A One-Two Punch to Forum Shopping: Recent Judicial and Legislative Amendments to South Carolina's Corporate Venue Jurisprudence

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McFarland: A One-Two Punch to Forum Shopping: Recent Judicial and Legislative Amendments to South Carolina's Corporate Venue Jurisprudence

I. INTRODUCTION

Hampton County is notorious throughout South Carolina, and the nation, for its plaintiff-friendly jurors and excessive verdicts.1 Predictably, plaintiffs frequently search for any potential justification to file their complaints in Hampton County courts. Unfortunately for corporate defendants, plaintiffs have rarely come up empty handed. South Carolina's pre-2005 venue statute and its judicial interpretation failed to provide any rational limitations to corporate venue.2 Prior to 2005, the South Carolina Supreme Court, in an attempt to resolve inherent ambiguities in the pre-2005 venue statute, erroneously relied on language from the service of process statute3 to formulate an overly broad definition of corporate residence.4 Consequently, the court determined that corporations reside, for venue purposes, in any county where they merely own property and transact business.5 In addition, the pre-2005 venue statute allowed plaintiffs to sue certain foreign corporations "in any county which the plaintiff shall designate in his complaint."6 As a result, Hampton County experienced a forty-three percent increase between 2000 and 2004 in the number of lawsuits filed in its courts.7 Furthermore, Hampton County currently maintains a caseload nearly twice that of other counties with comparable populations.8 Consequently, Hampton County epitomizes the significant problems associated with forum shopping under South Carolina's pre-2005 venue jurisprudence.

South Carolina courts and lawmakers recently delivered a one-two punch that effectively eliminates forum shopping within the state. On February 2, 2005, the South Carolina Supreme Court struck first with its ground-breaking decision in Whaley v. CSX Transportation, Inc.9 In Whaley, the supreme court overturned several previous cases and held that "own[ing] property and transact[ing] business" within a county is insufficient to establish the residence of a corporate defendant

5. Id. at 426, 266 S.E.2d at 775.
for venue purposes. Subsequently, the South Carolina Legislature passed "sweeping tort reform legislation . . . that included the first significant changes to the state's general venue statute in over a century." The Economic Development, Citizens, and Small Business Protection Act of 2005, which became effective on July 1, 2005, includes a much-needed amendment to South Carolina's archaic venue statute. Together, these recent changes in South Carolina's corporate venue jurisprudence have established overdue limitations on forum selection that more adequately protect the substantive rights of corporate defendants and promote the convenience of all interested parties.

Part II of this Comment provides essential background information concerning the historical development of venue law and the justifications for establishing statutory venue limitations. Part III explores the evolution of South Carolina's previous corporate venue jurisprudence and discusses the adverse effects caused by the state's failure to establish adequate restrictions on forum selection. Part IV examines the South Carolina Supreme Court's recent opinion in *Whaley* and further analyzes the subsequent effects of this landmark decision. Part V considers the changes in the amended version of South Carolina Code section 15-7-30 and examines its application to corporate venue. Finally, Part VI analyzes the potential widespread effects of the recent changes to South Carolina's corporate venue jurisprudence.

II. AN OVERVIEW OF VENUE JURISPRUDENCE

A. The Historical Development of Venue

The concept of venue originally developed in the early English judicial system. Historically, the King traveled throughout the country and held court at various locations based entirely upon his own convenience. However, the records and equipment soon became "too bulky," influencing the court to settle at Westminster. Once settled, the court summoned jurors to Westminster for trial, and venue took on the meaning of "the locality from which jurors were selected." At that time, jurors participated extensively in the questioning of litigants—a

10. Id. at 474–75, 609 S.E.2d at 295–96.
16. Id. at 3.
18. Rineberg, supra note 14, at 1064.
process that worked more efficiently if the jurors were familiar with the location of the dispute.\textsuperscript{19}

As the legal system developed and the role of jurors declined, the focus of venue correspondingly shifted from the location of the dispute and from where jurors were drawn to "the distinction between transitory and local actions."\textsuperscript{20} Generally, local actions involved disputes that could occur only in a particular location, such as disputes over real property.\textsuperscript{21} Therefore, plaintiffs could bring local actions only "where the cause of action arose."\textsuperscript{22} In contrast, tort actions were generally transitory in nature because the alleged act or omission giving rise to the cause of action might have occurred anywhere.\textsuperscript{23} Absent any statutory requirement limiting venue, tort actions "[could] be maintained wherever the wrongdoer [could] be found and legally served with process."\textsuperscript{24} Today, the majority of jurisdictions have enacted statutes that provide the exclusive regulation of venue.\textsuperscript{25} Consequently, the modern definition of venue has evolved into "[t]he proper or a possible place for a lawsuit to proceed, [usually] because the place has some connection either with the events that gave rise to the lawsuit or with the plaintiff or defendant."\textsuperscript{26}

\textbf{B. Justifications for Venue Restrictions}

Venue statutes limit the number of available fora and protect the competing interests in the location of trial. Undeniably, venue is a critical aspect of civil litigation that can significantly affect the resolution of a dispute.\textsuperscript{27} The forum of adjudication often affects the "geographic location, pleading and discovery rules, docket speed, judge assignment, and jury pool.\textsuperscript{28} Under the American judicial system, a plaintiff is the "master of its complaint" and initially selects the forum in which to adjudicate its claim.\textsuperscript{29} Therefore, absent any restrictions, plaintiffs can designate a venue merely for its strategic advantages without consideration of competing, yet valid, interests.\textsuperscript{30} The concept of venue primarily serves to promote

\begin{thebibliography}{99}
\bibitem{19} Id.
\bibitem{20} Id.; see also 77 AM. JUR. 2d Venue § 2 (1997) ("Under the common law, the venue of an action depended upon whether the action was local or transitory in nature." (citing Little v. Chicago, St. P. M. & Ry. Co., 67 N.W. 846, 846–47 (Minn. 1896)).
\bibitem{21} JAMES F. FLANAGAN, SOUTH CAROLINA CIVIL PROCEDURE 625 (2d ed. 1996).
\bibitem{22} Id.
\bibitem{23} 77 AM. JUR. 2d Venue § 25 (1997).
\bibitem{24} Id.
\bibitem{25} Id. § 2.
\bibitem{26} BLACK'S LAW DICTIONARY 1591 (8th ed. 2004).
\bibitem{27} See Gregory J. Swain, Annotation, \textit{Place Where Corporation is Doing Business for Purposes of State Venue Statute}, 42 A.L.R.5th 221 (1996) (stating "venue can be a critical selection for litigants").
\bibitem{29} Id. at 38.
\bibitem{30} Id. at 39.
\end{thebibliography}
the convenience of all parties,31 not merely the self-serving motives of eager plaintiffs. Consequently, courts, legislatures, and legal scholars have recognized several justifications for establishing statutes that restrict plaintiffs' forum selection alternatives.

