

IN THE SUPREME COURT OF THE STATE OF OREGON

RICHARD A. KOHRING AND)
KERSTIN KOHRING,) Multnomah County Circuit Court
) Case No. 1111-14966
Plaintiffs-Adverse Parties,)
) Supreme Court No. S _____
v.)
) MANDAMUS PROCEEDING
JAMES C. BALLARD, MD, and)
OREGON ORTHOPEDIC &)
SPORTS MEDICINE CLINIC, LLP)
)
Defendants-Relators.)

OREGON ASSOCIATION OF DEFENSE COUNSEL'S AMICUS
CURIAE MEMORANDUM IN SUPPORT OF
PETITION FOR ALTERNATIVE WRIT OF MANDAMUS

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INTRODUCTION

Amicus Curiae Oregon Association of Defense Counsel (“OADC”) appears in support of defendants-relators’ Ballard and Oregon Orthopedic & Sports Medicine Clinic LLP’s position on mandamus. OADC focuses its analysis on the proper construction of ORS 14.080(2), and, particularly, the phrase “conducts regular sustained business activity” for purposes of whether proper corporate venue lies in a particular county. The question is what did the legislature intend when it provided that venue for purposes of an action against an Oregon corporation is proper in a county where it “conducts regular sustained business activity.” ORS 14.080(2). This is a significant issue of first impression that requires this court’s review. Venue statutes have a primary focus of protecting defendants from being subjected to litigation in distant locations with which they have no connection. Nonetheless, Oregon plaintiffs, with increasing frequency, have enhanced their efforts to bring actions where the defendant has no presence, and in Multnomah County in particular. The question whether a corporate defendant “conducts regular, sustained business activity” is often, as in this action, the only hook on which plaintiffs can attempt to rely, and has been the subject of numerous trial court decisions.

A petition for a writ of mandamus is a defendant’s only remedy for an error of law in the trial court. This court explained in *Mack Trucks, Inc., v.*

Taylor, 227 Or 376, 382, 362 P2d 364 (1961), when the plaintiff chooses an “improper” place for trial:

“the defendant’s only remedy is a motion for change of venue. If the court rules against him and he wishes to pursue the matter further, he must then proceed by mandamus in this court to force the trial court to change the venue.”

See also Roskop v. Trent, 250 Or 397, 400, 443 P2d 174 (1968) (on direct appeal the court refused to consider an assignment of error which challenged a trial court’s refusal to allow a change of venue because “the remedy for erroneous refusal to change the venue is by way of mandamus.” *citing Mack Trucks*, 227 Or 376). A writ of mandamus is appropriate, and necessary, in this case.

I. Venue for Actions for Medical Negligence, Like Other Personal Injury Actions, is Based on Statute

The venue provisions involved are found in ORS 14.080. The statute provides, in relevant part:

“(1) All other actions¹ shall be commenced in the county in which the defendants, or one of them, reside at the commencement of the action or in the county where the cause of action arose. A party resident of more than one county shall be deemed a resident of each such county. If none of the defendants reside in this state, the action may be commenced in any county.

“(2) For purposes of this section, a corporation incorporated under the laws of this state, a limited partnership or a foreign corporation authorized to do business in this state shall be deemed to be a

¹That is, actions not specifically identified in ORS 14.040, 14.050 and 14.060.

resident of any county where the corporation or limited partnership conducts regular, sustained business activity or has an office for the transaction of business or where any agent authorized to receive process resides. A foreign corporation or foreign limited partnership not authorized to transact business in this state shall be deemed not to be a resident of any county in this state.”

There is no debate in this case that the cause of action arose not in Multnomah County but in Clackamas County, where all the medical care which forms the basis of the claims was provided. Thus, pursuant to ORS 14.080(1), venue is proper in Multnomah County only if one of the defendants is a resident of Multnomah County as of the date the action was commenced.

ORS 14.080(2). The trial court record shows that defendant Dr. Ballard is a Clackamas County resident, and the corporate defendant, Oregon Orthopedic & Sports Medicine Clinic, maintains its registered agent, as well as its only places of business for the provision of medical care to patients in Clackamas County. So, venue properly can be placed in Multnomah County under ORS 14.080(2) only if the corporate defendant “conducts regular, sustained business activity” in Multnomah County.

