10-1979

Rush v. Savchuk

Lewis F. Powell Jr.

This is similar to Lee-Hi Pavini in which I dissented from denial of Cert. I think the D/P analysis in Schaffer v Heitner applies.

Note: We can't say the D/P Q is not substantial

Linda & Paul: Give me these memos, the Pappas(?) case, & my Lee-Hi opinion the day before the Conference - Feb 15

Appellee, while a passenger in a car driven by Appellant Rush, was injured in an accident in Ind. Both Appellee & Rush also were residents of Ind.

Year & half after accident, & after St/lims had run in Ind., Appellee moved to Minn.

He then sued Rush and his insurer, State Farm, obtaining quasi in rem juris by virtue of a Minn. statute allowing garnishment based on an auto liability policy.

Preliminary Memo

February 16, 1979 Conference
List 3, Sheet 1

No. 78-952

liability limited to amt. of policy

RUSH and STATE FARM MUTUAL AUTO INS. CO.

v.

SAVCHUK

Timely

Appeal from Minn. S.Ct. (Wahl, Otis, dissenting, joined by Rogosheske and Peterson)
State/Civil

The Seider v Roth case (N.Y.) is being followed

1. SUMMARY: The issue here is whether quasi in rem jurisdiction may constitutionally be based on the obligation of an insurance company to defend and indemnify a nonresident insured under the company's automobile insurance policy, when the incident giving rise to the action occurs outside the forum state but the plaintiff is a resident of the forum state.

I would note.
Paul

2. FACTS & DECISIONS BELOW: The controversy arose out of a single-car accident in Indiana. The car was driven by appt Rush and owned by his father; appee Savchuk was a passenger. The Rush car was insured by appt State Farm. Both Rush and Savchuk were residents of Indiana at the time of the incident. About a year and a half later, Savchuk moved with his parents to Minnesota, where he now resides.

This suit was commenced when Savchuk served a garnishment summons on State Farm. A copy of the summons and complaint were served personally on Rush in Indiana. The complaint alleged negligence and sought $125,000 in damages.

Savchuk relied on Minn. St. § 571.41 to establish quasi in rem jurisdiction over Rush on the basis of State Farm's obligation to defend and indemnify Rush under Rush's automobile liability insurance policy. Section 571.41 provides in pertinent part:

> Subd. 2. Garnishment shall be permitted before judgment in the following instances only:
>
> (1) For the purpose of establishing quasi in rem jurisdiction.
>
> * * * *
>
> (c) [when] the defendant is a nonresident individual, or a foreign corporation, partnership or association.
>
> (2) When the garnishee and the debtor are parties to a contract of suretyship, guarantee, or insurance, because of which the garnishee may be held to respond to any person for the claim asserted against the debtor in the main action.

Rush and State Farm contended that § 571.41 did not apply to the circumstances here and that, if it did, it would violate the Due Process Clause of the Fourteenth Amendment. The trial court denied appts' motion to dismiss. The Minn. S.Ct. affirmed.

The Minn. S.Ct. first construed the statute to apply to a case such as this. The court then rejected appts' constitutional attack. The court noted that the provision's application was limited to situations in which the plaintiff was a resident of the state at the time the action was commenced and that proper notice was given. The court then held that § 571.41 did not expose the defendant to possible liability greater than the amount of the insurance policy. That is, the quasi in rem jurisdiction bestowed by operation of the statute would not be transformed into personal jurisdiction over the defendant when the defendant appeared in Minnesota to defend the case on its merits.

The court found ample justification for assertion of quasi in rem jurisdiction, however, in the facts that the insurer was present in the state, registered to do business and was doing business in the state, and in the state's legitimate interest in protecting its residents and providing them with a forum. (Here the statute of limitations had run in the only available alternative forum.)

The court recognized the statutory procedure was patterned after Seider v. Roth, 17 N.Y.2d 111, 216 N.E.2d 312 (1966). It noted that other states had rejected that procedure and that it

had incurred criticism by legal commentators. But the court thought that the procedure was not overly harsh and that ill effects could be ameliorated by invocation of the doctrine of forum non conveniens.

Justice Otis dissented. He was particularly disturbed by application of the statute to a case, such as this, in which the plaintiff moved from the time of the accident to the forum state. In his view, this subjected defendants to the possibility of having to defend suit in an intolerably large number of jurisdictions.

While the case was pending here, this Court decided Shaffer v. Heitner, 433 U.S. 186 (1977). There a nonresident plaintiff filed a shareholder's derivative suit in a Delaware court, naming as defendants 28 present or former officers or directors of Greyhound (a Delaware corporation) and Greyhound Lines (a wholly-owned subsidiary incorporated in California). None of the individual defendants was a Delaware resident. The complaint alleged that the individual defendants had violated their duties to both corporations by engaging in activities that subjected the corporations to liability. The Delaware court obtained jurisdiction by sequestering Greyhound stock owned by the individual defendants. The Delaware Supreme Court sustained the exercise of jurisdiction on the basis of a constitutional distinction between quasi in rem and in personam jurisdiction. This Court rejected a categorical distinction of that sort reasoning that "if a direct assertion of personal jurisdiction over

the defendant would violate the Constitution, it would seem that an indirect assertion of that jurisdiction should be equally impermissible." 433 U.S., at 209. The Court determined the Delaware court's exercise of jurisdiction in that case to be unwarranted under the International Shoe minimum contacts approach.

This Court vacated the judgment of the Minn. S.Ct. and remanded the case for reconsideration in light of Shaffer. 433 U.S. 186 (1977). On remand, the Minn. S.Ct. distinguished Shaffer and reaffirmed its original disposition. Unlike the res in Shaffer, the Minn. S.Ct. said, the insurer's obligation to defend and indemnify has no independent significance apart from the accident litigation. See O'Connor v. Lee-Hy Paving Corp., 579 F.2d 194 (CA 2 1978) (Friendly, J.) (distinguishing the Seider procedure from the situation in Shaffer). Also, here there was no alternative forum in which vindication of Minnesota's interest in the recovery by one of its residents could be assured. Indiana's guest statute would have cut off appee's claim, and by the time the trial court acted on appee's motion to amend his complaint to make State Farm a party the Indiana statute of limitations had run. The court saw no risk of forum shopping because quasi in rem jurisdiction was limited by its first opinion to residents of the forum; there was no evidence in this case that appee had engaged in forum shopping. Generally, the court thought there were sufficient minimum contacts with Minnesota to justify extension of jurisdiction in this case.

Justice Otis dissented again, this time joined by two others. He thought Shaffer authorized jurisdiction based on a res only if the res were the subject matter of the litigation. He noted that the majority emphasized the state's interests associated with the plaintiff while the test of jurisdiction concerns the defendant's contacts with the forum state. He thought the defendant here had had nothing to do with Minnesota and had no reason to expect to be hauled before a Minnesota court.

3. CONTENTIONS: Appts contend that the Seider procedure is inconsistent with Shaffer and with this Court's jurisdiction cases generally. They note that New Hampshire recently has adopted the procedure for cases in which the defendant comes from a Seider jurisdiction. And the New York courts generally have sustained the Seider procedure since Shaffer, but the issue is being hotly contested.

Resp distinguishes Shaffer on the ground that the property here was the insurer's obligation to defend and indemnify, which arose precisely because of the accident constituting the underlying subject matter of the lawsuit. In Shaffer the property bore no relation to the plaintiff's cause of action, but was merely a device to compel the defendant's personal appearance. Resp notes also that this Court dismissed an appeal raising the Seider issue in the past, Victor v. Lyon Associates, Inc., 21 N.Y.2d 695, 234 N.E.2d 459, dismissed for want of a substantial federal question sub nom. Hanover Ins. v. Victor, 393 U.S. 7 (1968), and denied

cert in a decision upholding the constitutionality of the Seider procedure, Minichiello v. Rosenberg, 410 F.2d 106 (CA 2 1968), cert. denied, 396 U.S. 844 (1969). Moreover, in none of the states in which the procedure was rejected was the determination made on federal constitutional grounds. The federal DC in Minnesota and the CA 2 continue to uphold the procedure.

4. DISCUSSION: Appee's distinction of Shaffer does have some support in that opinion. The Court noted that the "property which . . . serves as the basis for state-court jurisdiction is completely unrelated to the plaintiff's cause of action." 433 U.S., at 209. But the Court's discussion of situations in which property alone might provide a basis for jurisdiction suggests that the property itself must play a real and substantial role in the lawsuit. See id., at 207-208. In this case, the res on which the Minnesota courts relied is not really the subject of any controversy; it is uncontested that the insurer has an obligation to defend and to indemnify. Moreover, the location of the property in Minnesota appears entirely fortuitous as far as appt is concerned. Evidently no claim was made that the insurance contract had some nexus with Minnesota. In fact, Judge Otis explains:

> When plaintiff was injured, he and defendant were both Indiana residents, driving on an Indiana highway in a car registered in Indiana and insured in Indiana by a policy written in that state. The record discloses no relationship between defendant

> and the State of Minnesota. The fact that his insurer also does business in Minnesota is not, of course, attributable to any activity on the part of defendant.

Petn. A-44.

Thus, while jurisdiction might fairly be asserted over the insurer, Rush's lack of connection to the forum makes assertion of jurisdiction over him highly questionable. I think this case raises a substantial question, then, whether the statute sustained below is reconcilable with the fairness concepts infused into quasi in rem analysis by the Shaffer decision.

This Court did reserve in Shaffer the question whether "the presence of a defendant's property in a State is a sufficient basis for jurisdiction when no other forum is available to the plaintiff." 433 U.S., at 211 n. 37. The CA indicated in this case that appee could not have recovered in the only other available forum. Thus, the Minnesota statute might be sustained at least as applied to a case such as this. But this question itself appears to be substantial.

