

Supreme Court Case Files

Lewis F. Powell Jr. Papers

10-1978

# Lee-Hy Paving Corp. and Davis E. Clem v. O'Connor

Lewis F. Powell Jr.

Follow this and additional works at: https://scholarlycommons.law.wlu.edu/casefiles



Part of the Civil Procedure Commons, and the Constitutional Law Commons

#### Recommended Citation

Lee-Hy Paving Corp. and Davis E. Clem v. O'Connor. Supreme Court Case Files Collection. Box 62. Powell Papers. Lewis F. Powell Jr. Archives, Washington & Lee University School of Law, Virginia.

This Manuscript Collection is brought to you for free and open access by the Lewis F. Powell Jr. Papers at Washington and Lee University School of Law Scholarly Commons. It has been accepted for inclusion in Supreme Court Case Files by an authorized administrator of Washington and Lee University School of Law Scholarly Commons. For more information, please contact christensena@wlu.edu.

### Preliminary Memo

October 27, 1978 Conference List 3, Sheet 2

No. 78-410

LEE-HY PAVING CORP.

Cert to CA 2

٧.

(Friendly, Gurfein & Moskill) Federal/Civil

o'connor.

Please see Freliminary Memo in No. 78-268,

Gillespie v. Schwartz, October 27, 1978 Conference (List 3, Sheet 2).

Two responses have been filed.

10/13/78

Spaeth

CA 2 Opinion in Petition

Timely

January In

Beyond the absence of a conflict, there are two reasons for denying certificati. First, the second circuit here most likely was Correct in its ruling. As the preliminary memorandum states, this is in effect New York's judicial equivalent to the direct action statute approved by this Court in Watson v. Employer's Liability Assurance Corp., 348 U.S. 66 (1954). Thus, the true party in interest is the insurance company that is contractually obligated to defend the suit and that will have to pay if it loses. The "minimum contacts" necessary for due process, therefore, are those between the insurance company and the State--not between the named defendant and the State:

Second, insofar as the named defendant has any due process difficulties with New York's jurisdiction over him, these will arise only if the "direct action" of Miniciallo fails to operate properly. Thus, for example, the defendant's home State might grant collateral estoppel effect to the New York judgment in a subsequent in personam suit for some liability not covered by the defendant's insurance policy. If this were to occur, however, the Court could review the question on appeal from the later judgment.

Accordingly, I would deny certiorari.

Court	Voted on		70 415
Argued	Assigned	No.	78-410
Submitted	Announced 19.		

LEE-HY PAVING CORP.

٧ğ

### O \*CONNOR

5mme vote 18-268

	HOLD	JURGSORTIC STATEMEN	Na:		M0010%	CHAP ST	NOT VOTING
	FOR	 S Bist pr	· CEP	HOY JAPA			
Burger, Ch. 3							
Brennan, J		 			<del>.</del>		
Stewart, J		 					
When J		 			. !		
Marshall, J	<b></b>	 			<b>.</b>		
Blackman, J		 		j			
Powell, J					1		
Rehoguist, J		 1 1					
Stevers, J			ı				
	]	 			<u>.</u>		

### No. 78-410 Lee-Hy v. O'Compar

MR. JUSTICE POWELL, dissenting.

Respondents' decedent, a New York resident, was killed in an accident near Richmond, Virginia, when he was struck by a vehicle owned by petitioner Lee-Ny Paving Corp. and operated by petitioner, Clem, an employee of Loc-My. Respondent, administratrix of her husband's estate, instituted this suit in the District Court for the Eastern District of New York, claiming damages for the personal injuries to and wrongful death of her husband. Petitioner, Lec-Hy, corried public liability insurance with Royal-Globe Insurance Co. and Continental Casualty Co., both doing business in New York but neither having its principal place of business located there. Doon filing her complaint, respondent sought an order under New York law to attach the contractual obligations of the insurance companies to defend and indemnify Lee-Hy. T<del>he requested attachment</del> granted by The Distric Court, which thereafter denied petitioner's motion to vacate the attachment and disminist

ramifications in the wast arena of personal injury

litigation. It raises serious and troublesome issues of

fundamental fairness to persons and in oreas remote from

it seems to me that the rationale of our recent decision in

Shaffer v. Heitner, 433 U.S. 186 (1977) at least casts doubt

on the correctness of the decision of the Court of Appeals.