The most debated and publicized justification for venue limitations is the prevention of forum shopping. Forum shopping is "[t]he practice of choosing the most favorable jurisdiction or court in which a claim might be heard."32 Without venue restrictions, plaintiffs would possess unfettered discretion to select venue and choose the most advantageous forum in which to adjudicate their claims.33 However, "flexibility so great that it encourages forum-shopping cannot be in the best interests of any of the litigants."34 Although plaintiffs possess a significant interest in selecting favorable courts, forum shopping blatantly disregards the valid and often competing interests of other relevant parties. Those competing interests include the convenience of the witnesses and other parties, judicial economy, fairness to the local community, and substantive rights of defendants to be tried where they reside.35 Forum shopping also "creates the impression that law and jurors can be manipulated to give unfair advantages to certain parties" and therefore reduces the public's confidence in the legal system.36 Consequently, the system needs venue restrictions to balance all competing interests and "curb the abuses engendered by this [overly] extensive venue."37

Statutes limiting venue selection also promote the efficient allocation of judicial resources and the expeditious resolution of civil actions.38 Without adequate restrictions, plaintiff-friendly fora can experience a flood of litigation lacking any significant relationship to that particular locality.39 The resulting congestion prevents the affected courts from expeditiously resolving disputes, while other, less strategically advantageous courts remain unnecessarily idle.40 Moreover, judicial proceedings undeniably progress more efficiently when conducted in a forum having a more significant relationship to the underlying dispute. Courts in close proximity to the dispute or the parties' residences can obtain easier access to

32. BLACK'S LAW DICTIONARY 681 (8th ed. 2004).
34. PAUL LAXALT ET AL., NAT'L LEGAL CTR. FOR THE PUBLIC INTEREST, VENUE AT THE CROSSROADS 20 (Steven R. Schlesinger ed., 1982).
38. Id.
39. See Amicus Brief of Product Liability Council, supra note 8, at 6 (stating that prior to 2005 Hampton County had a caseload almost twice that of other counties with similar populations); JUDICIAL HELLOHOLES, supra note 7, at 21 (stating that in 2002, sixty-seven percent of lawsuits in Hampton County were filed by non-residents, and forty-one percent concerned events that occurred elsewhere).
40. See LAXALT ET AL., supra note 34, at 15 (asserting that forum shopping causes congestion in courts).
evidence and witnesses.\textsuperscript{41} In addition, "[k]nowledge of local customs, influences, conditions and history facilitates expeditious and intelligent handling of the case."\textsuperscript{42}

Furthermore, venue restrictions shield local communities from injustices associated with forum shopping and promote the interests of local residents.\textsuperscript{43} Insufficient venue limitations allow plaintiffs to bring civil claims in distant courts, thereby forcing those courts to entertain unrelated litigation. Forum shopping thus unfairly imposes litigation expenses and jury duty on local communities "which ha[ve] no real interest in the outcome of the suit."\textsuperscript{44} Moreover, the public has a considerable interest in monitoring significant local events.\textsuperscript{45} Legal events frequently have substantial consequences for the local community, and are of great concern to local residents. In addition, adjudicating disputes locally enhances the opportunity for interested parties to receive notice of the proceedings and to intervene when necessary.\textsuperscript{46}

Most importantly, venue limitations protect defendants, especially corporations and other business entities, from being forced to litigate in distant and inconvenient fora.\textsuperscript{47} South Carolina courts have long recognized "the right of a defendant to be tried in the county of his residence is a substantial one and [is] not to be lightly denied."\textsuperscript{48} Indeed, the plaintiff's right of forum selection is inferior to the defendant's right to be tried in the locality where it resides.\textsuperscript{49} Although this right is equally applicable to all defendants, it presents unique implications for corporate defendants. Unlike the residence of an individual, the residence of a corporation is frequently difficult to ascertain and is more susceptible to broad interpretation.\textsuperscript{50} Therefore, effective venue limitations prevent over-inclusive determinations of corporate residence and restrict plaintiffs from hauling corporate defendants into "inconvenient or burdensome" fora.\textsuperscript{51}

\begin{itemize}
  \item \textsuperscript{41} Id. at 26–27.
  \item \textsuperscript{42} Id. at 27.
  \item \textsuperscript{43} Janutis, supra note 28, at 39–40.
  \item \textsuperscript{44} LAXALT ET AL., supra note 34, at 15.
  \item \textsuperscript{45} Id.
  \item \textsuperscript{46} Id. at 26.
  \item \textsuperscript{47} Rineberg, supra note 14, at 1065.
  \item \textsuperscript{48} Carroll v. Guess, 302 S.C. 175, 177, 394 S.E.2d 707, 706 (1990); see also Blizzard v. Miller, 306 S.C. 373, 375, 412 S.E.2d 406, 407 (1991) (stating that defendants have a "substantial right" to be tried where they reside); Rogers v. Montgomery, 188 S.C. 244, 247, 198 S.E. 380, 381 (1938) (asserting that the right of defendants to be tried where they reside is a substantial right (citing Rosamond v. Lucas-Kidd Motor Co., Inc., 183 S.C. 544, 550, 191 S.E. 516, 518 (1937))).
  \item \textsuperscript{49} Carroll, 302 S.C. at 177, 394 S.E.2d at 708.
  \item \textsuperscript{50} See Neirbo Co. v. Bethlehem Shipbuilding Corp., 308 U.S. 165, 168 (1939) (stating the procedural concepts underlying venue pose more significant problems when applied to corporations than to individuals).
  \item \textsuperscript{51} Janutis, supra note 28, at 37; see also Rineberg, supra note 14, at 1065 (stating that venue statutes serve to "protect defendants from being haled into distant courts" (quoting Alan J. Lazarus, Jurisdiction, Venue, and Service of Process Issues in Litigation Involving a Foreign Party, 31 TORT & INS. L.J. 29, 66–67 (1998))).
\end{itemize}
III. THE EVOLUTION OF SOUTH CAROLINA’S PRE-2005 CORPORATE VENUE JURISPRUDENCE

South Carolina’s pre-2005 venue jurisprudence contained inadequate limitations on corporate venue and failed to protect the interests of corporate defendants, local courts, and the public in general. The venue statute, South Carolina Code section 15-7-30, provided the basis for forum selection:

[T]he action shall be tried in the county in which the defendant resides at the time of the commencement of the action. If there be more than one defendant then the action may be tried in any county in which one or more of the defendants to such action resides at the time of the commencement of the action. If none of the parties shall reside in the State the action may be tried in any county which the plaintiff shall designate in his complaint.52

The inherent ambiguity and overly broad nature of the statute led to unfairness and inefficiency in its application, especially for corporate defendants.

