needs to be simple and it needs to be consistent. And it can be accomplished. All that is required is that the court recognizes that its prior interpretation is too complex and illogical. Rather than having competing venue statutes, which in turn results in litigious competition, there needs to be harmony. Section 508.040 should locate a corporate defendant's residence in any county where that corporation maintains an office for the transaction of its usual and customary business regardless of whether or not that corporation is joined with other unincorporated defendants. Section 351.375 can still be used to locate a corporation's residence in the county of its registered agent for purposes of section 508.010, but this should serve only as creating another venue choice—not destroying all other choices granted under section 508.040.

As Judge Storckman stated in his dissent in *Bowden*: “I am convinced that there is nothing radically wrong with [Missouri] venue statutes *if they are properly construed*.”<sup>193</sup> There is truth to this statement. For it is not the venue statutes *per se* that are complex and illogical; it is the court's interpretation of them.

STEVEN RINEBERG\*

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193. *Bowden*, 359 S.W.2d at 196 (Storckman, J., dissenting) (emphasis added).

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