



COOK COUNTY ASBESTOS LITIGATION CONFERENCE

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RECENT COOK COUNTY LAWS, DECISIONS AND RULINGS



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Cases filed Pre-ILSB328 (before August 15, 2025)



- Need to know when the case originally filed.
- Argue that ILSB328 can't be applied retroactively. No language in statute that it applies to cases filed prior to August 15, 2025)

Cases filed Post-August 15, 2025



- Illinois Senate Bill 328 significantly expands the circumstances in which a court may exercise general personal jurisdiction over an out-of-state corporation. Specifically, the law states that—in cases alleging exposure to hazardous substances (including asbestos) only—a foreign corporation consents to general jurisdiction in Illinois by either:
 - 1) Registering to do business in the state; or
 - 2) Transacting business in the state (even when it has not registered).

“Registering to Do Business”



- *Aspen American Insurance Co. v. Interstate Warehousing, Inc.*, 2017 IL 121281- Held that in the absence of any language to the contrary, the fact that a foreign corporation has registered to do business under the Act does not mean that the corporation has thereby consented to general jurisdiction over all causes of action, including those that are completely unrelated to the corporation's activities in Illinois.
- *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023). Mallory answered question of whether federal due process clause prohibits a State from requiring an out of state corporation to consent to personal jurisdiction to do business there.

“Transacting Business” defined



- What is considered “transacting business” has not been defined by the Illinois Legislature, but the Illinois Legislature has defined what is not considered transacting business. Under 805 ILCS 5/13.75 the following activities are not to be considered transacting business under Illinois law:
 - maintaining, defending, or settling any proceeding;
 - holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;
 - maintaining bank accounts;
 - maintaining offices or agencies for the transfer, exchange, and registration of the corporation’s own securities or maintaining trustees or depositaries with respect to those securities;
 - selling through independent contractors;
 - soliciting or obtaining orders whether by mail or through employees or agents or otherwise, if orders require acceptance outside this State before they become contracts;
 - Owning, without more, real, or personal property;
 - Conducting an isolated transaction that is completed within 120 days and that is not one in the course of repeated transactions of a like nature; or
 - Having a corporate officer or director who is a resident of this State.

Defense Arguments why SB328 Unconstitutional



- Violates Article IV Section 8 of IL Constitution because “[a] bill shall be read by title on three different days in each house.” Ill. Const. 1970, art. IV, § 4(d) (the “Three Readings Rule”). It was not read on three different days.
- Violates Article 4 section 13 of the Illinois Constitution- The Illinois Constitution’s “Special Legislation Clause” prohibits the creation of laws that grant a specific individual or group a privilege or a benefit that the law withholds from others. See Ill. Const. 1970, art. IV, § 13 (“The General Assembly shall pass no special or local law when a general law is or can be made applicable”)
- Violates the Dormant Commerce Clause by imposing an undue burden on out-of-state businesses. Specifically, it subjects those defendants to lawsuit exposure for injuries that may have no meaningful connection to Illinois

Plaintiff Arguments why SB328 is Constitutional



- US Supreme Court in *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023) says so. How is the Illinois statute different than Mallory?
- Illinois' statute is narrower in scope than PA's statute at issue in Mallory. PA's statute applies broadly to any registered corporations are subject to general jurisdiction. SB328 applies to narrower category of claims.
- Jurisdiction based on *consent* and not *contacts*. Courts routinely rule that PJ is waivable and enforce forum-selection clauses, arbitration clauses, and contractual consent-to-jurisdiction provisions. If you want to do business in Illinois you consent to its jurisdiction pursuant to SB328.
- *International Shoe* and *Daimler* limit jurisdiction based on contacts. *Mallory* is a different analysis since it must be analyzed under *consent*.
- SB 328 is constitutional because personal jurisdiction is a waivable due-process right, and under *Mallory*, Illinois may require a foreign corporation that voluntarily registers to do business in the state to consent to jurisdiction as a condition of that registration.

