

Survey of Toxic Tort Law Cases

Illinois Supreme Court Ratifies Drastic Amendment to Illinois' Workers' Occupational Disease Act

In January 2025, the Illinois Supreme Court overturned decades of legal precedent to rubber stamp the Illinois legislature's destruction of exclusivity defenses and protections under the Occupational Disease Act, ignoring employers' rights advocates' pleas to uphold constitutional due process in Illinois, and instead ratifying the legislature's 2019 amendment to 820 ILCS 310/1.1.

The Illinois Workers' Occupational Disease Act (ODA) historically provided employers with protections by limiting employees' ability to pursue civil claims for occupational diseases that developed after their employment ended. In 2019, however, the legislature amended the ODA and introduced 820 ILCS 310/1.1 ("Exception 1.1"), which altered these protections. At the beginning of 2025, the Illinois Supreme Court addressed the application and constitutionality of Exception 1.1, rejecting arguments that it violated employers' constitutional due process rights. The court's decision in *Martin* upheld the amendment despite its significant impact on employers' rights and defenses under the ODA, including the exclusivity provisions that traditionally barred civil suits once compensation benefits were available under the Act.

Exception 1.1, enacted in 2019, permits employees whose claims were previously barred by certain repose periods to avoid the ODA's exclusivity provision and pursue civil litigation. In March 2024, the United States Court of Appeals for the Seventh Circuit in *Martin v. Goodrich Corporation* certified three questions to the Illinois Supreme Court. These questions asked: (1) whether the temporal limitation in section 1(f) of the ODA constitutes a statute of repose, (2) whether applying Exception 1.1 violates the Illinois Constitution's due process protections, and (3) what the temporal scope of Exception 1.1 should be.

While the case was pending, several amicus briefs were submitted on behalf of employer organizations, raising concerns about the potential effects of the amendment on Illinois businesses. These briefs asserted that Exception 1.1 could allow plaintiffs to circumvent long-standing timing restrictions and questioned whether reopening extinguished claims would raise constitutional issues.

In January 2025, the Illinois Supreme Court unanimously upheld the amendment. In addressing the certified questions, the court concluded that: (1) Section 1(f) constitutes a statute of repose under Exception 1.1; (2) Exception 1.1 applies prospectively, though its prospective application may still allow civil claims arising many years after exposure; and (3) Exception 1.1 does not violate employers' due process rights.

Regarding the first question, the court referenced its 2015 decision in *Folta v. Ferro Engineering*, which held that section 6(c) of the ODA was a statute of repose. The *Martin* court described Exception 1.1 as a legislative response to *Folta* and applied similar reasoning to treat Section 1(f) as a statute of repose because it limits employer liability after a defined period.

For the second question, the court relied on section 4 of the Statute on Statutes, which governs the temporal application of legislative amendments. It determined that Exception 1.1 is substantive because it affects the types of claims employees may bring outside the ODA and, therefore, applies prospectively. The parties nevertheless disputed what "prospective" meant in this context. The defense argued that applying Exception 1.1 to a claim based on a 1976 exposure would impair vested rights related to the ODA's defenses and exclusivity provisions. This disagreement led the court to address the third certified question.

On the issue of due process, the court held that an employer's ability to rely on the ODA's exclusivity provisions does not vest until the employee's claim accrues—that is, when the disease is diagnosed. Because the diagnosis in this case occurred after the enactment of Exception 1.1, the court found no due process violation in applying the amendment.

Despite concerns raised by the defense and amici, the Illinois Supreme Court deferred broader policy considerations to the legislature, indicating that any adjustments or clarifications would need to come through legislative action rather than judicial interpretation.

The ruling in *Martin* significantly affects employers facing occupational disease litigation in Illinois, as it limits reliance on the ODA's exclusivity protections for claims discovered after the 2019 amendment. The decision is expected to increase toxic-tort and occupational-disease civil filings, adding to the caseload of

Illinois courts. Employers now face heightened exposure to liability and may need to look to legislative solutions to address the practical and operational challenges posed by this change in the ODA's framework.

Martin v. Goodrich Corp., 2025 IL 130509.

Fifth District Overturns Trial Court's Denial of Defendant's Motion to Transfer Venue Based on *Forum Non Conveniens*

In *Smith v. Walgreen Co.*, the defendant Walgreen Co. successfully moved to transfer the case from St. Clair County, Illinois to Christian County, Illinois based on *forum non conveniens*.

