

IN THE  
INDIANA COURT OF APPEALS

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CAUSE NO. 73A05-1505-CT-00422

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JESSIE EADS and	)	Appeal from the Shelby County Superior Court
TOTAL IMAGES EXTERIORS	)	
LLC d/b/a TIE TREE SERVICES	)	
	)	
Appellants (Defendants below)	)	Lower Court Cause No:
	)	73D01-1503-CT-00010
v.	)	34D04-1501-CT-00021
	)	
PATRICK TURNER	)	
	)	The Honorable R. Ken Apsley
Appellee (Plaintiff above)	)	Judge, Presiding

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Brief of *Amicus Curiae*  
Indiana Trial Lawyers Association

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## **STATEMENT OF THE INTEREST OF THE AMICUS CURIAE**

The mission of the Indiana Trial Lawyers Association (“ITLA”) is to preserve the constitutional rights of open access to courts and equal protection under the law for all individuals in Indiana. ITLA is an association of Indiana lawyers who regularly represent clients who have been injured due to the negligence of others. As such, ITLA members’ clients have a vested interest in easily and accurately identifying the correct venue county under Trial Rule 75(A)(4) when suing organizations and corporations that operate in Indiana.

### **SUMMARY OF THE ARGUMENT**

Ind. T.R. 75(A)(4) provides that preferred venue includes the county where the principal office of a defendant organization is located. Prior to the Indiana Supreme Court’s 2006 decision in *American Family Ins. Co. v. Ford Motor Company*, 857 N.E.2d 971 (Ind. 2006), there was uncertainty as to what “principal office” meant in the context of preferred venue under Ind. T.R. 75(A)(4). The Supreme Court clarified the issue by holding that the term “principal office” refers to a domestic or foreign corporation’s registered office in Indiana.

It can be both challenging and time consuming for a litigant to correctly identify the “main office” or “most important” office of a corporation. We live in an era where a significant percentage of businesses in Indiana have staff in multiple counties and utilize “satellite” offices located around the State. Indiana requires all corporations to continuously maintain both a “registered” office as well as a “registered” agent. While it may be daunting for a litigant to correctly identify a corporation’s “main office” or “most important” office,” anyone with access to the Internet can quickly log on to Indiana Secretary of State’s website and correctly identify the county where a corporation’s registered office and resident agent are located.

Total Image Exteriors' ("TIE") argument that *American Family Ins.* "forces" domestic corporations to defend lawsuits in inconvenient counties is simply not accurate. Organizations and corporations choose the county in which to locate a resident agent. They choose to establish a "nexus" with a particular county by deciding to locate their registered office/agent there. It doesn't cost a corporation any more money to locate its resident agent in Shelby County than it does to locate its resident agent in Howard County or any other county in the State. If a corporation is concerned about the prospect of defending lawsuits in an inconvenient county because Indiana law deems registered offices to be the "principal office" under Trial Rule 75(A)(4), they are free to change the location of their resident office/agent at any time. Registering a change of address for a corporation's registered office/agent with the Indiana Secretary of State's office can be accomplished online in a matter of minutes at no charge.

This Court's affirmation that "principal office" means the corporation's registered office/agent under Trial Rule 75(A)(4) will impact many of the clients ITLA's members represent. ITLA's members respectfully request that the Court affirm the Indiana Supreme Court's 2006 holding in *American Family Ins.*

## ARGUMENT

### **1. Since 2006, the term "principal office" refers to the county where an organization maintains its registered office.**

Since the advent of the trial rules in 1970, the sole focus of the opinions interpreting T.R. 75 has been on whether the county chosen by plaintiff was indeed a county of preferred venue. *Lowe v. Johnson*, 469 N.E.2d 768, 772 (Ind. Ct. App. 1984), *rhrg. denied*. The primary issue in this appeal is whether the Indiana Supreme Court's 2006 interpretation of the term "principal office" applies to all organizations and corporations operating in Indiana, regardless of whether they are foreign or domestic. T.R. 75(A)(4) is silent on what the term "principal office" means.

More importantly, Trial Rule 75(A)(4) does not spell out different venue criteria for foreign and domestic organizations. TIE contends that the Indiana Supreme Court's holding in *American Family Ins.* defining the term "principal office" to mean the "registered office" of the corporation only applies to foreign corporations. To the contrary, the very first sentence of the Court's opinion clarified what "principal office" means in the context of T.R. 75(A)(4) and (10):

"We hold that the term "principal office" as used in subsections (4) and (10) of Trial Rule 75(A) refers to a domestic or foreign corporation's registered office in Indiana." *Amer. Family Ins.*, 857 N.E.2d at 974-75 (Emphasis added).

The Supreme Court went out of its way to clarify that "principal office" means the "registered office" of both foreign and domestic corporations by observing that Indiana corporate law defined "principal office" as the location of a corporation's resident agent for both domestic and foreign corporations as far back as 1970, when Ind. T.R. 75 was adopted. *Amer. Family Ins.*, 857 N.E.2d 974-75, fn. 4 and fn. 5.

