

JENNER & BLOCK

*Practice Series*

# Personal Jurisdiction in Illinois

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This outline provides an overview of significant issues relating to the exercise of personal jurisdiction in Illinois, both in state and federal courts.

## I. Personal Jurisdiction Analysis In Illinois State Courts

1. **Traditional Two-Step Analysis** (Generally no longer used) – Illinois State Courts traditionally employed a two-step process in analyzing personal jurisdiction. *Keller v. Henderson*, 359 Ill. App. 3d 605, 611 (2d Dist. 2005).
  - A. First, courts determined whether jurisdiction was proper under the Illinois Long-Arm Statute by questioning whether a nonresident defendant performed one of the acts enumerated in 735 ILCS § 5/2-209. *Id.*
  - B. Second, courts determined whether the exercise of jurisdiction over the defendant comported with the due process standards of the Illinois and U.S. Constitutions. *Id.* (See Part 2 of this section, on page 3, for due process analysis).
  - C. The Illinois Long-Arm Statute provides jurisdiction in the following circumstances:
    1. **Long-Arm Specific Acts** – Where the defendant takes, in Illinois, any of the acts enumerated in subsection 2-209(a), the Long-Arm Statute grants jurisdiction to the courts of Illinois over the defendant in cases arising out of the act committed.<sup>2</sup>

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<sup>2</sup> The Illinois Long-Arm Statute lists the following acts as giving rise to jurisdiction in Illinois: (1) The transaction of any business within this State; (2) The commission of a tortious act within this State; (3) The ownership, use, or possession of any real estate situated in this State; (4) Contracting to insure any person, property or risk located within this State at the time of contracting; (5) With respect to actions of dissolution of marriage, declaration of invalidity of marriage and legal separation, the maintenance in this State of a matrimonial domicile at the time this cause of action arose or the commission in this State of any act giving rise to the cause of action; (6) With respect to actions brought under the Illinois Parentage Act of 1984, as now or hereafter amended, the performance of an act of sexual intercourse within this State during the possible period of conception; (7) The making or performance of any contract or promise substantially connected with this State; (8) The performance of sexual intercourse within this State which is claimed to have resulted in the conception of a child who resides in this State; (9) The failure to support a child, spouse or former spouse who has continued to reside in this State since the person either formerly resided with them in this State or directed them to reside in this State; (10) The acquisition of ownership, possession or control of any asset or thing of value present within this State when ownership, possession or control was acquired; (11) The breach of any fiduciary duty within this State; (12) The performance of duties as a director or officer of a corporation organized under the laws of this State or having its principal place of business within this State; (13) The ownership of an interest in any trust administered within this State; or (14) The exercise of powers granted under the authority of this State as a fiduciary.

- a. This is **specific jurisdiction**: jurisdiction exists because the action relates to the defendant’s activities in – or connections to – Illinois.
2. **Subsection (b)** of the Long-Arm Statute provides jurisdiction in any case where the defendant is: (1) a natural person present in Illinois when served with process; (2) a natural person domiciled or residing in Illinois when the cause of action arose, the action was commenced, or process was served; (3) a corporation organized under the laws of Illinois; or (4) a natural person or business doing business in Illinois such that the person’s or business’s contacts render it essentially at home in Illinois.<sup>3</sup>
  - a. This is **general jurisdiction**: the defendant has a sufficient presence in Illinois that jurisdiction exists over them for any action brought within the state, even if the action does not relate to the defendant’s activities in – or connections to – Illinois.
  3. **Subsection (c)** allows a court to exercise jurisdiction on any other basis now or hereafter permitted by the Illinois Constitution and the Constitution of the United States. That is to say, to the extent allowed by due process under both the Illinois and U.S. Constitutions.
- D. Move away from the Traditional Two Step Analysis under the Long-Arm Statute:
  1. 735 ILCS § 5/2-209(c), effective as of September 7, 1989, is viewed as a catch all provision. *Keller*, 359 Ill. App. 3d at 611. Based on this subsection, the long-arm statute “has been held to be coextensive with the due process requirements of the Illinois and United States Constitutions.” *Id.* at 12. Under this “independent basis for exercising personal jurisdiction,” “the Illinois long-arm statute is satisfied and no other inquiry is necessary” where “both the federal and Illinois due process requirements for personal jurisdiction” are satisfied. *Id.*
  2. “Because of the coextensive nature of the long-arm statute and due process requirements, the first step traditionally employed by Illinois

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<sup>3</sup> In *Aspen Am. Ins. Co. v. Interstate Warehousing, Inc.*, 418 Ill. Dec. 282 (2017), the Illinois Supreme Court ruled that in light of *Daimler AG v. Bauman*, 571 U.S. 117 (2014), subsection (b)(4) “cannot constitutionally be applied to establish general jurisdiction where, as here, there is no evidence that defendant’s contacts with Illinois have rendered it ‘essentially at home’ in this state.” *Aspen Am.* 418 Ill. Dec. at 288 (quoting *Daimler*, 571 U.S. at 139).

courts in personal jurisdiction analysis, that is, whether the defendant performed any of the acts enumerated in the long-arm statute, is now ‘wholly unnecessary.’” *Id.*

3. “In other words, the long-arm statute is satisfied when due process concerns are satisfied, regardless of whether the defendant performed any of the acts enumerated in the long-arm statute.” *Id.*
4. As such, Illinois state courts’ personal jurisdiction analysis now focuses “solely on whether plaintiff has shown that the federal and Illinois due process requirements have been met.”
5. However, some courts still examine whether jurisdiction is proper under the Long-Arm Statute, as a guide to their analysis. *See, e.g., Old Orchard Urban Ltd. P’ship v. Harry Rosen, Inc.*, 389 Ill. App. 3d 58, 64 (1st Dist. 2009) (noting that although analysis under the Long-Arm Statute is not necessary, it “is helpful to our discussion of the jurisdictional issue presented here”).

**2. Modern Two-Step Due Process Analysis** – The modern approach in Illinois State Courts is to analyze personal jurisdiction only under the due process standards of the U.S. and Illinois Constitutions, and not under the Long-Arm Statute. *Russell v. SNFA*, 2013 WL 1683599, ¶ 30 (Ill. Apr. 18, 2013); *Keller*, 359 Ill. App. 3d at 612.

A. **U.S. Constitution** – The due process standard of the U.S. Constitution requires that, for a nonresident defendant to be subject to personal jurisdiction in Illinois, the defendant must have certain “minimum contacts” with Illinois “such that maintenance of the suit there does not offend ‘traditional notions of fair play and substantial justice.’” *Wiles v. Morita Iron Works Co.*, 125 Ill. 2d 144, 150 (1988) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). The federal due process analysis consists of two considerations:

1. First, a court must consider whether the nonresident defendant had sufficient “minimum contacts” with Illinois such that there was “fair warning” that the nonresident might be haled into court here. *Spartan Motors, Inc. v. Lube Power, Inc.*, 337 Ill. App. 3d 556, 561 (2d Dist. 2003) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)).
  - a. The Illinois Supreme Court has held that “the relevant inquiry into whether the minimum contacts test has been satisfied depends on what category of personal jurisdiction is being sought—either general or specific.” *Russell*, 2013 WL 1683599, ¶ 36.
  - b. In cases of **general jurisdiction**, the key inquiry is whether the defendant has “continuous and systematic contacts with

Illinois.” *Bolger v. Nautica Int’l, Inc.*, 369 Ill. App. 3d 947, 952 (2d Dist. 2007).

- c. In cases of **specific jurisdiction**, the question is whether the “[law]suit arises out of or relates to the defendant’s contacts with” Illinois. *Keller*, 359 Ill. App. 3d at 613.
  - d. For a more detailed discussion of general vs. specific jurisdiction, and the requirements for proving each, see Section III “Specific vs. General Jurisdiction” of this outline on page 11.
2. Second, a court should consider whether it is reasonable to require the defendant to litigate in Illinois. *Keller*, 359 Ill. App. 3d at 618. Relevant considerations are:
- a. The burden on the defendant of defending the action in Illinois;
  - b. Illinois’s interest in adjudicating the dispute;
  - c. The plaintiff’s interest in obtaining convenient and effective relief;
  - d. The interstate judicial system’s interest in obtaining the most efficient resolution of the action; and
  - e. The shared interests of the several states in advancing fundamental social policies. *Id.*; *Burger King*, 471 U.S. at 476-77.

Note: courts often do not reach these considerations, particularly where a court’s conclusions are clear after conducting an exhaustive analysis of “minimum contacts” and the extent to which general or specific jurisdiction exists.

**B. Illinois Constitution** – The Illinois Constitution’s due process requirement mandates that it be “fair, just, and reasonable to require a nonresident defendant to defend an action in Illinois, considering the quality and nature of the defendant’s acts which occur in Illinois or which affect interests located in Illinois.” *Rollins v. Ellwood*, 141 Ill. 2d 244, 275 (1990).

1. In *Rollins*, the Illinois Supreme Court made clear that the due process standard of the Illinois Constitution is “separate and independent from the Federal guarantee of due process.” *Id.* Illinois State Courts are therefore technically required to engage in two separate due process analyses: one under the Illinois Constitution, and the second under the U.S. Constitution. *Id.*

2. As a practical matter, it does not appear that Illinois State Courts analyze additional considerations when evaluating personal jurisdiction under Illinois due process standards. *See, e.g., Keller*, 359 Ill. App. 3d at 619-20; *Wiggen v. Wiggen*, 954 N.E.2d 432, 438 n.1 (Ill. Ct. App. 2d Dist. 2011). In *Russell*, the Illinois Supreme Court confirmed that “there have been no decisions from this court or the appellate court identifying any substantive difference between Illinois due process and federal due process on the issue of a court’s exercising personal jurisdiction over a nonresident defendant.” 2013 IL 113909 ¶ 32. The court further noted that federal courts interpreting Illinois law have also not found a meaningful difference between the Illinois and federal due process analyses. *Id.* Moreover, the party challenging personal jurisdiction in *Russell* did not argue that it was entitled to greater due process protections under the Illinois due process clause. *Id.* ¶ 33. Therefore, the Illinois Supreme Court conducted one due process analysis in *Russell* and did not determine the extent, if any, to which Illinois and federal due process protections differ. *Id.*
  3. As discussed below, federal courts in Illinois often conduct one comprehensive due process analysis, not a separate analyses under the Illinois and U.S. Constitutions.
3. **Process** – Absent a general appearance or waiver, personal jurisdiction requires service of process. *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 308 (1986).
- A. “A judgment rendered without service of process . . . where there has been neither a waiver of process nor a general appearance by the defendant, is void regardless of whether the defendant had actual knowledge of the proceedings.” *Id.* *See also Jayko v. Fraczek*, 966 N.E.2d 1121, 1126 (Ill. Ct. App. 1st Dist. 2012) (“[W]hen proper service is lacking and the court does not acquire personal jurisdiction, the judgment entered is considered void *ab initio*.”).
    1. “[A] party attacking a judgment for lack of personal jurisdiction due to defective service of process is not restricted by either the time limitations or the ‘due diligence’ requirements of section 2-1401 of the Code of Civil Procedure.” *State Bank of Lake Zurich*, 113 Ill. 2d at 308. As such, “a judgment rendered by a court which fails to acquire jurisdiction of either the parties or the subject matter of the litigation may be attacked and vacated at any time or in any court, either directly or collaterally.” *Id.*
    2. For a more detailed discussion of how to make an appearance and preserve objections to personal jurisdiction, see Section V, “Challenging Personal Jurisdiction” on page 45.

- B. Service of process in Illinois State Courts is governed by 735 ILCS §§ 5/2-201 to 5/2-213.
- C. Generally, service can be made on individuals by (1) leaving a copy of the summons with the defendant personally or (2) leaving a copy at the defendant's usual abode, with a family member or person residing there over the age of 13, informing that person of the contents, and also sending a copy to the same abode by mail. 735 ILCS § 5/2-203.
- D. Service on corporations can be made (1) by leaving a copy of the process with its registered agent or any officer or agent of the corporation found anywhere in the state; or (2) "in any other manner now or hereafter permitted by law." 735 ILCS § 5/2-204. "A private corporation may also be notified by publication and mail in like manner and with like effect as individuals." *Id.*
- E. Service can also be made on individuals or corporations by publication. 735 ILCS § 5/2-206.
- F. If a party waives formal service of process, that party has not waived any objections to personal jurisdiction or venue. 735 ILCS 5/2-213(b).
- G. For a more detailed discussion of the requirements for service of process in Illinois, see 3 Ill. Prac., Civil Procedure Before Trial §§ 9:1-9:13.