The underlying lawsuit was filed in St. Clair County alleging negligence against several defendants, including Walgreen Co. The complaint claimed Walgreen Co. had improperly filled a prescription ordered by the decedent's treating physician at a Walgreens pharmacy located in Christian County. None of the alleged negligent conduct took place in St. Clair County. Prior to the trial court's ruling on Walgreen Co.'s motion to transfer, all other defendants had been dismissed from the lawsuit on personal jurisdiction grounds.

At the trial court level, Walgreen Co. argued the public and private interest factors strongly favored transfer to Christian County. Walgreen Co.'s argument focused on the location of the Walgreens pharmacy at issue, the location of the alleged negligence, and the location of the alleged injury, *i.e.*, Christian County. Furthermore, Walgreen Co. argued that Christian County was less congested than St. Clair County, and since the Walgreens pharmacy at issue was in Christian County, the possibility of a jury viewing the premises favored transfer to that venue. Walgreen Co. also argued the plaintiff's choice of venue should be given less deference because she was not a resident of St. Clair County.

The plaintiff's argument focused on the location of various parties, including the dismissed defendants, the location of potential witnesses, and the location of potential evidence, *e.g.*, medical records and corporate documents. The plaintiff argued the parties, potential witnesses, and evidence were in closer proximity to St. Clair County than Christian County and, therefore, transfer was improper. Moreover, the plaintiff contended St. Clair County had approximately four times as many Walgreens' locations as Christian County, and the issue of improperly filled prescriptions was national, not local. Because this was a national issue, and St. Clair County had more Walgreens locations than Christian County, the plaintiff argued the issues were of more interest to St. Clair County residents.

Walgreen Co.'s motion to transfer was denied by the trial court. The Illinois Appellate Court for the Fifth District overruled the trial court's decision stating, "[a]lthough we acknowledge the plaintiff's right to choose the forum, a balance of the relevant factors strongly favors a transfer to Christian County." *Smith v. Walgreen Co.*, 2024 IL App. (5th) 240394, ¶ 20.

The appellate court rejected most, if not all, of the plaintiff's arguments against transfer of the case to Christian County and found that all but one of the public and private interest factors favored transfer. The appellate court conceded that the attorneys of record were in closer proximity to St. Clair County but gave this argument little weight. The appellate court's reasoning focused heavily on the fact that the alleged negligence and injury occurred in Christian County, not St. Clair County. While acknowledging that Walgreens Co. did operate stores in St. Clair County, the appellate court found the plaintiff's national issue argument unpersuasive. The appellate court opined that transactions at St. Clair County locations were "unrelated to the instant case and insignificant for purposes of *forum non conveniens*." *Smith*, 2024 IL App. (5th) 240394, ¶ 34. Furthermore, the appellate court noted the trial court improperly considered the convenience of the dismissed defendants in denying Walgreen Co.'s motion to transfer. Finally, the appellate court stated its deference to the plaintiff's choice of forum was reduced because she did not reside in St. Clair County, nor did the events giving rise to the lawsuit occur there.

Smith v. Walgreen Co., 2024 IL App. (5th) 240394.

Illinois Appellate Court Addresses Issuance of Proximate Cause Jury Instruction in Toxic Tort Litigation

In 2025, the Illinois First District Appellate Court addressed issuance of the proximate cause jury instruction in a toxic tort lawsuit. In *Evard v. Monsanto Co.*, the plaintiffs alleged that they developed non-Hodgkins lymphoma caused by their exposure to products designed, manufactured, and distributed by the defendant. Monsanto argued that genetic replication errors caused the plaintiffs' illnesses.

During a jury instruction conference, the plaintiffs proposed the long form proximate cause instruction, which reads: "When I use the expression 'proximate cause,' I mean a cause that, in the natural or ordinary course of events, produced the plaintiffs' injury. It need not be the only cause, nor the last or nearest cause. It is sufficient if it combines with another cause resulting in the injury." IPI Civil No. 15.01. Monsanto proposed the short form, which consists only of

the first sentence of the instruction. The trial court issued the short form because Monsanto was the only defendant at trial. Ultimately, the jury reached a verdict in favor of Monsanto.

On appeal, the plaintiffs argued that the trial court committed reversible error by failing to give the long form instruction because proximate cause was the critical issue at trial. In addressing this issue, the court relied on the Notes on Use for IPI Civil No. 15.01 and the Comment to the instruction. Based on these sources, the court determined that the long form seems to be preferred, but the short form may be used in a trial court's discretion in situations where there is only one plaintiff and one defendant.