I therefore would grant certionari and set the case for arqument.

their places of residence and the scenes of accidents. And

The petitioners, the defendants in this negligence suit instituted in New York, are residents of Virginia. The accident occurred there, and it is conceded that neither of petitioners has an contacts of relations in or with the state of New York. Yet, on a theory of quasi in rem jurisdiction supporting the attachment, petitioners have been subjected to personal jurisdiction - with the risk of substantial personal liability - in New York. Under the rationale of the Circuit Court's decision, it would have

}-

Seider v. Roth, 17 N.Y.2d 111, 216 N.E.2d 312 (1966), and applied in the federal courts of the Second Circuit in Minichiello v. Rosenberg, 410 F.28 106 (1968). In Seider jurisdiction was predicated on the fiction that the insurance company's obligation to indemnify the policyholder was a "debt" that the plaintiff in a negligence suit could attach as a "res". In Minichiello, an an opinion written by J<del>odge Priendly,</del> the Court reasoned that the New York Court of Appeals in Seider had created judicially a direct action statute similar to that passed by the Louisiana legislature and held to be constitutiona) in Watson v. Employers Liability Assurance Corp., 348 U.S. 66 (1954). In that case, the statute in question allowed injured persons action to rue directly against a liability insurance company that had -up to designated limits issued a policy agreeing to pay the established claims of persons injured by the insured. But the Louisiana statute was limited to torts committed within that state, a fact large in the Court's decision. It was reasoned

and scene of the tort are readily accessible to the trier of fact. Pinally, concern was expressed that residents of Louisiana would not obtain jurisdiction over foreign tortfeasors if they could not do so in Louisiana.

In Minichiello the Court of Appeals recognized
that the judicially created direct action in New York
advanced this theory of jurisdiction substantially beyond
that of the Louisiana statute wat the nevertheless
concluded that quasi in rem jurisdiction existed. It
emphasized New York's interest in protecting its residents
and providing them with ready means of sping foreign
tortfeasors was sufficient to satisfy due process
requirements.

In this case the Sourt of Appeals for the Second

Circuit declined to reconsider its holding in Minichiello on

the ground attempty wrond by potitionare, that the Seider

doctrine had been undermined by Shafer v. Heitner, supra
The Court of Appeals

For the Second of Shafer as requiring

expensive, and therefore more costly to the insurers, to defend a litigation several hundred miles away from the site of the accident, the residence of the defendants and the location of witnesses. In reaching a similar conclusion with respect to whether suit in New York would be "unfair to the nominal defendants" (the petitioners here), the court

"will not pay the judgment, nor manage the defense". 40

The court die

then noted that no "other state could constitutionally give

collateral estopped effect to a Seider judgment".

Although I would agree that no such collateral estopped should be allowed, the view expressed by the Court of appeals is distum that may or may not be followed in other jurisdictions.

that it was not [oreclosing the possibility of a denial of due process in circumstances not presented in this case.

I find the decision of the Court of Appeals disturbing. The reference to petitioners as "nominal defendants" disregards many of the wary "realities" that hear upon whether alleged torfebsors, sucd ind remote jurisdiction, are denied the fairness required by the Duc Process ()ause. It is novel doctrine, at least for me, to refer to the parties defendant in a negligence case as being only the "nominal" parties in interest if they happen to have liability insurance. In this case, for example, petitoners will have to appear in the New York court and Participate in the defense of the suit in essentially the same manner and extent as if it were brought in Virginia. this 300 miles from their residences and places of business,

in a remote forum also are not inconsequential. It is routine procedure for the jury to view the scene of the accident, often more than once. Jurors drawn from the venue of the accident may be better able to understand testimony pertaining to local geography where this is relevant. In short, all of the considerations applicable to forum non conveniens - a doctrine based on fairness - cut against any general application of the Seider doctrine.