## II. Personal Jurisdiction Analysis In Illinois Federal Courts

1. **Diversity Jurisdiction** – In diversity cases in Illinois Federal Court, the standard for personal jurisdiction is the same as it would be in Illinois State Court. *Wilson v. Humphreys (Cayman) Ltd.*, 916 F.2d 1239, 1243 (7th Cir. 1990) (quoting *Turnock v. Cope*, 816 F.2d 332, 334 (7th Cir.1987) (abrogated on other grounds) (“In a diversity case, a federal district court has personal jurisdiction over a nonresident defendant ‘only if a court of the state in which it sits would have such jurisdiction.’”). *See also Edelson v. Ch’ien*, 352 F. Supp. 2d 861, 866 (N.D. Ill. 2005) (quoting *Wilson*, 916 F.2d at 1243) (“Thus, the Court has jurisdiction ‘only if [an Illinois State Court] would have such jurisdiction.’”).
  - A. Specifically, the analysis conducted in federal diversity cases is the same two-step due process analysis outlined in Part 2 of Section I “Personal Jurisdiction Analysis in Illinois State Court” of this outline on page 3. *See Citadel Grp. Ltd v. Wash. Regional Med. Ctr.*, 536 F.3d 757, 760-61 (7th Cir. 2008).
  - B. The Seventh Circuit has stated that an evaluation of due process under the Illinois Constitution is unnecessary, because in “no case post-*Rollins* has an Illinois court found federal due process to allow the exercise of jurisdiction in a case where Illinois limits prohibited it.” *Hyatt Int’l Corp. v. Coco*, 302 F.3d 707, 715 (7th Cir. 2002); *see also GMAC Real Estate, LLC v. E.L. Cutler & Assocs., Inc.*, 472 F. Supp. 2d 960, 964 (N.D. Ill. 2006) (“[I]t is only in the rare (and perhaps hypothetical) case that the federal due process analysis might actually differ from the Illinois due process analysis.”).
2. **Federal Question Jurisdiction (over defendants based in the United States)** – In federal question cases, Illinois Federal Courts analyze two issues: (1) whether the defendant is amenable to service of process; and (2) whether the exercise of personal jurisdiction over the defendant in Illinois is consistent with due process. *See Omni Capital Int’l v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 104 (1987); *uBID, Inc. v. GoDaddy Grp., Inc.*, 623 F.3d 421, 425 (7th Cir. 2010).
  - A. First, a defendant must be amenable to service of process pursuant to Federal Rule of Civil Procedure 4(k). *See Omni Capital*, 484 U.S. at 104; *uBID*, 623 F.3d at 425. Under Rule 4(k)(1), a party is amenable to service of process where:
    1. The underlying statute (*i.e.*, the federal law under which the claim arises) authorizes nationwide service of process. Fed. R. Civ. P. 4(k)(1)(C).
      - a. This is rare. In *Kinslow v. Pullara*, 538 F. 3d 687, 690 (7th Cir. 2008), the Seventh Circuit observed that the following statutes are among the few that authorize nationwide service of process:

- 1) Employee Retirement Income Security Act, 29 U.S.C. § 1132(e)(2);
  - 2) Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1965(a); and
  - 3) Securities Exchange Act of 1934, 15 U.S.C. § 78aa.
2. The defendant would be subject to jurisdiction in a court in Illinois. Fed. R. Civ. P. 4(k)(1)(A). *See also Illinois v. Hemi Group LLC*, 622 F.3d 754, 756 (7th Cir. 2010).
    - a. Because a defendant is only subject to jurisdiction in Illinois if the exercise of such jurisdiction comports with due process, the court will proceed straight to the due process analysis discussed above in Part 2 of Section I of this outline. *Id.*
  3. The defendant is a party joined under Fed. R. Civ. P. 14 or 19 and is served within a judicial district of the United States and not more than 100 miles from where the summons was issued. Fed. R. Civ. P. 4(k)(1)(B).
- B. Second, even if a defendant is amenable to service of process, due process must be satisfied. *Omni Capital*, 484 U.S. at 104; *uBID*, 623 F.3d at 425.
1. To determine whether the exercise of jurisdiction over a defendant would comport with due process, the court conducts the same two-step due process analysis discussed in Part 2 of Section I on page 3.

**Practice Tips:**

- **If the statute giving rise to the federal question jurisdiction does not authorize nationwide service of process, the court will go straight to the two-step due process analysis discussed in Part 2 of Section I on page 3.**
- **Despite the technical differences between diversity and federal question cases (e.g., the questions regarding amenability to service of process and Federal Rule of Civil Procedure 4(k)), the fundamentals of the personal jurisdiction analysis are the same in diversity and federal question cases: a party is only subject to personal jurisdiction in Illinois if it is consistent with due process.**

3. **Federal Question Jurisdiction (over international defendants)** – In federal question cases against international defendants, Illinois Federal Courts will exercise personal jurisdiction over defendants where the following four conditions are met:
- A. The plaintiff’s claims must be based on federal law. Fed. R. Civ. P. 4(k)(2); *Cent. States, Se. & Sw. Areas Pension Fund v. Reimer Express World Corp.*, 230 F.3d 934, 940 (7th Cir. 2000).
  - B. No state court could exercise jurisdiction over the defendant. Fed. R. Civ. P. 4(k)(2)(A); *Cent. States*, 230 F.3d at 940.
  - C. The exercise of jurisdiction is consistent with the laws of the United States. Fed. R. Civ. P. 4(k)(2)(B); *Cent. States*, 230 F.3d at 940.
    - 1. It is not clear what the purpose of this prong is. In *Central States*, the Seventh Circuit held that this prong is satisfied as long as no U.S. statute specifically prohibits jurisdiction over the defendants or otherwise indicates that jurisdiction would be improper. *Cent. States*, 230 F.3d at 941.
  - D. The exercise of jurisdiction is consistent with the U.S. Constitution. Fed. R. Civ. P. 4(k)(2)(B); *Cent. States*, 230 F.3d at 940.
    - 1. Here, the court conducts the same two-step due process analysis discussed in Part 2 of Section I of this outline on page 3. However, courts analyze the defendant’s contacts with the United States as a whole – not just Illinois. *Abelesz v. OTP Bank*, 692 F.3d 638, 655-56 (7th Cir. 2012).
  - E. For a discussion of jurisdiction over international defendants, see Part 6 of Section IV “Special Circumstances” of this outline at page 43.
4. **Process** – Just as in Illinois State Court, for an Illinois Federal Court to exercise jurisdiction over the person of the defendant (in both diversity and federal question matters), service of process must be procedurally appropriate, unless the defendant waives service of process. *Omni Capital Int’l, Ltd. v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 104 (1987); *Cent. Laborers’ Pension, Welfare & Annuity Funds v. Griffie*, 198 F.3d 642, 644 (7th Cir. 1999). Note that this inquiry deals with the *procedural* requirements of service of process, not the *amenability* of the defendant to service of process.
- A. As with Illinois State Courts, a judgment is void if the defendant is not properly served and the defendant does not: (1) waive service; or (2) make an appearance in the case without reserving an objection to jurisdiction. *Cent. Laborers’*, 198 F.3d at 644.

1. For a more detailed discussion of how to make an appearance and preserve objections to personal jurisdiction, see Section V, “Challenging Personal Jurisdiction,” on page 45.
- B. Service of process in federal courts is governed by Federal Rule of Civil Procedure 4.
- C. Generally, service of process for an action in Illinois Federal Court can be made on an individual or corporation within the United States by any method allowable in Illinois State Court. Fed. R. Civ. P. 4(e)(1).
- D. Further, service can be made on individuals in the United States by service of process on their agent. Fed. R. Civ. P. 4(e)(2)(C).
- E. Federal Rule of Civil Procedure 4(f) provides different requirements for service on an individual or corporation located outside the United States.
- F. As with Illinois State Courts, if a party waives formal service of process, that party has not waived any objections to personal jurisdiction or venue. Fed. R. Civ. P. 4(d)(5).
- G. For a more detailed discussion of the requirements for service of process in federal courts, see Volume 4A of Wright and Miller’s Federal Practice & Procedure Civil §§ 1089-1139.

### III. Specific vs. General Jurisdiction

#### 1. General Principles

- A. The “minimum contacts” required for personal jurisdiction differ depending on whether the plaintiff seeks general or specific jurisdiction. *Russell*, 2013 WL 1683599, ¶ 36 (Ill. Apr. 18, 2013).
- B. In evaluating whether personal jurisdiction exists (either general or specific), the U.S. Supreme Court has encouraged a case-by-case analysis and has cautioned against using a “mechanical” test. *Burger King v. Rudzewicz*, 471 U.S. 462, 478-79 (1985); *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945); *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 884 (2011) (“[P]ersonal jurisdiction requires a forum-by-forum, or sovereign-by-sovereign, analysis.”).

#### 2. Specific Jurisdiction

##### A. General Principles

- 1. “Specific jurisdiction requires a showing that the defendant purposefully directed its activities at the forum state and the cause of action arose out of or relates to the defendant’s contacts with the forum state.” *Russell*, 2013 WL 1683599, ¶ 40 (citing *Burger King*, 471 U.S. at 472). “Under specific jurisdiction, a nonresident defendant may be subjected to a forum state’s jurisdiction based on certain ‘single or occasional acts’ in the state but only with respect to matters related to those acts.” *Id.* (quoting; *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). *See also Goodyear*, 564 U.S. at 919 (“[S]pecific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction.”).
- 2. The court must find “[a]t a minimum . . . an act by which the defendant purposefully avails himself of the privilege of conducting activities within [Illinois], thus invoking the benefits and protections of its laws.” *Bolger v. Nautica Int’l, Inc.*, 369 Ill. App. 3d 947, 952 (2d Dist. 2007) (quoting *Campbell v. Mills*, 262 Ill. App. 3d 624, 627 (1994)). *See also Hanson v. Denckla*, 357 U.S. 235, 253 (1958) (same); *Russell*, 2013 WL 1683599, ¶ 42, *but see J. McIntyre Machinery*, 564 U.S. at 877-78 (“There may be exceptions, say, for instance, in cases involving an intentional tort.”).
- 3. The defendant’s contacts must be more than “‘random,’ ‘fortuitous,’ or ‘attenuated.’” *Burger King*, 471 U.S. at 475 (1985).
- 4. In *Tamburo v. Dworkin*, 601 F.3d 693 (7th Cir. 2010), the Seventh Circuit explained that conduct is purposefully directed at a state

where: (1) the conduct at issue is intentional; (2) it is expressly aimed at the forum state; and (3) the defendant has knowledge that the conduct's effects will be felt (i.e. the plaintiff will be injured) in the forum state. *Id.* at 702-03.

5. In *Burger King*, the U.S. Supreme Court articulated a two-fold rationale for permitting specific personal jurisdiction over a nonresident defendant that “purposefully directs” its activities toward the forum:
  - a. First, the state has a “‘manifest interest’ in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors.” *Burger King*, 471 U.S. at 473.
  - b. Second, “where individuals ‘purposefully derive benefit’ from their interstate activities, it may well be unfair to allow them to escape having to account in other States for consequences that arise proximately from such activities; the Due Process Clause may not readily be wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed.” *Id.* at 473-74 (internal citations omitted).
6. In *Walden v. Fiore*, 571 U.S. 277 (2014), the Court reiterated that the focus of the personal jurisdiction analysis lies in the contacts the defendant creates with the forum state itself, not the defendant's contacts with persons who reside in the forum state. *Id.* at 284-85. Further, no matter how significant the *plaintiff's* contacts with the forum may be, they cannot be decisive in determining whether the defendant's due process rights are violated. *Id.* at 285.
7. In *Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty.*, 137 S. Ct. 1773 (2017), the Court emphasized the distinction between general and specific jurisdiction, reversing the decision of the California Supreme Court that found jurisdiction based on a “sliding scale approach,” where “the strength of the requisite connection between the forum and the specific claims at issue is relaxed if the defendant has extensive forum contacts that are unrelated to those claims.” *Id.* at 1781.
  - a. The court reiterated that where there is no “affiliation between the forum and the underlying controversy, principally, an activity or occurrence that takes place in the forum state . . . , specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State.” *Id.*
  - b. “For specific jurisdiction, a defendant's general connections with the forum are not enough.” *Id.*

B. Physical Presence in the State

1. “Jurisdiction in these circumstances may not be avoided merely because the defendant did not *physically* enter the forum State. Although territorial presence frequently will enhance a potential defendant’s affiliation with a State and reinforce the reasonable foreseeability of suit there, it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State in which business is conducted. So long as a commercial actor’s efforts are ‘purposefully directed’ toward residents of another State, we have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there.” *Burger King*, 471 U.S. at 476 (emphasis in original).

C. Stream of Commerce

1. In *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), the U.S. Supreme Court introduced the “stream of commerce” theory:
  - a. “Hence if the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.” *Id.* at 297-98.
  - b. Thus, the Court reasoned that if a defendant intentionally inserts its products into the stream of commerce with the expectation that they will reach Illinois, that defendant could be subject to jurisdiction in Illinois.
2. In *Asahi Metal Industry Co. v. Superior Court of California, Solano County*, 480 U.S. 102 (1987) the U.S. Supreme Court again addressed the stream of commerce theory.
  - a. In that case, the plaintiff brought a products-liability action in California state court against a Taiwanese manufacturer, who in turn filed a cross-complaint for indemnification against a Japanese manufacturer. *Id.* at 105-06. The Japanese

manufacturer was aware that some of the components it manufactured, sold, and delivered to the Taiwanese manufacture were being sold in California. *Id.* at 107.