**2. TIE has exclusive control over the location of its registered office/agent. No organization is "forced" to locate a registered office/agent in an inconvenient location.**

TIE argues that the "unintended consequence" of the Indiana Supreme Court's 2006 holding in *Amer. Family Ins.* forces corporations to defend cases in counties that have no real "nexus" to the parties or the case. In *Lake Holiday Conservancy v. Davison*, 808 N.E.2d 119 (Ind. Ct. App. 2004), Lake Holiday, a governmental entity, argued that it is "highly inconvenient and illogical" for the venue of the trial to be in the plaintiff's county of residence (Marion County) when the accident occurred in Montgomery County and all six defendants resided in Montgomery County. *Id.* at 124. The Court of Appeals recognized that the plain language of Trial Rule 75(A)(5) precluded a transfer to Montgomery County because it had a more logical "nexus" to the accident or because it was more convenient for the defendants. *Id.* at 123.

Inconvenience to the defendant and its witnesses does not trump the plain language of Trial Rule 75.

Because organizations and corporations control where they choose to locate their resident office/agent, *American Family Ins.* does not “force” domestic corporations to defend lawsuits in faraway venues having no nexus to the case. Organizations and corporations create the nexus to a county by locating their resident office/agent there. Any Indiana corporation or organization that wants to avoid the prospect of defending a case in a distant county can do so by simply changing the location of its registered agent. I.C. 23-1-24-2 spells out a simple process for notifying the Indiana Secretary of State’s office regarding a change of address of a corporation’s registered office/resident agent. Changing the address of a registered office and registered agent can be done online through the Indiana Secretary of State’s website at no cost.

**3. Defining the term “principal office” as the location of the corporation’s “main office” or most “important office” would have detrimental consequences for litigants and trial courts.**

The term “principal office” is not defined in Ind. T.R.75 (A)(4) or (A)(10). TIE is correct that prior to the Indiana Supreme Court’s decision in *American Family Ins.*, the term “principal office,” in the context of T.R.75(A)(4), had been interpreted by the Court of Appeals to mean “the most important or main office of an organization.” *Western Sales & Service, Inc. v. Ford Motor Co.*, 576 N.E.2d 631 (Ind. Ct. App. 1991). Unfortunately, defining “principal office” as the “most important or main office of an organization” for T.R. 75(A)(4) venue purposes set the stage for incorrect filings as well as the need for judicial intervention to referee disputes over venue.

Correctly identifying the “main office” or “most important” office of a corporation poses significant challenges for a party initiating a lawsuit. A significant percentage of businesses in

Indiana have staff in multiple counties and utilize “satellite” offices located around the state. Is a corporation’s “main office” the office with the most employees? Is a corporation’s “main office” the office where the company first established its headquarters 50 years ago? Is the corporation’s “most important” office the office that generates the highest gross revenue or the one with the most employees? Is it the office where the CEO and other upper tier management employees maintain office space? If a corporation has multiple offices around the state, the stage is set for debate and disagreement over whether a particular office is indeed the “main office” or “most important” corporate office.

Defining “principal office” as the “most important or main office of an organization” under T.R. 75(A)(4) forces a plaintiff to do time consuming research to ascertain where the corporation has set up offices and allocated resources/staffing around the state. After the research is complete, plaintiffs make an educated guess as to where the “main office” or “most important” office is located. If suit is filed, and the defendant contests venue claiming plaintiff’s selection is not the corporation’s “most important” in-state office, judicial intervention is required. A trial court is required to expend valuable court time adjudicating a dispute over whether a particular corporate office selected by plaintiff is the “main office” or a “more important” office than some other office. If a plaintiff’s guess as to the venue of a corporation’s “main office” proves to be wrong, a motion for change of venue is granted and the plaintiff is forced to outlay yet another filing fee when the case is transferred to another county.

The Supreme Court’s decision in *American Family Ins.* eliminates the guesswork in identifying the correct venue under T.R. 75(A)(4). Every domestic and foreign corporation operating in Indiana is required to have “registered offices” and “registered agents.” I.C. 23-1-24-1(a)(1) and (a)(2). The fact that all corporations must maintain a registered office/agent

combined with the fact that registered offices are the “principal office” of a corporation under Trial Rule 75(A)(4) eliminates any uncertainty or controversy over venue selection. It is quick and easy for plaintiffs to log onto the Indiana Secretary of State’s website and correctly identify the county of a corporation’s registered office/agent. Defining “principal office” as the corporation’s registered office virtually eliminates the possibility that any trial court will be called upon to conduct an evidentiary hearing to determine proper venue under T.R. 75(A)(4).

### CONCLUSION

In 2006, the Indiana Supreme Court decided that the term “principal office” means the registered office/agent of an organization. Because foreign and domestic corporations are required to maintain registered offices/agents, it is easy for plaintiffs to log onto the Indiana Secretary of State’s website and accurately determine the correct “principal office” under Trial Rule 75(A)(4), eliminating the need for trial courts to referee squabbles over venue. Corporations seeking to avoid the inconvenience of defending lawsuits in distant counties can easily prevent that situation by locating their resident agent in any county that suits them.

Respectfully submitted,

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## WORD COUNT CERTIFICATE

Pursuant to Rule 44(E) of the Indiana Rules of Appellate Procedure, the undersigned counsel verifies that the foregoing Amicus Curiae Brief, including cover page, table of contents, table of authorities, word count certificate, certificate of service, and signature block, contains less than 7000 words, as counted by Microsoft Word 2013.

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David L. Farnbauch

## CERTIFICATE OF SERVICE

Pursuant to Ind. Appellate Rule 24(D), I hereby certify that on the 20th day of October, 2015, a true and complete copy of the foregoing document was served on:

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by depositing the same in the United States mail in an envelope properly addressed to them and affixed with sufficient first class postage.

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David L. Farnbauch