II. The Intent and Plain Meaning of ORS 14.080(2)

The question presented is the meaning of the provision in ORS 14.080(2) for corporate venue in “any county where the corporation * * * conducts regular, sustained business activity.” Of course, that provision cannot be read in isolation or out of context. Rather, in discerning the legislature’s intent, the

court starts with a statute's text, read in context. *State v. Gaines*, 346 Or 160, 171, 206 P3d 1042 (2009); *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-11, 859 P2d 1143 (1993); see *Mastriano v. Board of Parole*, 342 Or 684, 691-92, 159 P3d 1151 (2007). Generally, the court gives words of common usage their plain, natural and ordinary meaning. *PGE*, 317 Or at 611. As the court stated in *England v. Thunderbird*, 315 Or 633, 638, 848 P2d 100 (1993), “[t]he best indication of legislative intent is the words of the statutes themselves.” The court should not insert what has been omitted or omit what has been inserted. ORS 174.010.

The court looks also to the context of the statutory provision at issue, which includes other provisions of the same statute and related statutes, as well as the statutory framework within which the law was enacted. *Id.* *Howell v. Willamette Urology, P.C.*, 344 Or 124, 128, 178 P3d 220 (2008) (Court followed the “familiar paradigm” in construing “where the cause of action arose” in ORS 14.080(1)). The court also may look to legislative history and give it the weight the court considers appropriate. ORS 174.020(3). *State v. Gaines*, 346 Or at 168.

In context, it is clear that when venue is not proper, the trial court has no discretion to deny the change of venue. ORS 14.110(1)(a); *Mutzig v. Hope*, 176 Or 368, 397, 158 P2d 110 (1945). ORS 14.040, 14.050, and 14.080 all provide for venue in mandatory terms (*e.g.*, “shall be commenced”). It is also clear that

by use of the words “regular” and “sustained”, the legislature meant “typical” or “normal” and more than “any” or “some” business activity.” *See Lundy v. Borden Chemical Co.*, 45 Or App 867, 871, 609 P2d 1307 (1980) (“regular,” as used in contract defined as synonymous with “normal” or “typical”). The meaning of “business activity” can be discerned in part from the legislative history, which is revealing. As a starting point, with venue statutes, the court has an expressed legislative intent to protect defendants from unjust and unnecessary expenses in defending actions in counties distant from the defendant’s residence or the place of conduct. 1909 Or Laws, Ch 43, § 2. In addition, the legislature’s changes to ORS 14.080 in 1983 support relators’ construction of ORS 14.080(2).

Until 1983, the statutory venue provision for actions not specified elsewhere in the venue statutes did not have separate provisions relating to corporations and other business entities. Instead, ORS 14.080 read:

“[ORS] 14.080 All other actions or suits shall be commenced and tried in the county in which the defendants, or one of them, reside or may be found at the commencement of the action or suit, except that an action founded on an alleged tort may be commenced either in the county where the cause of action arose or in the county where the defendants, or one of them, reside or may be found at the commencement of the action. If none of the defendants reside in this state the action or suit may be tried in any county which plaintiff may designate in his complaint.”

1983 Or Laws, chapter 163, § 1. Thus, from the outset, the Oregon legislature had an intent to afford a protection to Oregon corporations and individuals that did not extend to non-residents, who could be sued in any county in the state.

In 1983 the legislature considered Senate Bill 198. Professor Fredric Merrill testified before the Senate Committee on Local Government and Elections about the significance of the bill:

“The bill deals with venue which is the subject of what county in the state a defendant maybe sued which can be a matter of considerable importance if you are the defendant in a law suit. This bill would provide for venue over the corporation in any place where it does business, which would be broader. SB 198 makes very little change in the existing law. The bill eliminates the part which states that a defendant maybe sued where he maybe [*sic*]found.”

App 1 (Minutes, Senate Committee on Local Government and Elections, Feb. 9, 1983, Tape 14-A, p 2). The comments to SB 198 distributed for discussion that day explained the changes based on corporate residence:

“Subsection (2) This subsection is consistent with existing case law, except venue for some corporations is extended to any *place* of business. A local corporation or registered foreign corporations would continue to be suable at its designated office (where the authorized agent resides) but would also be suable in any county *where it actually does business*, rather than its principal place of business (if different than the designated office).”

App 3 (Minutes, Senate Committee on Local Government and Elections, Feb. 9, 1983, Ex C) (emphasis added).