- b. The U.S. Supreme Court unanimously agreed that the California state court’s exercise of specific jurisdiction over the Japanese manufacturer would be unreasonable and unfair in violation of the Due Process clause. The U.S. Supreme Court, however, was split on the minimum-contacts analysis and scope of the stream of commerce theory.
  - 1) Four justices (O’Connor, Rehnquist, Powell, and Scalia) adopted a narrow stream of commerce theory. “The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State. Additional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State . . . . But a defendant’s awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State.” *Id.* at 112 (emphasis added).
  - 2) Four other justices (Brennan, White, Marshall, and Blackmun) adopted a broader view of the stream of commerce theory, rejecting the suggestion that “[a]dditional conduct” is necessary to establish minimum contacts. *Id.* at 117. “The stream of commerce refers not to unpredictable currents or eddies, but to the regular and anticipated flow of products from manufacture to distribution to resale sale. As long as a participant in this process is aware that the final product is being marketed in the forum State, the possibility of a lawsuit there cannot come as a surprise.” *Id.*
3. In *J. McIntyre Machinery, Ltd. v. Nicaastro*, 564 U.S. 873 (2011), the U.S. Supreme Court further discussed the “stream of commerce” theory.
  - a. *J. McIntyre Machinery* was a products-liability action where the defendant, a British company, manufactured a machine that resulted in an injury to a person in New Jersey. *Id.* at 878. The Court held that specific jurisdiction did not exist over the defendant in New Jersey for several reasons. First, the machine was manufactured in England, where the defendant is

incorporated and where its principal place of business is located. *Id.* Second, the defendant did not advertise in, send goods to, or otherwise target New Jersey (an independent distributor sold the machine in question to the plaintiff's employer in New Jersey). *Id.* at 877-78. Third, only four of the defendant's machines ended up in New Jersey. *Id.* at 878. Fourth, the defendant had no office in New Jersey, it did not own property in there, nor did it pay taxes, advertise in, or send employees to the state. *Id.* at 886. Finally, it was of little importance that the defendant attended annual conventions in the United States – but not in New Jersey – to market its products. *Id.* at 878.

b. A plurality of the Court (Justices Kennedy, Roberts, Thomas, and Scalia) adopted a stricter view of the “stream of commerce” theory, in lines with Justice O’Connor’s opinion in *Asahi*, and noted that the key inquiry is whether the defendant has “targeted” the forum:

1) “The stream of commerce, like other metaphors, has its deficiencies as well as its utility. It refers to the movement of goods from manufacturers through distributors to consumers, yet beyond that descriptive purpose its meaning is far from exact. This Court has stated that a defendant’s placing goods into the stream of commerce ‘with the expectation that they will be purchased by consumers within the forum State’ may indicate purposeful availment. *World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980) (finding that expectation lacking). But that statement does not amend the general rule of personal jurisdiction. It merely observes that a defendant may in an appropriate case be subject to jurisdiction without entering the forum—itsself an unexceptional proposition—as where manufacturers or distributors ‘seek to serve’ a given State’s market. *Id.* at 295, 100 S.Ct. 559. The principal inquiry in cases of this sort is whether the defendant’s activities manifest an intention to submit to the power of a sovereign. . . . Sometimes a defendant does so by sending its goods rather than its agents. The defendant’s transmission of goods permits the exercise of jurisdiction only where the defendant can be said to have targeted the forum; as a general rule, it is not enough that the defendant might have predicted that its goods will reach the forum State.” *Id.* at 882.

- 2) Justice Kennedy criticized Justice Brennan’s concurring opinion in *Asahi*. “Justice Brennan’s concurrence, advocating a rule based on general notions of fairness and foreseeability, is inconsistent with the premises of lawful judicial power. This Court’s precedents make clear that it is the defendant’s actions, not his expectations, that empower a State courts to subject him to judgment.” *Id.* at 883.
  - 3) Justice Kennedy also emphasized that “personal jurisdiction requires a forum-by-forum, or sovereign-by-sovereign, analysis.” *Id.* at 884. “The question is whether a defendant has followed a course of conduct directed at the society or economy existing within the jurisdiction of a given sovereign, so that the sovereign has power to subject the defendant to judgment concerning that conduct.” *Id.* To illustrate, Justice Kennedy stated that an “owner of a small Florida farm [who] might sell crops to a large nearby distributor . . . who might then distribute them to grocers across the country” is not necessarily subject to jurisdiction in other states, even if it is foreseeable to the farmer that his crops may end up in a distant state. *See id.* at 885.
  - 4) In the context of international defendants, the plurality noted that the mere fact that a defendant has an intent to serve the U.S. market – without a showing that the defendant purposefully availed itself of the forum state’s market – is insufficient to establish specific jurisdiction. *Id.* at 886.
- c. In a separate concurring opinion, Justices Breyer and Alito argued that the “stream of commerce” theory should not be viewed so narrowly:
- 1) The Justices agreed “that a single sale of a product in a State does not constitute an adequate basis for asserting jurisdiction over an out-of-state defendant, even if that defendant places his goods in the stream of commerce, fully aware (and hoping) that such a sale will take place.” *Id.* at 888-89.
  - 2) The Justices also believed that specific jurisdiction does not exist where a party “knows or reasonably should know that its products are distributed through a nationwide distribution system that *might* lead to those

products being sold in any of the fifty states.” *Id.* at 891 (emphasis in original).

3) The Justices took issue with the plurality’s approach regarding “targeting” of the forum, and noted that the plurality’s analysis was not sufficiently nuanced:

a) “The plurality seems to state strict rules that limit jurisdiction where a defendant does not ‘inten[d] to submit to the power of a sovereign’ and cannot ‘be said to have targeted the forum.’ But what do those standards mean when a company targets the world by selling products from its Web site? And does it matter if, instead of shipping the products directly, a company consigns the products through an intermediary (say, Amazon.com) who then receives and fulfills the orders? And what if the company markets its products through pop up advertisements that it knows will be viewed in a forum? Those issues have serious commercial consequences but are totally absent in this case.” *Id.* at 890.

4. In *Russell v. SNFA*, 2013 WL 1683599 (Ill. Apr. 18, 2013), the Illinois Supreme Court conducted an extensive analysis of the “stream of commerce” theory and deduced the following principles based on the U.S. Supreme Court’s opinion in *J. McIntyre Machinery*:

a. While the stream of commerce theory is “valid[],” its “proper application” is “not settled.” *Id.* ¶ 67. The Illinois Supreme Court declined to adopt the narrow or broad stream of commerce theory. *See id.* ¶¶ 67-70 (“*McIntyre* has not definitively clarified the proper application of the stream-of-commerce theory.”).

b. “[S]pecific jurisdiction should *not* be exercised based on a single sale in a forum, even when a manufacturer or producer ‘knows or reasonably should know that its products are distributed through a nationwide distribution system that *might* lead to those products being sold in any of the fifty states.’” *Id.* ¶ 68 (emphasis in original) (citing *J. McIntyre Machinery*, 564 U.S. at 891).

c. At a minimum, the nonresident defendant must be aware that the final product is being marketed in the forum state. *See*

*Wiles v. Morita Iron Works Co.*, 125 Ill. 2d 144, 160 (1988) (repeating this principle).

5. In *Russell*, the plaintiff-decedent died after a helicopter containing the defendant's bearings crashed in Illinois. 2013 WL 1683599, ¶¶ 4-6. The Illinois Supreme Court found that specific jurisdiction existed under the following facts:
  - a. The defendant, SNFA, was a French company, conducting business internationally and in the United States, but was not licensed to do business in Illinois, and had no offices, assets, property, or employees in the state. *Id.* ¶ 10.
  - b. SNFA custom-built the bearings at issue for an Italian company, Agusta, which manufactured the helicopter that crashed and killed the plaintiff. *Id.* ¶ 73. Agusta sold the helicopter through its U.S. subsidiary. *Id.* The court reasoned: "Consequently, the *sole* market for defendant's bearings of this type would be Agusta or an owner of an Agusta helicopter that needed to replace those bearings. In other words, the *only* way that defendant's product, custom-made helicopter tail-rotor bearings, would ever reach the final consumer, including consumers in the United States and Illinois, was through Agusta and its American distributor AAC." *Id.* (emphasis in original). The court ultimately concluded that "Defendant knowingly used [Agusta and AAC] to distribute and market its products throughout the world, including the United States and Illinois. [Agusta and AAC have] made multiple sales of [SNFA's] products in Illinois." *Id.* ¶ 85.
  - c. Over a 10-year span, five Agusta helicopters (with SNFA bearings) were sold to buyers in Illinois. *Id.* ¶ 75.
  - d. Perhaps most strikingly, the court was persuaded by the fact that SNFA sold different bearings to an unrelated company located in Rockford, Illinois, reasoning that "[b]y engaging a business entity located in Illinois, defendant undoubtedly benefited from Illinois' system of laws, infrastructure, and business climate." The court ruled that the "arising out of" standard for specific jurisdiction is "lenient" and "flexible" and found that SNFA had the requisite minimum contacts with Illinois for purposes of specific personal jurisdiction. *Id.* ¶¶ 79-85.

D. Foreseeability and Fairness

1. Historically, based on the U.S. Supreme Court's decision in *Asahi Metal Industry Co. v. Superior Court of California, Solano County*, 480 U.S. 102 (1987), courts would assess the extent to which subjecting the defendant to a lawsuit in the forum state was fair, and whether the defendant could foresee the injury and the possibility of a lawsuit. In *J. McIntyre Machinery*, a plurality of the Court limited that doctrine, noting that the central question is the "authority [of the court] to subject a defendant to judgment," which depends on the defendant's "purposeful availment." 564 U.S. at 885. The Court reasoned further:
  - a. "The owner of a small Florida farm might sell crops to a large nearby distributor, for example, who might then distribute them to grocers across the country. If foreseeability were the controlling criterion, the farmer could be sued in Alaska or any number of other States' courts without ever leaving town. And the issue of foreseeability may itself be contested so that significant expenses are incurred just on the preliminary issue of jurisdiction. Jurisdictional rules should avoid these costs whenever possible." *Id.*
  - b. *See also Burger King*, 471 U.S. at 474 ("[T]he Court has consistently held that [foreseeability of causing injury] is not a 'sufficient benchmark' for exercising personal jurisdiction.").
  - c. *But see Keller v. Henderson*, 359 Ill. App. 3d 605, 617 (2d Dist. 2005) ("Foreseeability is the central focus in applying the 'arising out of or related to' test in [the context of nonintentional torts].").
2. In the context of nonintentional torts, Illinois courts have explained that foreseeability is a central part of the analysis: "the contacts with the forum state [must] meet both a 'cause in fact' and 'legal cause' test. More specifically, 'cause in fact' refers to whether the injury would not have occurred 'but for' the defendant's forum activities. 'Legal cause' refers to whether the defendant's forum conduct 'gave birth to' the cause of action. Foreseeability is the central focus in applying the 'arising out of or related to' test in this context. We believe that this test is appropriate as it correctly considers the interest of the forum state while protecting the defendant's due process rights by providing jurisdiction only over causes of action *directly* arising out of or related to the defendant's contacts." *Keller*, 359 Ill. App. 3d at 617 (emphasis in original) (holding that the defendant, the seller of an airplane, was subject to specific jurisdiction in Illinois for a claim arising out of an airplane crash occurring in Georgia, where: (1) the

airplane was delivered in Illinois; (2) the alleged maintenance failures took place in Illinois; and (3) the parties entered into a contract while the airplane was still in Illinois).

**PRACTICE TIP:** In light of the plurality’s opinion in *J. McIntyre Machinery*, litigants should mention – but not over-emphasize – the foreseeability of the injury and of being haled into court in the forum state. Litigants should instead focus on the specific conduct of the defendant and whether that constitutes “targeting” or “purposeful direction” towards the forum state.

E. Economic Injuries

1. “Where the injury alleged is economic in nature, rather than physical or emotional, however, the plaintiff needs to show more than the ‘harm was felt in Illinois,’ the plaintiff must also show an intent to affect an Illinois interest.” *Hyperquest, Inc. v. NuGen I.T., Inc.*, 627 F. Supp. 2d 884, 891 (N.D. Ill. 2008) (internal citations and quotations omitted).