possibility of a second suit in the jursidiction where the accident occurred. The opinion of the Court of Appeals seems to assume, by its reference to petitioners as nominal defendants, that the only real parties in Interest are the insurance companies. To be turn, a judgment in the New York case cannot exceed the amount indemnified by the policies of insurance. But damage suit judgments, especially in recent years, often exceed insured limits. In this case, for example, if respondent wins a judgment that exhausts the

willbe

those of the first, Witnesses ection toolify improvisely the same manner, and policioners could be not the Mazard of a record jury verdice end judgment. Whether these conterns subjected to this sort of injustice - being required to undergo two trials rather than one - raises for me serious questions of Fundamental Fairness.

# $\times \times \times$

Note to David: When you edit and revise this draft, please provide some footnotes - including a strong citation to Judge Anderson's dissent in Minichiello.

He seem, the judicially wested the the doctions continue continue vaiser raiser severe questions of due process. It hersely receive consonant with the standards of farmers eveningled in

# FILE COPY

# PLÉASE RETURN TO FILE

### 1st DRAFT

## SUPREME COURT OF THE UNITED STATES

LED-HY PAVING CORP. AND DAVIS II. CLEM & MARGUERITE T. OCONNOR, ETC.

ON PETITION FOR WIGHT OF CURRENCEME TO THE UNITED STATES. COURT OF APPEALS FOR THE SECOND CHECKET.

No. 78-410 | 18 ided November +, 1978

Mt. J. Street Powers, dissenting,

This case presents the question whether the Due Process Clause permits a tort planetit to obtain jurisdiction in New York over a defendant whose sole contact with the State arises from the deten latt's contract for indemnity with a company that does business in New York. The case presents an issue of considerable importance with troublesome tamifications in the spacious arena of personal injury litigation, Moreover, it seems to me that the rationale of our recent decision in Shafter v. Heather, 433 U. S. 186 (1977), is at odds with the decision of the Court of Appeals here. I therefore would grant certificat and set the case for argument.

The petitioners are residents of Virginia. While working for petitioner Ler-Hy Paving Corp. (Lee-Hy) in Virginia, the respondent's decedent (a New York resident) was killed when Lor-Hy's gentler, operated by petitioner Chan struck him sear Richmond, Va. The respondent instituted this suit in the District Court for the Eastern District of New York as exceptrix for her busband's estate channing damages for the wrongful death of her hashend. Its order to obtgin jurisdiction over the petitioners, who are consoled to have an other postertion to New York, the respondent sought and obtained under New York law are order attacking the contractual obligations of two restriction companies doing leastness in New York to defend and indomanly Len-Hy. The District Court decided petitioner's motion to vacate the artischover) and dismoss the suit. Acknowledging that there was a "substantial ground for difference of quantor" on the question

of law and that the issue was an important one the District Court certified an appeal to the Court of Appeals under  $28^{\circ}$ U. S. C. § 1282 (b).

The Second Circuit affirmed? The court based its ruling on the theory of quase to rear purishlation adopted by the New York Court of Appeals in Scider v. Roth. 17 N. Y. 2d 111. 216 N. E. 2d 312 (1966). In Scider, personal jurisdiction. was predicated on the faction that the insurance company's addigation to indemnify the policyholder was a "delit" that the planatut in a negligence suit to aid attack as a "res.". In Michelia for v. Ruscula of A10 F. 2d 196 (1988), the Second Current affermed the emisticationality of Solder jorisdiction. reasoning that the New York Court of Appeals but treated andicially a direct action has similar to the Louislana statute hele constitutional in Watson v. Employers Linkelity Assurnaise Corp., 348 U. S. (6) (1954). The Minichiella court recognized that the Scalar doctrine differed in one important respect from the Lemeinen chieft action statute of Watson; Under Scider, there was no requirement that the fort for which polass was sought have occurred in the State asserting jura-gierana. Despite the Court's emphasis in Watson on the location of the tort, the Second Circuit 4: Minichiella ruled that New York's interest in protecting its residents and providing them with a ready rulents of suing foreign to thensors was sufficient to justify Scider jupishetion power the Due Process Clause?