This Court recently declined cert to review a Second Circuit decision upholding the Seider procedure despite this Court's Shaffer decision. Lee-Hy Paving Corp. v. O'Connor, No. 78-410 (Dec. 4, 1978). MR. JUSTICE POWELL, joined by MR. JUSTICE BLACKMUN, dissented at some length from that denial, finding Shaffer to be "at odds with the decision of the Court of Appeals here." Dissenting opinion, at 1. Appts in this case have properly invoked this Court's mandatory jurisdiction. I think the arguments advanced by MR. JUSTICE POWELL militate against a dismissal herein.

There is a motion to dismiss or affirm.

1/23/79	Sasso	Opinions in Petition

ME

February 16, 1979

Court .....
Argued ..... , 19...
Submitted ..... , 19...

Voted on ..... , 19...
Assigned ..... , 19..
Announced ..... , 19..

No. 78-952

RUSH

vs.

SAVCHUK

Also motion to dismiss or affirm.

Note

	HOLD FOR CERT.	JURISDICTIONAL STATEMENT	MERITS	MOTION	AGENDA	NOTATION
Burger, Ch. J		✓				
Brennan, J		Jurn 3				
Stewart, J		✓				
White, J		✓				
Marshall, J		✓				
Blackmun, J	✓					
Powell, J	✓					
Rehnquist, J	✓					
Stevens, J	✓					

78-952 Rush v. Savchuk Argued 10/1/79

A Lee-Hy Parvin Case

Minn. S/Ct sustained juris re. the authority of Sneeden (N.H.).

9 ll vote to Reverse on mtn Lee-Hy Parvin B/K.

Adamson (for Peter Rush)

Minn S/Ct not only found jurisdiction but also held that Minn. law applied to the alleged neg. ~~Thus~~ Minn. law is materially ~~different~~ different from Fed. in that comparative negligence rather than contributory neg. applies

If Rush had not appeared, he would breach his obligation to testify. The Ins. Co. then might deny liab. under policy.

(In Hertner, suppose an officer & director liab. policy had been garnisheed in Del — ~~at~~ would Minn have been guest in new jurisdiction)

(next pg

Borkan (Resp)

Minn. relied on Snider

Minn leg. amended its garnishment statute for purpose of allowing Snider type suits.

→ | SI of Tim had run in 2nd when suit in Minn was brought.

JPS noted that insurance co - in light of Snider - could change their policies to provide that it had no obligation to defend ~~against~~ on in rem action in a state other than state of accident. This would deprive Minn of its basis for jurisdn.

Reverse 6 - 3

78-952 Rush v. Savchuk Conf. 10/3/79

The Chief Justice Reverse

Mr. Justice Brennan Affirm
(no reasons stated)

Mr. Justice Stewart Reverse
Harlan case because of Seider decision w/respect to quasi-in-rem. Seider may be questionable, but could be accepted by P.S. except for Hartman that overruled Pennoyer v Neff.

Mr. Justice White Affirm - tentatively

The property here (the ins. ctt.) is related to lawsuit. Thus Here is dif. from Heutner

Conceded there are problems as to whether judg. binds D's ~~[illegible]~~ in other states

May not distract

Mr. Justice Marshall Reverse - tentatively

The tort was committed in Fed ~~[illegible]~~ - & Minn. had no ~~[illegible]~~h "contact" with cause of action.

Mr. Justice Blackmun Reverse

Minn. has been a haven for ~~[illegible]~~ for plaintiffs lawyers for years.

Sedat was wrongfully decided & cannot be reconciled with Heutner

Agree with my opinion in Lee Hi Paving.

Mr. Justice Powell Reverse

Agree with HAB.
See my Lee Hy Paving opinion
Heitner in effect overruled
the rationale of Seider.
Seider was wrong.

Mr. Justice Rehnquist Reverse

Heitner in effect overruled
Harris

Mr. Justice Stevens Affirm

The individual Δ is not before
Court in any jurisdictional sense. We
should rely on & include in our
op., the representations of counsel
for Resp. as to limited nature
of Minn. jurisdiction.

I may add, in connecting something along following lines:
"I join in J Marshall's excellent op for the Ct, and add that my dissent from the denial of Cert. in Lee Hy Pouring (cite) suggests additional reasons for reversing the judg of in this case."

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Marshall

Circulated: 26 OCT 1979

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-952

Randal Rush et al., Appellants, v. Jeffrey D. Savchuk | On Appeal from the Supreme Court of Minnesota.

[October —, 1979]

Excellent opinion. I'll join, LFP 10/29/79

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This appeal presents the question whether a State may constitutionally exercise *quasi in rem* jurisdiction over a defendant who has no forum contacts by attaching the contractual obligation of an insurer licensed to do business in the State to defend and indemnify him in connection with the suit.

I

On January 13, 1972, two Indiana residents were involved in a single-car accident in Elkhart, Ind. Appellee Savchuk, who was a passenger in the car driven by appellant Rush, was injured. The car, owned by Rush's father, was insured by appellant State Farm Mutual Automobile Insurance Co. (State Farm) under a liability insurance policy issued in Indiana. Indiana's guest statute would have barred a claim by Savchuk. Ind. Stat. § 9-3-3-1.

Savchuk moved with his parents to Minnesota in June 1973.[1] On May 28, 1974, he commenced an action against Rush in the Minnesota state courts.[2] As Rush had no contacts with Minnesota that would support *in personam* jurisdiction, Savchuk attempted to obtain *quasi in rem* jurisdic-

[1] Savchuk moved to Rochester, [illegible] Law School.

[2] The suit was filed in the county court in Olmsted [illegible] 272 N. W. 2d 889, 891, n. 2 (1978).

I think this is a good opinion. Would you - Jon

tion by garnishing State Farm's obligations under the insurance policy to defend and indemnify Rush in connection with such a suit.[1] State Farm does business in Minnesota.[2] Rush was personally served in Indiana. The complaint alleged negligence and sought $125,000 in damages.[3]

As provided by the state garnishment statute, Savchuk moved the trial court for permission to file a supplemental complaint making the garnishee, State Farm, a party to the action after State Farm's response to the garnishment summons

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[1] Minn. Stat. § 571.42, subd. 2 (1978) provides, in relevant part:

"Notwithstanding anything to the contrary herein contained, a plaintiff in any action in a court of record for the recovery of money may cause a garnishee summons to issue prior to judgment therein in the following instances only:

. . . .

"(5) If the court shall order the issuance of such summons, if a summons and complaint is filed with the appropriate court and either served on the defendant or a copy of it is left with the sheriff for service on the defendant not more than 60 days after the order is signed, and if, upon application to the court it shall appear that:

. . . .

"(2) The purpose of the garnishment is to establish quasi in rem jurisdiction; and that

. . . .

"(b) defendant is a nonresident individual, or a foreign corporation, partnership or association.

"(3) The garnishee and the debtor are parties to a contract of employment, contractor, or insurance, because of which the garnishee may be held to respond to any person not the plaintiff asserting against the debtor in the main action. . . ."

The Minnesota Supreme Court cited this version of the statute, enacted in 1976, in its opinion, as entered, 272 N. W. 2d xxxv (Minn. 1978) (*Savchuk III*). The version of the statute that was in effect at the time of the original opinion, 311 Minn. 388, 245 N. W. 2d xxxv (1976) (*Savchuk I*), does not differ in any important respect.

[2] State Farm is an Illinois corporation that does business in all 50 States, the District of Columbia, and several Canadian provinces. The Travelers Almanac 110 (1978).

[3] The prayer was later reduced voluntarily to $70,000, the jurisdictional amount.

asserted that it owed the defendant nothing.[4] Rush and State Farm moved to dismiss the complaint for lack of jurisdiction over the defendant.[5] The trial court denied the motion to dismiss and granted the motion for leave to file the supplemental complaint.

On appeal, the Minnesota Supreme Court affirmed the trial court's decision. 311 Minn. 480, 245 N. W. 2d 624 (1976) (*Savchuk I*). It held, first, that the obligation of an insurance company to defend and indemnify a nonresident insured under an automobile liability insurance policy is a garnishable res in Minnesota for the purpose of obtaining *quasi in rem* jurisdiction when the incident giving rise to the action occurs outside Minnesota but the plaintiff is a Minnesota resident when the suit is filed. Second, the court held that the assertion of jurisdiction over Rush was constitutional because he had notice of the suit and an opportunity to defend, his liability was limited to the amount of the policy, and the garnishment procedure may be used only by Minnesota residents. The court expressly recognized that Rush had engaged in no voluntary activity that would justify the exercise of *in personam* jurisdiction. The court found, however, that considerations of fairness supported the exercise of *quasi in rem* jurisdiction because in accident litigation the insurer controls the defense of the case. State Farm does business in and is

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[4] Minn. Stat. § 571.495 requires the garnishee to disclose the amount of his debt to the defendant. Section 571.51 provides, in relevant part:

"[I]n all . . . cases where the garnishee denies liability, the judgment creditor may move the court at any time before the garnishee is discharged, on notice to both the judgment debtor and the garnishee, for leave to file a supplemental complaint making the latter a party to the action, and setting forth the facts upon which he claims to charge him; and, if probable cause is shown, such motion shall be granted. . . ." 4 Minn. Stat. § 571.51 (1978).

The post-garnishment [illegible].

[5] The motion to dismiss also alleged lack of subject-matter jurisdiction, insufficiency of process, and insufficiency of service of process.

regulated by the State, and the State has an interest in protecting its residents and providing them with a forum in which to litigate their claims.

Rush appealed to this Court. We vacated the judgment and remanded the cause for further consideration in light of *Shaffer* v. *Heitner*, 433 U. S. 186 (1977). 433 U. S. 902 (1977).