F. Other Notable Cases

1. *Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty.*, 137 S. Ct. 1773 (2017) (Nonresident consumers' products liability claims against nonresident prescription drug manufacturer were not connected to California, and, thus, due process did not permit exercise of specific personal jurisdiction over claims there; nonresident consumers were not prescribed drug in California and did not purchase, ingest, or become injured by drug there, mere fact that resident consumers were prescribed, obtained, and ingested drug in California and sustained same alleged injuries as nonresident consumers was an insufficient basis to exercise specific jurisdiction, and neither manufacturer's actions in conducting research unrelated to drug in California nor its decision to contract with a California company to distribute drug nationally were enough to exercise specific jurisdiction.)
2. *Walden v. Fiore*, 571 U.S. 277 (2014) (Georgia police officer lacked minimal contacts with Nevada required for Nevada federal district court to exercise personal jurisdiction over him consistent with due process, in airline passengers' *Bivens* action alleging officer violated their Fourth Amendment rights by, inter alia, seizing cash from them in Georgia during their return trip to Nevada, even if officer knew that his allegedly tortious conduct in Georgia would delay return of funds to passengers with connections to Nevada, passengers' Nevada attorney contacted officer in Georgia, some of the cash seized in

Georgia “originated” in Nevada, and funds were eventually returned to passengers in Nevada, where officer approached, questioned, and searched passengers, and seized cash, in Georgia airport, passengers alleged that officer later helped draft false probable cause affidavit to a Georgia office, and officer never traveled to, conducted activities within, contacted anyone in, or sent anything or anyone to Nevada)

3. *Asahi Metal Indus. Co. v. Superior Ct. of Cal., Solano Cty.*, 480 U.S. 102 (1987) (Taiwanese tire manufacturer settled product liability action brought in California and sought indemnification there from Japanese valve assembly manufacturer; Japanese company’s “mere awareness . . . that the components it manufactured, sold, and delivered outside the United States would reach the forum State in the stream of commerce” held insufficient to permit California court’s jurisdiction over the Japanese company).
4. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985) (franchisor headquartered in Florida allowed to maintain breach-of-contract action in Florida against Michigan franchisees, where franchise agreement contemplated ongoing interactions between franchisees and franchisor’s headquarters).
5. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980) (Oklahoma court could not exercise personal jurisdiction over a nonresident automobile retailer and its wholesale distributor in a products-liability action, when the defendants’ only connection with Oklahoma is the fact that an automobile sold in New York to New York residents became involved in an accident in Oklahoma).

### 3. General Jurisdiction

#### A. General Principles

1. General jurisdiction in a forum allows for “a cause of action against a defendant based on activity that is entirely distinct from its activity in the forum.” *Russell v. SNFA*, 987 N.E.2d 778, 786 (Ill. Apr. 18, 2013). In other words, if general jurisdiction exists over XYZ Corp. in Illinois, the corporation could be sued in Illinois on any claims, even if unrelated to Illinois (e.g., a car accident involving one of its agents in Hawaii).
2. The threshold inquiry in general jurisdiction cases is whether the party’s affiliations with the forum state are “so continuous and systematic as to render them essentially at home in the forum State.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (internal citations omitted); *Russell*, 987 N.E.2d 778, 786 (“General jurisdiction for a corporate defendant exists when it has

engaged in continuous and substantial business activity within the forum.”).

3. “[T]ransient contact, such as attendance at trade shows, advertising, or the mere solicitation of customers, is insufficient to establish general jurisdiction.” *Bolger v. Nautica Int’l, Inc.*, 369 Ill. App. 3d 947, 951-52 (2d Dist. 2007).

B. Burden of Proving General Jurisdiction

1. Both Federal and Illinois State Courts confirm that the requirements for establishing general jurisdiction are high.

- a. *Russell*, 987 N.E.2d 778, 786 (“[T]he standard for finding general jurisdiction is very high and requires a showing that the nonresident defendant carried on systemic business activity in Illinois not casually or occasionally, but with a fair measure of permanence and continuity.”) (internal citations omitted); *Cardenas Marketing Network, Inc. v. Pabon*, 972 N.E.2d 680, 689 (Ill. App. 1st Dist. 2012); (“[A] court may exercise jurisdiction over a defendant that is ‘doing business within this State.’ . . . This ‘doing business’ standard is very high.”) (internal citations omitted).

- b. *Tamburo v. Dworkin*, 601 F.3d 693, 701 (7th Cir. 2010) (“The threshold for general jurisdiction is high; the contacts must be sufficiently extensive and pervasive to approximate physical presence.”); *Purdue Research Found. v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 787 (7th Cir. 2003) (“These contacts must be so extensive to be tantamount to [the defendant] being constructively present in the state to such a degree that it would be fundamentally fair to require it to answer in [any forum state court] in *any* litigation arising out of *any* transaction or occurrence taking place *anywhere* in the world.”) (emphasis in original); *Richter v. INSTAR Enters. Int’l, Inc.*, 594 F. Supp. 2d 1000, 1006 (N.D. Ill. 2009) (“[T]o expose itself to the general jurisdiction of the courts of Illinois, a defendant’s business contacts in Illinois must be intentional, continuous, and substantial rather than inadvertent, trivial, or sporadic, continue up to the time of suit, and evidence a purpose on the part of the defendant to avail himself of the protection of the laws of Illinois.”).

- C. In Federal and Illinois State Courts, there are certain factors that allow for courts to automatically exercise general jurisdiction.

1. Federal courts
  - a. Explicit consent to be sued in the state. *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 880 (2011).
  - b. Individuals can be sued in Illinois if they are domiciled in Illinois. *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014).
  - c. Corporations can be sued in Illinois if they are incorporated in Illinois or if their principal place of business is located in Illinois. *Id.*
2. Illinois State Courts (Illinois Long-Arm Statute, 735 ILCS § 5/2-209(b))
  - a. A natural person present in Illinois when served with process. 735 ILCS § 5/2-209(b)(1).
  - b. A natural person domiciled or residing in Illinois when the cause of action arose, the action was commenced, or process was served. *Id.* at 209(b)(2).
  - c. A corporation organized under the laws of Illinois. *Id.* at 209(b)(3).

D. Exercise of General Jurisdiction Over Nonresident Corporations

1. In *Goodyear*, 564 U.S. at 921, the U.S. Supreme Court noted that, in determining whether to exercise jurisdiction over nonresident corporations, courts should consider the following factors:
  - a. whether the corporation is registered to do business in the forum state;
  - b. whether the corporation maintains employees in the state;
  - c. whether the corporation maintains bank accounts in the state;
  - d. whether the corporation designs, manufactures, or advertises its products in the state;
  - e. whether the corporation solicits business in the state; and
  - f. whether the corporation sells directly to customers located in the state.

*Goodyear*, 564 U.S. at 921.

2. In several cases out of the Northern District of Illinois, courts suggested that the following factors merit consideration when determining whether jurisdiction is proper over nonresident corporations:
  - a. whether the corporation maintains offices or employees in Illinois;
  - b. whether the corporation sends agents into Illinois to conduct business;
  - c. whether the corporation has designated an agent for service of process in Illinois;
  - d. whether the corporation advertises or solicits business in Illinois; and
  - e. the extent to which the corporation conducts business in Illinois.

*See, e.g., Richter*, 594 F. Supp. 2d at 1006. In *J.B. ex rel. Benjamin v. Abbott Laboratories, Inc.*, for example, the Northern District of Illinois found that a pharmaceutical company had maintained regular, continuous business contacts “[b]y soliciting business, selling and marketing products, and employing a sales team in the [district].” 2013 WL 452807, \*3 (N.D. Ill. Feb. 6, 2013).

3. Illinois State Courts appear less willing to adopt a formal set of criteria, but the federal analysis discussed above might be helpful for state court actions. *See Cardenas Marketing Network, Inc. v. Pabon*, 972 N.E.2d 680, 689 (Ill. App. 1st Dist. 2012) (“Although there may be no such all-inclusive test, almost all Illinois cases determining the existence of personal jurisdiction over foreign corporations have based their findings upon the existence of factors such as offices or sales activities in Illinois.”).

**PRACTICE TIP: In addition to the contacts discussed above, parties should also focus on the following:**

- Whether the entity owns/rents property (including offices, warehouses, plants, etc.), telephone listings, or mailboxes in Illinois.
- Whether the entity pays taxes in Illinois.
- Additionally, as discussed in Part 2 of Section IV “Special Circumstance” of this outline at page 36 below, the connections of a subsidiary may be relevant to the personal jurisdiction analysis.

4. Stream of Commerce

- a. In *Goodyear*, the U.S. Supreme Court rejected the notion that the stream of commerce theory can be used to support a finding of general jurisdiction: “Under the sprawling view of general jurisdiction urged by respondents and embraced by the North Carolina Court of Appeals, any substantial manufacturer or seller of goods would be amenable to suit, on any claim for relief, wherever its products are distributed.” 564 U.S. at 929.

5. Other Notable Cases

- a. *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952) (general jurisdiction appropriately exercised over Philippine corporation sued in Ohio, where: (1) to the extent the corporation was doing any business, it was doing so from Ohio; (2) the corporation’s president maintained an office in Ohio and supervised the company’s work from there; and (3) files were maintained in Ohio).
- b. *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408 (1984) (general jurisdiction did not exist over a Colombian corporation in Texas where the corporation: (1) negotiated a contract in-person for services in Texas; (2) purchased approximately 80% of its helicopters, spare parts, and accessories for more than \$4 million from a Texas company over an eight-year period; (3) regularly sent employees to Texas for training; (4) accepted checks drawn on a bank in Texas; (5) did not maintain a place of business in Texas; and (6) was not licensed to do business in Texas. The Court also held that “mere purchases [made in the forum State], even if occurring at regular intervals, are not enough to warrant a State’s assertion of [general] jurisdiction over a nonresident corporation in a cause of action not related to those purchase transactions.”).

#### IV. Special Circumstances

##### 1. The Internet

###### A. Illinois State Court

###### 1. Specific Jurisdiction Over A Party Based On Its Internet Activity

a. One of the leading Illinois State Court cases on the subject of specific personal jurisdiction over a company based on its Internet activity is *Innovative Garage Door Co. v. High Ranking Domains, LLC*, 981 N.E.2d 488 (Ill. App. 2d Dist. 2012). In *Innovative Garage*, the court noted that two standards have emerged concerning the exercise of specific jurisdiction over a nonresident defendant based on Internet activity. *Id.* at 495-97.

1) The first standard was articulated in *Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997). In *Zippo*, the court endorsed a “sliding scale” approach based on the interactivity of the defendant’s website.

b) On one end of the scale are interactive websites that allow for the transaction of business and the defendant to derive profits directly from the web-related activity. In these cases, the court can exercise jurisdiction. *Innovative Garage*, 981 N.E.2d at 496.

c) Jurisdiction cannot be asserted at the other end of the scale, where the website is passive and merely provides information about the defendant’s products. *Id.*

d) In between these two extremes lie websites that are moderately interactive, in that they allow customers in foreign jurisdictions to communicate with the defendant regarding the defendant’s services or products. Here, jurisdiction may or may not be appropriate, depending on the level of interactivity and the nature of information exchanged. *Id.* at 497.

2) The second standard focuses on the extent to which the defendant has “targeted” the forum state. *See, e.g., ALS Scan, Inc. v. Digital Service Consultants, Inc.*, 293 F.3d 707, 714 (4th Cir. 2002) (“[U]nder the standard we

adopt and apply today, specific jurisdiction in the Internet context may be based only on an out-of-state person's Internet activity directed at [the forum state] and causing injury that gives rise to a potential claim cognizable in [the forum state].”).

- b. However, the court in *Innovative Garage* cautioned against a strict application of either test: “We emphasize, however, that they are just tools that may be useful in analyzing certain fact patterns. Neither line of cases should be regarded as providing a dispositive test to be applied in cases involving jurisdiction and the Internet.” *Innovative Garage*, 981 N.E.2d at 495-96. “Instead, the ultimate analysis is what it has always been—whether the quality and nature of the defendant's contacts with the forum are such that it is fair and reasonable to assert personal jurisdiction.” *Id.* at 496.
- c. The court in *Innovative Garage* determined that specific jurisdiction existed over a nonresident defendant under the following facts.
  - 1) The defendant (“HRD”) was an Arizona LLC with its principal place of business in Colorado. *Id.* at 492. HRD ran a website designed to solicit inquiries from people requiring handyman and related services. *Id.* The website allowed users to specify the service they required, and their location (Illinois was one option). *Id.* HRD would then pass the inquiries onto local businesses and was paid for these leads. *Id.*
  - 2) The plaintiff (“Innovative”), a repair service in Illinois, entered into a contract with HRD whereby HRD agreed to provide leads to Innovative. *Id.* Innovative later sued HRD for breach of contract. *Id.* at 493.
  - 3) The Second District Appellate Court noted that HRD's website was minimally interactive: a user selected a state and city, and the website identified a local contractor. *Id.* at 498. But, because the website was predicated on retrieving information from Illinois residents, the court determined that it “was expressly directed toward Illinois residents.” *Id.* at 499.
  - 4) The court stressed that HRD had other contacts with Illinois – beyond the mere maintenance of a website – that helped inform its decision. “Quite simply, this is not a case in which a defendant's only tie to the forum

state is its website. The most significant contact HRD has with this state is the nature of its business relationship with Innovative. HRD entered into a contract that established a long-term – indeed, as alleged, open-ended-relationship with an Illinois business. Pursuant to that relationship, HRD arranged business transactions between the Illinois business and what were primarily Illinois consumers.” *Id.* at 498; *see also id.* at 497 (“Generally, regardless of the interactivity of the website, ‘something more’ than just the presence of a website is required.”).

d. Other Notable Specific Personal Jurisdiction Cases From Illinois State Court

- 1) *National Gun Victims Action Council v. Schecter*, 409 Ill. Dec. 595 (1st Dist. 2016) (holding that personal jurisdiction does not exist merely because non-forum defendants used internet communications to obtain contracts with Illinois residents).
- 2) *MacNeil v. Trambert*, 401 Ill. App. 3d 1077, 1082-83 (2d Dist. 2010) (holding that the sale of a product over an Internet auction website (eBay) to a buyer in Illinois, when the seller has no control over who purchases the item, does not subject the seller to specific jurisdiction in Illinois without further ties to the state).
- 3) *Howard v. Missouri Bone & Joint Ctr., Inc.*, 373 Ill. App. 3d 738, 743 (5th Dist. 2007) (rejecting the “sliding scale” approach from *Zippo* and noting that the Internet “does not pose unique jurisdictional challenges.” The court also held that “the web page’s level of interactivity is irrelevant [because] ... an interactive website is similar to telephone or mail communications. A passive website is much the same as advertising on the radio or in a magazine.” The court ultimately held that personal jurisdiction did not exist where the defendant had maintained an “interactive website that allowed people to make appointments, fill out patient surveys, and ask the defendant questions.”).
- 4) *Larochelle v. Allamian*, 361 Ill. App. 3d 217, 226 (2d Dist. 2005) (“Oceanic’s website does little more than provide information regarding its services and provide an application that can be printed out and sent to Oceanic. While Oceanic’s e-mail address is included,

there is no interactivity. Thus, we find no basis for jurisdiction because of the website.”).