The Court of Appelds skellikel this case along with two others with respect to a select median is simpler. Goldspieles, Schoolig, Nac 78-268, and Rospiel Moglital for Himself v. Schoolig. No. 78-361. In such a three cost, a sident of other States were case in New York for Ups constraint considered No. York. The sections to introduction in maintainty magnetic responsible to the output to a set of figure contrainty doing to cross in New York.

On the paper specifies in the Modellands, being the description of the Modellands, being a property of the strong a trace-time laying the solution with respect to postures be truly experiently described by the Modellands of the Modellands between Modellands and the Modellands of the state of the modellands that the paper is seening for expectation of the state where the modellands contained

In the case at hor, the petitioners presuccessfully reged reconsideration of Minichaelle, on the ground that the Scider dortrine and been underwined by Shafter v. Heather, super-The Court of Appeals viewed the toverriding teaching of Shaffer" as requiring courts to look to the Trealities' of the asserted grounds for farisdiction. As tar as the insurance companies were concerned the court formed no unfarroess in their being subject to the jurisherme of New York courts. as they do business in New York. The court mought that this was true even though often it is more expressive and therefore some costly to insurers the defend a lawsuit brought several legistral tailes from the site of the accident, the residence of the defendants and the location of the witnesses. The court scached a smaller conclusion concerning the farmess of a suit brought in New York against "the nominal deteralants" (the patitioners here). The court thought it conical that they should complain even though they twill not pay the programme, non-ingrange the defense "c

I find the Court of Appeals' decision auturbing. Atthough the insurance companies' contact with New York is important in determining whether it is fair for the New York courts to assert their maisferion, our decision in Waters indicated that the difficulties of defending a negligacer case for from the place of the rejary should be taken into account as decrebed Day Process Clause. See Waters v. Employers Laddity Associate Corp. 348 U.S. at 72. Often these difficulties are substantial. It is contine precedure for the judge and judy to view the scene of the arcident often time than once, Judes cannot from the views of the view of the property can be better able to understand testimosy portaining to local conditions

 $<sup>\</sup>Phi$  differential process absences that so this, or published on the Gaussian of the plantity assume a does the P - DP - A - D is about the congruency

The court had note that no court of the could not significantly give resister as a court from the about integral of Arbungh Anguse that the source from the Court is a lowest one court's operation from the regard is fortist that may be not not be followed to their parent-state.

<sup>§</sup> So. P. Cherg. M. Cenerick of Alvidense § 207 (28) Int. 1972.

and gregraphy. In short, many of the factors tendstoughly to sedered under the doctrine of forms one connectors.—itself a doctrine based on fairness—may also percain to the factors of a rough hundreds of order from the location of an avoidant exercising its junisdiction over the parties to the resulting tort sand.

Moreover, the Court of Appeals' reference to the politioners as "common! defendants" disregards many of the Trealities" that bear upon whether are alleged tertfeasor, such in a joins-diction remote from his home and the location of the acculeur, is defined the fair sess required by the Due Process Clause. It is moved coefficient at least for me to refer to the interest of defendants to regligence actions as "nominal" merely because they have insurance. In this case, for example, petitioners will be suprevened to appear in a court in New York, and will be required to participate in the defense of the suit messentially the same manner as if it had been brought in Virginia. They are required to do this 300 scales from their residences and place of business confronted with all of the generalities coused by defays that often stretch a trial over several days or even weaks.

be addition to the problems posed for both the inserer and the insured by a lingston board handreds of rates from the scene of the rost, there is the everguesent possibility of a second suit in the jurisdiction where the accident occurred. The opinion of the Court of Appeals seems to assume by its reference to petitionies as non-inal defendants that the only real parties in extenst are the insurance companies. To be seen, a padgment against the petitioners in the New York courts cannot exposed the amount of indomnification provided under the insurance policies. But judgments for civil damages, especially in recent years often have executed insured limits. In this case, for example, if respondent wins a judgment will be free to sue petitioners in Virginia where they would be forced to go through a second trial—possibly with-