On remand, the Minnesota Supreme Court held that the assertion of *quasi in rem* jurisdiction through garnishment of an insurer's obligation to its insured complied with the due-process standards enunciated in *Shaffer*. 272 N. W. 2d 888 (Minn. 1978) (*Savchuk II*). The court found that the garnishment statute differed from the Delaware stock sequestration procedure held unconstitutional in *Shaffer* because the garnished property was intimately related to the litigation and the garnishment procedure paralleled the asserted state interest in "facilitating recoveries for resident plaintiffs." *Id.*, at 891.[3] This appeal followed.

II

The Minnesota Supreme Court held that the Minnesota garnishment statute embodies the rule stated in *Seider* v. *Roth*, 17 N. Y. 2d 111, 216 N. E. 2d 312 (1966), that the constructive obligation of an insurance company to its insured under a liability insurance policy is a debt subject to attachment under state law if the insurer does business in the State." *Seider* jurisdiction was upheld against a due-process challenge

[3] Minnesota would apply its own comparative negligence law, rather than Indiana's contributory negligence rule. See *Schwenk* v. *Consolidated Freightways Corp.*, 300 Minn. 187, 221 N. W. 2d 663 (1974). Appellant asserts that Minnesota would also decline to apply the Indiana guest statute if the case were tried in Minnesota. Juris Statement 20, n. 2; cf. *Savchuk II*, 272 N. W. 2d at 891–892. The constitutionality of a choice of law rule that would apply to an Indiana resident in these circumstances is not before us. Cf. *Home Ins. Co.* v. *Dick*, 281 U. S. 397 (1930).

[3] 272 N. W. 2d, at 891.

in *Simpson* v. *Loehmann*, 21 N. Y. 2d 305, 234 N. E. 2d 669 (1967), reargument denied, 21 N. Y. 2d 990, — N. E. 2d — (1968). The New York court relied on *Harris* v. *Balk*, 198 U. S. 215 (1905), in holding that the presence of the debt in the State was sufficient to permit *quasi in rem* jurisdiction over the absent defendant. The court also concluded that the exercise of jurisdiction was permissible under the Due Process Clause because, "[v]iewed realistically, the insurer in a case such as the present is in full control of the litigation" and "where the plaintiff is a resident of the forum state and the insurer is present in and regulated by it, the State has a substantial and continuing relation with the controversy." *Simpson* v. *Loehmann*, *supra*, at 311, — N. E. 2d, at —.

The United States Court of Appeals for the Second Circuit gave its approval to *Seider* in *Minichiello* v. *Rosenbery* (CA2 1968), 410 F. 2d 106, adhered to on banc, 410 F. 2d 117, cert. denied, 396 U. S. 844 (1969), although on a slightly different rationale. Judge Friendly construed *Seider* as "in effect a judicially created direct action statute. The insurer doing business in New York is considered the real party in interest and the nonresident insured is viewed simply as a conduit, who has to be named as a defendant in order to provide a conceptual basis for getting at the insurer." *Id.*, at 109; see *Dawson* v. *Dench*, 42 N. Y. 2d 138, 142, — N. E. 2d —, — (1977). The court held that New York could constitutionally enact a direct action statute, and that the restriction of liability to the amount of the policy coverage made the policyholder's personal stake in the litigation so slight that the exercise of jurisdiction did not offend due process.

New York has continued to adhere to *Seider*.[7] New Hampshire follows *Seider* if the defendant resides in a *Seider* juris-

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[7] *Bodon* v. *Stapleton*, 45 N. Y. 2d 886, — N. E. 2d — (1978). The State has declined, however, to make the attachment procedure available to nonresident plaintiffs. *Dawson* v. *Dench*, 42 N. Y. 2d 138, — N. E. 2d — (1977).

diction,[15] but not in other cases.[16] Minnesota is the only other State that has adopted *Seider*-type jurisdiction.[17] The Second Circuit recently reaffirmed its conclusion that *Seider* does not violate due process after reconsidering the doctrine in light of *Shaffer* v. *Heitner*. *O'Connor* v. *Lee-Hy Paving Corp.*, 579 F. 2d 194 (CA2), cert. denied — U. S. — (1978).

III

In *Shaffer* v. *Heitner* we held that "all assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny." 433 U. S., at 212. That is, a State may exercise jurisdiction over an absent defendant only if the defendant has "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co.* v. *Washington*, 326 U. S. 310, 316 (1945). In determining whether a particular exercise of state-court jurisdiction is consistent with due process, the inquiry must focus on "the relationship among the defendant, the forum, and the litigation." *Shaffer* v. *Heitner*, *supra*, at 204.

[15] *Forbes* v. *Boynton*, 113 N. H. 617, 313 A. 2d 129 (1973).

[16] *Camire* v. *Scieszka*, 116 N. H. 281, 358 A. 2d 397 (1976).

[17] The practice has been rejected, based on state law or constitutional grounds, in *Belcher* v. *Government Employees Ins. Co.*, — Md. —, 387 A. 2d 770 (1978); *Javorek* v. *Superior Court*, 17 Cal. 3d 629, 552 P. 2d 728 (1976); *Hart* v. *Cote*, 145 N. J. Super. 420, 367 A. 2d 1219 (Law Div. 1976); *Grinnell* v. *Garrett*, 295 So. 2d 496 (La. App. 1974); *Johnson* v. *Farmers Alliance Mutual Ins. Co.*, 499 P. 2d 1387 (Okl. 1972); *State ex rel. Government Employees Ins. Co.* v. *Lasky*, 454 S. W. 2d 942 (Mo. App. 1970); *Howard* v. *Allen*, 254 S. C. 455, 176 S. E. 2d 127 (1970); *De Rentiis* v. *Lewis*, 106 R. I. 240, 258 A. 2d 464 (1969); *Housley* v. *Anaconda Co.*, 19 Utah 2d 124, 427 P. 2d 390 (1967); *Jardine* v. *Donnelly*, 413 Pa. 474, 198 A. 2d 513 (1964). See also *Tessier* v. *State Farm Mutual Ins. Co.*, 458 F. 2d 1299 (CA1 1972); *Kirchman* v. *Mikula*, 443 F. 2d 816 (CA5 1971); *Robinson* v. *O. F. Shearer & Sons*, 429 F. 2d 83 (CA3 1970); *Sykes* v. *Beal*, 392 F. Supp. 1089 (Conn. 1975); *Barker* v. *LaJoie*, 311 F. Supp. 901 (Vt. 1970).

It is conceded that Rush has never had any contacts with Minnesota and that the auto accident that is the subject of this action occurred in Indiana and also had no connection to Minnesota. The only affiliating circumstance offered to show a relationship among Rush, Minnesota, and this lawsuit is that Rush's insurance company does business in the State. *Seider* constructed an ingenious jurisdictional theory to permit a State to command a defendant to appear in its courts on the basis of this factor alone. State Farm's contractual obligations to defend and indemnify Rush in connection with liability claims is treated as a debt owed by State Farm to Rush. The legal fiction that assigns a situs to a debt for garnishment purposes, wherever the debtor is found, is combined with the legal fiction that a corporation is "present," for jurisdictional purposes, wherever it does business to yield the conclusion that the obligation to defend and indemnify is located in the forum for purposes of the garnishment statute. The fictional presence of the policy obligation is deemed to give the State the power to determine the policyholder's liability for the out of state accident."

We held in *Shaffer* that the mere presence of property in a State does not establish a sufficient relationship between the owner of the property and the State to support the exercise of jurisdiction over an unrelated cause of action. The ownership of property in the State is a contact between the defendant and the forum, and it may suggest the presence of other ties. 433 U. S., at 209. Jurisdiction is lacking, however, unless there are sufficient contacts to satisfy the fairness standard of *International Shoe*.

Here, the fact that the defendant's insurer does business in the forum State suggests no further contacts between the

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[1] The conclusion that State Farm's obligation under the insurance policy was garnishable property is a matter of state law and therefore is not before us. Assuming that it was garnishable property, the question is what significance that has for us in the relationship between the defendant, the forum, and the litigation.

defendant and the forum, and the record supplies no evidence of any. State Farm's decision to do business in Minnesota was completely adventitious as far as Bush was concerned. He had no control over that decision, and it is unlikely that he would have expected that for buying insurance in Indiana he had subjected himself to suit in any State to which a potential future plaintiff might decide to move. In short, it cannot be said that the *defendant* engaged in any purposeful activity related to the forum that would make the exercise of jurisdiction fair, just, or reasonable, see *Kulko* v. *California Superior Court*, 436 U. S. 84, 93–94 (1978); *Hanson* v. *Denckla*, 357 U. S. 235, 253 (1958), merely because his insurer does business there.

Nor are there significant contacts between the litigation and the forum. The Minnesota Supreme Court was of the view that the insurance policy was so important to the litigation that it provided contacts sufficient to satisfy due process.[*] The insurance policy is not the subject matter of the case however, nor is it related to the operative facts of the negligence action. The contractual arrangements between the defendant and the insurer pertain only to the conduct, not the substance, of the litigation, and accordingly do not affect the court's jurisdiction unless they demonstrate ties between the defendant and the forum.

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[*] The court explained: "In the instance of the insurer's obligation to defend and indemnify, which concededly extends into the tort action, has an independent value or significance apart from accident litigation. In the accident litigation however, it is inevitably the focus, determining the rights and obligations vis-à-vis the insurer, the insured, and sometimes speaking, the victim." *Savchuk II*, 272 N. W. 2d, at 892 (emphasis in original). The court considered the "practical relationship between the insurer and the nominal defendant" and the interplay of liability in the policy amount, and the restriction of the guest-host procedure to residents plaintiffs, and concluded that "the relationship between the defending parties, the litigation, and the forum [was] vital," *id.*, at 893, was sufficient to sustain the exercise of jurisdiction.

No !