- 5) *Bombliss v. Cornelsen*, 355 Ill. App. 3d 1107, 1114-17 (3d Dist. 2005) (applying the “sliding scale” *Zippo* standard and noting that the website in question fell into the third category because it invited customers to communicate with the owners by email. The court determined that, if this were the full extent of the defendant’s Internet activity, there would not be sufficient contacts to exercise jurisdiction. However, the defendants had also engaged in discussions in online chat rooms concerning their business with the plaintiffs. Together, the court held that these activities were sufficient to support jurisdiction.).

## 2. General Jurisdiction

- a. We are not aware of any Illinois State Court authorities discussing whether simply maintaining a public website is sufficient to confer general jurisdiction in Illinois. However, as discussed below, Illinois Federal Courts have held that mere maintenance of a public website does not confer general jurisdiction. *See, e.g., Tamburo v. Dworkin*, 601 F.3d 693, 701 (7th Cir. 2010) (“Nor is the maintenance of a public Internet website sufficient, without more, to establish general jurisdiction.”).

## B. Illinois Federal Court

1. The Seventh Circuit has rejected the *Zippo* “sliding scale” of interactivity approach to specific jurisdiction in Internet cases.
  - a. In *Illinois v. Hemi Group, LLC*, 622 F.3d 754 (7th Cir. 2010), the court found that Hemi, a nonresident operator of a website selling cigarettes, was subject to specific personal jurisdiction in Illinois, specifically noting that the *Zippo* test was unnecessary for that determination.
    - 1) Hemi operated a website through which customers could purchase cigarettes, and expressly stated that they would ship to any state except New York. *Id.* at 758. Hemi excluded New York due to ongoing litigation there. *Id.* at 755-56.
    - 2) The Seventh Circuit held that Hemi had sufficient minimum contacts with Illinois because it stood ready to do business with Illinois residents through its

website, and in fact did business with Illinois residents. *Id.* at 758. Further, the fact that Hemi excluded New York demonstrated that Hemi knew conducting business with residents of a particular state would subject it to jurisdiction there. *Id.*

- 3) The court noted that it had “done the entire minimum contacts analysis without resorting to the sliding scale approach first developed in *Zippo*.... This was not by mistake.... [W]e think that the traditional due process inquiry described earlier is not so difficult to apply to cases involving Internet contacts that courts need some sort of easier-to-apply categorical test.” *Id.* at 758-59.
- 4) The Seventh Circuit advised that “Courts should be careful in resolving questions about personal jurisdiction involving online contacts to ensure that a defendant is not hauled into court simply because the defendant owns or operates a website that is accessible in the forum state, even if that site is ‘interactive.’” *Id.* at 760.

## 2. Other Notable Illinois Federal Court Cases

- a. In *Matlin v. Spin Master Corp.*, 921 F.3d 701 (7th Cir. 2019), the Seventh Circuit held that there was no personal jurisdiction over defendant sellers where the only evidence of the sellers’ contacts with Illinois was the plaintiffs’ attorney’s receipt from an online purchase from the sellers and the attorney’s declaration stating that he purchased and received one of defendants’ products in Illinois. The court found that the defendants did not target Illinois because “even if we accepted that a single online sale provided a sufficient link to the royalty dispute ... the plaintiff-initiated contact arose after the plaintiffs filed suit—solely to lure the defendants into Illinois to establish personal jurisdiction over them.” *Id.* at 707.
- b. In *be2 LLC v. Ivanov*, 642 F.3d 555 (7th Cir. 2011) (decided after *Hemi*), the Seventh Circuit held that the defendant, an individual by the name of Ivanov, was not subject to personal jurisdiction in Illinois based on his operation of a dating website on which 20 Illinois residents had created profiles.
  - 1) The court stated that its “inquiry boils down to this: has Ivanov purposely exploited the Illinois market?” *Id.* at 558. The court noted that “[b]eyond simply operating an interactive website that is accessible from the forum

state, a defendant must in some way *target* the forum state's market." *Id.* at 558-59 (emphasis in original).

- 2) The Seventh Circuit held that Ivanov had not targeted the Illinois market, as only 20 Illinois residents had created profiles on the site, and there was no evidence of any interactions between Ivanov and the Illinois residents. *Id.* at 559. The Court noted that the case was more like *Mobile Anesthesiologists* than *uBid* (see cases below). *Id.*
- c. In *Mobile Anesthesiologists Chicago, LLC v. Anesthesia Associates of Houston Metroplex, P.A.*, 623 F.3d 440 (7th Cir. 2010) (decided approximately two weeks after *Hemi*), the Seventh Circuit held that the defendant, a Houston anesthesiologist, was not subject to personal jurisdiction in Illinois merely because he operated a website with a similar URL to a Chicago-based anesthesiology company.
- 1) The Chicago-based anesthesiology company had registered the website [www.mobileanesthesiologists.com](http://www.mobileanesthesiologists.com) in 2003, and federally trademarked the words "MOBILE ANESTHESIOLOGISTS" in 2005. *Id.* at 442.
  - 2) The Houston-based anesthesiology company registered the website [www.mobileanesthesia.com](http://www.mobileanesthesia.com) in 2007. *Id.*
  - 3) The Chicago company argued that the Houston company had subjected itself to suit in Illinois by registering and maintaining a website with a name similar to their trademark, and continuing to do so after receiving a cease-and-desist letter from the Chicago company. *Id.* at 444.
  - 4) The court rejected this argument, as the Houston company had clearly not "purposefully directed its activities at Illinois." *Id.* Indeed the website contained only a Houston-area phone number, email address, and an "invitation to doctors in the 'greater Houston area' to contract of his services." *Id.* at 446.
- d. In *uBid, Inc. v. GoDaddy Group, Inc.*, 623 F.3d 421 (7th Cir. 2010) (also decided approximately two weeks after *Hemi*), the Court held that GoDaddy was subject to specific personal jurisdiction in Illinois, as it had "thoroughly, deliberately, and successfully exploited the Illinois market." *Id.* at 427.

- 1) The Seventh Circuit noted that GoDaddy had conducted “extensive national advertising” which had “successfully reached Illinois consumers, who have flocked to GoDaddy by the hundreds of thousands and have sent many millions of dollars to the company each year.” *Id.* at 427.
  - 2) The court acknowledged that GoDaddy had not “specifically target[ed] Illinois customers in its advertising,” but stated that it was “easy to infer that GoDaddy’s national marketing campaign is intended to reach as large an audience as possible” and that there was not even a need to infer, as GoDaddy had “placed physical ads in particular Illinois venues.” *Id.* at 428.
  - 3) The court was not persuaded by GoDaddy’s argument that its sales to Illinois customers were “automated transactions unilaterally initiated” by the customers. *Id.* at 428. The court stated that “GoDaddy itself set the system up this way. It cannot now point to its hundreds of thousands of customers in Illinois and tell us, ‘It was all their idea.’” *Id.*
  - 4) The court concluded that “What matters is that GoDaddy purposefully availed itself of the Illinois market.” *Id.* at 429.
- e. In *Jennings v. AC Hyrdaulic*, 383 F.3d 546 (7th Cir. 2004), the Seventh Circuit upheld the dismissal of the case for lack of personal jurisdiction. *Id.* at 552. The court noted that the defendant’s passive website “did not contribute” to the plaintiff’s “effort to establish specific jurisdiction.” *Id.* at 550. The court declined to address whether personal jurisdiction might be established based on an interactive website. *Id.* at 549. The court only held that personal jurisdiction certainly could not be based on a passive website that only offered customers information about the company and its products. *Id.* The court noted that “it is unusual to find a company that does not maintain at least a passive website. Premising personal jurisdiction on the maintenance of a website, without requiring some level of ‘interactivity’ between the defendant and consumers in the forum state, would create almost universal personal jurisdiction...” *Id.*
- f. In *Noboa v. Barcelo Corporacion Empresarial, S.A.*, 2015 WL 13050008 (N.D. Ill. Mar. 26, 2015), the court held that there was no specific jurisdiction over the defendants, a Mexican

resort and the Spanish corporation that owned the resort. Plaintiffs had booked a room at the resort through Orbitz.com, which has its headquarters in Chicago. *Id.* (Plaintiffs did not argue that the court had general jurisdiction over the defendants.) The court distinguished the case from *Hemi* because the defendants did not sell a product to Illinois residents through their own commercial website. The court further held that the defendants did not expressly elect to do business in Illinois merely by allowing customers to book rooms through a company headquartered in Illinois. *Id.* at \*3-4.

- g. In *Pickering v. ADP Dealer Services, Inc.*, 2013 WL 996212 (N.D. Ill. Mar. 13, 2013), the court held that there was no specific (or general) jurisdiction over the defendant, a California corporation that entered into a contract with a Massachusetts company to advertise the latter's website. *Id.* The Massachusetts company was wholly owned by an Illinois company. *Id.* The court held that the defendant did not "purposefully direct[] its activities at Illinois" because it was primarily dealing with the Massachusetts entity and there was no evidence to suggest that the plaintiff dealt with the parent company in Illinois. *Id.* at \*4.
- h. In *Foley v. Yacht Management Group, Inc.*, 2009 WL 2020776 (N.D. Ill. July 9, 2009), the court stated: "This court agrees with other district courts that have examined the issue and finds that a seller of an item on eBay is not subject to specific personal jurisdiction in the state in which the eventual buyer resides without further ties to that jurisdiction. Sellers post items for auction on eBay and have no control over who ultimately wins the auction and purchases the item. As such, the seller does not purposefully direct conduct toward any particular forum and the process of an online auction does not rise to the level of purposeful availment or purposeful conduct directed at a forum state necessary to establish personal jurisdiction. Rather, the seller cannot choose who buys the item and where that person is located and the contact between the seller and buyer is the type of random, fortuitous, and attenuated contact that is excluded from the reach of personal jurisdiction." *Id.* at \*3.
- i. The court in *Linehan v. Golden Nugget, LLC*, 2008 WL 4181743 (N.D. Ill. Sept. 5, 2008), held that it could not exercise personal jurisdiction over the defendant even where the defendant's website was interactive. *Id.* at \*6. The court quoted extensively from *Howard v. Missouri Bone and Joint*

*Center, Inc.*, and rejected the sliding scale approach, agreeing that the internet does not pose unique jurisdictional challenges. *Id.* at \*5-6. Instead, the court considered the website as merely another form of advertising, and noted the long-held rule that mere solicitation of business did not subject a defendant to the court's jurisdiction. *Id.*

3. Several pre-*Hemi* decisions in the Northern District of Illinois utilized the "sliding scale" approach.

a. In *Chicago Architecture Foundation v. Domain Magic, LLC*, 2007 WL 3046124 (N.D. Ill. Oct. 12, 2007), the court held that jurisdiction was proper where the defendant misappropriated the website of an Illinois corporation for its own economic gain and intended to use the website to affect Illinois residents. *Id.* at \*7-8. Domain Magic, the defendant, which was unaffiliated with the Chicago Architecture Foundation ("CAF"), registered a website with the domain name [www.chicagoarchitecturefoundation.org](http://www.chicagoarchitecturefoundation.org), despite being aware that CAF had its own website at another domain name. *Id.* at \*1. Domain Magic's website consisted primarily of links to businesses and services in the Chicago area. *Id.* at \*7. Domain Magic received a payment whenever a user clicked on one of these links. *Id.* The court found this interactivity to be enough, under the sliding scale approach, to be a proper basis for personal jurisdiction, especially given that Domain Magic's website was, by its nature, specifically targeted at Illinois residents. *Id.*

b. In *George S. May Int'l Co. v. Xcentric Ventures, LLC*, 409 F. Supp. 2d 1052 (N.D. Ill. 2006), the court held that the defendant's website was sufficiently interactive for the court to exercise jurisdiction under the sliding scale approach. *Id.* at 1059. The court noted that the website allowed visitors to purchase products (which at least thirteen Illinois residents had done), make donations, and post messages to which the defendants sometimes responded. *Id.*

c. In *Berthold Types Ltd. v. European Mikrograf Corp.*, 102 F. Supp. 2d 928 (N.D. Ill. 2000), the court held that it could not exercise jurisdiction over the defendants on the basis of their internet activity. *Id.* at 933. Here, the website provided information on defendant's products and allowed customers to submit suggestions on how to improve defendant's services. *Id.* However, no business was transacted directly over the website, as orders could not be placed online. *Id.* Instead, customers had to fill out the service agreement, print it out, and

mail it to the company. *Id.* The court thus found that the website fell into the “middle ground” category of the sliding scale, and lacked the level of interactivity necessary to confer jurisdiction. *Id.*