<sup>&</sup>lt;sup>3</sup> See Carl Ga Comp. v. Colhect Ash U. S. Nic, 3of July (1937).

out the lenefit of lawyers supplied by the insurance companies. Moreover, as every latigation lawyer knows, the bazards of a second trial may exceed those of the first; westesses seldom tell their story gree selv the same way twice, and often new evidence is introduced. To say that the legal rights of insured defendants are not being adjudicated, despite their substantial role in the detense of the sent and despite the potential loss of their right to the insurance rompany's legal representation begs the question. To what extent must ar indivioual be involved in the higation before the fundamental fairons requirements of International Shor-Co. v. Washington, 326 U. S. 310 (1945), are applicable?

In size the judicially exected Scider doctrine raises screams questions of dec process. To me it does not appear consequent with the standards of farmess enucciated in International Stor v. Washington, 326 U.S. 310 (1945), and strongly renewated a Singler v. Herton, supra. The issues presented are of covered to inspress and insureds in every State as we'll as to state legislators responsible for the fairness of long-arm statutes. The case ments plenary consideration by this Court.

## Supreme Court of the Anited States Mashington, P. C. 2054.9

CHAMBARS OF THE CHIEF JUSTICE

.().

November 21, 1978

Re: 78-410 - Lee-Hy Paving Co. V. O'Connor

Dear Lewis:

I repeat my agreement with what you say in your November 14 circulation because it fully supports a grant of cert. I would hope it will stimulate a fourth vote. I see no utility in anything less.

Regards,

Mr. Justice Powell

Copies to the Conference

Court	Voted on, 19		
Argued 19	Assigned	No.	78-41(
Submitted 19	Amounted 19		

LEE-HY PAVING CORP.

VS.

### O'CONNON

1.5

Relent In L.F.P.

	ноль сент.		at Rigar	COUNT.	Metaris	Morton	VIO.5 N. N. N. VOT 1744
	YOU :			TION SEP	TNN TO2		10, 10, 10, 10,
Burger, Ch. J		. !.,		j.	{  .		
Breznan, J				!	!J	: 14-	<b>.</b>
Stewart, J						' '	<b>.</b>
White, J		- 1		1	1 1	1	.,,
Marshall, J			-				
Blackmun, J				: '	i .	1	
Powell, J							
Relanquist, J	1			•			
Stevers, J	: : <sub> </sub>			· · · · · · ·		ļ <sub>1</sub>	
·· . · · · · · <u>-</u> · · <u>-</u> · · <u>-</u> · · · · · ·	<u>:-</u>	j		,			

2 8 NOV 1978

FILE COPY

PLEASE RETURN TO FILE

ard DRAFT

# SUPBEME COURT OF THE UNITED STATES

LEE-HY PAVING CORP. AND DAVIS E. CLEM & MARGUERITE T. O'CONNOR ETC.

ON PETITION FOR WRIT OF CONTIONARD TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CHECUT

No. 78-419. Decaded Decoples -, 1978.

Mr. JUSTICE PRIVATE, with whom Mr. JUSTICE BLACKMON joins, dissenting.

This case presents the question whether the Due Process Clause permits a tort plaintiff to obtain jurisdiction in New York over a defendant whose side contact with the State arises from the defendant's contract for indemnity with a company that does business in New York.\(^1\) The case presents an issue of considerable importance, with troublesome ramifications in the spacious arens of personal injury litigation. Moreover, it seems to me that the rationale of our recent decision in Shaffer v. Hother, 433 U.S. 186 (1977), is at odds with the decision of the Court of Appeals here. I therefore would grant certionari and set the case for argument.