In April, the House Committee on Judiciary considered SB 198. As proposed, the new section 2 provided:

“(2) For purposes of this section, a corporation incorporated under the laws of this state, a limited partnership or a foreign corporation authorized to do business in this state shall be deemed to be a resident of any county where the corporation or limited partnership transacts business or has an office for the transaction of business or where any agent authorized to receive process resides. A foreign corporation not authorized to transact business in this state shall be deemed not to be a resident of any county in this state.”

App 9 (House Judiciary Committee Subcommittee 2, May 3, 1983, Ex A, Frank Merrill Amendments). Senator Godwin explained the overall changes to ORS 14.080:

“* * * [T]he bill came from the Oregon State Bar’s annual meeting in September. It cleans up and partly expands Oregon’s catch-all venue statute. The statute has not be [*sic*] amended since sometime in the 1800’s. The Procedure and Practice Committee of the Oregon State Bar felt it was time that some of the case law be put into the statutes so it would be easier to determine where venue would lie on a particular action where it is not otherwise specified in Chapter 14.”

App 4 (Minutes, House Committee on Judiciary, April 18, 1983, Cassette Tape 250, p 2). In response to questions about subsection (2), Senator Godwin “said the provisions of subsection (2), lines 12-15 are patterned after the federal venue statute, 28 USC, § 13.91 ¶(c).” *Id.*

Representative Hall then commented that he had talked to someone from the banking industry, who had indicated they may come up with some new

language for the bill to get at the problem of allowing venue anywhere the corporation does business.” *Id.* at p 3. Although Senator Godwin said “they do not wish to amend the bill on that issue,” *id.*, by May when the bill reached the House Committee on Judiciary, amendments had in fact been proposed. The hand engrossed version of the bill showing the amendments is attached at App 9 (House Judiciary Committee Subcommittee 2, May 3, 1983, Ex A, Frank Merrill Amendments). In relevant part, as amended, section 2 provided:

“(2) For purposes of this section, a corporation incorporated under the laws of this state, a limited partnership or a foreign corporation authorized to do business in this state shall be deemed to be a resident of any county where the corporation or limited partnership *conducts regular, sustained business activity* or has an office for the transaction of business or where any agent authorized to receive process resides. * * *.” (emphasis added).

Professor Merrill testified:

“FRANK MERRILL, Oregon State Bar, testified in support of the bill. In answer to a question from the committee, MR. MERRILL stated that a defendant that regularly conducts business in all counties, would be subject to suit in any one of those counties.”

App 7 (Minutes, House Committee on Judiciary, May 3, 1983, Cassette Tapes: 288 and 289, p 2). The committee adopted the proposed amendments, *id.*, and on May 9 approved Senate Bill 198 with a do pass recommendation. App 8 (Minutes, House Committee on Judiciary, May 9, 1983, Tape 302-03, p 4).

In 1983, the legislature deleted the reference to “or may be found.” 1983 Or Laws, ch 163, § 1. This narrowed the reach of proper venue to places where

the defendant had a meaningful and not transitory connection. The proponents of the amendments to ORS 14.080 had in mind the *place* or *places* of business for an Oregon corporation, or any county where it “actually” does business, meaning the business *of* the corporation, whether providing medical services, or automotive services, or selling groceries, or fresh produce from a farm stand.

As first proposed, the amendments would have incorporated any county where the corporation “transacts business”, a phrase that appears twice in section 2. A foreign corporation not authorized to “transact business” in Oregon was deemed not to be a resident of any county. App 9 (House Judiciary Committee Subcommittee 2, May 3, 1983, Ex A, Frank Merrill Amendments). Transaction of business in that sense clearly means the conduct of the foreign corporation’s business. No authorization is required for advertising in Oregon or purchasing goods from Oregon, only for the conduct of the corporation’s business in Oregon.

The change ultimately incorporated was designed to afford a greater protection to corporate defendants by quantifying the level of corporate business that would sustain proper venue. Merely transacting business would not suffice; instead, only a corporation that “conducts regular, sustained business activity” in a county would be subject to suit in that county.