#### 4. General Jurisdiction

- a. Courts in the Seventh Circuit have confirmed that the mere maintenance of a website is insufficient to establish general personal jurisdiction. *See Tamburo*, 601 F.3d at 701 (“Nor is the maintenance of a public Internet website sufficient, without more, to establish general jurisdiction.”); *Richter v. INSTAR Enters. Int’l, Inc.*, 594 F. Supp. 2d 1000, 1008-09 (N.D. Ill. 2009) (holding that general jurisdiction did not exist over a defendant that maintained an interactive website and sold goods to Illinois residents through that website); *Pickering*, 2013 WL 996212, at \*3 (“The maintenance of a public Internet site alone is insufficient to justify general jurisdiction. The court is unaware of any case, and Pickering has cited none, in which a court has found general jurisdiction simply on the basis of a defendant’s website, even when the website was used to make sales directly into the forum state.”) (internal citations omitted); *Gencor Pac., Inc. v. Nature’s Thyme, LLC*, 2007 WL 1225362, at \*\*5-6 (N.D. Ill. Apr. 24, 2007) (holding that general jurisdiction did not exist over a company that maintained an interactive website accessible to users in Illinois, and noting that “[t]hrough the online activities [the plaintiff] points to are certainly some of the activities that a business that was a resident of Illinois would engage in, they cannot be said to be so extensive and central to the business’s operation that [the defendant] becomes indistinguishable from a resident business.”).

#### **PRACTICE TIP:**

- A party’s Internet activity is only one element of the personal jurisdiction analysis. Internet activity should be considered along with other contacts to the forum state.
- Where the maintenance of a website is at issue, Illinois Federal Court is a more favorable forum for nonresident defendants seeking to dismiss a case for lack of personal jurisdiction.

## 2. Jurisdiction Over a Parent Corporation Based on its Subsidiary

- A. Illinois courts (both federal and state) will sometimes exercise personal jurisdiction over a nonresident parent corporation based on its relationship with a subsidiary corporation over which the court has personal jurisdiction. *Old Orchard Urban Ltd. Partnership v. Harry Rosen, Inc.*, 389 Ill. App. 3d 58, 66 (1st Dist. 2009). However, Illinois courts will not permit the exercise of jurisdiction over the subsidiary's parent merely because it is the parent. *Id.*
- B. Illinois courts use two distinct approaches in examining whether the activities of the subsidiary give rise to jurisdiction over the parent. *Gruca v. Alpha Therapeutic Corp.*, 19 F. Supp. 2d 862, 866 (N.D. Ill. 1998). The first is the "Piercing the Corporate Veil" theory, and the second is a more flexible "Agency" or "Substantial Control" theory. *Id.*
  1. Illinois State Courts have noted that there has been "[c]onsiderable confusion" in the federal decisions applying Illinois law over whether the two theories are separate, as the distinctions have sometimes been blurred. *Old Orchard*, 389 Ill. App. 3d at 71. However, the two theories are separate and distinct bases for exercising jurisdiction over a parent corporation. *Id.*
- C. Piercing the Corporate Veil
  1. Illinois courts apply Illinois law where a party seeks to pierce the corporate veil of a nonresident corporation for purposes of establishing personal jurisdiction. *Old Orchard*, 389 Ill. App. 3d at 69. Illinois courts do not apply the law of the state of incorporation. *Id.*
  2. In determining whether to pierce the corporate veil, Illinois courts first examine whether there is a "unity of interest and ownership such that the separate identities of the entities are nonexistent." *Id.* at 70. In determining whether there is a unity of interest and ownership, Illinois courts will examine a number of factors, including:
    - a. Inadequate capitalization of the subsidiary. *Id.*
    - b. A failure to observe corporate formalities or retain corporate records. *Id.*
    - c. Insolvency on the part of the debtor corporation. *Id.*
    - d. The commingling of funds or assets. *Van Dorn Co. v. Future Chem. & Oil Corp.*, 753 F.2d 565, 570 (7th Cir. 1985).
    - e. One corporation treating the assets of another as its own. *Id.*

3. However, evidence only of the use of common officers or directors, or the sharing of office space, is not sufficient to pierce the corporate veil. *Old Orchard*, 389 Ill. App. 3d at 70.
4. If it is determined that the separation of the entities is a fiction, Illinois courts will then ask whether “observance of the fiction of separate entities would sanction a fraud or promote injustice.” *Id.* at 70. If the court finds that treating the corporations as separate would sanction a fraud, then it will pierce the corporate veil, and exercise personal jurisdiction over the parent corporation based on its jurisdiction over the subsidiary. *Id.*

D. *Maunder* “Agency” or “Substantial Control” Theory

1. In *Maunder v. DeHavilland Aircraft of Canada, Ltd.*, 102 Ill.2d 342 (1984), the Illinois Supreme Court held that the exercise of personal jurisdiction over the parent corporation was proper where its subsidiary corporation was doing business in Illinois on behalf of the parent. *Id.* at 354. In that case, the Court determined that the Illinois-based subsidiary was merely a “supply depot” for the parent, and thus the parent was effectively doing business in Illinois. *Id.* at 352. The Court noted that the parent’s advertising materials indicated that support for its products could be obtained through the subsidiary. *Id.* at 347-48.
  - a. Illinois courts have since stated that the “theory underlying *Maunder* is that, if a subsidiary corporation is acting as the parent corporation’s Illinois agent in the sense of conducting the parent’s business rather than its own, then it is appropriate to assert jurisdiction over the parent.” *Alderson v. Southern Co.*, 321 Ill. App. 3d 832, 854 (1st Dist. 2001).
2. In *Alderson*, the Court held that personal jurisdiction over the subsidiary’s parent corporations was proper where the parent corporations existed for the sole purpose of holding the assets of the subsidiary and overseeing its operations. *Alderson*, 321 Ill. App. 3d at 855.
3. Further, the appearance of one of the parent corporations’ name and logo on the letterhead of the subsidiary supported the conclusion that the subsidiary was doing the business of the parent. *Id.*
4. As another Illinois court stated, “[t]he critical question [under the *Maunder* test] is whether the Illinois subsidiary exists for no purpose other than conducting the business of its parent.” *Old Orchard*, 389 Ill. App. 3d at 66.

- a. The court in *Old Orchard* further observed that “Parent corporations necessarily direct and control some aspects of their subsidiaries’ businesses, [but] [t]he determinative question is whether the parent corporation is simply attempting to shield itself from lawsuits by conducting its own business through the legal fiction of ‘separate’ subsidiaries.” *Id.* at 68.
  - b. The court in *Old Orchard* held that personal jurisdiction over the parent was not appropriate because the subsidiaries were engaged in their own distinct business. *Id.* at 67-68.
- E. The Seventh Circuit has not explicitly adopted either theory: “Illinois courts exercise jurisdiction over parents based on the activities of the subsidiary where the corporate veil can be pierced, or perhaps where all the corporate formalities are observed but the subsidiary’s only purpose is to conduct the business of the parent.” *Central States, S.E. & S.W. Areas Pension Fund v. Reimer Express World Corp.*, 230 F.3d 934, 940 (7th Cir. 2000). Rather, the Illinois Federal Courts appear to prefer an analysis that incorporates both tests.
1. The Seventh Circuit has adopted “the ‘general rule’ that ‘the jurisdictional contacts of a subsidiary corporation are not imputed to the parent.’” *Abelesz v. OTP Bank*, 692 F.3d 638, 658 (7th Cir. 2012) (quoting *Purdue Research Found. v. Sanofi–Synthelabo, S.A.*, 338 F.3d 773, 788 n.17 (7th Cir. 2003)); *see also Central States*, 230 F.3d at 945 (“We adopt the rule that a corporate parent may provide administrative services for its subsidiary in the ordinary course of business without calling into question the separateness of the two entities for purposes of personal jurisdiction.”); *IDS Life Ins. Co. v. SunAmerica Life Ins. Co.*, 136 F.3d 537, 540 (7th Cir. 1998) (“Parents of wholly owned subsidiaries necessarily control, direct, and supervise the subsidiaries to some extent, but unless there is a basis for piercing the corporate veil and thus attributing the subsidiaries’ torts to the parent, the parent is not liable for those torts.”).
  2. To impute the subsidiary’s jurisdictional contacts to the parent “requires ‘an unusually high degree of control’ or that the subsidiary’s ‘corporate existence is simply a formality.’” *Abelesz*, 692 F.3d at 658-59 (quoting *Purdue*, 338 F.3d at 788 n.17); *Central States*, 230 F.3d at 943 (“[C]onstitutional due process requires that personal jurisdiction cannot be premised on corporate affiliation or stock ownership alone where corporate formalities are substantially observed and the parent does not exercise an unusually high degree of control over the subsidiary.”) There must be evidence that the parent “controls and dominates” the subsidiary. *Abelesz*, 692 F.3d at 659; *see also KM Enters., Inc. v. Global Traffic Techs., Inc.*, 725 F.3d 718, 733 (7th Cir. 2013) (“The activities of a subsidiary may suffice to assert jurisdiction over the parent if there is some basis for piercing

the corporate veil, such as the parent's unusual degree of control over the subsidiary, but this does not apply in the case of an ordinary parent-subsidiary relationship that observes corporate formalities."); *IDS*, 136 F.3d at 541 (noting that a key question is whether the subsidiary was acting as the parent's agent "in the sense of conducting [the parent's] business rather than [the subsidiary's] business").

### 3. Acts of an Agent

#### A. General Principles

1. While the Illinois long-arm statute is no longer a central part of the personal jurisdiction analysis, it specifically contemplates that acts of an agent can subject a party to jurisdiction in Illinois. *See* 735 ILCS § 5/2-209(a) ("Any person, whether or not a citizen or resident of this State, who in person or *through an agent* does any of the acts hereinafter enumerated ...") (emphasis added).
2. Thus, when determining if the defendant has minimum contacts, once it can be shown that a third party is acting as the defendant's agent, courts will consider both the defendant's direct contacts with the forum state and its indirect contacts through its agent. *See Keller v. Henderson*, 359 Ill. App. 3d 605, 614 (2d Dist. 2005) ("Defendant's contacts with Illinois consist of both his direct contacts with Illinois and his contacts through his agent .... Contacts through a defendant's agent are attributed to the defendant for purposes of personal jurisdiction analysis."); *Allerion, Inc. v. Nueva Icacos, S.A. de C.V.*, 283 Ill. App. 3d 40, 48 (1st Dist. 1996) ("The due process clause permits personal jurisdiction to be exercised over a defendant based upon acts of its agent.").
  - a. While there is "at least *some* support for the notion that the in-state acts of independent contractors can be imputed to a nonresident defendant for purposes of exercising personal jurisdiction ... the clear weight of authority only supports imputing the in-state acts of an *agent* to a nonresident defendant." *Madison Miracle Prods., LLC v. MGM Distribution Co.*, 978 N.E.2d 654, 676-77 (Ill. App. 1st Dist. 2012) (emphasis in original) (collecting cases); *but see Richard Knorr Int'l, Ltd. v. Geostar, Inc.*, 2010 WL 1325641, at \*10 (N.D. Ill. Mar. 30, 2010) ("By dispatching independent contractors to do its bidding in a forum state, a corporation can acquire sufficient contacts for the forum's exercise of personal jurisdiction to comport with due process.").

- 1) Even though courts assess the activities of a defendant's agent, the defendant itself must still purposefully avail itself of the protections of doing business in Illinois or purposefully direct its activities towards Illinois. *Madison Miracle Prods.*, 978 N.E.2d at 677-78.
- 2) Language from the U.S. and the Illinois Supreme Courts has made clear that a defendant must insert itself into the forum and avail itself of the benefits of doing business in the forum state. Specifically, in *Burger King*, the U.S. Supreme Court held that the defendant's contacts cannot be based on the unilateral activity of another party or third person. 471 U.S. at 474. "Jurisdiction is proper, however, where the contacts proximately result from actions by the defendant *himself* that create a 'substantial connection' with the forum State. Thus where the defendant 'deliberately' has engaged in significant activities within a State, or has created 'continuing obligations' between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by 'the benefits and protections' of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well." 471 U.S. at 475-76 (emphasis in original) (internal citations and quotation marks omitted); *Russell*, 2013 IL 113909, ¶ 42 (citing *Burger King* and using similar language); *see also Bell v. Don Prudhomme Racing, Inc.*, 405 Ill. App. 3d 223, 230 (4th Dist. 2010) (quoting *Int'l Shoe*, 326 U.S. at 317) ("[I]t has been generally recognized that the casual presence of the corporate agent or even his conduct of single or isolated items of activities in a state in the corporation's behalf are not enough to subject it to suit on causes of action unconnected with the activities there").
3. "The designation of an Illinois registered agent is not an independently determinative factor ... in determining whether a foreign corporation is doing business in Illinois." *Alderson v. Southern Co.*, 321 Ill. App. 3d 832, 853 (1st Dist. 2001); *but see Employers Ins. of Wausau v. Banco De Seguros Del Estado*, 199 F.3d 937, 943 (7th Cir. 1999) ("However, by agreeing to designate an agent for service of process, as Banco has, foreign companies can waive this requirement of 'minimum contacts.'").