A. Residence of Corporate Defendants for Venue Purposes

The venue statute’s first major deficiency involved its ambiguous reference to the residence of corporate defendants. Although the statute expressly established venue “in the county in which the defendant resides,” it failed to define or provide any basis for determining a defendant’s residence.53 This ambiguity proved troublesome, particularly for corporations, whose residence is inherently more difficult to ascertain than that of individuals.54 Early South Carolina Supreme Court decisions circumvented the venue statute’s shortcomings by establishing practical and restrictive definitions of corporate residence.55 Initially, the supreme court established different definitions of “resides” for domestic and foreign corporations. A domestic corporation’s residence for venue purposes was “(1) in any county where the corporation maintain[ed] an agent and transact[ed] its corporate business or (2) in the county where the corporation maintained its principal place of

52. S.C. CODE ANN. § 15-7-30 (2005) (amended 2005) (emphasis added). This section governs venue for all civil actions filed in South Carolina with several narrow exceptions. For these specific exceptions, see S.C. CODE ANN. § 15-7-10 (2005) (governing venue for actions involving real property) and S.C. CODE ANN. § 15-7-20 (2005) (governing actions for recovery of statutory penalties and forfeitures, and actions against public officers in the execution of their duties).
53. Id. § 15-7-30.
54. See Neirbo, 308 U.S. at 168 (stating the procedural concepts underlying venue pose more significant problems when applied to corporations than to individuals).

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business." In contrast, "for purposes of venue, a foreign corporation reside[d] in any county where it ha[d] an office and agent for the transaction of business."  

In *Miller v. Boyle Construction Co.*, the supreme court abandoned its restrictive interpretation of the venue statute and substantially expanded the definition of "resides" for domestic corporations. In *Miller*, the court held that in addition to the counties meeting the tests above, domestic corporations also resided in any counties where they owned property and transacted business. The court relied exclusively on a 1927 statute that governed service of process and personal jurisdiction over domestic corporations. The statute stated that "service ... shall be effective and confer jurisdiction over any domestic corporation in any County where such domestic corporation shall own property and transact business." The court failed to provide any justification for its reliance on the service of process statute, merely stating that the statute "also governed and controlled" venue. Consequently, by interpreting the service of process statute as complementary to the venue provision, the *Miller* court substantially broadened the definition of "resides" for domestic corporations.

Initially, the supreme court refused to extend the definition of "resides" in a similar fashion for foreign corporations. Six years after *Miller*, the supreme court in *Hancock v. Southern Cotton Oil Co.* reasoned the 1927 service of process statute failed to make even "the slightest inference or reference to a domesticated foreign corporation." Therefore, the court declined to extend the reasoning of *Miller* to foreign corporations and maintained the previous venue standard for those corporations. However, in 1964, the legislature amended the service of process statute to include foreign corporations. The amended statute stated that "service as effected under the terms of this section shall be effective and confer jurisdiction over any domestic or foreign corporation in any county where such domestic or foreign corporation shall own property and transact business." Soon afterward, the supreme court in *Lott v. Claussens, Inc.* extended *Miller*'s reasoning to foreign corporations. The court in *Lott* thus determined that a foreign corporation also resided for venue purposes in any county where it "own[ed] property and

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58. 198 S.C. 166, 172, 17 S.E.2d 312, 314 (1941).
59. *id.* at 172, 17 S.E.2d at 314.
60. *id.* at 172, 17 S.E.2d at 314.
61. *id.* at 172, 17 S.E.2d at 314 (emphasis added) (quoting S.C. CODE ANN. § 434 (1932)).
62. *id.* at 172, 17 S.E.2d at 314.
63. 211 S.C. 432, 439, 45 S.E.2d 850, 853 (1947).
64. *id.* at 439, 45 S.E.2d at 853.
65. *id.* at 440-41, 45 S.E.2d at 853.
67. *id.* at 470, 609 S.E.2d at 293 (emphasis added) (quoting S.C. CODE ANN. § 10-421 (Supp. 1964)).
68. 251 S.C. 478, 480, 163 S.E.2d 615, 616-17 (1968).
69. *id.* at 480, 163 S.E.2d at 616-17 (quoting S.C. CODE ANN. § 10-421 (Supp. 1964)).
transact[ed] business." 70 The court adopted a broad definition of "owning property" for venue purposes. 71 In probably the most egregious example of the over-extension of corporate venue, the Lott court held that possessing intangible property rights of a continuous and permanent nature was sufficient to satisfy the "owns property" requirement for venue. 72

In Lott, the plaintiff sued in Barnwell County, seeking damages stemming from an automobile accident. 73 On appeal, defendant Claussens challenged the verdict on the basis of improper venue. Claussens, "a foreign corporation duly domesticated in South Carolina [and] engaged in the bakery business," sold various baked goods to grocery stores throughout Barnwell County. 74 To assist in the promotion and distribution of its products, Claussens joined the South Carolina Bakers' Council. The Council owned bread racks in various grocery stores that it provided to members to display their products. The Council initially paid for and retained ownership of the racks, but Claussens later reimbursed the Council for its total cost. 75 Although Claussens was not in privity with any grocery stores in Barnwell County, the court concluded that Claussens "acquired a valuable and legally enforceable right" to use display racks throughout the county. 76 Furthermore, because the right was permanent and continuous in nature, the court determined that it constituted "owning property" for purposes of the venue test. 77

The most documented decision summarizing South Carolina's pre-2005 corporate venue jurisprudence is In re Asbestos Cases. 78 Combining the holdings of Miller and Lott, In re Asbestos Cases definitively explained that the residence of both foreign and domestic corporations for venue purposes included counties in which they owned property and transacted business. 79 The supreme court stated, "where there are different statutes in pari materia, though enacted at different times, and not referring to each other, they are to be taken and construed together as one system, and as explanatory of each other." 80 Applying this principle, the court concluded the venue statute and the service of process statute "obviously deal with the same general subject matter." 81 Therefore, "venue would be proper under the provisions of section 15-7-30, as augmented by [the service of process statute]." 82 Thus, domestic corporations were subject to venue in any county where they (1) maintained their "principal place of business," or (2) "maintain[ed] an

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70. Id. at 480, 163 S.E.2d at 616–17.
71. Id. at 482, 163 S.E.2d at 618.
72. Id. at 481–82, 163 S.E.2d at 617–18.
73. Id. at 480, 163 S.E.2d at 616.
75. Id. at 481, 163 S.E.2d at 617.
76. Id. at 482, 163 S.E.2d at 617.
77. Id. at 482, 163 S.E.2d at 617–18.
79. Id. at 426, 266 S.E.2d at 775.
80. Id. at 426, 266 S.E.2d at 775 (quoting Fishburne v. Fishburne, 171 S.C. 408, 410, 172 S.E. 426, 427 (1934)).
81. Id. at 426, 266 S.E.2d at 775.
82. Id. at 427, 266 S.E.2d at 775–76.
office and agent for the transaction of business,” or (3) “own[ed] property or transacted business.” 83 Foreign corporations were subject to venue in any county where they (1) “maintain[ed] an office and agent for the transaction of business,” or (2) “own[ed] property or transacted business.” 84