The petitioners are residents of Virginia. While working for petitioner Lee-Hy Paving Corp. (Lee-Hy) in Virginia, the respondent's depedent in New York resident) was killed when Lee-Hy's grader, operated by petitioner Clem. struck him near Richmond, Va. The respondent postituted this suit in the District Court for the Fastern District of New

Along with Levelly Parison Coop by O'Commo, the Civil of Apparddecided two order mass with respect to which correcting smalls. Gallespie v. Schmidts, No. 78-268, and Respons Hospital for Wismon v. Schmidts, No. 78-361. In pick, at these cases, residents of other States were stad in New York for tails regarding net-ide at New York. The sole basis for jurisdiction in each is the insurance pulse of the dependant, issued by a company thing business in New York. Although I write only with respects. Levelly Parison Coop, v. O'Commo, the governes stated in my apinant large would support the granting of conformal in all three weeks.

York as executrix for her husband's estate claiming damages for the wrongful death of her husband. In order to obtain jurisdiction over the peritioners, who are conceded to have no other connection to New York, the respondent sought and obtained under New York law an order attaching the contractual obligations of two insurance companies doing husiness in New York to defend and indemnify Lee-Hy. The District Court demod petitioner's motion to vacate the attachment and dismiss the suit. Acknowledging that there was a "substantial ground for difference of opinion" on the question of law, and that the issue was an important one, the District Court certified an appeal to the Court of Appeals under 28 U. S. C. § 1203 (b).

The Second Circuit affirmed. The coort based its ruling on the theory of quasi in rem jurisdiction adopted by the New York Court of Appends in Scider v. Rath, 17 N. Y. 2d 111. 216 N. E. 2d 312 (1966). In Scider, personal jurisdiction. was predicated on the fiction that the insurance company's obligation to indemnify the policyholder was a "debt" that the plainfill in a togligence sail could attach as a "res." In Minichiella v. Rosenberg, 410 F. 2d 106 (1968), the Second Circuit affirmed the constitutionality of Scider jurisdiction. reasoning that the New York Court of Appeals had created judicially a direct action law similar to the Louisiana statute held constitutional in Watson v. Employers Liability Assurquan Corp. 348 U. S. 66 (1954). The Minichiglia court recognized that the Scieler doctrine differed in one important respect from the Louisiness direct action statute of Watson; Under Seider there was no requirement that the tart for which reduces was sought have accurred in the State asserting jurischetion. Despate the Court's emphasis in Watson on the location of the tort, the Second Circuit in Minichiella ruled that New York's interest in protecting its residents and providing them with a ready means of suing foreign tortleasors was sufficient to justify Scider jurisdiction under the Duc-Process Clause,\*

In this personalize dissent in Minichicky, Judge Anderson organical that

In the case at bar, the petitioners unsuccessfully urged reconsideration of Manchello on the ground that the Scider doctrine had been underninal by Shaffer x. Heitner, supra, The Court of Appeals viewed the "overriding teaching of Shaffer" as requiring courts to look to the "resulties" of the asserted grounds for jurisdiction. As far as the insurance companies were concerned, the court found on unfairness in their being subject to the jurisdiction of New York courts, as they do lossiness in New York. The court thought that this was true even though often it is more expensive (and therefore more costly to insurers) to defend a lawsuit brought several bundred miles from the site of the accident, the residence of the defendants, god the location of the witnesses. The court reached a similar conclusion concerning the fairness of a suit brought to New York against "the nominal defendants" (the petitioners here). The court thought it implical that they should complain even though they "will not pay the judgment, nor unmage the defense."

I find the Court of Appends' decision disturbing. Although the insurance companies' contact with New York is important in determining whether it is fair for the New York courts to assert their jurisdiction, our decision in Watson indicated that the difficulties of defending a negligence case far from the place of the injury should be taken into account under the Due Process Clause. See Watson v. Employers Liability Assirance Corp., 348 U.S., at 72. Often these difficulties are substantial. It is routine preceives for the judge and jury.

Hintson was based primarily on a  $S^*$  to be strong interest in lawing jurisdiction with respect to terminal activity within the State's barders. See Minichielle, 440 Y. 2d. at 113–117. Thus, Judge Anderson concluded that "statutes ascerting jurisdiction of the state where the according toward analytic as due present, whereas the assertion of jurisdiction by the state of the plaintiff a residence does not."  $Id_{ij}$  at 106 (footnate unittest).