4. Of course, “[t]he mere fact that a corporation by which a nonresident is employed, or in which he is a stockholder is itself subject to Illinois jurisdiction does not subject that nonresident to jurisdiction.” *Petrich v. MCY Music World, Inc.*, 371 Ill. App. 3d 332, 344 (1st Dist. 2007) (internal quotation marks omitted).

B. Notable Cases

1. In *Campbell v. Acme Insulations, Inc.*, an action alleging injuries sustained as a result of exposure to asbestos in a manufacturer’s products, the court held that a non-resident defendant who has a registered agent within Illinois “neither ‘consent[s] to general jurisdiction as a condition of doing business in Illinois’ nor ‘waives any due process limitations.’” 2018 IL App (1st) 173051, ¶ 17 (citing *Aspen Am. Ins. Co. v. Interstate Warehousing, Inc.*, 2017 IL 121281, ¶ 24).
2. In *Keller*, the estate of an individual that died in an airplane crash sued the nonresident seller of the airplane. 359 Ill. App. 3d at 609. The seller had engaged an Illinois company to serve as his broker for the sale of the airplane. *Id.* at 614. The court held that personal jurisdiction over the seller was proper where, among other things, the broker listed and advertised the airplane in Illinois. *Id.* The broker also signed the sales contract on behalf of the seller in Illinois. *Id.*
3. In *Viktron Ltd. P’ship v. Program Data Inc.*, 326 Ill. App. 3d 111 (2d Dist. 2001), a breach-of-contract action involving a nonresident corporation, the court held that jurisdiction in Illinois over the corporation was proper where the corporation’s president came to Illinois to negotiate the contract. *Id.* at 119.
4. In *Allerion*, a breach-of-contract action brought by a seller, the court held that personal jurisdiction existed over a nonresident buyer because the buyer’s agent: (1) was an Illinois corporation; and (2) negotiated extensively with the seller within Illinois. 283 Ill. App. 3d at 48-49. Additionally, the contract was executed in Illinois. *Id.* at 49.
5. In *D.S. Am. (E.) Inc. v. Elmendorf Grafica, Inc.*, 274 Ill. App. 3d 643 (1st Dist. 1995), the court held that jurisdiction over a nonresident corporation was proper where one of the corporation’s employees was sent to Illinois for two days to inspect products that ultimately became the subject of the litigation. *Id.* at 651.

#### 4. Fiduciary Shield Doctrine

- A. Illinois recognizes a fiduciary shield that “denies personal jurisdiction over an individual whose presence and activity in the state in which the suit is brought were solely on behalf of his employer or other principal.” *Rice v. Nova Biomedical Corp.*, 38 F.3d 909, 912 (7th Cir. 1994) (citing *Rollins*, 141 Ill.2d at 280). Where an individual defendant’s conduct “was a product of, and was motivated by, his employment situation and not his personal interests ... it would be unfair to use this conduct to assert personal jurisdiction over him as an individual.” *United Fin. Mortg. Corp. v. Bayshores Funding Corp.*, 245 F. Supp. 2d 884, 894 (N.D. Ill. 2002) (quoting *Rollins*, 141 Ill.2d at 280 (internal quotation marks omitted)).
- B. “[O]wning a small amount of a corporation’s stock does not disqualify a defendant from the protection of the fiduciary shield doctrine.” *Leong v. SAP Am., Inc.*, 901 F. Supp. 2d 1058, 1065 (N.D. Ill. 2012).
- C. Application of the fiduciary shield doctrine is discretionary, however, so even if the doctrine’s criteria are satisfied, that does not bar the exercise of personal jurisdiction by Illinois courts. *Rice*, 38 F.3d at 914. See *People ex rel. Morse v. E & B Coal Co.*, 261 Ill. App. 3d 738, 747 (5th Dist. 1994) (holding that personal jurisdiction existed over a director who “freely chose to accept a directorship with full knowledge that [the company] was an Illinois corporation conducting a mining operation in Illinois”); *Renner v. Grand Trunk W. R. Co.*, 263 Ill. App. 3d 547, 551 (1st Dist. 1994) (holding that fiduciary doctrine did not shield a nonresident train engineer from liability in connection with a personal injury action; “the acts giving rise to his status as a defendant in this suit were [not] compelled by the order of his employer. Rather, this cause of action appears to arise out of alleged negligence by a nonresident occurring during normal commercial activity in Illinois.”).
- D. There are two exceptions to the fiduciary shield doctrine: “(1) the shield is removed if the individual’s personal interests motivated his actions, and (2) the shield generally does not apply when the individual’s actions are discretionary.” *Zurich Capital Markets, Inc. v. Coglianese*, 388 F. Supp. 2d 847, 860 (N.D. Ill. 2004) (internal citations and quotation marks omitted).

#### 5. Conspiratorial Activity

- A. The mere fact that a party’s co-conspirators are subject to jurisdiction in Illinois does not mean that the party is also subject to jurisdiction in Illinois. *Knaus v. Guidry*, 389 Ill. App. 3d 804, 819 (1st Dist. 2009). That is, the party must still purposefully direct its conspiratorial activity towards Illinois. *Id.* at 827.

## 6. Jurisdiction Over International Defendants

- A. Generally, courts analyze the same factors for international defendants as they do for U.S. defendants outside of Illinois. *Wiles*, 125 Ill.2d at 152. Notably, however, when assessing whether jurisdiction in Illinois is proper over an international defendant, courts pay close attention to the burden associated with forcing the defendant to litigate in the United States and Illinois specifically. *Id.* Additionally, “it is clear that when concerned with an international defendant, courts are to consider the procedural and substantive policies of those other *nations* whose interests would be affected by the assertion of jurisdiction by the forum court .... Concomitantly, the forum court must be mindful of the Federal government’s interest in maintaining its foreign relations policies.” *Id.* (internal citations omitted) (emphasis in original); *see also Asahi Metal Industry*, 480 U.S. at 115.

## 7. Partnerships

- A. If a partnership is subject to jurisdiction in Illinois, each of its general partners are likewise subject to jurisdiction in Illinois. *Felicia, Ltd. v. Gulf Am. Barge, Ltd.*, 555 F. Supp. 801, 805-06 (N.D. Ill. 1983).
- B. Similarly, general partners can be subject to jurisdiction in Illinois based on contacts by other general partners. *Morton v. Env'tl. Land Sys., Ltd.*, 55 Ill. App. 3d 369, 372-73 (1st Dist. 1977).
- C. Additionally, if one joint venture partner is subject to jurisdiction in Illinois, the other joint venture partners are also amenable to jurisdiction in Illinois. *Brown v. 1995 Tenet ParaAmerica Bicycle Challenge*, 931 F. Supp. 592, 594-95 (N.D. Ill. 1996).

## 8. Educational Institutions and Other Nonprofit Organizations

### A. Educational Institutions

1. National educational institutions are not subject to general personal jurisdiction in Illinois, even if: (1) the institutions employ faculty and other staff from Illinois; (2) the institutions enroll students from Illinois; (3) an alumni organization exists for the institution in Illinois; (4) the institution maintains a website accessible from Illinois; and (5) the institution conducts some marketing activities within the state. *Snodgrass v. Berklee Coll. of Music*, 2013 WL 3337815, at \*3-5 (N.D. Ill. July 2, 2013), *aff'd*, 559 F. App'x 541 (7th Cir. 2014). Even if an institution has many contacts with Illinois through alumni, “alumni are not necessarily employees or agents of their institutions and their contacts are not the institution’s contacts—at least not for the purposes of personal jurisdiction.” *Id.* at \*5.

2. *See also Gehling v. St. George's Sch. of Med., Ltd.*, 773 F.2d 539, 542 (3d Cir. 1985) (“Advanced educational institutions typically draw their student body from numerous states, and appellants’ theory would subject them to suit on non-forum related claims in every state where a member of the student body resides. Thus, the fact that residents of the state apply and are accepted for admission to St. George’s is of no moment.”); *but see Duchesneau v. Cornell Univ.*, 2009 WL 3152125 (E.D. Pa. Sept. 30, 2009) (holding that the exercise of general jurisdiction over Cornell University was proper in Pennsylvania where: (1) Cornell was registered to business in Pennsylvania; (2) Cornell operated a regional marketing office in Pennsylvania; (3) the regional marketing office was housed in a Pennsylvania office suite, which Cornell leased; and (4) Cornell paid salaries, utility bills, insurance, and other expenses in connection with the regional marketing office in Pennsylvania).

#### B. Nonprofit Organizations

1. The mere fact that a national nonprofit organization is licensed in Illinois and holds a fundraising event in the state is not sufficient for general personal jurisdiction. *Brown v. 1995 Tenet ParaAmerica Bicycle Challenge*, 931 F. Supp. 592, 594 n.1 (N.D. Ill. 1996). Activities in Illinois must be shown to constitute “continuous and systematic general business contacts.” *Id.*
2. However, where national nonprofit organizations take an active role in their local chapters (*e.g.*, collecting membership dues from local programs in Illinois and receiving contributions from Illinois residents), general jurisdiction may be proper. *Flint v. Court Appointed Special Advocates of Du Page Cty., Inc.*, 285 Ill. App. 3d 152, 167-69 (2d Dist. 1996). Such contacts with Illinois “cannot reasonably be characterized as random, fortuitous, or attenuated.” *Id.* at 169.

## V. Challenging Personal Jurisdiction

### 1. Illinois State Courts – 735 ILCS § 5/2-301 Motion

#### A. Special Appearances Not Required

1. In 2000, the Illinois legislature eliminated the distinction between special and general appearances in 735 ILCS § 5/2-301. *KSAC Corp. v. Recycle Free, Inc.*, 364 Ill. App. 3d 593, 596 (2d Dist. 2006). Instead, defendants simply file an appearance, which does not “waive an objection to personal jurisdiction, because [it is not a] responsive pleading or a motion.” *Id.*; see also *TCF Nat. Bank v. Richards*, 2016 IL App (1st) 152083, ¶ 50 (“Although defendant asserts she merely filed a “special appearance,” we observe that section 2–301 of the Code was amended in 2000 to no longer require that a party file a special appearance to preserve a jurisdictional objection.”).
2. However, some courts still continue to distinguish between special and general appearances. See, e.g., *Bickel v. Subway Dev. of Chicagoland, Inc.*, 354 Ill. App. 3d 1090, 1095 (5th Dist. 2004) (“A special and limited appearance must be designated as such to avoid being construed as a general appearance.”); *Pro Sapiens, LLC v. Indeck Power Equip. Co.*, 2019 IL App (1st) 182019, ¶ 77 (“Illinois sets up a framework whereby litigants may appear in court for the limited purpose of contesting personal jurisdiction, what used to be called a ‘special appearance.’”).

#### B. 735 ILCS § 5/2-301 Motion

1. To object to the court’s exercise of personal jurisdiction, a defendant must file a motion to dismiss for lack of personal jurisdiction under 735 ILCS § 5/2-301.
2. The 2-301 motion must be filed prior to filing any other pleading or motion, except for a motion for an extension of time or a motion filed under Sections 2-1301, 2-1401, or 2-1401.1. 735 ILCS § 5/2-301(a).
3. If any other pleading or motion is filed prior to the 2-301 motion, or any other appearance is made, the objection to personal jurisdiction is waived. 735 ILCS § 5/2-301(a-6). See also *Andreasen v. Suburban Bank of Bartlett*, 173 Ill. App. 3d 333, 339 (1st Dist. 1988) (“Personal jurisdiction can be waived, and is waived, by a person’s participation in the proceedings in issue.”).
4. However, the 2-301 motion may be made as part of a combined motion. 735 ILCS § 5/2-301(a); see, e.g., *Ryburn v. People*, 349 Ill. App. 3d 990, 994 (4th Dist. 2004).

5. A party does not waive any objections to personal jurisdiction or venue by waiving formal service of process. 735 ILCS § 5/2-213(b).
6. The potential grounds for a 2-301 motion to dismiss are: (1) the defendant is not amenable to process (*i.e.*, the court lacks personal jurisdiction over the defendant); (2) insufficient process (*i.e.*, the form of the summons itself is incorrect); or (3) insufficient service of process (*i.e.*, the manner in which the summons was served did not comply with the relevant statute). 735 ILCS § 5/2-301(a).
7. The 2-301 motion can seek to dismiss the entire action or any cause of action, or to quash service of process. 735 ILCS § 5/2-301(a).