**B. Application of the Pre-2005 Venue Statute to Corporations Not Residing in Any South Carolina County**

In addition to being overbroad, South Carolina’s previous venue statute was facially deficient because it expressly gave plaintiffs unfettered discretion to select venue regarding certain foreign corporations. As discussed above, the courts determined that foreign corporations resided in any county where they (1) “maintain[ed] an office and agent for the transaction of business” or (2) “own[ed] property and transacted[ed] business.” 85 Under the above test, many foreign corporations that operated within the state failed to reside in any South Carolina county for venue purposes. In such scenarios, a provision of the pre-2005 venue statute allowed “the action [to] be tried in any county which the plaintiff shall designate in his complaint,” 86 regardless of the location of the underlying dispute or potential witnesses. This statutory provision failed to provide even the slightest restriction on venue selection and thus permitted legislatively-sanctioned forum shopping. 87

**C. Effects of South Carolina’s Previous Corporate Venue Methodology**

South Carolina’s pre-2005 venue statute and its judicial interpretation failed to provide adequate limitations on corporate venue and thereby ignored substantial competing interests in local adjudication. Both the broad interpretation of corporate residence and the statute’s application to non-resident corporations gave plaintiffs broad discretion in selecting fora. By interpreting “resides” to include “owns property and transacts business,” 88 the supreme court strayed from the plain

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84. Id. at 472, 609 S.E.2d at 294 (quoting Asbestosis Cases, 276 S.C. at 582, 281 S.E.2d at 114).
85. Id. at 472, 609 S.E.2d at 294 (quoting Asbestosis Cases, 276 S.C. at 582, 281 S.E.2d at 114).
87. When litigation simultaneously involved resident and non-resident corporate defendants, South Carolina’s pre-2005 venue statute expressly limited proper venue to counties in which the domestic corporation resided. Id. The South Carolina Supreme Court recognized a preference for venues appropriate for resident corporations over venues merely applicable to non-resident corporations. Planagan, supra note 21, at 623 (citing Asbestosis Cases at 426–33, 266 S.E.2d at 775–78).
88. See Asbestosis Cases, 276 S.C. at 582, 281 S.E.2d at 114.
meaning of this term\textsuperscript{89} and deprived corporate defendants of their right to be tried where they resided.

In addition, the unrestricted venue methodology disregarded the considerable interests of local courts and communities. First, the overly-broad venue standards exposed plaintiff-friendly courts to a flood of litigation lacking any real connection to the forum county. As discussed earlier, Hampton County maintained a caseload twice that of similarly-populated counties.\textsuperscript{90} Forty-one percent of those cases concerned incidents occurring outside of the county.\textsuperscript{91} Consequently, South Carolina's pre-2005 venue jurisprudence was damaging to judicial economy. Plaintiffs also often filed complaints in fora lacking any reasonable relationship to the underlying dispute, forcing disinterested local citizens to bear the burden of remote litigation while truly interested citizens lost their ability to monitor the proceedings.

IV. CASTING THE FIRST STONE: AN ANALYSIS OF \textit{Whaley v. CSX Transportation, Inc.}

After twenty-five years of applying an overly-extensive interpretation of the pre-2005 venue statute regarding corporate defendants, the South Carolina Supreme Court finally changed directions in \textit{Whaley}.\textsuperscript{92} The \textit{Whaley} court held that, for venue purposes, owning property and transacting business within a county is insufficient to establish that county as a residence for corporate defendants.\textsuperscript{93} In so holding, the court reverted to the earlier definition of "resides" and limited proper venue over foreign and domestic corporations to any county where "a defendant corporation . . . (1) maintains its principal place of business or (2) maintains an office and agent for the transaction of business."\textsuperscript{94}

In \textit{Whaley}, CSX Transportation employed the plaintiff, Danny Whaley, as a locomotive engineer.\textsuperscript{95} On May 20, 2000, Whaley was traveling on his typical route between Greenwood and Laurens, South Carolina, when he was overcome by stomach cramps and nausea.\textsuperscript{96} After paramedics transported Whaley to the local emergency room, a physician diagnosed him with heat exhaustion and dehydration.\textsuperscript{97} After a failed attempt to return to work, Whaley discovered he was unable to perspire when exerting himself, making it impossible for him to continue

\textsuperscript{89} See Webster's College Dictionary 1145 (1991) (defining "reside" as "to dwell permanently or for a considerable time; live"); see also Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992) (stating that "words used [in a statute] must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand its operation").

\textsuperscript{90} Amicus Brief of Product Liability Council, \textit{supra} note 8, at 6.

\textsuperscript{91} \textit{Judicial Hellholes, \textit{supra} note 7, at 21.}

\textsuperscript{92} 362 S.C. 456, 609 S.E.2d 286 (2005).

\textsuperscript{93} \textit{Id.} at 474, 609 S.E.2d at 295.

\textsuperscript{94} \textit{Id.} at 475, 609 S.E.2d at 296.

\textsuperscript{95} \textit{Id.} at 465, 609 S.E.2d at 290.

\textsuperscript{96} \textit{Id.} at 465, 609 S.E.2d at 291.

\textsuperscript{97} \textit{Id.} at 466, 609 S.E.2d at 291.
in his job. Nearly three years later, Whaley began experiencing shortness of breath and dizziness, prompting the installation of a pacemaker in his chest. Subsequently, Whaley filed a complaint against CSX in Hampton County, South Carolina, alleging that CSX negligently failed to provide a safe working environment.

The facts relevant to venue indicated that Hampton County had no relationship with the underlying dispute and a negligible connection to either party. CSX, a foreign corporation existing under Virginia law, maintained its principal place of business in Florida. CSX neither operated any offices nor maintained agents for the transaction of business in Hampton County. The plaintiff also had no apparent connection to Hampton County. Whaley’s family had resided in Abbeville County for nearly 250 years. Moreover, Whaley typically worked from a CSX facility in Greenwood County, and the alleged incident did not occur in Hampton County. Consequently, locating the trial in Hampton County was inconvenient for both parties. Although Greenwood County’s court was only thirteen miles from the plaintiff’s home, “Whaley’s lawyer filed [the] complaint six counties and 145 miles away in Hampton County, a jurisdiction generally perceived as favorable to plaintiffs.” Moreover, no witnesses identified by either party lived in Hampton County. One witness for the plaintiff even admitted in his deposition that conducting the trial in Hampton County would be inconvenient for him.