In fact the fictitious presence of the insurer's obligation in Minnesota does not, without more, provide a basis for concluding that there is *any* contact in the *International Shoe* sense between Minnesota and the insured. To say that "a debt follows the debtor" is simply to say that intangible property has no actual situs, and a debt may be sued on wherever there is jurisdiction over the debtor. State Farm is "found" in the sense of doing business, in all 50 States and the District of Columbia. Under appellee's theory, the "debt" owed to Rush would be "present" in each of those jurisdictions simultaneously. It is apparent that such a "contact" can have no jurisdictional significance.

An alternative approach for finding minimum contacts in *Seider*-type cases, referred to with approval by the Minnesota Supreme Court,[5] is to attribute the insurer's forum contacts to the defendant by treating the attachment procedure as the functional equivalent of a direct action against the insurer. This approach views *Seider* jurisdiction as fair both to the insurer, whose forum contacts would support *in personam* jurisdiction even for an unrelated cause of action, and to the "nominal defendant." Because liability is limited to the policy amount, the defendant incurs no personal liability,[6] and the judgment is satisfied from the policy proceeds which are not available to the insured for any purpose other than paying accident claims, the insured is said to have such a slight stake in the litigation as a practical matter that it is not unfair to make him a "nominal defendant" in order to obtain jurisdiction over the insurance company.

Seider actions are not equivalent to direct actions, however.[7] The State's ability to exert its power over the "nomi-

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[5] *Id.*, at 882–883, *but see Savchuk I*, 312 Minn., at 488, 248 N. W. 2d, at 320.

[6] *See Savchuk II*, 257 N. W. 2d, at 340, *compare Landmann* II, N. Y. 2d 290, 291, 238 N. E. 2d 319, 320 (1968).

[7] In *Savchuk I* the Minnesota Supreme Court rejected Rush's argument that the garnishment procedure amounted to a direct action, observ-

and defendant" is analytically prerequisite to the insurer's entry into the case as a garnishee. If the Constitution forbids the assertion of jurisdiction over the insured based on the policy, then there is no conceptual basis for bringing the "garnishee" into the action. Because the party with forum contacts can only be reached through the out-of-state party, the question of jurisdiction over the nonresident cannot be ignored.[18] Moreover, the assumption that the defendant has no real stake in the litigation is far from self-evident.[19]

The Minnesota court also attempted to attribute State Farm's contacts to Rush by considering the "defending parties" together and aggregating their forum contacts in determining whether it had jurisdiction.[20] The result was the

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ing. "The defendant, and the insurer, is the party sued. There is nothing in the statute which suggests that the insurer should be named as a defendant." 311 Minn., at 388, 245 N. W. 2d, at 628. See n. 4, *supra.*

[18] Compare the direct action statute upheld in *Watson* v. *Employers Liability Assurance Corp.,* 348 U. S. 66 (1954), which was applicable only if the accident or injury occurred in the State or the insured was domiciled there and which permitted the plaintiff to sue the insurer alone, without naming the insured as a defendant. *Id.,* at 68, n. 4.

[19] An adverse relationship between the insurer and the defendant could develop, for example, if multiple plaintiffs sue in different States for an aggregate amount in excess of the policy limits, if the insurer asserts a contract defense such as breach of the duty to cooperate, to the obligation to indemnify, or if a successful claim would affect the policyholder's insurability. Further, the nature and quality of the insured's interest may depend on the type of policy attached. Cf. *Donawitz* v. *Danek,* 42 N. Y. 2d 138, — N. E. 2d — (medical malpractice). Professional malpractice suits, for example, question the defendant's integrity and competence along with seeking compensation; persons insured under policies with large deductibles could be exposed to liability even if the judgment is within the policy limits.

[20] "We view as relevant the relationship between the *defending parties,* the litigation, and the forum state. It cannot be said that Minnesota lacks such minimum contacts with these *defending parties* as to offend the requirements of due process." *Savchuk II,* 272 N. W. 2d, at 891 (emphasis added).

assertion of jurisdiction over Rush based solely on the activities of State Farm. Such a result is plainly unconstitutional. Naturally, the parties' relationships with each other may be significant in evaluating their ties to the forum. The requirements of *International Shoe*, however, must be met as to each defendant over whom a state court exercises jurisdiction.

The justifications offered in support of *Seider* jurisdiction share a common characteristic: they shift the focus of the inquiry from the relationship among the defendant, the forum, and the litigation to that among the plaintiff, the forum, the insurer, and the litigation. The insurer's contacts with the forum are attributed to the defendant because the policy was taken out in anticipation of such litigation. The State's interests in providing a forum for its residents and in regulating the activities of insurance companies are substituted for its contacts with the defendant and the cause of action. This subtle shift in focus from the defendant to the plaintiff is most evident in the decisions limiting *Seider* jurisdiction to actions by forum residents on the ground that permitting nonresidents to avail themselves of the procedure would be unconstitutional.[illegible] In other words, the plaintiff's contacts with the forum are decisive in determining whether the defendant's due process rights are violated.

Such an approach is forbidden by *International Shoe* and its progeny. If a defendant has certain judicially cognizable ties with a State, a variety of factors relating to the particular cause of action may be relevant to the determination whether the exercise of jurisdiction would comport with "traditional notions of fair play and substantial justice." See *McGee* v. *International Life Ins. Co.*, 355 U. S. 220 (1957); cf. *Kulko* v. *California Superior Court*, 436 U. S., at 98, 101. Here, however, the defendant has no contacts with the forum, and the

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[illegible] See, e. g., *Farrell* v. *Piedmont Aviation, Inc.*, 411 F. 2d 812 (CA2 1969); *Rintala* v. *Shoemaker*, 362 F. Supp. 1044 (Minn. 1973); *Donawitz* v. *Danek*, 42 N. Y. 2d 138, — N. E. 2d — (slip op. 7).

Due Process Clause "does not contemplate that a state may make binding a judgment . . . against a individual or corporate defendant with which the state has no contacts, ties, or relations." *International Shoe Co.* v. *Washington*, 326 U. S., at 319. The judgment of the Minnesota Supreme Court is, therefore,

Reversed.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

October 30, 1979

Re: No. 78-952, Rush v. Savchuk

Dear Thurgood,

I am glad to join your opinion for the Court.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

October 30, 1979

Re: No. 78-952 - Rush v. Savchuk

Dear Thurgood:

Please join me.

Sincerely,

Mr. Justice Marshall

Copies to the Conference

October 30, 1979

78-952 Rush v. Savchuk

Dear Thurgood:

Please join me in your excellent opinion for the Court.

I might add in concurring, something along the following lines:

> "I join Mr. Justice Marshall's opinion for the Court, and add that my dissent from the denial of certiorari in Lee-Ry Paving v. O'Connor, 439 U.S. 1034 (1978), emphasizes some of the practical reasons for reversing the judgment of the Supreme Court of Minnesota."

Sincerely,

Mr. Justice Marshall

lfp/as

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

October 30, 1979

Re: No. 78-952 - Ruth v. Saychuk

Dear Thurgood:

Please join me.

Sincerely,

Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

October 31, 1979

Re: No. 78-952 - Rush v. Savchuk

Dear Thurgood:

I am glad to join the opinion you have prepared.

Sincerely,

Harry

Mr. Justice Marshall
cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

October 31, 1979

Re: No. 78-952 - Rush v. Saychuk

Dear Lewis:

You will recall that I joined you in dissent from the denial of certiorari in Lee-Hy Paving Corp. v. O'Connor, 439 U.S. 1034 (1978). I liked your emphasis on the practicalities there, and if you choose to write something along the lines suggested in your note of October 30 to Thurgood -- or to expand somewhat thereon -- I would be pleased to join you. I think those practicalities are significant and important.

Sincerely,

Harry

Mr. Justice Powell

cc: The Conference

Mr Justice -

Janet Cooper, the Marshall clerk who worked on this opinion, dropped by this afternoon to see if the majority opinion could be changed in a manner that would persuade you not to write a concurrence. I told her I would discuss the matter with you. She proposes altering n. 20 to include the practical considerations you discussed in Lee-Hy. She does not plan to cite

Over

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

October 31, 1979

Re: No. 78-952 - Rush v. Savchuk

Dear Lewis:

You will recall that I joined you in dissent from the denial of certiorari in Lee-Ny Paving Corp. v. O'Connor, 439 U.S. 1034 (1978). I liked your emphasis on the practicalities there, and if you choose to write something along the lines suggested in your note of October 30 to Thurgood -- or to expand somewhat thereon -- I would be pleased to join you. I think those practicalities are significant and important.

Sincerely,

Harry

Mr. Justice Powell

cc: The Conference

Lee-Hy, however, and she wishes to leave open the possibility that a Wilds state might bar a plaintiff from bringing a second suit in an state. She remains open to discussion on these points.

Jon

Sally v. Louden
recopy this, with Rider
A commencing at point
indicated, followed by B

(1)

11/2/79

No. 78-952, Rush v. Savchuk

See Lee-Hoy Parking Corp. et al v O'Connor, ___ U.S. ___ (Dec. 4, 1978, Powell, J., dissenting from denial of certiorari).

Mr. Justice Powell, concurring.