The court found that it would have been preferable for the trial court to issue the long form because this was a complex case and causation was a central issue. Ultimately, however, the court determined that the trial court did not abuse its discretion by issuing the short form. The court reasoned that Monsanto was the sole defendant at trial, meaning the short form could be issued according to the Notes on Use.

Additionally, there was no evidence that the conduct of anyone other than Monsanto caused or contributed to the plaintiffs' illnesses. Rather, Monsanto argued that genetic replication errors caused the plaintiffs' illnesses. The court analogized the case to *Campbell v. Wagner*, 303 Ill. App. 3d 609 (4th Dist. 1999). In that case, the plaintiff suffered a perforated colon during a hysterectomy, which she argued could have been caused by a hematoma and her surgeon's negligence. The surgeon and her employer argued that the hematoma caused the perforated colon. The Fourth District Appellate Court found that the trial court did not abuse its discretion by issuing the short form proximate cause instruction because there was no evidence that anyone's conduct other than the surgeon caused the plaintiff's injury. *Campbell*, 303 Ill. App. 3d at 614. Neither of the parties in that case argued that the hematoma was caused by negligence. *Id.*

Finally, despite use of the short form instruction, the plaintiffs were not prevented from arguing that Monsanto could be liable even if there were multiple causes of the plaintiffs' illness. During closing arguments, the plaintiffs' attorney repeatedly argued that there could be multiple causes of the plaintiffs' cancer, and to establish proximate cause, the jury only had to find that Monsanto's products were "a cause," not "the cause."

Evard v. Monsanto Co., 2025 IL App (1st) 241235-U.

Illinois District Court Addresses Preemption of State Law Claims Alleging Benzene Contamination of Medication

In *Birdsong v. Walgreens, Inc.*, the United States District Court for the Northern District of Illinois examined whether claims alleging benzene contamination of medication were preempted by federal law. The plaintiffs alleged that Walgreens sold mucus relief medication containing benzene. They claimed that Walgreens violated state statutes and tort law by failing to disclose the benzene content of the medication. Walgreens moved for dismissal, arguing that the plaintiffs' claims were preempted by the Food, Drug, and Cosmetic Act (FDCA).

The FDCA preempts any state law claim that relates to the regulation of an over-the-counter medication and that imposes a requirement on the manufacturer that is different from or in addition to, or that is otherwise not identical with, a requirement under relevant federal law. 21 U.S.C. § 379r(a). The court explained that for the plaintiffs' claims to survive preemption, Walgreens' failure to disclose the risk of benzene in its mucus medication must have plausibly violated a federal requirement.

As to the plaintiffs' claim that Walgreens was required to include benzene as an ingredient on the labels of its medication, the court determined that the claim was preempted. According to the court, the FDCA provides only that "active" and "inactive" ingredients may be listed on labeling. Based on the definitions of active and inactive ingredients used in the Code of Federal Regulations, the court reasoned that FDA regulations require manufacturers to list only ingredients intended for use in their products, not unintended contaminants. 21 C.F.R. § 201.66(b)(2) and (8). The plaintiffs did not allege that Walgreens or any manufacturers intended for benzene to be present in the mucus medication, only that the manufacturers used a carbomer that was manufactured with benzene. The benzene in Walgreens' medication was a trace contaminant, not an active or inactive ingredient in the medication. Consequently, the FDCA prohibited its inclusion in labeling, meaning the plaintiffs' claims that state law required its inclusion were preempted.

The plaintiffs also argued that Walgreens affirmatively misrepresented the mucus medication's safety in its marketing of the medication. The plaintiffs specifically alleged that through marketing and sale, Walgreens represented that its mucus medication was safe for people, including pregnant women and their newborns, adults aged 65 or older, and people with weakened immune systems. Standing alone, this allegation related to the safety of the medication. As the court explained, however, the plaintiffs' allegation stemmed from

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their lack of knowledge that the medication contained benzene. Thus, the court believed that the plaintiffs' allegation was not factually different from their claim that Walgreens should have disclosed the presence of benzene in its medication. As discussed, the court believed that the FDCA did not require Walgreens to disclose the presence of benzene in the mucus medication.

Ultimately, the court determine that without claiming that the FDCA required Walgreens to disclose the risk of benzene in the mucus medication, a finding that Walgreens was required to warn the plaintiffs of the risk of benzene would impose a duty on Walgreens regarding production and sale of an over-the-counter medication different from, or in addition to, or otherwise not identical with, a requirement under federal law. Therefore, the court dismissed the plaintiffs' complaint without prejudice based on preemption.

