

# There's No Place Like Home

By Anne E. Thar, Vice President and General Counsel, ISBA Mutual

**I**t took Dorothy one good knock on the head and a wild dream to figure out there's no place like home. Unfortunately, it's a lesson some lawyers never learn. As the following tale illustrates, lawyers who dare to venture past their own backyards encounter more than talking trees and wicked witches.

**The Wiz fizzles.** After the big tornado hit Kansas, Ms. Almira Gulch moved to a high-rise in Chicago. Inevitably, Gulch sought the assistance of an attorney to sue one of her neighbors over a dog bite. As luck would have it, a slowdown in the fortune-telling business had led Professor Marvel to law school. Lawyer Marvel represented Gulch in several more nuisance claims.

Gulch tired of city living and moved to a tranquil retirement community in California that strictly prohibited all pets and children. Despite Gulch's California address, she asked Lawyer Marvel to help with her estate planning, including establishing several trusts. To fund the trusts, Ms. Gulch informed Lawyer that she intended to sell her shares of the Flying Monkey Transport Company, which were worth \$2 million.

When Gulch sold the stock, she was hit with California's 9.3 percent capital gains tax, in addition to the 20 percent federal capital gains tax. Gulch then sued Marvel for legal malpractice, alleging that she wouldn't have sold the stock had she been aware of the additional capital gains tax. Marvel, of course, was oblivious to California tax law.

**If he only had a brain...** The Scarecrow also proceeded on to law school after leaving Oz and became a successful plaintiff's attorney in southern Illinois. Scarecrow was licensed to practice



***Repeat those words before following the Yellow Brick Road to malpractice and UPL risks in an unfamiliar jurisdiction.***

law in both Illinois and Missouri. One sunny afternoon, Scarecrow was approached by his old friend, the Tin Man, to file a products liability suit on Tin Man's behalf against the Oz Clockworks Company for a defective heart. Because Tin Man resided in Missouri, Scarecrow filed the complaint in the Circuit Court of St. Louis.

Defendant Oz Clockworks filed a motion for summary judgment alleging that its clocks clearly were not intended to be used as hearts. Scarecrow was unaware that the Missouri court had recently changed its procedural rules regarding motions for summary judgment to require opposing counsel to respond to motions in writing. Instead, Scarecrow showed up at the hearing to verbally present his objections to the motion. Judge Glinda ruled in the

defendant's favor based upon Scarecrow's lapse in procedure.

In another case, Scarecrow was retained by former Oz resident, the Cowardly Lion, who claimed to have been falsely arrested and detained while visiting Munchkinville in central Illinois. Once again, Scarecrow failed to verify the local procedural rules. As a result, Attorney Scarecrow failed to respond to the motion for summary judgment within the 14-day period required in the Central District

Court of Illinois.

**How could you, Auntie Em?** Believe it or not, Dorothy graduated from the University of Kansas School of Law and also settled in Illinois to pursue her law career. In the interim years, Dorothy's Aunt Em and Uncle Henry had expanded their farming operations and now owned farmland in several states. Aunt Em hired Dorothy to draft a lease for the Gales' Iowa farm which the aunt and uncle had agreed to lease to their old Kansas farmhands Zeke, Hunk, and Hickory (the "farmhands"). Dorothy drafted a simple year-to-year lease that renewed automatically each year unless notice was provided to the farmer tenants by the November 15th preceding the next crop year. Under the terms of the lease, rent was determined based upon a percentage of the crop yield.

After one year of the arrangement, Aunt Em decided to cancel farmhands' lease because she believed that farmhands were damaging the soil and understating the crop yield. In compliance with the terms of the lease drafted by Dorothy, Aunt Em provided farmhands with notice of the lease's termination on November 10th. Farmhands refused to vacate the land, citing an Iowa statute that requires all farm lease

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termination notices to be given by the preceding September 1st of the upcoming crop season. Since Aunt Em's notice was defective under Iowa law, Zeke, Hunk, and Hick were entitled to farm the land for another crop year.

An exasperated Aunt Em took charge of matters and negotiated a settlement with farmhands under which they received \$10,000 in exchange for their agreement to terminate the lease. Aunt Em then sued Dorothy for legal malpractice and the \$10,000 in damages. (Auntie Em didn't build a farming empire by being a wimp.)

Lawyers like Marvel, Scarecrow, and Dorothy face additional risks by practicing outside of their usual jurisdictions as well. First, lawyers may be engaged in the unauthorized practice

of law when they represent clients in foreign jurisdictions in which the lawyers are not licensed. Second, lawyers risk losing their fees in such situations. Courts in both California and Maryland in recent years have denied fees to lawyers for work physically performed in states in which they were not licensed to practice law.

**Following the Yellow Brick Road.** Before you practice in unfamiliar territory, consider the following advice.

1. *Just because you have a license to practice law in another jurisdiction doesn't mean you should use it.* It's tough enough these days to keep abreast of the law in one jurisdiction. Develop a network of local counsel to work with or refer cases to in these circumstances.

2. *Just because you have a license to*

*practice law in Illinois doesn't mean you should practice all over the state.* Practice customs, local ordinances, and procedures can vary significantly from one area of the state to another. Don't assume that you can practice in another county or judicial district without doing the necessary homework. It only takes five minutes to call a colleague in another part of the state and verify the game rules.

3. *Don't compromise your professionalism for long-time clients, friends or family.* Instead, refer Auntie Em to local counsel (who has a current malpractice policy).

Now click your tasseled loafers and Ferragamo pumps three times and repeat after me, "There's no place like my own jurisdiction..."