I join the opinion of the Court. I write separately only to emphasize practical considerations that support the Court's decision. In this case, a new resident of Minnesota brought suit in Minnesota arising from an automobile accident that occurred in Indiana, against a resident of Indiana who had no contact with Minnesota. Considerations of fairness demonstrate that the state court erred in disregarding the "realities" that bear upon an alleged tortfeasor sued in a jurisdiction remote

Rush

lfp/gs 11/2/79 Rider-A;-p.1-(Rosh)

(2)

As noted by the Court, in Spider v. Roth, 17 N.Y.2d 11, 216 N.E.2d 312 (1966), the New York Court of Appeals enunciated the theory of quasi in rem jurisdiction that the Supreme Court of Minnesota applied in this case. In cases following Spider, the alleged tortfeasor has been described "the nominal defendant". See O'Connor, et al. v. Ace-Hy-Paying-Corp., et al., ... P.2d ... (CA 1977). It is even said to be "ironical" that such a defendant should complain even though he "will not pay the judgment, nor manage the defense", Id., at ... It is novel doctrine, at least for me, for a court to think of the interest of a defendant in a tort action as "nominal" merely because he has insurance. In this case, for example, the defendant (petitioner here) was summonsed to appear in a Minnesota court and is required by the provisions of his insurance policy - if for no other reason - to participate in the defense of the suit. Such a defendant is forced to

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~~tort~~ damage suit, the place where the alleged tort occurred usually is the most apropriate venue both from the standpoint of optimum conditions of trial and fairness to the defendant. It is routine procedure for the judge and jury to view the scene of the accident, often more than once. Jurors drawn from the venue of the accident are likely to be better able to understand testimony pertaining to local conditions and geography. And witnesses are more readily available to testify without the expense and uncertainity of transporting them to a distant state. In short, many of the factors traditionally associated with the most appropriate place to conduct tort litigation militate against what has come to be called the Spider doctrine. To be sure, we are talking here about jurisdiction over a defendant, and the fundamental due process considerations focus on a defendant's contacts with the jurisdiction in which the suit is commenced. I

which after all in the core meaning of due process,

4

They are, however, ~~even though they are~~ not irrelevant to the ~~basic~~ fairness of the trial, ~~are controlling~~. If a defendant's contacts in the foreign state are zero, ~~as~~ the considerations mentioned above need not be addressed. I do suggest, however, that a court properly may consider these factors as being relevant to the jurisdiction issue where the weighing of "contacts" leaves the issue in some doubt.

Rider B

Rosh B

5

Nor can the possibility of a second suit in the jurisdiction in which the accident occurred, and where the defendant resides, be dismissed as wholly unlikely in a case of this kind. 11/ After a defendant had been subjected to a trial in a foreign state on the basis of quasi in rem jurisdiction, it is by no means clear that the plaintiff - unless barred by the statute of limitations - would not remain free to sue the defendant in his domiciliary state where the accident occurred. Such suit could seek damages in excess of the limits of the insurance policy, and the defendant would be forced to participate in a second trial - probably without the benefit of lawyers ~~supplied~~ provided by the insurance company. The hazards of a second trial can be substantial. ~~Witnesses seldom tell their story precisely the same way twice, and often new evidence is introduced.~~

fundamental fairness enunciated in International Shoe v. Washington Co., 326 U.S. 310, 316 (1945), and recently reiterated in Shaffer v. Heiter, 433 U.S. 186 (1977).

JS 11/2/79

MEMORANDUM

To: Mr. Justice Powell

Re: No. 78-952, Rush v. Savchuk

Attached is a proposed concurrence in Rush v. Savchuk. The draft borrows, virtually word for word, two paragraphs from your Lee-Hy dissent. I want to note, however, that I have not included a third paragraph of analysis contained in that opinion.

In Lee-Hy you suggest that

> the difficulties of defending a negligence case far from home should be taken into account under the Due Process Clause. See Watson v. Employers Liability Assurance Corp., 348 U.S. at 72. Often these difficulties are substantial. It is routine procedure for the judge and 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 conditions and geography. In short, many of the factors traditionally considered under the doctrine of forum non conveniens--itself a doctrine based upon fairness--may also pertain to the fairness of a court hundreds of miles from the location of an accident exercising its jurisdiction over the parties to the resulting tort suit. (footnotes omitted)

I fear that inclusion of this paragraph could have two unfortunate effects: (1) The emphasis on the importance of litigation in the forum of the accident could be perceived as inconsistent with your vote in Worldwide Volkswagen in which the Court will hold that Oklahoma may not exercise jurisdiction over defendants although the accident occurred in Oklahoma and the plaintiffs were in Oklahoma when the suit was filed. (2) The reference to the doctrine of forum non conveniens could be read as inconsistent with the Court's analysis. The doctrine of forum non conveniens weighs the interests of both parties, see F. James, Civil Procedure § 12.17 at 664-65 (1965), whereas the application of International Shoe looks solely to the connection between the defendant and the forum state. See op. at 11-12. That is, reference to forum non conveniens principles could suggest that you believe that the plaintiff's interests must be assessed in determing the due process rights of the defendant.

Accordingly, I suggest that you limit the concurrence to refutation of the argument that the defendant in a Seider action is merely a nominal party. Mr. Justice Brennan's dissent may argue that consideration of the interests of all parties demands an opposite result in this case. If so, the above quoted paragraph could be revised to refute that contention.

Fill

No. 78-952, Rush v. Savchuk

Mr. Justice Powell, concurring.

In 9 don't think it necessary to add this concurrence, I'll not circulate this. But keep in file.

I join the opinion of the Court. I write separately only to emphasize that my earlier views on the issue presented by this case, see Lee-Hy Paving Corp, et al v.O'Connor, ___ U.S. ___ (Dec. 4, 1978)(Powell J., dissenting) are in perfect harmony with the views of the Court here and in World-Wide Volkswagen v. Woodson.

In Lee-Hy, I expressed the view that application of the Seider doctrine was incompatible with our decision in Shaffer v. Heitner, 433 U.S. 186 (1977). I advanced three reasons in support of the view that a defendant was denied due process when forced to defend a Seider action: (i) The defendant faces considerable practical difficulties in defending an action far from home. (ii) The defendant cannot be properly viewed as a "nominal" party despite the presence of his insurance company

upon the second and third of these considerations to support its conclusion. Ante at 9-10 & n.20.

In light of the dissent of MR. JUSTICE BRENNAN in both this case and World-Wide Volkswagen v. Woodson, it is appropriate to emphasize the limited role that I believe the practical difficulties thrust upon a Seider defendant play in the resolution of this case. The constitutional limitation on a State's exercise of jurisdiction protects a defendant from litigation in an inconvient forum. But the limits of jurisdiction are founded upon principles of federalism rather than forum non conveniens. See World-Wide Volkswagen v. Woodson, No. 78-1078 at 6-8.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

November 3, 1979

Re: 78-952 - Rush v. Savchuk

Dear Thurgood:

I join.

Regards,

WEB

Mr. Justice Marshall

Copies to the Conference

lfo/ss 11/7/79

No. 78-952, Rush v. Savchuk

Mr. Justice Powell, concurring.

I join the opinion of the Court. I write separately only to emphasize practical considerations that support the Court's decision. See Lee-Hy Paving Corp., et al. v. O'Connor, ___ U.S. ___ (Dec. 4, 1978, Powell, Jr., dissenting from denial of certiorari). In this case, news resident of Minnesota brought suit in Minnesota arising from an automobile accident that occurred in Indiana, against a resident of Indiana who had no contact with Minnesota.

As noted by the Court, in Seider v. Roth, 17 N.Y.2d 11, 216 N.E.2d 312 (1966), the New York Court of Appeals enunciated the theory of quasi in rem jurisdiction that the Supreme Court of Minnesota applied in this case. In cases following Seider, the alleged tortfeasor has been described "the nominal defendant". See O'Connor, et al. v. Lee-Hy Paving Corp., et al., ___ F.2d ___ (CA 1977).

court to think of the interest of a defendant in a tort action as "nominal" merely because he has insurance. In this case, for example, the defendant (petitioner here) was summoned to appear in a Minnesota court and is required by the provisions of his insurance policy - if for no other reason - to participate in the defense of the suit. Such a defendant is forced to litigate away from home (it could be thousands of miles), confronted with all of the uncertainties caused by delays that often stretch a trial over weeks.

Moreover, in the typical damage suit, the place where the alleged tort occurred usually is the most appropriate venue both from the standpoint of optimum conditions of trial and fairness to the defendant. It is routine procedure for the judge and jury to view the scene of the accident, often more than once. Jurors drawn from the venue of the accident are likely to be better able to understand

state. In short, many of the factors traditionally associated with the most appropriate place to conduct tort litigation militate against what has come to be called the Seider doctrine. To be sure, we are talking here about jurisdiction over a defendant, and the fundamental due process considerations focus on a defendant's contacts with the jurisdiction in which the suit is commenced. I therefore do not suggest that what may be called the practicalities and convenience factors are controlling.

They are, however, not irrelevant to the fairness of the trial, which after all is the core meaning of due process. If a defendant's contacts in the foreign state are zero, the considerations mentioned above need not be addressed. I do suggest, however, that a court properly may consider these factors as being relevant to the jurisdiction issue where the weighing of "contacts"

be dismissed as wholly unlikely in a case of this kind.[1] After a defendant had been subjected to a trial in a foreign state on the basis of quasi in rem jurisdiction, it is by no means clear that the plaintiff - unless barred by the statute of limitations - would not remain free to sue the defendant in his domiciliary state where the accident occurred. Such suit could seek damages in excess of the limits of the insurance policy, and the defendant would be forced to participate in a second trial - probably without the benefit of lawyers provided by the insurance company. The hazards of a second trial can be substantial.

In sum, for the foregoing reasons as well as those convincingly marshaled by the Court's opinion, the application of the Seider v. Roth doctrine is inconsistent with the principles of fundamental fairness enunciated in International Shoe v. Washington Co., 326 U.S. 310, 316 (1945),

1. In this case, there could be no second suit in Indiana because the statute of limitations has run. Indeed, it appears that respondent chose to sue in Minnesota because its laws were favorable to him in two major respects. The statute of limitations had run against a suit in Indiana. In addition to suit being barred in Indiana, the law of that state adheres to the contributory negligence doctrine whereas Minnesota has adopted comparative negligence as its rule of tort law. Respondent was a guest in petitioner's automobile. Thus, as this case illustrates, the Seider doctrine would invite forum shopping to the serious disadvantage of a defendant.

p. 10

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Marshall

Circulated: _____

Recirculated: 9 NOV 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-952

Randat Rush et al., Appellants, v. Jeffrey D. Savchuk | On Appeal from the Supreme Court of Minnesota.