C. Support by Affidavit

1. Unless the facts constituting the basis for the objection are apparent from papers already on file, the motion must be supported by an affidavit setting forth those facts. 735 ILCS § 5/2-301(a).

D. Jurisdictional Discovery

1. When a defendant files a motion to dismiss for lack of personal jurisdiction, the plaintiff can obtain discovery under Illinois Supreme Court Rule 201(l). Rule 201(l) states:

(1) While a motion filed under section 2-301 of the Code of Civil Procedure is pending, a party may obtain discovery only on the issue of the court's jurisdiction over the person of the defendant unless (a) otherwise agreed to by the parties; or (b) ordered by the court upon a showing of good cause by the party seeking the discovery that specific discovery is required on other issues.

(2) An objecting party's participation in a hearing regarding discovery, or in discovery as allowed by this rule, shall not constitute a waiver of that party's objection to the court's jurisdiction over the person of the objecting party.

2. Where a plaintiff requests discovery on the issues raised in a 2-301 motion, the trial court "must allow that inquiry," and "may, on its own motion or on motion of the parties, issue such orders as are necessary and reasonable to protect the defending party against misuse of discovery, and must under Rule 201(l) limit the inquiry to those matters raised by the motion." *Falstad v. Falstad*, 152 Ill. App. 3d 648, 655 (1st Dist. 1987). *See also La Salle Nat. Bank of Chicago v. Akande*, 235 Ill. App. 3d 53, 63 (2d Dist. 1992).

3. Rule 201(l) also appears to allow a defendant to obtain limited discovery pertaining to the issue of personal jurisdiction. *Haubner v. Abercrombie & Kent Int'l*, 351 Ill App 3d 112, 118 (1st Dist. 2004) (“Rule 201(l) ... allows a defendant to conduct limited discovery regarding the issue of personal jurisdiction without submitting to the general jurisdiction of the court.”).
  - a. However, the defendant should be cautious, as any discovery requests not pertinent to personal jurisdiction may cause the defendant to waive the objection. In *Haubner*, the defendant served a request to admit upon the plaintiffs, which dealt with the amount in controversy, as there was a question of whether the case could be removed to federal court. The Court held this request was not relevant to personal jurisdiction, and thus constituted a “general appearance and a waiver of any objection to the circuit court’s *in personam* jurisdiction.” *Id.* at 118.
  - b. However, *Haubner* has since been called into question. In *KSAC*, the court indicated that *Haubner* was “built on an obsolete framework.” 364 Ill. App. 3d 593 at 596. The *KSAC* court pointed out that the revised version of § 2-301 eliminated the distinction between general and special appearances. *Id.* at 595. The version of § 2-301 amended effective January 1, 2000 instead provided for waiver “only if the party files a responsive pleading or a motion ... before filing a motion asserting the jurisdictional objection.” *Id.* at 595. The *KSAC* court thus held that the defendant had not waived its objection to personal jurisdiction by responding to a discovery request before filing its motion to dismiss, because the response to the discovery request was not a pleading or motion. *Id.* at 597.

**PRACTICE TIP: If a party is contesting personal jurisdiction, that party should not engage in any discovery request or response, other than those relevant to the matter of personal jurisdiction, until after the question of personal jurisdiction is resolved.**

E. Burden on Plaintiff

1. The plaintiff has the burden of proving a *prima facie* case for personal jurisdiction. *Russell*, 2013 IL 113909, ¶ 28; *Spartan Motors*, 337 Ill. App. 3d at 559.
2. In deciding a motion to dismiss for lack of personal jurisdiction, the court can receive and consider affidavits from both parties. *Keller*, 359 Ill. App. 3d at 611. Recall that, unless the facts constituting the basis for the objection are apparent from papers already on file in the

case, a motion to dismiss for lack of personal jurisdiction must be supported by an affidavit setting forth those facts. 735 ILCS § 5/2-301(a).

3. A plaintiff's *prima facie* case can be defeated by a defendant's uncontradicted evidence (generally presented through an affidavit) that jurisdiction is lacking. *Russell*, 2013 IL 113909, ¶ 28.
4. Facts within the defendant's affidavits must be taken as true notwithstanding contrary averments in the plaintiff's pleadings. *Keller*, 359 Ill. App. 3d at 611. But if the facts presented in the plaintiff's affidavits contradict the facts from the defendant's affidavits, the facts in the plaintiff's affidavits prevail. *Id.*
5. If there is a material evidentiary dispute regarding the facts underlying a court's personal jurisdiction analysis – and personal jurisdiction over the defendants would be defeated if the dispute is resolved in the defendant's favor – the court must hold an evidentiary hearing. *Keller*, 359 Ill. App. 3d at 611.

## **2. Illinois Federal Court – 12(b)(2) Motion**

### **A. Rule 12(b)(2) Motion**

1. To challenge a federal court's exercise of personal jurisdiction, a defendant must file a motion under Federal Rule of Civil Procedure 12(b)(2).
2. The 12(b)(2) motion must be made before the responsive pleading, if a responsive pleading is allowed or required. If no responsive pleading is required, the defendant can assert the defense at trial. Fed. R. Civ. P. 12(b).
3. The objection to personal jurisdiction can be combined with other objections under Rule 12(b) (lack of subject matter jurisdiction, improper venue, insufficient process, insufficient service of process, failure to state a claim upon which relief can be granted, and failure to join a party under Rule 19) or included in the responsive pleading. Fed. R. Civ. P. 12(b).
4. However, the defendant will waive any objection to personal jurisdiction if the objection is not included in the first responsive pleading due, whether that response is a Rule 12(b) motion or another responsive pleading. *Garvey v. Am. Bankers Ins. Co. of Fla.*, 2019 WL 2076288, at \*2 (N.D. Ill. May 10, 2019).

5. As in Illinois State Courts, a party does not waive any objections to personal jurisdiction or venue by waiving formal service of process. Fed. R. Civ. P. 4(d)(5).
6. A party does not waive an objection to personal jurisdiction by removing a case to federal court. *Silva v. City of Madison*, 69 F.3d 1368, 1376 (7th Cir. 1995).

B. Jurisdictional Discovery

1. The U.S. Supreme Court has recognized that “where issues arise as to jurisdiction or venue, discovery is available to ascertain the facts bearing on such issues.” *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 n.13 (1978).
2. It is within the trial court’s discretion to grant or deny limited jurisdictional discovery. *Ticketreserve, Inc. v. Viagogo, Inc.*, 656 F. Supp. 2d 775, 782 (N.D. Ill. 2009) (denying discovery request, because plaintiff “provided nothing but its unsupported assertion of personal jurisdiction”).
3. “At a minimum, the plaintiff must establish a colorable or prima facie showing of personal jurisdiction before discovery should be permitted.” *Cent. States*, 230 F.3d at 947 (holding that district court did not abuse its discretion in denying plaintiff’s discovery request).
  - a. As the court explained in *Ticketreserve*: “Generally, courts grant jurisdictional discovery if the plaintiff can show that the factual record is at least ambiguous or unclear on the jurisdiction issue .... The standard is low, but a plaintiff’s request will be denied if it is based only upon unsupported assertions of personal jurisdiction.” 656 F. Supp. 2d at 782 (citations omitted).
  - b. *See also Cent. States, Se. & Sw. Areas Pension Fund v. Phencorp Reinsurance Co.*, 440 F.3d 870, 876-78 (7th Cir. 2006) (granting jurisdictional discovery on the issue of general personal jurisdiction, where the district court denied the request for discovery without analyzing it in the light of general jurisdiction, and the plaintiff had “established a *prima facie* case for general personal jurisdiction”).

C. Burden on Plaintiff

1. On a motion to dismiss, the plaintiff bears the burden of proving that personal jurisdiction exists. *Cent. States*, 230 F.3d at 939.

2. In deciding the motion, a court may receive and consider affidavits from both parties. *Interlease Aviation Investors II (Aloha) L.L.C. v. Vanguard Airlines, Inc.*, 262 F. Supp. 2d 898, 905 (N.D. Ill. 2003).
3. Any conflicts in the pleadings and affidavits are to be resolved in the plaintiff's favor, but the court should accept as true any facts contained in the defendant's pleadings or affidavit that are not refuted by the plaintiff. *Id.*

### 3. Overlap with Other Issues

#### A. Forum Non Conveniens

##### 1. General Principles

- a. *Forum non conveniens* is a common-law doctrine by which a court can dismiss a claim “when an alternative forum has jurisdiction to hear [the] case, and ... trial in the chosen forum would establish oppressiveness and vexation to a defendant ... out of all proportion to plaintiff's convenience, or ... the chosen forum [is] inappropriate because of considerations affecting the court's own administrative and legal problems.” *Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 429 (2007) (quoting *Am. Dredging Co. v. Miller*, 510 U.S. 443, 447-448 (1994)).
- b. “Dismissal for *forum non conveniens* reflects a court's assessment of a ‘range of considerations, most notably the convenience to the parties and the practical difficulties that can attend the adjudication of a dispute in a certain locality.’” *Sinochem*, 549 U.S. at 429 (quoting *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 723 (1996)).
- c. The U.S. Supreme Court has “characterized *forum non conveniens* as, essentially, ‘a supervening venue provision, permitting displacement of the ordinary rules of venue when, in light of certain conditions, the trial court thinks that jurisdiction ought to be declined.’” *Sinochem*, 549 U.S. at 429 (quoting *American Dredging*, 510 U.S. at 453).
- d. “A court must balance the private and public interests in determining the appropriate forum in which the case should be tried. Private interest factors include the convenience of the parties; the relative ease of access to sources of testimonial, documentary, and real evidence; the availability of compulsory process to secure attendance of unwilling witnesses; the cost to obtain attendance of willing witnesses; the possibility of viewing the premises, if appropriate; and all other practical

considerations that make a trial easy, expeditious, and inexpensive. The relevant public interest factors include: the administrative difficulties caused when litigation is handled in congested venues instead of being handled at its origin; the unfairness of imposing jury duty upon residents of a county with no connection to the litigation; and the interest in having local controversies decided locally.” *Dawdy v. Union Pac. R.R. Co.*, 207 Ill. 2d 167, 172-73 (2003).

## 2. Federal Court

- a. In federal court, a matter can be dismissed for *forum non conveniens* if the alternative forum is abroad. *Sinochem*, 549 U.S. at 430. Requests to dismiss or transfer a case to another federal district in the United States (or a United States territory) are governed by the transfer and change-of-venue statutes. See 28 U.S.C. §§ 1404, 1406.
- b. A federal court need not establish personal (or subject-matter) jurisdiction before dismissing a case on *forum non conveniens* grounds. *Sinochem*, 549 U.S. at 435-36. This is a practical consideration: if a case presents complicated questions of personal jurisdiction or subject-matter jurisdiction, the court need not waste time and resources deciding those issues if the case can be disposed of expeditiously by way of *forum non conveniens*. *Id.* at 436 (“[W]here subject-matter or personal jurisdiction is difficult to determine, and *forum non conveniens* considerations weigh heavily in favor of dismissal, the court properly takes the less burdensome course.”).

## 3. Illinois State Courts

- a. In Illinois State Courts, a motion to dismiss for *forum non conveniens* is permitted on both an interstate and intrastate basis. *Dawdy*, 207 Ill.2d at 176.
- b. Illinois State Courts presume that jurisdiction is proper in Illinois when considering a motion to dismiss for *forum non conveniens*. *Jones v. Searle Labs.*, 93 Ill.2d 366, 371 (1982).

**PRACTICAL TIP: When dealing with an action that occurred abroad, defendants should consider moving simultaneously to dismiss: (1) for *forum non conveniens*, and (2) for lack of personal jurisdiction.**

B. Motion to Transfer Venue

1. Similar to *forum non conveniens*, motions to transfer to a different venue are concerned with the most convenient forum for the litigation.
2. Unlike *forum non conveniens*, motions to transfer venue are governed by statute. (28 U.S.C. §§ 1404, 1406 for federal courts; 735 ILCS § 5/2-104 for Illinois State Courts.)
3. Courts are clear that venue considerations are irrelevant to a personal jurisdiction analysis. In other words, even if a particular forum is the most convenient site for the litigation, that consideration has no bearing on whether the defendant can be sued in the forum state. *See Andrews v. Heinold Commodities, Inc.*, 771 F.2d 184, 187 (7th Cir. 1985) (“Personal jurisdiction and venue are discrete concepts that should be kept separate.”); *Hull 753 Corp. v. Elbe Flugzeugwerke GmbH*, 58 F. Supp. 2d 925, 927 (N.D. Ill. 1999) (“A court lacking personal jurisdiction is an improper venue to litigate.”).

**4. Door-Closing Statute**

- A. Some states have “door-closing” statutes. These statutes often require that a party be registered to do business in the forum state before it can file suit in the state. *See, e.g.*, MISS. CODE ANN. § 79-4-15.02(c) (“[a] court may stay a proceeding commenced by a foreign corporation ... until the foreign corporation ... obtains the certificate [of authority]”).
1. A corporation can often cure this defect by registering to do business after filing suit. *ITL Int’l, Inc. v. Constenla, S.A.*, 669 F.3d 493, 497 (5th Cir. 2012).
- B. Illinois does not have a door-closing statute.