There is no suggestion either on the face of the statute or in the legislative history that there was any intent to extend proper venue for Oregon

corporations to counties with which there are only incidental contacts. Nor is there any suggestion that a corporation's name, or advertisements, or, modernly, website and internet presence would subject that defendant to venue in any county in the state where its advertising might reach, or from which Oregon corporations might order or purchase goods or supplies to be delivered to its place or places of business. To extend the reach of proper venue on the grounds argued by plaintiff and adopted by Judge Immergut in this case is to ignore the underlying purpose of venue protections and to render meaningless any distinction between Oregon and foreign corporations for purposes of venue.

III. The Trouble Ahead If a Writ of Mandamus Is Not Issued

The defendants in this case are medical providers, but the import of the decision is by no means limited to professional services corporations. It extends to every sort of business operating as an Oregon corporation or limited partnership. Plaintiff's proposed rule is not a rule limited to corporations whose business address is in a county contiguous to Multnomah. The use of the word "Portland" in a business name does not denote Multnomah County. "Portland" could and does accurately describe a corporation or limited partnership located *exclusively* in Washington or Clackamas counties, yet with a Portland address.

Without question, any construction of ORS 14.080(2) that allows proper venue to depend on whether the corporation maintains a website for purposes of marketing defies legislative intent to restrict proper venue to those places where


the corporation conducts its business activity. ORS 14.080(2) would be rendered meaningless.

CONCLUSION

The Court should grant the petition for alternative writ of mandamus.

DATED this 11th day of July 2012.

KEATING JONES HUGHES, P.C.



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Certificate of Compliance

I certify that this brief complies with the word count limitation pursuant to ORAP 5.05(2)(b); the word count is **3,196** words. I further certify that this brief is produced in a type font not smaller than 14 point in both text and footnotes pursuant to ORAP 5.05(4)(f).

In addition, I certify that this document was converted into a searchable PDF format for electronic filing and was scanned for viruses; it is submitted to the court brief bank virus-free as required by ORAP 9.17(5)(b).


Lindsey H. Hughes

APPENDIX

- 266 SENATOR ROBERTS asked if there was a time limit in the review under ORS 222.890.
- 277 SENATOR ISHAM replied within the first 30-day period there is an opportunity to review all the alternatives; after that 30-day period there is no opportunity to suggest alternative to annexation and there is no opportunity for the Health Division to hold the proceedings in abeyance. A 'Proceedings Guide for Annexation to a City' (Exhibit "A") was then presented to the Committee members.
- 390 Mr. STEVE BOEDIGHEIMER and Mr. RON HALL of the Health Division explained page 5 of the bill as not having to start over from the beginning.

Tape 15-A

- 013 MR. RON HALL explained about the effects of the bill in the Stewart Lennox problem in Klamath County as letting the district initiate the process. In this case, however, the City asked for the annexation. The district was a 'paper district'.
- 083 Mr. HALL said that about 49 times the Health Hazard Law has been used with 'forced annexation' since 1967.
- 153 Mr. RON HALL had handouts for the Committee members (Exhibit "B").
- 167 SENATOR STARKOVICH asked in line 12--does the loan applicant have to be a city.
- 180 SENATOR HEARD stated that the Chair is appointing Senator Roberts and Senator Ryles as a sub-committee to look into this bill further. (SB 229)
- SB 198; relating to relating to venue
- 210 FREDRIC MERRILL, Professor of Law at the University of Oregon Law School, and representing the OR State Bar, passed around written testimony (Exhibit "C"). The bill deals with venue which is the subject of what county in the state a defendant maybe sued which can be a matter of considerable importance if you are the defendant in the sense of where you have to travel to defend the law suit. This bill would provide for venue over the corporation in any place where it does business, which would be broader. SB198 makes very little change in the existing law. The bill eliminates the part which states that a defendant maybe sued where he maybe found.
- 474 SENATOR GARDNER moved SB 198 to the floor of the Senate with a 'do pass' recommendation.

The following Senators voted 'aye': Gardner, Jernstedt, Ryles, Starkovich, and Heard. Senator Roberts voted 'nay'. Senator Houck was excused. Senator Gardner will carry the bill on the floor of the Senate.

COMMENT TO PROPOSED VENUE STATUTE ---SB 198

Fredric Merrill

The proposed statute is basically a rewrite of existing ORS 14.080 with clarification of ambiguities in the existing statute as suggested by Oregon cases. As noted, there are a few minor changes. The other Oregon venue statutes are not changed: this is the general statute for transitory actions, not otherwise covered by a specific statute.