[November —, 1979]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This appeal presents the question whether a State may constitutionally exercise *quasi in rem* jurisdiction over a defendant who has no forum contacts by attaching the contractual obligation of an insurer licensed to do business in the State to defend and indemnify him in connection with the suit.

I

On January 13, 1972, two Indiana residents were involved in a single-car accident in Elkhart, Ind. Appellee Savchuk, who was a passenger in the car driven by appellant Rush, was injured. The car, owned by Rush's father, was insured by appellant State Farm Mutual Automobile Insurance Co. (State Farm) under a liability insurance policy issued in Indiana. Indiana's guest statute would have barred a claim by Savchuk. Ind. Stat. § 9-3-3-1.

Savchuk moved with his parents to Minnesota in June 1973.[1] On May 28, 1974, he commenced an action against Rush in the Minnesota state courts.[2] As Rush had no contacts with Minnesota that would support *in personam* jurisdiction, Savchuk attempted to obtain *quasi in rem* jurisdic-

[1] Savchuk moved to Pennsylvania after this appeal was filed.

[2] The suit was filed after the two-year Indiana statute of limitations had run. 272 N. W. 2d 888, 891, n. 2 (1978).

footnote 2 has been changed so that the "malpractice" point comes first. There is no substantive change. Jon

tion by garnishing State Farm's obligation under the insurance policy to defend and indemnify Rush in connection with such a suit.[3] State Farm does business in Minnesota.[4] Rush was personally served in Indiana. The complaint alleged negligence and sought $125,000 in damages.[5]

As provided by the state garnishment statute, Savchuk moved the trial court for permission to file a supplemental complaint making the garnishee, State Farm, a party to the action after State Farm's response to the garnishment summons

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[3] 4 Minn. Stat. § 571.41, *et seq.* (1978) provides, in relevant part:

"Notwithstanding anything to the contrary herein contained, a plaintiff in any action in a court of record for the recovery of money may issue a garnishee summons before judgment thereon in the following manner, to-wit:

. . . . .

"(b) If the court shall order the issuance of such summons, if a summons and complaint is filed with the appropriate court and either served on the defendant or delivered to a sheriff for service on the defendant not more than 90 days after the order is granted, and if, upon application to the court it shall appear that:

. . . . .

"(2) The purpose of the garnishment is to establish quasi in rem jurisdiction and that

. . . . .

"(b) defendant is a nonresident individual, or a foreign corporation, partnership or association,

. . . . .

"(4) The garnishee and the debtor are parties to a contract of suretyship, guarantee, or insurance, because of which the garnishee may be held to respond to any person for the claim asserted against the debtor in the main action, . . ."

The Minnesota Supreme Court cited this version of the statute, enacted in 1976, in its opinion on remand, 272 N. W. 2d 888 (Minn. 1978) (*Savchuk II*). The version of the statute that was in effect at the time of the original action, 311 Minn. 488, 245 N. W. 2d 585 (1976) (*Savchuk I*), does not differ in any important respect.

[4] State Farm is an Illinois corporation that does business in all 50 States, the District of Columbia, and several Canadian provinces. The Insurance Almanac 440 (1979).

[5] The prayer was later reduced voluntarily to $50,000, the face amount of the policy.

asserted that it owed the defendant nothing." Rush and State Farm moved to dismiss the complaint for lack of jurisdiction over the defendant.[2] The trial court denied the motion to dismiss and granted the motion for leave to file the supplemental complaint.

On appeal the Minnesota Supreme Court affirmed the trial court's decision. 311 Minn. 480, 245 N. W. 2d 624 (1976) (*Savchuk I*). It held, first, that the obligation of an insurance company to defend and indemnify a nonresident insured under an automobile liability insurance policy is a garnishable res in Minnesota for the purpose of obtaining *quasi in rem* jurisdiction when the incident giving rise to *the action occurs* outside Minnesota but the plaintiff is a Minnesota resident when the suit is filed. Second, the court held that the assertion of jurisdiction over Rush was constitutional because he had notice of the suit and an opportunity to defend, his liability was limited to the amount of the policy, and the garnishment procedure may be used only by Minnesota residents. The court expressly recognized that Rush had engaged in no voluntary activity that would justify the exercise of *in personam* jurisdiction. The court found, however, that considerations of fairness supported the exercise of *quasi in rem* jurisdiction because in accident litigation the insurer controls the defense of the case. State Farm does business in and is

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[1] Minn. Stat. § 571.105 requires the garnishee to disclose the amount of his debt to the defendant. Section 571.51 provides, in relevant part:

"[I]n all . . . cases where the garnishee denies liability, the judgment creditor may cause the court . . . any time before the garnishee is discharged, on notice to both the judgment debtor and the garnishee, for leave to file a supplemental complaint making the latter a party to the action, and setting forth the facts upon which he claims to charge him, and, if probable cause is shown, such leave shall be granted . . . ." 1 Minn. Stat. § 571.51 (1978).

The party-garnishee is not a defendant.

[2] The motion to dismiss alleged lack of subject-matter jurisdiction, insufficiency of process, and insufficiency of service of process.

regulated by the State, and the State has an interest in protecting its residents and providing them with a forum in which to litigate their claims.

Rush appealed to this Court. We vacated the judgment and remanded the cause for further consideration in light of *Shaffer* v. *Heitner*, 433 U. S. 186 (1977). 433 U. S. 902 (1977).

On remand the Minnesota Supreme Court held that the assertion of *quasi in rem* jurisdiction through garnishment of an insurer's obligation to an insured complied with the due process standards enunciated in *Shaffer*. 272 N. W. 2d 888 (Minn. 1978) (*Savchuk II*). The court found that the garnishment statute differed from the Delaware stock sequestration procedure held unconstitutional in *Shaffer* because the garnished property was intimately related to the litigation and the garnishment procedure paralleled the asserted state interest in "facilitating recoveries for resident plaintiffs." *Id.*, at 891.[2] This appeal followed.

II

The Minnesota Supreme Court held that the Minnesota garnishment statute embodies the rule stated in *Seider* v. *Roth*, 17 N. Y. 2d 111, 216 N. E. 2d 312 (1966), that the contractual obligation of an insurance company to its insured under a liability insurance policy is a debt subject to attachment under state law if the insurer does business in the State.[3] *Seider* jurisdiction was upheld against a due process challenge

[2] Minnesota would apply its own comparative negligence law, rather than Indiana's contributory negligence rule. See *Schwartz* v. *Consolidated Freightways Corp.*, 300 Minn. 487, 221 N. W. 2d 665 (1974). Appellant asserts that Minnesota would also decline to apply the Indiana guest statute if this case were tried in Minnesota. Juris. Statement 10, n. 2; cf. *Savchuk II*, 272 N. W. 2d at 891–892. The constitutionality of a choice of law rule that would apply forum law in these circumstances is not before us. Cf. *Home Ins. Co.* v. *Dick*, 281 U. S. 397 (1930).

[3] 272 N. W. 2d, at 891.

in *Simpson* v. *Loehmann*, 21 N. Y. 2d 305, 234 N. E. 2d 669 (1967), rearg. denied, 21 N. Y. 2d 990, 238 N. E. 2d 319 (1968). The New York court relied on *Harris* v. *Balk*, 198 U. S. 215 (1905), in holding that the presence of the debt in the State was sufficient to permit *quasi in rem* jurisdiction over the absent defendant. The court also concluded that the exercise of jurisdiction was permissible under the Due Process Clause because, "[v]iewed realistically, the insurer in a case such as the present is in full control of the litigation" and "where the plaintiff is a resident of the forum state and the insurer is present in and regulated by it, the State has a substantial and continuing relation with the controversy." *Simpson* v. *Loehmann*, *supra*, at 311, 234 N. E. 2d, at 672.

The United States Court of Appeals for the Second Circuit gave its approval to *Seider* in *Minichiello* v. *Rosenberg* (CA2 1968), 410 F. 2d 106, adhered to en banc, 410 F. 2d 117, cert. denied, 396 U. S. 844 (1969), although on a slightly different rationale. Judge Friendly construed *Seider* as "in effect a judicially created direct action statute. The insurer doing business in New York is considered the real party in interest and the nonresident insured is viewed simply as a conduit, who has to be named as a defendant in order to provide a conceptual basis for getting at the insurer." *Id.*, at 109; see *Dunaway* v. *Dandi*, 42 N. Y. 2d 138, 142, 366 N. E. 2d 253, 255 (1977). The court held that New York could constitutionally enact a direct action statute, and that the restriction of liability to the amount of the policy coverage made the policyholder's personal stake in the litigation so slight that the exercise of jurisdiction did not offend due process.

New York has continued to adhere to *Seider*.[7] New Hampshire follows *Seider* if the defendant resides in a *Seider* juris-

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[7] *Hodes* v. *Staples*, 45 N. Y. 2d 886, 383 N. E. 2d 116 (1978). The State has declined, however, to make the attachment procedure available to nonresident plaintiffs. *Dunaway* v. *Dandi*, 42 N. Y. 2d 138, 366 N. E. 2d 253 (1977).

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III

In *Shaffer* v. *Heitner* we held that "all assertions of state-court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny." 433 U. S., at 212. That is, a State may exercise jurisdiction over an absent defendant only if the defendant has "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co.* v. *Washington*, 326 U. S. 310, 316 (1945). In determining whether a particular exercise of state-court jurisdiction is consistent with due process, the inquiry must focus on "the relationship among the defendant, the forum, and the litigation." *Shaffer* v. *Heitner*, *supra*, at 204.