The trial court denied CSX’s motion to transfer venue, “finding that CSX was a resident of Hampton County because it owned property and transacted business in Hampton county.” In particular, CSX owned railroad tracks throughout the county and performed various hauling services for local businesses. The trial court also stated that CSX’s “substantial and continuous contacts” within the county further supported venue. Following a one-million-dollar verdict for Mr.

99. Id. at 467, 609 S.E.2d at 291.
100. Id. at 467, 609 S.E.2d at 291.
102. Id.
103. Brief of The American Tort Reform Association et al. as Amicus Curiae Supporting Appellant at 3, Whaley, 362 S.C. 456, 609 S.E.2d 286 (No. 01-CP-25-127) [hereinafter Amicus Brief of ATRA].
104. Whaley, 362 S.C. at 465, 609 S.E.2d at 291; see also Affidavit of Robert L. Love, Jr., supra note 101, at 1 (stating that “none of the alleged acts and/or omissions occurred in Hampton County”).
105. Amicus Brief of ATRA, supra note 103, at 3.
109. See Affidavit of Robert L. Love, Jr., supra note 101, at 1 (stating that CSX owned tracks in Hampton County); Transcript of Record at 5, Whaley, 362 S.C. 456, 609 S.E.2d 286, (No. 01-CP-25-127) (stating that CSX provided services such as “hauling materials or dropping cars at local facilities” in Hampton County).
110. Whaley, 362 S.C. at 473, 609 S.E.2d at 295.
Whaley, CSX appealed the trial court’s venue determination, and the supreme court granted certiorari. Subsequently, the supreme court reversed the trial court’s ruling and determined that “CSX [did] not reside in Hampton County for purposes of venue, and therefore the case should not have been tried in Hampton County.”

In reaching its conclusion, the supreme court first held “the ‘owns property and transacts business’ test is no longer a viable test for determining whether venue is proper.” The test originated when prior opinions relied on language from a service of process and personal jurisdiction statute to interpret the term “resides” within the venue statute. One of those decisions had recognized the statutory construction principle that “[w]here there are different statutes in pari materia, though enacted at different times, and not referring to each other, they are to be taken and construed together as one system, and as explanatory of each other.” In pari materia refers to principles dealing with similar subjects or “relating to the same matter.” Thus, the pre-Whaley venue cases, without providing any justification, presumed that personal jurisdiction and venue concerned the same subject matter.

The court in Whaley determined that the doctrines of personal jurisdiction and venue are not analogous, and that previous decisions incorrectly interpreted the respective statutes as complementary. There are several distinctions between the two. First, personal jurisdiction is a substantive right granted to a defendant and grounded in the Due Process Clause of the Fourteenth Amendment, while venue is a procedural choice based entirely on the convenience of the parties. Second, a motion alleging improper venue does not preserve the issue of personal jurisdiction. Thus, “if the defendant merely challenges venue, without asserting the affirmative defense of personal jurisdiction . . . then the defendant has effectively consented to the district court’s personal jurisdiction.” Finally, a court can obtain personal jurisdiction over a properly served defendant without having

111. Id. at 467, 609 S.E.2d at 291–92.
112. Id. at 484, 609 S.E.2d at 300–01.
114. Id. at 474, 609 S.E.2d at 295.
116. BLACK’S LAW DICTIONARY 807 (8th ed. 2004); see also Joiner v. Rivas, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000) (stating that “statutes dealing with the same subject matter are in pari materia and must be construed together, if possible, to produce a single, harmonious result”).
117. Whaley, 362 S.C. at 474, 609 S.E.2d at 295.
118. See Int’l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) ("[D]ue process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’") (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940))).
119. 77 AM. JUR. 2D Venue § 1 (1997).
121. Id.
proper venue over that defendant.\textsuperscript{122} Because jurisdiction and venue clearly address different concepts, South Carolina courts should not interpret them jointly.\textsuperscript{123}

The United States Supreme Court, applying a similar analysis to that of the \textit{Whaley} court, has refused to mesh the concept of venue with personal jurisdiction principles. For example, in \textit{Robertson v. Railroad Labor Board}\textsuperscript{24} the Court specifically distinguished venue from personal jurisdiction. The \textit{Robertson} Court explained: "It is obvious that jurisdiction, in the sense of personal service within a district where suit has been brought, does not dispense with the necessity of proper venue. It is equally obvious that proper venue does not eliminate the requisite of personal jurisdiction over the defendant."\textsuperscript{125} Many state courts follow a similar line of reasoning.\textsuperscript{126} In \textit{State ex rel. Pagliara v. Stussie},\textsuperscript{127} the Missouri Court of Appeals held the interpretation of "agent" in the state's venue statute should not be governed by the definition of that term contained in the service of process statute.\textsuperscript{128} Consequently, the court refused to interpret the venue statute by relying upon the service of process statute.\textsuperscript{129}

The \textit{Whaley} court buttressed its argument for invalidating the "owns property and transacts business" test on the fact that there was no longer a statutory basis for imposing the test.\textsuperscript{130} In 1981, the South Carolina General Assembly amended the service of process statute.\textsuperscript{131} The amended version, which applied only to domestic corporations, read as follows:

(a) The registered agent appointed by any domestic corporation shall be the agent of such corporation for service of any process, notice, or demand required or permitted by law to be served, and such service shall be binding upon the corporation.

(b) Whenever a corporation shall fail to appoint or maintain a registered agent in this State, or whenever its registered agent cannot with reasonable diligence be found at the registered office, the Secretary of State shall be an agent of such

\begin{itemize}
\item \textsuperscript{122} Whaley v. CSX Transp., Inc., 362 S.C. 456, 474, 609 S.E.2d 286, 295 (2005); see also WRIGHT, supra note 31, §3801 (declaring that if venue is improper, the action cannot be heard in that court although jurisdiction exists).
\item \textsuperscript{123} \textit{Whaley}, 362 S.C. at 474, 609 S.E.2d at 295.
\item \textsuperscript{124} 268 U.S. 619 (1925).
\item \textsuperscript{125} \textit{Id.} at 623.
\item \textsuperscript{126} See Swain, supra note 27, at 236 (asserting that a minority of states equate venue principles with the test for personal jurisdiction).
\item \textsuperscript{127} 549 S.W.2d 900 (Mo. Ct. App. 1977).
\item \textsuperscript{128} \textit{Id.} at 903. The court determined the standard definition for agent, ""a person authorized by another to act for him, one intrusted with another's business,"" sufficiently applied for purposes of venue. \textit{Id.} (quoting BLACK'S LAW DICTIONARY 85 (4th ed. 1968)). In contrast, the service of process statute relied on the more restrictive definition of a general agent. \textit{Id.}
\item \textsuperscript{129} \textit{Id.}
\item \textsuperscript{130} Whaley v. CSX Transp., Inc., 362 S.C. 456, 474, 609 S.E.2d 286, 295 (2005).
\item \textsuperscript{131} \textit{Id.} at 472, 609 S.E.2d at 294.
\end{itemize}
corporation upon whom any such process, notice, or demand may be served.\textsuperscript{132}