Subsection (1) For individuals, this is generally the same as the existing rule except:

(a) The statute refers to place of commencement. The first sentence of the existing statute refers to commencement and trial of actions. The last sentence refers to trial. Since place of trial is subject to change of venue provisions in 14.110, this statute should define proper place of commencement. Under ORCP 3, actions are commenced when filed. County of commencement is the county where filed.

(b) This eliminates where defendant is found as a venue base but substitutes a general (not contract limited) provision authorizing venue where the cause of action arose. NOTE: This provision also removes any question of suing a corporation where the cause of action arose.

(c) The second sentence makes clear that residence, not domicile, is the venue basis. An individual may have

Exhibit C Fredric Merrill

several residences. A corporation, as provided below, may do business or have agents in more than one county.

Subsection (2) This subsection is consistent with existing case law, except venue for some corporations is extended to any place of business. A local corporation or registered foreign corporation would continue to be suable at its designated office (where the authorized agent resides) but would also be suable in any county where it actually does business, rather than its principal place of business (if different than the designated office).

Subsection (3) This subsection is necessary because of the ORCP change in capacity for partnerships and unincorporated associations. Note, the venue basis is where a person who could be served resides, not where service in the entity actually takes place. For a partnership, this would be where any partner resides; for other unincorporated associations, where an officer or managing agent resides; and for both, any county where an agent authorized to receive process resides. See ORCP 7 D.(3)(e) and (f). The venue for partnerships would be consistent with prior law because you had to sue all partners and the proper venue would be any county where a partner resided. (Presumably, one would still join all partners anyway as individual defendants). Venue for other associations would be more restricted as, if you sued all association members individually, you could lay venue in any county where a Member resided.

act had been adopted by half of the states in some form or another.

- 047 REP. SCAVERA said it takes the 9th Circuit to request the opinion of the Oregon Supreme Court, so if the 9th Circuit wanted to decide it on their own they could. LYON said in such a case that opinion would not be binding if the same question ever came before the Oregon Supreme Court. SCAVERA asked if it is used in other states often. LYON said he understood that it is infrequently applied.
- 071 CHAIR asked if there was opposition to the bill in the Senate. LYON said there was concern that it would change existing practice whereby questions would be decided according to Oregon Law which is not the case.
- 077 REP. SMITH said the vote was 17 to 9 in the Senate.
- 083 DIANA GODWIN, Oregon State Bar, said that Senator Frye carried the bill and there was some confusion in the Senate on what the bill would do.
- 113 BETSY BELSHAW, State Court Administrator, appeared on behalf of the Supreme Court and said the court has no objection to the bill so long as it retains the word "may".
- SB 198 - Relating to venue (corporations, partnerships, associations)
- 138 GODWIN said the bill came from the Oregon State Bar's annual meeting in September. It cleans up and partly expands Oregon's catch-all venue statute. The statute has not be amended since sometime in the 1800's. The Procedure and Practice Committee of the Oregon State Bar felt it was time that some of the case law be put into the statutes so it would be easier to determine where venue would lie on a particular action where it is not otherwise specified in Chapter 14.
- 167 CHAIR asked about lines 15 and 16 where it refers to a foreign corporation, and asked if a corporation was transacting business in this state in an unauthorized fashion, where would they be sued if they were not a resident of any county. GODWIN referred to lines 10 and 11 where it says if none of the defendants reside in this state the action can be commenced in any county. CHAIR referred to subsection (3) and asked how an unincorporated association is served. GODWIN referred to the current law on venue where it refers to unincorporated association to answer the question.
- 195 HALL asked about subsection (2) and if language should be inserted on line 14 so it also applies to limited partnerships. There was some discussion of the suggestion. GODWIN said the provisions of subsection (2), lines 12-15 are patterned after the federal venue statute, 28 USC, Section 13.91 paragraph (c).