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[11] *Forbes* v. *Boynton*, 113 N. H. 617, 313 A. 2d 129 (1973).

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[13] The practice has been rejected, based on state law or constitutional grounds, in *Belcher* v. *Government Employees Ins. Co.*, 282 Md. 718, 387 A. 2d 770 (1978); *Javorek* v. *Superior Court*, 17 Cal. 3d 629, 552 P. 2d 728 (1976); *Hart* v. *Cote*, 145 N. J. Super. 420, 367 A. 2d 1219 (Law Div. 1976); *Grinnell* v. *Garrett*, 295 So. 2d 496 (La. App. 1974); *Johnson* v. *Farmers Alliance Mutual Ins. Co.*, 499 P. 2d 1387 (Okla. 1972); *State ex rel. Government Employees Ins. Co.* v. *Lasky*, 454 S. W. 2d 942 (Mo. App. 1970); *Howard* v. *Allen*, 254 S. C. 455, 176 S. E. 2d 127 (1970); *De Rentiis* v. *Lewis*, 106 R. I. 240, 258 A. 2d 464 (1969); *Housley* v. *Anaconda Co.*, 19 Utah 2d 124, 427 P. 2d 390 (1967); *Jardine* v. *Donnelly*, 413 Pa. 474, 198 A. 2d 513 (1964). See also *Tessier* v. *State Farm Mutual Ins. Co.*, 458 F. 2d 1299 (CA1 1972); *Kirchman* v. *Mikula*, 443 F. 2d 816 (CA5 1971); *Robinson* v. *O. F. Shearer & Sons*, 429 F. 2d 83 (CA3 1970); *Sykes* v. *Beal*, 392 F. Supp. 1089 (Conn. 1975); *Ricker* v. *LaJoie*, 314 F. Supp. 401 (Vt. 1970).

It is conceded that Rush has never had any contacts with Minnesota, and that the auto accident that is the subject of this action occurred in Indiana and also had no connection to Minnesota. The only affiliating circumstance offered to show a relationship among Rush, Minnesota, and this lawsuit is that Rush's insurance company does business in the State. *Seider* constructed an ingenious jurisdictional theory to permit a State to command a defendant to appear in its courts on the basis of this factor alone. State Farm's contractual obligation to defend and indemnify Rush in connection with liability claims is treated as a debt owed by State Farm to Rush. The legal fiction that assigns a situs to a debt, for garnishment purposes, wherever the debtor is found *is combined with the legal fiction* that a corporation is "present," for jurisdictional purposes, wherever it does business to yield the conclusion that the obligation to defend and indemnify is located in the forum for purposes of the garnishment statute. The fictional presence of the policy obligation is deemed to give the State the power to determine the policyholder's liability for the out of state accident.[1]

We held in *Shaffer* that the *mere presence of property* in a State does not establish a sufficient relationship between the owner of the property and the State to support the exercise of jurisdiction over an unrelated cause of action. "The ownership of property in the State is a contact between the defendant and the forum, and it may suggest the presence of other ties. 433 U. S., at 209. Jurisdiction is lacking, however, unless there are sufficient contacts to satisfy *the* fairness standard of *International Shoe*.

Here, the fact that the defendant's insurer does business in the forum State suggests no further contacts between the

[1] The conclusion that State Farm's obligation under the insurance policy was garnishable property is a matter of state law and therefore is not before us. Assuming that it was garnishable property, the question is what significance that fact has to the relationship between the defendant, the forum, and the litigation.

defendant and the forum, and the record supplies no evidence of any. State Farm's decision to do business in Minnesota was completely adventitious as far as Bush was concerned. He had no control over that decision, and it is unlikely that he would have expected that by buying insurance in Indiana he had subjected himself to suit in any State to which a potential future plaintiff might decide to move. In short, it cannot be said that the *defendant* engaged in any purposeful activity related to the forum that would make the exercise of jurisdiction fair, just, or reasonable, see *Kulko* v. *California Superior Court*, 436 U. S. 84, 93–94 (1978); *Hanson* v. *Denckla*, 357 U. S. 235, 253 (1932), merely because his insurer does business there.

Nor are there significant contacts between the litigation and the forum. The Minnesota Supreme Court was of the view that the insurance policy was so important to the litigation that it provided contacts sufficient to satisfy due process.[*] The insurance policy is not the subject matter of the case however, nor is it related to the operative facts of the negligence action. The contractual arrangements between the defendant and the insurer pertain only to the conduct, not the substance, of the litigation, and accordingly do not affect the court's jurisdiction unless they demonstrate ties between the defendant and the forum.

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[*] The court explained, "In the instant case, the insurer's obligation to defend and indemnify, while theoretically separable from the tort action, has no independent value or significance apart from accident litigation. In the accident litigation, however, it is inevitably the facts, determining the rights and obligation[s] of the insurer, the insured, and generically speaking, the victim." *Spencer* II, 272 N. W. 2d, at 892 (emphasis in original). The court concluded that "personal relationship between the insurer and the nominal defendant." *Ibid.* The limitation of liability to the policy amount, and the restriction of the garnishment proceeding to resident plaintiffs, and concluded that "the relationship between the defending parties, the litigation, and the forum state," *id.*, at 893, was sufficient to sustain the exercise of jurisdiction.

In fact, the fortuitous presence of the insurer's obligation in Minnesota does not, without more, provide a basis for concluding that there is *any* contact in the *International Shoe* sense between Minnesota and the insured. To say that "a debt follows the debtor" is simply to say that intangible property has no actual situs, and a debt may be sued on wherever there is jurisdiction over the debtor. State Farm is "found," in the sense of doing business, in all 50 States and the District of Columbia. Under appellee's theory, the "debt" owed to Rush would be "present" in each of those jurisdictions simultaneously. It is apparent that such a "contact" can have no jurisdictional significance.

An alternative approach for finding minimum contacts in *Seider*-type cases, referred to with approval by the Minnesota Supreme Court,[7] is to attribute the insurer's forum contacts to the defendant by treating the attachment procedure as the functional equivalent of a direct action against the insurer. This approach views *Seider* jurisdiction as fair both to the insurer, whose forum contacts would support *in personam* jurisdiction even for an unrelated cause of action, and to the "nominal defendant." Because liability is limited to the policy amount, the defendant incurs no personal liability,[8] and the judgment is satisfied from the policy proceeds which are not available to the insured for any purpose other than paying accident claims, the insured is said to have such a slight stake in the litigation as a practical matter that it is not unfair to make him a "nominal defendant" in order to obtain jurisdiction over the insurance company.

Seider actions are not equivalent to direct actions, however.[9] The State's ability to exert its power over the "nomi-

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[7] *Id.*, at 592–593; but see *Seider I*, 313 Minn., at 488, 245 N. W. 2d, at 629.

[8] See *Seider II*, 272 N. W. 2d, at 912; *Simpson v. Loehmann*, 21 N. Y. 2d 305, 309, 234 N. E. 2d 669, 671 (1968).

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[5] *Id.*, at 302-303. See *Savchuk I*, 311 Minn., at 488, 245 N. W. 2d, at 620.

[6] *Seider II*, 272 N. W. 2d, at 362. *Simpson v. Loehmann*, 21 N. Y. 2d 305, 311, 234 N. E. 2d 669, 671 (1968).

[7] In *Savchuk I*, the Minnesota Supreme Court rejected Rush's argument that the garnishment procedure amounted to a direct action, observ-

nal defendant" is analytically prerequisite to the insurer's entry into the case as a garnishee. If the Constitution forbids the assertion of jurisdiction over the insured based on the policy, then there is no conceptual basis for bringing the "garnishee" into the action. Because the party with forum contacts can only be reached through the out-of-state party, the question of jurisdiction over the nonresident cannot be ignored.[19] Moreover, the assumption that the defendant has no real stake in the litigation is far from self-evident.[20]

The Minnesota court also attempted to attribute State Farm's contacts to Rush by considering the "defending parties" together and aggregating their forum contacts in determining whether it had jurisdiction.[21] The result was the

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ing. 'The defendant, not the insurer, is the party sued. There is nothing in the statute which suggests that the insurer should be named as a defendant.'" 311 Minn., at 338, 245 N. W. 2d, at 629. *See* n. 4, *supra*.

[19] Compare the direct action statute upheld in *Watson* v. *Employers Liability Assurance Corp.*, 348 U. S. 66 (1954), which was applicable only if the accident or injury occurred in the State or the insured was domiciled there and which permitted the plaintiff to sue the insurer alone, without joining the insured as a defendant. *Id.*, at 68, n. 4.

[20] A party does not extinguish his legal interest in a dispute by insuring himself against having to pay an eventual judgment out of his own pocket. Moreover, the purpose of insurance is simply to make the defendant whole for the economic costs of the lawsuit; but noneconomic factors may also be important to the defendant. Professional malpractice actions, for example, question the defendant's integrity and competence and may affect his professional standing. Cf. *Donawitz* v. *Danek*, 42 N. Y. 2d 138, 366 N. E. 2d 253 (1977) (medical malpractice action premised on *Seider* jurisdiction dismissed because plaintiff was a nonresident). Further, one can easily conceive of cases in which the defendant might have a substantial economic stake in *Seider* litigation—if, for example, multiple plaintiffs sued in different States for an aggregate amount in excess of the policy limits, or if a successful claim would affect the policyholder's insurability. For these reasons, the defendant's interest in the adjudication of his liability cannot reasonably be characterized as *de minimis*.

[21] The court stated, "We view as most vital the relationship between the *defending parties*, the litigation, and the forum state. It cannot be said

assertion of jurisdiction over Rush based solely on the activities of State Farm. Such a result is plainly unconstitutional. Naturally, the parties' relationships with each other may be significant in evaluating their ties to the forum. The requirements of *International Shoe*, however, must be met as to each defendant over whom a state court exercises jurisdiction.