The amended statute omitted any mention of personal jurisdiction, and, more importantly, removed any reference to the ownership of property and transaction of business.\textsuperscript{133} Therefore, even if \textit{Whaley} had not held that previous courts incorrectly relied upon the previous service of process statute in creating the "owns property and transacts business" test, the \textit{Whaley} court concluded that no statutory basis for the test remained after 1981.\textsuperscript{134}

Although the \textit{Whaley} decision was quickly superseded by legislation, it still has a significant effect on South Carolina law. The supreme court decided \textit{Whaley} on February 2, 2005,\textsuperscript{135} and the legislature did not enact the new venue statute until July 1, 2005.\textsuperscript{136} Therefore, \textit{Whaley} governs venue for all civil actions filed during that five-month interval.\textsuperscript{137} \textit{Whaley}'s invalidation of the "owns property and transacts business" test also substantially reduced the number of potential venue options available to plaintiffs suing corporate defendants. The decision immediately reduced the potential for forum shopping and provided better protection of a corporate defendant's right to be tried in the county where it truly resides. However, \textit{Whaley} could potentially have an adverse effect on certain foreign corporations. Because \textit{Whaley} narrowed the definition of "resides" for venue purposes, fewer foreign corporations will meet the residency requirements in South Carolina counties. Therefore, during the five-month period in which \textit{Whaley} controls venue, more foreign corporations will qualify as non-residents and will be subject to the pre-2005 statutory provision, allowing plaintiffs unfettered discretion to select a county in which to sue non-resident foreign corporations.\textsuperscript{138}

V. THE KNOCK-OUT PUNCH: SOUTH CAROLINA'S NEW VENUE STATUTE

Several months after the supreme court decided \textit{Whaley}, the South Carolina Legislature amended section 15-7-30 of the South Carolina Code, eliminating the pre-2005 venue statute's deficiencies and establishing adequate restrictions on


\textsuperscript{134} \textit{Whaley}, 362 S.C. at 472, 609 S.E.2d at 295.

\textsuperscript{135} \textit{Id.} at 456, 609 S.E.2d at 286.

\textsuperscript{136} \textit{See} S.C. CODE ANN. § 15-7-30 (2005).

\textsuperscript{137} White et al., \textit{supra} note 11, at 31.

\textsuperscript{138} S.C. CODE ANN. § 15-7-30 (2005) (amended 2005) (stating that "[i]f none of the parties shall reside in the State the action may be tried in any county which the plaintiff shall designate in his complaint" (emphasis added)).
corporate venue. The amended venue statute became effective on July 1, 2005, as a part of the Economic Development, Citizens, and Small Business Protection Act of 2005. Unlike the previous venue statute, the new section 15-7-30 provides comprehensive definitions for all essential terms and more effectively promotes the rights of corporate defendants and the convenience of all interested parties.

A. Time Considered to Determine Proper Venue

The first significant change enacted by the new venue statute concerns the time period the courts consider when determining venue. The previous venue statute based the determination of venue on circumstances existing "at the time of the commencement of the action," while the new statute bases the determination of venue on circumstances existing "at the time the cause of action arose." Although the change appears subtle, it can substantially affect both trial strategy and the rights of corporate defendants. For instance, determining venue based on the circumstances existing "at the time the cause of action arose" can significantly reduce post-incident maneuvering by both parties. The statute of limitations in South Carolina for tort and contract actions is three years. Within that time period, market and economic developments could influence corporate defendants to reposition or expand the location of their business. By determining venue "at the time the cause of action arose," the new venue statute prevents plaintiffs from waiting three years in hopes the corporate defendant will enter a plaintiff-friendly venue. Moreover, the statutory change prevents corporate defendants from attempting to avoid litigation in uninviting counties by withdrawing their presence from those counties after a cause of action arises.

However, in some situations, basing venue on the circumstances existing "at the time the cause of action arose" could hinder a corporate defendant's right to be tried in the county of its current residence. Many corporations may decide to relocate their businesses due to various market forces within the three years provided by the statute of limitations. In that scenario, venue would be proper in the county where the defendant previously resided, but not in the county of its current residence. As a result, plaintiffs could force corporate defendants into distant courts having little or no connection with their current location.

143. Id.
146. Id.
B. Bases for Determining Proper Venue

The most significant modification to South Carolina's venue statute concerns the bases upon which courts determine proper venue. The pre-2005 version of the venue statute established venue in any county where a corporate defendant "resides." In contrast, the amended statute provides specific, well-defined, and limited bases for establishing proper venue for both foreign and domestic corporations. The amended statute establishes separate and distinct bases for determining venue depending on the nature of the corporation. Consequently, the new statutory provision cures the inherent ambiguity and over-breadth of the previous venue statute and more effectively protects the rights of corporate defendants.

1. Application to Domestic Corporations

As applied to domestic corporations, the new venue statute limits the number of available fora and effectively promotes the convenience of the parties. The relevant portion of the statute states:

(E) A civil action tried pursuant to this section against a domestic corporation . . . must be brought and tried in the county in which the:

(1) corporation . . . has its principal place of business at the time the cause of action arose; or
(2) most substantial part of the alleged act or omission giving rise to the cause of action occurred.

Thus, the first basis upon which the new statute predicates proper venue is the corporation’s principal place of business. To avoid ambiguity, the new venue statute expressly defines a corporation’s principal place of business:

(10) “Principal place of business” means:
(a) the corporation’s home office location within the State from which the corporation’s officers direct, control, or coordinate its activities;
(b) the location of the corporation’s manufacturing, sales, or purchasing facility within the State if the corporation does not have a home office within the State; or
(c) the location at which the majority of corporate activity takes place if the corporation has multiple
offices . . . located within the State if the corporation does not have a home office within the State and has more than one . . . facility within the State. The following factors may be considered when determining the location at which the majority of corporate activity takes place:

(i) the number of employees located in any one county;
(ii) the authority of the employees located in any one county; or
(iii) the tangible corporate assets that exist in any one county.\textsuperscript{151}

The definition of “principal place of business” ensures a plaintiff cannot select a forum for purely self-serving motives and deprive a domestic corporation of its right to be tried where it resides. Although the statute provides three alternatives for defining the “principal place of business,” each subsequent alternative is predicated on the non-existence of the preceding condition. For example, subsection (b) defines “principal place of business” as “the location of the corporation’s . . . facility within the State.”\textsuperscript{152} However, subsection (b) applies only “if the corporation does not have a home office within the State.”\textsuperscript{153} The vast majority of domestic corporations, by definition, will maintain a home office within South Carolina and will be subject to venue only in that county. Therefore, the definition of “principal place of business” substantially limits plaintiffs’ forum options regarding domestic corporations.