Recent Cases Discussion



- *Toles v. Mead Johnson*, 2025 IL App (5th) 231205
 - NEC infant formula case involving Illinois exercising jurisdiction over Plaintiffs exposed in other jurisdictions.
 - Enough relationship between Mead Johnson and Illinois to exercise jurisdiction for the out of state Plaintiffs.
 - Analyzed under traditional PJ case law (*Ford*, *Bristol-Meyers Squibb*, etc.)
- *Fichtner v. Mercedes-Benz USA, LLC* (25 L 002494)
 - Discussing *Ford* and *Toles*.
 - Illinois resident exposed to asbestos from her husband's work in other jurisdictions.
 - Order denying Defendant's PJ motion, sufficient contacts with the forum jurisdiction to satisfy specific jurisdiction.
- *Jimenez v. J&J* (23 L 11613)
 - Motion to Compel genetic testing pursuant to Rule 215.
 - *Cowger v. Qualitex* analyzed this, Qualitex seeking full genomic panel. Here they seek 25 enumerated genes to locate any PV's.
 - Denied motion to compel genetic testing

Cook County Asbestos Litigation Conference – Consent Jurisdiction

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Retroactivity Analysis

- Focus on Legislative Intent – See *Perry v. Department of Financial and Professional Regulation*, 2018 IL 122349 (May 24, 2018) citing *Landgraf v. USI Film Products*, 511 U.S. 244 (1994)

Step One: Intent for Retroactive Application?

- No express intent = presumption that amended statute is not to be retroactively applied

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- 735 ILCS 5/2-209 (b)(5) – Effective August 15, 2025

A court may exercise general **jurisdiction** in any action arising within or without this State against any person who...

(5) Is a foreign business corporation that has **consented** to general **jurisdiction** in this State in accordance with subsection (b) of Section 13.20 or subsection (c-5) of Section 13.70 of the Business Corporation Act of 1983, but only if (i) the action alleges injury or illness resulting from exposure to a substance defined as toxic under the Uniform Hazardous Substances Act of Illinois, whether the cause of action arises within or without this State, and (ii) **jurisdiction** is proper as to one or more named co-defendants under subsection (a) of this Section

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- 805 ILCS 5/13.20 – Business Corporation Act of 1983

(a) Upon the filing of the application for authority by the Secretary of State, the corporation shall have the right to transact business in this State for those purposes set forth in its application, subject, however, to the right of this State to revoke such right to transact business in this State as provided in this Act.

(b) A corporation that obtains or continues to maintain the right to transact business in this State consents to the exercise of general jurisdiction by the courts of this State in accordance with paragraph (5) of subsection (b) of Section 2-209 of the Code of Civil Procedure.

A corporation consents to general jurisdiction in accordance with paragraph (5) of subsection (b) of Section 2-209 of the Code of Civil Procedure upon registering to do business in this State at any time following the effective date of this amendatory Act of the 104th General Assembly.

A corporation that has previously registered to do business in this State consents to general jurisdiction in accordance with paragraph (5) of subsection (b) of Section 2-209 of the Code of Civil Procedure upon the next date after the effective date of this amendatory Act of the 104th General Assembly on which the filing of its annual report in accordance of Section 14.05 is due, regardless of whether or not it then files its annual report.

Consent to such general jurisdiction terminates upon, and only upon, formal withdrawal from this State.

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- 805 ILCS 5/13.70 – Business Corporation Act of 1983

(c-5) A foreign corporation that transacts business in this State without authority is deemed to have consented to general jurisdiction in accordance with subsection (b) of Section 13.20 to the same extent as if it were registered to do business in this State. Consent to such general jurisdiction commences upon committing an act constituting the transaction of business in this State without authority at any time after the effective date of this amendatory Act of the 104th General Assembly and remains effective for 180 days following the committing of each and every such act.



