

Venue Wars

The latest legal fight in the legislature concerns venue. What is venue? Venue is a rule of court dictating where a person, corporation or another entity can be sued. Under current law, a corporation can be sued where the parties live, meaning the person who is suing or the person who is sued; where the bad act occurred giving rise to the lawsuit; or where, in the case of a corporation, the company can be found doing business on a regular and substantial basis. The big boys in Harrisburg, who write the hefty checks, want to make sure that corporations cannot be sued where they purposely avail themselves of the opportunity of doing business.

An example will suffice. Frito Lay is headquartered in Lycoming County. Supposing Frito Lay sells tainted food all over the state. A woman in Philadelphia eats the poisoned food and dies. Her estate can file the lawsuit in Philadelphia or Lycoming County. Supposing the estate of the dead woman is located in Harrisburg, Dauphin County. The tainted food was produced in Lycoming County, and the batches were inspected in Philadelphia before the product was sold in Dauphin County. Under current rules established by the Supreme Court of Pennsylvania, the estate of decedent may file a lawsuit in Dauphin or Lycoming County but may, if Philadelphia County had enough connection with the problem through its inspection in Philadelphia, be sued in the Metropolitan County.

Major corporations do not like being sued in Philadelphia. Therefore, companies want a special deal. They want to make sure that they can be sued where they reside as corporations, basically meaning where they are headquartered, or where the bad act occurred, but they do not want to be sued in other counties where they are found doing business on a regular basis. Medical providers already obtained a special privilege in 2002. The legislature attempted to restrict venue on medical liability cases, but the court struck that down since the Pennsylvania Constitution clearly states that only the courts can decide where lawsuits may be filed. This is based upon the ancient doctrine enunciated by Montesquieu and incorporated in our federal as well as our state constitution that a separation of powers between the Executive, Legislative, and the Judicial must be maintained in order to assure democracy. After the court struck down the legislative efforts to change venue rules for a medical liability case, the Pennsylvania Supreme Court, under great political pressure, made the change itself. Now medical liability cases can only be brought where the medical neglect occurred. This is great for hospitals and doctors in small, one hospital counties where they tend to be treated very kindly by judges and juries.

The major corporate players in Pennsylvania now want the same privilege for themselves that the medical community receives. What is the effect that venue tampering will have? Since Philadelphia County and Allegheny County are where most of the people live, people hurt in those counties will file claims there. Corporations that are headquartered in Philadelphia and Allegheny Counties will also be sued there. However, corporations that do business in other counties throughout the state and commit acts that may harm others, will be protected from being sued in counties where they are not headquartered or where the injured party does not reside. In some instances this will actually drive cases into Philadelphia and Allegheny Counties, and in other situations cases will be driven into the counties where the big corporations reside regardless of the involvement that other counties may have in the damage which was inflicted upon an innocent consumer.

This change in the venue laws may actually be good for rural lawyers and rural corporations. Since more cases would be brought where the greatest population centers occur, most cases will be brought in those big cities. However, rural areas with big industry will also see more cases filed in their counties. If the injured party and the corporation do not reside in the big cities, it is much less likely that cases will be filed there regardless of the relationship those major metropolitan areas have to the claim. As a rural lawyer, this may be good for my business even though it is bad for the rule of law, consistency and fairness. I should be celebrating. Unfortunately, I cannot get away from the basic ideal that the legislature should respect the constitution. The constitution decrees that the courts make decisions about where claims are filed. For the legislature to usurp this important responsibility, in the face of a great body of law and to the contrary, demeans the constitution. Those darn activist conservatives!

It seems like it is okay to trample on the constitution when it is done by big business and their supporters. We need to make sure that the standards we apply to individuals also apply to those who make the most money through their corporate structure. We already have given corporations and other shadow groups the right to buy elections by equating their dollars with the right to vote. Isn't that quite enough for one decade? No. The Pennsylvania legislature is considering wiping away several hundred years of constitutional development by giving the legislature the right to decide where cases are filed rather than the courts. Needless to say, there is no empirical or economic need to toy with venue in this matter. Nonetheless, the combine of business groups who have by far the most PAC dollars are likely to get their way until and unless the people express their disgust at the ballot box.

Manipulating the court system to benefit one particular group or ideology may be appealing in the short run, but the long-term consequences are dire for all of

us. After all, if the big spenders in Harrisburg or Washington can rewrite the laws for their own benefit, then any fad issue can result in a fundamental change in the legal system.

The law may be boring, but it is the consistent polestar that keeps our civilization from spinning apart during wild gyrations of social upheaval. There will always be a new and dramatic social issue for some ambitious politician to tout. Without laws neutral in their application and fair in their administration, we are only likely to see further diminution in the status of our social fabric.

Clifford A. Rieders, Esquire
Rieders, Travis, Humphrey, Harris,
Waters & Waffenschmidt
161 West Third Street
Williamsport, PA 17701
(570) 323-8711 (telephone)
(570) 323-4192 (facsimile)

Cliff Rieders, who practices law in Williamsport, is Past President of the Pennsylvania Trial Lawyers Association and a member of the Pennsylvania Patient Safety Authority. None of the opinions expressed necessarily represent the views of these organizations.