Additionally, the new venue statute fundamentally adopts the \textit{Whaley} holding, thus providing a second layer of protection against forum shopping.\textsuperscript{154} Subsection H of the venue statute expressly declares that “[o]wning property and transacting business in a county is insufficient in and of itself to establish the principal place of business for a corporation for purposes of this section.”\textsuperscript{155} However, the statutory definition of principal place of business effectively precludes application of the “owns property and transacts business” test, rendering subsection H technically unnecessary. The state legislature therefore considered the \textit{Whaley} rule sufficiently essential to the fair administration of justice as to warrant codification. Moreover, by expressly repealing the previous judicially-created test, the legislature has avoided any potential for confusion in the application of the “principal place of business” definition.

The new venue statute also allows a plaintiff to sue domestic corporations, as well as individual defendants, in the county where the “most substantial part of the

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\item \textsuperscript{151} \textit{Id.} § 15-7-30(A)(10).
\item \textsuperscript{152} \textit{Id.} § 15-7-30(A)(10)(b).
\item \textsuperscript{153} \textit{Id.}
\item \textsuperscript{154} \textit{S.C. Code Ann.} § 15-7-30(H) (Supp. 2005).
\item \textsuperscript{155} \textit{Id.}
\end{itemize}
alleged act or omission giving rise to the cause of action occurred.\textsuperscript{156} Unfortunately, the statute provides no basis for determining where the most substantial part of the underlying dispute transpired.\textsuperscript{157} Naturally, plaintiffs and defendants will often interpret the provision differently, which may result in confusion and litigation. Nevertheless, the application of the phrase "most substantial part" should be straightforward in most scenarios. The language contemplates fora possessing a close relationship to the underlying dispute, and therefore eliminates locations having only a minimal or remote connection to the events. Consequently, fora selected under the new venue provision should better promote the convenience of witnesses and the interests of local communities.

2. Application to Foreign Corporations Possessing a Certificate of Authority

The bases for establishing venue in suits against foreign corporations "required to possess and possessing a certificate of authority"\textsuperscript{158} are nearly identical to the bases for establishing venue in suits against domestic corporations. The provision controlling venue over foreign corporations with certificates of authority states:

(F) A civil action tried pursuant to this section against a foreign corporation required to possess and possessing a certificate of authority under the provisions of Section 33-15-101 et seq. . . . must be brought and tried in the county in which the:

(1) most substantial part of the alleged act or omission giving rise to the cause of action occurred; or
(2) foreign corporation . . . has its principal place of business at the time the cause of action arose.\textsuperscript{159}

While the provisions concerning domestic and foreign corporations appear similar, the application of the "principal place of business" test to foreign corporations will differ substantially from the test's application to domestic businesses.\textsuperscript{160} Foreign corporations are less likely to maintain a home office within South Carolina. Therefore, the principal place of business for foreign corporations will typically be where the corporation maintains a "manufacturing, sales, or purchasing facility."\textsuperscript{161}

Additionally, the new venue statute provides detailed guidance for determining which facility controls venue because many foreign corporations operate multiple facilities within the state. When a corporation maintains several facilities, the corporation's principal place of business is "the location at which the majority of

\textsuperscript{156} Id. \ § 15-7-30(C)(2), (D)(1), (E)(2), (F)(1), (G)(1).
\textsuperscript{157} Id. \ § 15-7-30(E)(2).
\textsuperscript{158} Id. \ § 15-7-30(F).
\textsuperscript{159} Id.
\textsuperscript{160} See S.C. CODE ANN. \ § 15-7-30(A)(10) (Supp. 2005).
\textsuperscript{161} Id. \ § 15-7-30(A)(10)(b).
corporate activity takes place.” To avoid unnecessary complexity or ambiguity, the statute provides three factors for courts to consider when making this determination: “(i) the number of employees . . . ; (ii) the authority of the employees . . . ; or (iii) the tangible corporate assets that exist in each county.”

Undeniably, opposing litigants will likely dispute the application of the factors and particularly the weight given to each. Nevertheless, the new venue statute still provides more guidance and more practical limitations on corporate venue than the pre-2005 venue statute. For example, by establishing venue in the county where “the majority of corporate activity takes place,” the new statute should prohibit plaintiffs from bringing suit in counties where foreign corporations maintain a relatively minor presence. Therefore, the amended provisions more effectively protect the rights of corporate defendants to be tried in the county where they reside.

Another noteworthy distinction between the statute’s treatment of foreign corporations possessing a certificate of authority and domestic corporations is the order in which the statute lists the different options for determining proper venue. Unlike the domestic corporations provision, the provision governing foreign corporations possessing a certificate of authority places the “most substantial part of the alleged act or omission” option before the “principal place of business” option. Although the statute provides no rationale for the difference, the change itself indicates a legislative preference for establishing venue in suits against foreign corporations where the underlying dispute occurred.

One potential explanation for the distinction lies in the inherent differences between domestic and foreign corporations. The likelihood of foreign companies maintaining a home office or residing in the traditional sense within South Carolina is much less than that of domestic corporations. Consequently, foreign corporations potentially have a diminished right to be tried in the county where they reside. Therefore, favoring the county where the most substantial part of the underlying incident occurred prioritizes the interests of local witnesses and communities ahead of foreign corporations.

162. Id. § 15-7-30(A)(10)(c)(i)–(iii).
163. Id.
164. Id. (emphasis added).
166. Id. § 15-7-30(E)–(F).
3. Application to Foreign Corporations Lacking a Certificate of Authority

The new venue statute distinguishes between foreign corporations that have a certificate of authority and those that do not. The provision governing the latter states:

(G) A civil action tried pursuant to this section against a foreign corporation, except a foreign corporation described in subsection (F) . . . must be brought and tried in the county in which the:

(1) most substantial part of the alleged act or omission giving rise to the cause of action occurred;
(2) plaintiff resides at the time the cause of action arose, or if the plaintiff is a . . . corporation, . . . at its principal place of business at the time the cause of action arose; or
(3) foreign corporation . . . has its principal place of business at the time the cause of action arose.

Subsections (G)(1) and (G)(2) have the same implications—and application—as the provision governing foreign corporations possessing a certificate of authority. However, subsection G includes one noteworthy distinction. Unlike other foreign corporations, those without a certificate of authority are subject to venue where an individual plaintiff resides or where a corporate plaintiff maintains its principal place of business. One explanation for the distinction is that South Carolina law does not require foreign corporations to obtain certificates of authority if they maintain a minor presence or transact minimal business in the state. For those corporations, all South Carolina counties will likely be equally convenient—or inconvenient—as potential fora for litigation. Furthermore, some foreign corporations transact business in South Carolina without authorization, even though they are required to obtain a certificate of authority. The statute thus reflects the policy that corporations refusing to adhere to the laws of the state should also have less protection under the laws of the state. Thus, in suits against foreign corporations lacking a certificate of authority, the new venue statute appropriately places a plaintiff’s interest in a convenient forum ahead of a defendant’s right to be tried where it resides.