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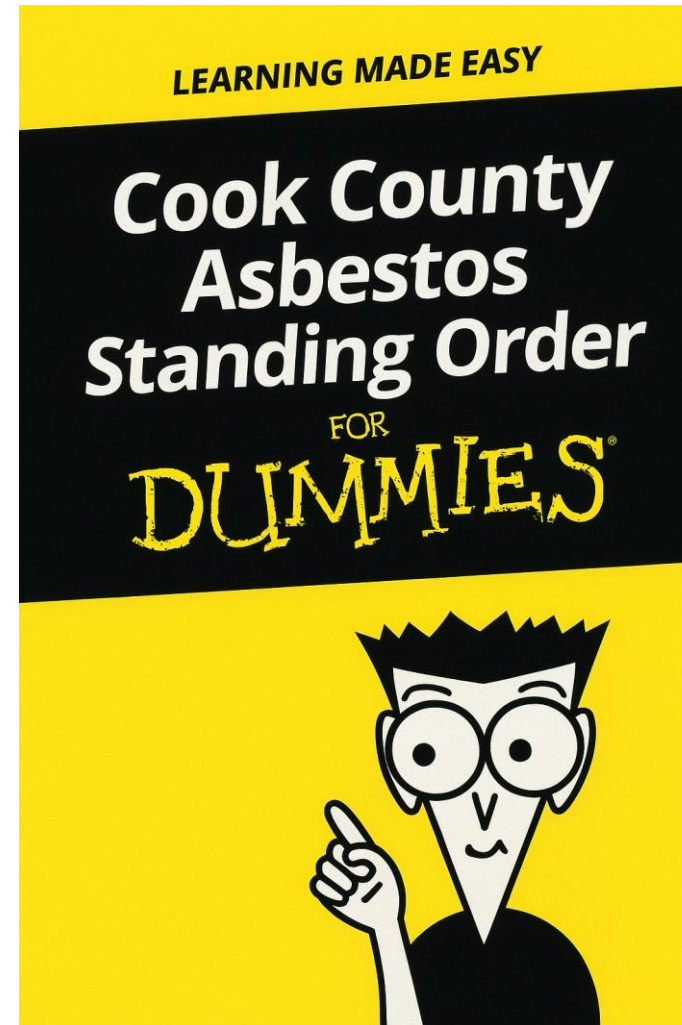
What Does the Future Hold For Out-Of-State Defendants?



Cook County Asbestos Standing Order for Dummies

Overview & Context

- Work in progress for decades
 - Amended several times over decades
 - Goal to streamline asbestos litigation
 - Make clear, uniform rules that all know and





Initial Obligations – Both Sides

Plaintiff Obligations

- Provide
 - Executed authorizations,
 - Answers to interrogatories,
 - Responses to requests for production,
 - Social Security records
 - and all medical records in their possession.

Defendant Obligations

- General answers to master defendant discovery
 - Required for all defendants (if requested)



Practical Considerations on Discovery

- Initial obligations are clear and easily met by both sides
- Ongoing obligation to supplement
- Any case-specific discovery issued by plaintiff—defendants get 60 days minimum to respond
- Need to make efforts to resolve these discovery disputes without court intervention

Routine Motions & J1 Logistics



- Routine Motions

- Examples

- Non-exhaustive
 - Leave to file appearance/respond late
 - Leave to amend the complaint
 - Motions for voluntary/agreed dismissals
 - Motions for good faith finding of settlement

- Mechanisms to object to any of these
 - If you put these on the motion call hearing list—you look bad

- Logistics of Cook County J1

- Every Tuesday at 130

- Court is devoting significant time to our docket

- Google docket sheet with pending motions

- Folder in the google doc sheet for your courtesy copies

- Deadlines to add motion to list and submit courtesy copies



Key Timing Deadlines (Pre-Trial)

Plaintiff Witnesses

- f(1) fact/exposure witnesses:
 - Produced **165 days before trial**
 - What about disclosed f(1)s not represented by plaintiff
 - Deadline?
 - Whose obligation?
- f(3) controlled experts:
 - Produced **105 days before trial (if requested)**
 - Does a request by one defendant cover all defendants?



Key Timing Deadlines (Pre-Trial) cont.

Defense Witnesses

- F(3) disclosures :
 - **90 days before trial**
 - **Provide identity and “expected testimony”**
- F(3) depositions:
 - **60 days before trial**
- **Defense Case-Specific Expert reports??**
 - No requirement for formal expert reports
 - Must disclose:
 - Identity
 - Expected testimony
 - Later reports allowed if:
 - Consistent with prior disclosures



Lesser Known Parts of Standing Order

- Supplemental discovery issued on Defendants
 - Standing order says 60 days minimum to respond
- Notice Requirement
 - Standing order says use File&Serve
 - Exceptions
- Plaintiff needs leave of Court and to show good cause to amend f(1)s
- If an f(1) is not disclosed against your defendant, you do not need to attend the deposition
- Plaintiffs are to provide all medical records in their possession
- Pretrial settlement conferences always an option
 - Both parties agree
 - Court will facilitate
- Punitive damages
 - Not later than 60 days



Motion Practice Deadlines

- Notable—Motion for Summary Judgment
 - Filing deadline:
 - **60 days before trial**
 - Response:
 - **14 days before trial**
 - Reply:
 - **7 days after response**
- Recommendations on when to file/notice up forum, application of foreign law, other important non-dispositive motions?