- 249 HALL said he had talked to someone from the banking industry, who had indicated they may come up with some new language for the bill to get at the problem of allowing venue anywhere the corporation does business. GODWIN said they do not wish to amend the bill on that issue.
- SB 199 - Relating to courts (attorneys fees not part of "amount in controversy" for determining jurisdiction)
- 270 GODWIN said this bill was also from the annual meeting of the Oregon State Bar and it came from the Procedure and Practice committee of the Bar. It clarifies an ambiguity in the law that when you are calculating the amount in controversy for determining where your court jurisdiction is going to be, that you do not count in any amounts claimed as costs and disbursements or attorney fees.
- 281 CHAIR asked about small claims jurisdiction and if it applies. HALL said it was made clear that if attorneys fees previously incurred are an element of your damages you can get attorneys fees and they are not considered the amount in controversy. HALL said the bill is only for \$3000 maximum jurisdiction of the district court, and \$2500 maximum jurisdiction of the justice's court, and will not effect the laws for small claims. CHAIR said the subcommittee would consider the small claims court concern at a work session on the bill.
- 404 MOTION: CHAIR moved SB 196 to the full committee with a do pass recommendation.
- 411 MOTION PASSED.: Courtney (excused); Lombard (aye); Scavera (aye); Smith (aye); Springer (excused); Rutherford (aye).
- 415 CHAIR adjourned the meeting at 3:15 p.m.

Submitted by,

Carolynn Gillson

Carolynn Gillson
Committee Assistant

HOUSE COMMITTEE ON JUDICIARY
SUBCOMMITTEE 2

May 3, 1983 1:30 p.m. Hearing Room 350

MEMBERS: Rep. Peter Courtney, Chairperson (present)
Rep. Bill Rutherford (excused)
Rep. Norm Smith (present)
Rep. Dick Springer (present)
Rep. Kip Lombard (present)
Rep. Jim Scavera (present)

STAFF: Kirk Hall, Legal Counsel
Kim Dickens, Committee Assistant

WITNESSES: Frank Merrill, Oregon State Bar
John Rueling, Assistant Attorney General
Donald Sterling, Oregon Newspaper Publishers

MEASURES: SB 198 - Relating to venue
SB 199 - Relating to courts
HB 2724 - Relating to tort claims
HB 2256 - Relating to tort claims against public bodies
HB 2263 - Relating to public records
HB 2264 - Relating to legal counsel for state agencies
HB 2868 - Relating to alcoholic beverages
HB 2912 - Relating to guardianships for incapacitated persons

TAPES: H-83-JUD-288, Side A&B
H-83-JUD-289, Side A&B

002 CHAIRPERSON COURTNEY called the meeting to order at 1:30 p.m.

SB 198 - Relating to venue

019 KIRK HALL, Legal Counsel, reviewed the status of the bill, and presented proposed amendments from Professor Merrill (Exhibit A, SB 198).

046 CHAIRPERSON COURTNEY moved to adopt the proposed amendments (Exhibit A, SB 198).

070 FRANK MERRILL, Oregon State Bar, testified in support of the bill. In answer to a question from the committee, MR. MERRILL stated that a defendant that regularly conducts business in all counties, would be subject to suit in any one of those counties.

MOTION ADOPTED: There were no objections.

082 MOTION: REP. SMITH moved SB 198 as amended to the full committee with a "do pass" recommendation.

MOTION PASSED: There were no objections.

SB 199 - Relating to courts

089 KIRK HALL reviewed the status of the bill for the committee.

142 MOTION: CHAIRPERSON COURTNEY moved SB 199 to the full committee with a "do pass" recommendation.

MOTION PASSED: There were no objections.

HB 2724 - Relating to tort claims

153 KIRK HALL reviewed the status of the bill for the committee.

230 The committee discussed the insurance against such negligence as discribed in the bill.

266 REP. SCAVERA stated that if a fire is not caused by spontaneous combustion, than it is caused by some negligent act. He added that a homeowner already pays taxes for the fire station to take care of these accidental fires, and they should not have to pay if a fireman is careless and is injured in the fire.

HB 2256 - Relating to tort claims against public bodies

315 MOTION: REP. SMITH moved to take HB 2256 off the table.

MOTION PASSED: There were no objections.

317 KIRK HALL reviewed the status of the bill for the committee, and distributed proposed amendments from Legislative Counsel (Exhibit N, HB 2256). He also distributed proposed amendments from John Reuling (Exhibit O, HB 2256).

450 MOTION APPROVED unanimously.

HB 2677 - relating to public body tort liability

485 HALL reviewed the status of HB 2677 for the committee. He referred the members to Legislative Counsel Draft 1902, which he said was not technically in amendment form but 'is the same thing' (Exhibit C - HB 2677, April 28, 1983).