Birdsong v. Walgreens, Inc., 2025 U.S. Dist. LEXIS 95818 (N.D. Ill. May 20, 2025).

Specific Jurisdiction Over Out-of-State Firearm Dealer

In *City of Chicago v. Westforth Sports, Inc.*, the Illinois Appellate Court First District held that the defendant gun dealer, whose only location was in Gary, Indiana, had "deliberately and purposely availed itself of the Illinois market," permitting an Illinois court to exercise specific personal jurisdiction over the defendant. *City of Chicago v. Westforth Sports, Inc.*, 2025 IL App (1st) 231908, ¶ 3.

The plaintiff, the City of Chicago, alleged that the defendant regularly engaged in business with Illinois straw purchasers through in-store retail sales, advertisements to out-of-state residents, its marketing through the internet, and by shipping firearms to Illinois dealers. Guns sold by the defendant were traced to more than 800 crimes in Chicago, and the defendant sold firearms illegally to dozens of Illinois purchasers. Chicago also alleged that the defendant ignored red flags and warning signs of illegal and/or straw men purchases. The trial court granted the defendant's motion to dismiss for lack of personal jurisdiction, but the appellate court reversed. The appellate court found that the defendant purposefully directed activity toward Illinois and that Chicago's claims related to those activities. Indeed, the defendant had earned substantial revenue from Illinois sales, assisted Illinois residents in evading Indiana residency requirements, and trained its staff to sell to Illinois residents. In short, the defendant's business practices and history of sales to straw purchasers of firearms bound for Illinois were not "random, fortuitous, or attenuated." *Westforth*

Sports, Inc., 2025 IL App (1st) 231908, ¶ 47. Instead, the defendant sought out this business.

The court also found that Chicago's allegations either arose out of the defendant's contacts with Illinois or related to its in-forum activities because the standard does not require strict causation or that the defendant's actions were the sole cause of harm. The standard is flexible and looks at how the defendant's conduct relates to the claims made against it. The court found that the "allegations in the complaint, the affidavits, and other documents in the record establish an un rebutted *prima facie* case that the alleged harm" arises from the defendant's years-long systematic practice of selling to Illinois straw purchasers. *Id.* ¶ 60. Finally, the court found it was reasonable to require the defendant to litigate in Illinois courts because the defendant directed its business to Illinois, Illinois has a strong public interest in the dispute, and Chicago had a strong interest in obtaining the relief sought. Indiana, on the other hand, lacked the same "urgency or impact as Illinois." *Id.* ¶ 64.

City of Chicago v. Westforth Sports, Inc., 2025 IL App (1st) 231908.

Illinois Senate Bill 328 Expands the Reach of Illinois Courts Over Foreign Corporations

On August 15, 2025, Governor Pritzker signed Illinois Senate Bill 328 (now Public Act 104-0328). This Act presents a significant change to the reach of Illinois courts over foreign defendants by amending the Illinois long-arm statute (735 ILCS 5/2-209).

The Act provides that a corporation submits to the general jurisdiction of Illinois courts if it is either:

- a. A corporation having its principal place of business in Illinois;
- b. A foreign business corporation that has consented to general jurisdiction in the State of Illinois in accordance with the Business Corporation Act of 1983; Additionally, these changes apply only if:
 1. The foreign corporation is sued in the action that alleges injuries or illness that resulted from exposure to a toxic substance as defined under the Uniform Hazardous Substances Act of Illinois and whether the cause of action arises within or without the State;
 2. Jurisdiction is proper as to one or more named co-defendants under the Code of Civil Procedure.

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It is irrelevant whether the injury or events related to the lawsuit arose within the state. For a corporation that previously already registered to conduct business in the state, the Illinois consent to general jurisdiction provisions would become effective upon the filing deadline, or its first annual report. This is true regardless of whether the report is actually filed. For corporations that register to do business in the state after the bill's effective date, the bill's effects would take place immediately.

This new law will broaden the reach of Illinois courts in asbestos cases, as well as other lawsuits that fall within the ambit of the Uniform Hazardous Substances Act of Illinois (430 ILCS 35/1). The Uniform Hazardous Substances Act defines "toxic" as "any substance (other than a radioactive substance) which has the capacity to produce bodily harm or illness to man through ingestion, inhalation, or absorption through any body surface." Pennsylvania is currently the only other state with a law similar to the new Illinois law. The Governor of New York struck down a similar bill in 2024.

2025 Bill Text IL S.B. 328 (Act 104-0352).

About the Authors



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