167. Id. §15-7-30(F), (G). Foreign corporations described in subsection (F) are those “required to possess and possessing a certificate of authority.” Id. § 15-7-30(F). Since subsection (G) explicitly applies to foreign corporations not covered by subsection (F), subsection (G) logically applies to foreign corporations not required to possess or not possessing a certificate of authority.
168. Id. § 15-7-30(G) (emphasis added).
VI. THE OVERALL EFFECTS OF SOUTH CAROLINA’S NEW CORPORATE VENUE METHODOLOGY

Corporations and legal professionals throughout South Carolina should not underestimate the far-reaching effects of Whaley and the amended section 15-7-30. In particular, the new venue statute has revamped the judicial landscape for civil litigation involving corporate defendants. Although its full impact cannot be immediately appreciated, the statute represents a victory for foreign and domestic corporations looking to conduct business and receive fair trials in South Carolina.

One of the principal benefits of the new venue statute is its relative clarity and specificity. Unlike the previous statute—which was fraught with ambiguity—the amended statute provides straightforward bases for determining proper venue and adequately defines all necessary terms. South Carolina courts can expect a substantial decrease in litigation regarding venue issues in suits against corporate defendants. Additionally, the unambiguous nature of the new venue statute should greatly benefit corporate defendants. Not only will corporations save litigation costs, but they can also operate their businesses in South Carolina without the uncertainty—and fear—of being forced to litigate in distant and unfriendly courts.

Second, the recent changes to South Carolina’s venue jurisprudence will significantly reduce forum shopping by plaintiffs. Under the pre-2005 venue statute and its subsequent interpretation, South Carolina amassed an embarrassing record regarding venue selection in suits involving corporate defendants. Michael Freedman, in an article for Forbes magazine, remarked, “Most states don’t allow this kind of forum shopping.”170 In particular, many tort reform proponents often mention Hampton County as a mecca for forum shopping plaintiffs. The county maintains a caseload nearly twice that of other counties with comparable populations.171 Assuredly, Hampton County’s caseload is not merely the result of an accident-prone population—non-resident plaintiffs file sixty-seven percent of lawsuits in Hampton County, and forty-one percent of the cases involve events occurring outside of the county’s borders.172

Fortunately, the new venue statute provides significant limitations on the number of potential venues for a given action and thereby reduces forum shopping. Now, both domestic and foreign corporations can anticipate suits only in counties having a substantial connection to the underlying dispute or to the corporation itself. Local courts and communities will also benefit from the narrower venue standards because local citizens and courts will no longer have to bear the burden of litigation unrelated to the local community. Plaintiff-friendly courts can expect lighter caseloads, fewer cases having little or no connection to the locality, and, therefore, easier access to crucial evidence. Overall, the reduction of forum shopping will undoubtedly make civil litigation in South Carolina more efficient for all interested parties.

170. Freedman, supra note 1, at 75.
171. Amicus Brief of Product Liability Council, supra note 8, at 6.
Most importantly, the recent changes to corporate venue should promote business development in South Carolina. South Carolina boasts the nation's sixth highest unemployment rate,173 and the Bureau of Economic Analysis ranked South Carolina forty-third out of fifty states in per capita income.174 In addition, the United States Chamber of Commerce Institute for Legal Reform "ranked South Carolina's liability system fortieth of the fifty states overall."175 Although the previous venue laws certainly were not the only basis for South Carolina's stagnant economy, they certainly did not encourage economic growth. Such negative publicity alone is detrimental to the state's economy. And fear of inconvenient fora and excessive verdicts could influence foreign corporations to avoid South Carolina completely, while domestic corporations may refuse to expand their existing operations into other counties.176

In particular, overly broad venue provisions are detrimental to the counties in the greatest need of economic stimuli. For example, Hampton County "is the tenth poorest of South Carolina's 46 counties"177 and maintains an unemployment rate of 7.8%, nearly 1.8% above the state average.178 In 2000, Walmart developed plans to open a retail facility in Hampton County but, following discussions with counsel, scrapped its plans and never built at that location.179

The amended venue statute should diminish the concerns of foreign and domestic corporations and help jump-start economic development throughout the state. The state legislature enacted the new venue statute as part of the Economic Development, Citizens, and Small Business Protection Act of 2005.180 The title alone implies that the South Carolina Legislature considered changes in the venue law essential to the economic development of the state. The significant reduction in forum shopping will increase corporate confidence in the state's judicial system and should spark economic growth.181 Corporations will be able to develop new or expand existing operations throughout South Carolina without fear of subjecting to an unjust judicial system. Consequently, foreign and domestic corporations are not the only parties that stand to benefit from the recent amendments to corporate venue. South Carolina workers can also look forward to better job opportunities and a more stable economic environment.

173. Amicus Brief of ATRA, supra note 103, at 21 (citation omitted).
175. Amicus Brief of ATRA, supra note 103, at 23 (citation omitted).
176. See id. at 23-24 (quoting Cindi Ross Scoppe, Editorial, There's a Lot More to Tort Reform than Arbitrary Caps (Thank Goodness), THE STATE, Sept. 23, 2003, at A8 ("[W]hen the fear of litigation ... starts affecting business decisions, it starts affecting our already-struggling economy.").
177. Freedman, supra note 1, at 76.
178. Id.
179. Id.
181. Amicus Brief of Product Liability Council, supra note 8, at 25 (stating that jury shopping "creates the impression that law and jurors can be manipulated to give unfair advantages to certain parties").
VII. CONCLUSION

The forum chosen for the adjudication of a cause of action can significantly affect the outcome of the dispute and convenience of the parties. Unfortunately for corporate defendants, South Carolina’s pre-2005 venue statute and its broad judicial interpretation allowed plaintiffs unfettered discretion to haul corporations into burdensome, plaintiff-friendly courts. However, South Carolina’s recent attempts to “curb ‘the abuses engendered by this extensive venue’”\(^\text{182}\) have met their mark. The South Carolina Supreme Court’s decision in *Whaley* overturned an erroneous and overly-broad interpretation of the pre-2005 venue statute and protected corporate defendants’ right to be tried where they truly reside. More importantly, the new venue statute effectively eliminates forum shopping and provides corporate defendants with confidence to transact business freely throughout the state. South Carolina’s new venue jurisprudence should help stimulate the state’s economy and fulfill the true purpose of venue: promoting the convenience of all litigants.

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