

Summary of SC91013, *State ex rel. Auto Owners Insurance Company v. The Honorable Edith L. Messina and The Honorable Kevin M.J. Crane*

Writ proceeding from the Boone and Jackson county circuit courts, Judges Kevin M.J. Crane and Edith L. Messina

Argued and submitted Jan. 5, 2011; opinion issued March 1, 2011

Attorneys: Auto Owners Insurance was represented by Kenneth R. Goleaner, Russell F. Watters and David R. Buchanan of Brown & James PC in St. Louis, (314) 421-3400; and Columbia Mutual Insurance and Biegel Refrigeration and Electric Company were represented by Edward L. Adelman of Goffstein, Raskas, Pomerantz, Kraus & Sherman LLC in St. Louis, (314) 721-7171, and Russell C. Ashley of Deacy & Deacy in Kansas City, (816) 421-4000.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: An insurance company challenges the transfer of venue over its lawsuit against another insurance company and a refrigeration and electric company from Jackson County to Boone County. In a unanimous decision written by Judge Michael A. Wolff, the Supreme Court of Missouri issues its writ of mandamus directing that the case be transferred back to Jackson County. In not enacting any provision defining the residence of insurance corporations in cases that do not involve tort claims, the legislature left in place the common-law definition of such residence, which includes any county in which the insurance company has an office or agent to transact its usual or customary business.

Facts: Auto Owners Insurance Company sued Columbia Mutual Insurance Company and Biegel Refrigeration and Electric Company Inc. in Jackson County, where some of Columbia Mutual's agents are located. Columbia Mutual and Biegel moved to dismiss, claiming venue was improper in Jackson County. Although Columbia Mutual has multiple agents located in Jackson County, its registered office and agent are located in Boone County; Biegel is located in Linn County. The Jackson County court found venue was improper there and transferred the case to Boone County. Auto Owners seeks this Court's relief.

WRIT MADE PERMANENT.

Court en banc holds: The Jackson County circuit court abused its discretion in transferring the case to Boone County. Because this case involves more than one defendant and none of the claims allege a tort, the applicable venue statute is section 508.010.2(2), RSMo Supp. 2009. Under this statute, venue is proper where any defendant resides. Section 351.375.2, RSMo Supp. 2009, provides that the residence of any corporation is the county in which its registered office is maintained, but section 351.690(3), RSMo Supp. 2009, provides that no provisions of chapter 351 shall apply to insurance companies. For purposes of venue under section 508.010, therefore, insurance corporations "reside" in any county in which they have or usually keep an office or agent to transact their usual and customary business. *State ex rel. Smith v. Gray*, 979 S.W.2d 190, 192 (Mo. banc 1998). In 2005, the legislature repealed section 508.040, RSMo, and did not enact any provision defining the residence of insurance corporations. By doing so, the legislature

left the common-law definition of residence in place for insurance corporations in cases that do not involve tort claims. Columbia Mutual has multiple agents located in Jackson County, so venue was proper there. Accordingly, this Court enters its permanent writ of mandamus directing that the case be transferred back to Jackson County.