TAPE 303, Side A

034 MOTION: REP. RUTHERFORD moved to report HB 2677 as amended with a do pass recommendation.

038 REP. LOMBARD stated that he had opposed the bill in subcommittee and will oppose reporting it out. He said that it has the effect of exposing units of government to substantial additional court liability.

095 MOTION APPROVED. All members voting 'aye' with the exception of Rep. Lombard voting 'nay.'

*HB 2912 - relating to guardianships for incapacitated persons

097 HALL reviewed HB 2912 for the committee.

119 MOTION: REP. COURTNEY moved to report HB 2912 with a do pass recommendation.

159 MOTION APPROVED unanimously.

*SB 198 - relating to venue

162 HALL reviewed the status of SB 198 for the committee.

189 MOTION: REP. COURTNEY moved to report SB 198 with a do pass recommendation.

195 MOTION APPROVED unanimously.

*SB 199 - relating to courts

202 HALL reviewed the status of SB 199 for the committee.

233 MOTION: REP. COURTNEY moved to report SB 199 with a do pass recommendation.

274 MOTION APPROVED unanimously.

*Motion to place on consent calendar (page 5, digit 279)

Senate Bill 198 (Hand engrossed showing amendments of Prof. Merrill)

PRINTED PURSUANT TO ORS 171.130 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Oregon State Bar)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Expands venue with respect to certain corporations. Prescribes venue for claims against partnerships and unincorporated associations.

A BILL FOR AN ACT

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Relating to venue; amending ORS 14.080.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 14.080 is amended to read:

14.080. (1) All other actions [*or suits*] shall be commenced [*and tried*] in the county in which the defendants, or one of them, reside [*or may be found*] at the commencement of the action [*or suit, except that an action founded on an alleged tort may be commenced either in the county*] or in the county where the cause of action arose [*or in the county where the defendants, or one of them, reside or may be found at the commencement of the action*]. A party resident of more than one county shall be deemed a resident of each such county. If none of the defendants reside in this state the action [*or suit may be tried in any county which plaintiff may designate in his complaint*] may be commenced in any county.

(2) For purposes of this section, a corporation incorporated under the laws of this state, a limited partnership or a foreign corporation authorized to do business in this state shall be deemed to be a resident of any county where the corporation or limited partnership ~~transacts business~~ ^{conducts regular, sustained business activity} or has an office for the transaction of business or where any agent authorized to receive process resides. A foreign corporation ^{or foreign limited partnership} ~~not authorized to transact business in this~~ state shall be deemed not to be a resident of any county in this state.

(3) For purposes of this section, a partnership or other unincorporated association subject to being sued in its own name shall be deemed a resident of any county where any person resides upon whom summons could be served for service upon the partnership or unincorporated association.

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.



CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the date below I served the foregoing OREGON ASSOCIATION OF DEFENSE COUNSEL'S AMICUS CURIAE MEMORANDUM IN SUPPORT OF PETITION FOR ALTERNATE WRIT OF MANDAMUS on the following:

Janet Schroer, OSB No. 813645
Hart Wagner, L.L.P.
1000 SW Broadway, Twentieth Floor
Portland OR 97205
503-222-4499

Of Attorneys for Defendants-Relators

Philip C. Gilbert, OSB No. 923125
Attorney at Law
103 SE 223rd Avenue, Suite A
Gresham OR 97030-7481
503-465-9600

Of Attorneys for Plaintiffs-Adverse Parties

Hon. Karen Immergut
Multnomah County Circuit Court
1021 SW Fourth Avenue
Portland OR 97212

by delivering two true and correct copies via first class mail to the above attorneys at their most recent addresses, deposited at the U.S. Postal Service with postage paid in Portland, Oregon.

I also certify that on the same date and by the same means, I filed the original and 15 copies of the foregoing OREGON ASSOCIATION OF DEFENSE COUNSEL'S AMICUS CURIAE MEMORANDUM IN SUPPORT

OF PETITION FOR ALTERNATE WRIT OF MANDAMUS with the State
Court Administrator, Appellate Records Section, Supreme Court Building, 1163
State Street, Salem OR 97301.

DATED this 11th day of July 2012.

KEATING JONES HUGHES, P.C.



Lindsey H. Hughes, OSB No. 833857
Peter D. Eidenberg, OSB No. 075778
Of Attorneys for Amicus Curiae Oregon
Association of Defense Counsel