<sup>\*</sup>The course did more that no bother state could constructionally give collectual estapps in effect to a Scales indigment." Although I agree that me such affect should be allowed, the court's appaient in this regard is diction that more or more not be followed in other possibilities.

Sep E. Cleary, McConnick on Paristence § 216 (24 Feb. 1972).

to view the seene of the accident often more than once, Jarors draws from the venue of the accident may be better able to understand asstinous pertaining to local conditions and geography. In short, many of the factors traditionally considered under the doctrine of forum and conteniens—itself a doctrine based on fairness—may also pertain to the fairness of a court hundreds of miles from the location of an accident exercising its parediction over the parties to the resulting tort suit."

Moreover, the Court of Appeals' reference to the petitioners as "nominal defendants" disregards many of the "reglities" that bear upon whether an alleged corticasor, such in a jurisdiction remote from his home and the focation of the accident, is decied the farmess required by the Due Process Clause. It is more' doctrine, at least for one to refer to the interest of defendants to negligence actions as "cominal" merely because they have magnetice. In this case for example, petitioners will be summored to appear in a court in New York, and will be required to participate in the defense of the suit in essentially the same manner as if a had been brought in Virginia. They are required to do this 300 miles from their residences and place of business, confronted with all of the uncertainties caused by delays that often stretch a trial over several days or even weeks.

In addition to the problems posed for both the insurer and the insured by a litigation located hundreds of miles from the scene of the tort, there is the ever-present possibility of a second stiff in the jurisdiction where the accident organized. The opinion of the Court of Appents seems to assure, by its reference to petitioners as nominal defendants, that the only real parties in interest are the insurance companies. To be sure, a jurigment against the petitioners in the New York courts cannot exceed the amount of indemonfication provided under the insurance policies. But judgments for civil dansages, especially in recent years, often have exceeded insured limits. In this case, for example, if respondent wins a judglimits.

A See, Gulf. Oil Corp., v. Gilbert, 480-17, 8, 501, 507, 509 (1947).

ment that exhausts the obligation of the insurers, the respondent will be free to see petitioners in Virginia where they would be forced to go through a second trial-possibly without the benefit of lawyers supplied by the insurance com-Moreover, as every litigation lawyer knows, the hazards of a second trial may exceed those of the first; witnesses soldom tell their story precisely the same way twice, and often new evidence is introduced. To say that the legal rights of insured defendants are not being adjudicated, despite their substantial role in the defense of the suit and despite the potential loss of their right to the insurance company's legal representation, begs the question; To what extent must an individual be involved in the litigation before the fundamental fairness requirements of International Shor Co. v. Washington, 326 U. S. 310 (1945), are applicable?

In sum, the judicially created Scider doctrine raises serious. questions of the process. To me it does not appear consonant with the standards of fairness enunciated in International Shoe v. Washington, 326 U. S. 310 (1945), and strongly tenerated in Shaffer v. Heitner, supra. The issues presented ate of concern to insurers and insureds in every State, as well as to state legislators responsible for the farmess of long-arm sugartes. The case merits plenary consideration

by this Court.

Court	Volcd on, 15	
Argued, 19	Assigned	No 30 444
Submitted	Annequied,	78-410

LEE-HY PAVING CORP.

15.

### O'CONNOR

Relisted for Mr. Justice Powell.

Deder

	1HOLD				SEME	DOTEST.					TUN	1 4	KF ST	VOT VOTEN
	- 708: -	. "		ļ. Ÿ	. 11151	208	AFF	RKY	APP.	177	_;	<u>,                                    </u>		
Burger, Ch. J				ļ					ļ					
Bremmer, J.,				1		- 1					1	1		
Stewart, J			ļ		d	!				Ι.		ļ		;
White J			l		1			1		1				1
Marshall, J					-					-	i	1		
Blackmun, J	1 1			1	-							1		
Powell, J			<u>.</u>	į	ļ	.,		ļ		ļ	.j			! <b>.</b>
Rohnquist, J	1 1			1				:				1		
Stevens, J			l		1			:		1				1
	.]		1		1			1	ı	!	1	1		<b></b>