The justifications offered in support of *Seider* jurisdiction share a common characteristic: they shift the focus of the inquiry from the relationship among the defendant, the forum, and the litigation to that among the plaintiff, the forum, the insurer, and the litigation. The insurer's contacts with the forum are attributed to the defendant because the policy was taken out in anticipation of such litigation. The State's interests in providing a forum for its residents and in regulating the activities of insurance companies are substituted for its contacts with the defendant and the cause of action. This subtle shift in focus from the defendant to the plaintiff is most evident in the decisions limiting *Seider* jurisdiction to actions by forum residents on the ground that permitting nonresidents to avail themselves of the procedure would be unconstitutional.[12] In other words, the plaintiff's contacts with the forum are decisive in determining whether the defendant's due process rights are violated.

Such an approach is forbidden by *International Shoe* and its progeny. If a defendant has certain judicially cognizable ties with a State, a variety of factors relating to the particular cause of action may be relevant to the determination whether the exercise of jurisdiction would comport with "traditional notions of fair play and substantial justice." See *McGee* v. *International Life Ins. Co.*, 355 U. S. 220 (1957); cf. *Kulko* v.

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that Minnesota lacks such minimally-requisite contacts, the relations to those *defending parties* as to afford the requirements of due process." *Savchuk II*, 272 N. W. 2d at 885 (emphasis added).

[12] See, e. g., *Purcell* v. *National Aviation Inc.*, 411 F. 2d 572 (CA2 1969); *Rietsch* v. *Shostakes*, 302 F. Supp. 1014 (Minn. 1973); *Dunwoody* v. *Dunck*, 42 N. Y. 2d 1, 15, 366 N. E. 2d 253 (1977); *Savchuk I*,

California Superior Court, 436 U. S., at 98-101. Here, however, the *defendant* has no contacts with the forum, and the Due Process Clause "does not contemplate that a state may make binding a judgment . . . against a individual or corporate defendant with which the state has no contacts, ties, or relations." *International Shoe Co.* v. *Washington*, 326 U. S., at 319. The judgment of the Minnesota Supreme Court is, therefore,

Reversed.

p. 10 (Helpful note)

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Marshall

Circulated: _____

Recirculated: 9 NOV 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–952

Randal Rush et al., Appellants, v. Jeffrey D. Savchuk | On Appeal from the Supreme Court of Minnesota.

[November —, 1979]

I'd join — may still add a concurrence

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This appeal presents the question whether a State may constitutionally exercise *quasi in rem* jurisdiction over a defendant who has no forum contacts by attaching the contractual obligation of an insurer licensed to do business in the State to defend and indemnify him in connection with the suit.

I

On January 13, 1972, two Indiana residents were involved in a single-car accident in Elkhart, Ind. Appellee Savchuk, who was a passenger in the car driven by appellant Rush, was injured. The car, owned by Rush's father, was insured by appellant State Farm Mutual Automobile Insurance Co. (State Farm) under a liability insurance policy issued in Indiana. Indiana's guest statute would have barred a claim by Savchuk. Ind. Stat. § 9–3–3–1.

Savchuk moved with his parents to Minnesota in June 1973.[1] On May 28, 1974, he commenced an action against Rush in the Minnesota state courts.[2] As Rush had no contacts with Minnesota that would support *in personam* jurisdiction, Savchuk attempted to obtain *quasi in rem* jurisdic-

[1] Savchuk moved to Pennsylvania after the appeal was filed.

[2] The suit was filed after the two-year Indiana statute of limitations had run. 272 N. W. 2d 888, 891, n. 2 (1978).

tion by garnishing State Farm's obligation under the insurance policy to defend and indemnify Rush in connection with such a suit.[3] State Farm does business in Minnesota.[4] Rush was personally served in Indiana. The complaint alleged negligence and sought $125,000 in damages.[5]

As provided by the state garnishment statute, Savchuk moved the trial court for permission to file a supplemental complaint making the garnishee, State Farm, a party to the action after State Farm's response to the garnishment summons

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[3] 4 Minn. Stat. § 571.41, subd. 2 (1978) provides, in relevant part:

"Notwithstanding anything to the contrary herein contained, a plaintiff in any action in a court of record for the recovery of money only is not a garnishee summons before judgment therein in the following instances only:

. . . . .

"(b) If the court shall order the issuance of such summons if a summons and complaint is filed with the appropriate court and either served on the defendant or delivered to a sheriff for service on the defendant and more than 30 days after the order is signed, and if, upon application to the court it shall appear that:

. . . . .

"(2) The purpose of the garnishment is to establish quasi in rem jurisdiction and that

. . . . .

"(b) defendant is a nonresident individual, or a foreign corporation, partnership or association.

"(3) The garnishee and the debtor are parties to a contract of suretyship, guarantee, or insurance, because of which the garnishee may be held to respond to any person for the claim asserted against the debtor in the main action, . . ."

The Minnesota Supreme Court cited this version of the statute, enacted in 1976, in its opinion on remand, 272 N. W. 2d 888 (Minn. 1978) (*Savchuk II*). The version of the statute that was in effect at the time of the original opinion, 311 Minn. 488, 245 N. W. 2d 888 (1976) (*Savchuk I*), does not differ in any important respect.

[4] State Farm is an Illinois corporation that does business in all 50 States, the District of Columbia, and several Canadian provinces. The Insurance Almanac 149 (1979).

[5] The prayer was later reduced voluntarily to $50,000, the face amount of the policy.

asserted that it owed the defendant nothing.[2] Rush and State Farm moved to dismiss the complaint for lack of jurisdiction over the defendant.[3] The trial court denied the motion to dismiss and granted the motion for leave to file the supplemental complaint.

On appeal, the Minnesota Supreme Court affirmed the trial court's decision, 311 Minn. 480, 245 N. W. 2d 624 (1976) (*Savchuk I*). It held, first, that the obligation of an insurance company to defend and indemnify a nonresident insured under an automobile liability insurance policy is a garnishable res in Minnesota for the purpose of obtaining *quasi in rem* jurisdiction when the incident giving rise to the action occurs outside Minnesota but the plaintiff is a Minnesota resident when the suit is filed. Second, the court held that the assertion of jurisdiction over Rush was constitutional because he had notice of the suit and an opportunity to defend, his liability was limited to the amount of the policy, and the garnishment procedure may be used only by Minnesota residents. The court expressly recognized that Rush had engaged in no voluntary activity that would justify the exercise of *in personam* jurisdiction. The court found, however, that considerations of fairness supported the exercise of *quasi in rem* jurisdiction because in accident litigation the insurer controls the defense of the case. State Farm does business in and is

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[2] 4 Minn. Stat. § 571.495 requires the garnishee to disclose the amount of his debt to the defendant. Section 571.51 provides, in relevant part:

"[U]pon . . . cases where the garnishee denies liability the judgment creditor may move the court at any time before the garnishee is discharged, on notice to both the judgment debtor and the garnishee, for leave to file a supplemental complaint making the latter a party to the action and setting forth the facts upon which he claims to charge him and, if probable cause is shown, such motion shall be granted. . . ." 4 Minn. Stat. § 571.51 (1978).

The party-garnishee is not a defendant.

[3] The motion to dismiss also alleged lack of subject-matter jurisdiction, insufficiency of process, and insufficiency of service of process.

regulated by the State, and the State has an interest in protecting its residents and providing them with a forum in which to litigate their claims.

Rush appealed to this Court. We vacated the judgment and remanded the cause for further consideration in light of *Shaffer* v. *Heitner*, 433 U. S. 186 (1977). 433 U. S. 902 (1977).

On remand, the Minnesota Supreme Court held that the assertion of *quasi in rem* jurisdiction through garnishment of an insurer's obligation to an insured complied with the due process standards enunciated in *Shaffer*. 272 N. W. 2d 888 (Minn. 1978) (*Savchuk II*). The court found that the garnishment statute differed from the Delaware stock sequestration procedure held unconstitutional in *Shaffer* because the garnished property was intimately related to the litigation and the garnishment procedure paralleled the asserted state interest in "facilitating recoveries for resident plaintiffs." *Id.*, at 891.[5] This appeal followed.

II

The Minnesota Supreme Court held that the Minnesota garnishment statute embodies the rule stated in *Seider* v. *Roth*, 17 N. Y. 2d 111, 216 N. E. 2d 312 (1966), that the contractual obligation of an insurance company to its insured under a liability insurance policy is a debt subject to attachment under state law if the insurer does business in the State.[6] *Seider* jurisdiction was upheld against a due process challenge

[5] Minnesota would apply its own comparative negligence law, rather than Indiana's contributory negligence rule. *See Schwartz* v. *Consolidated Freightways Corp.*, 300 Minn. 487, 221 N. W. 2d 665 (1974). Appellant asserts that Minnesota would also decline to apply its guest statute if this case were tried in Minnesota. Juris. Statement 10, n. 2; cf. *Savchuk II*, 272 N. W. 2d, at 891–892. The constitutionality of a choice of law rule that would apply forum law in these circumstances is not before us. Cf. *Home Ins. Co.* v. *Dick*, 281 U. S. 397 (1930).

[6] 272 N. W. 2d, at 891.

in *Simpson* v. *Loehmann*, 21 N. Y. 2d 305, 234 N. E. 2d 669 (1967), rearg. denied, 21 N. Y. 2d 990, 238 N. E. 2d 319 (1968). The New York court relied on *Harris* v. *Balk*, 198 U. S. 215 (1905), in holding that the presence of the debt in the State was sufficient to permit *quasi in rem* jurisdiction over the absent defendant. The court also concluded that the exercise of jurisdiction was permissible under the Due Process Clause because, "[v]iewed realistically the insurer in a case such as the present is in full control of the litigation" and "where the plaintiff is a resident of the forum state and the insurer is present in and regulated by it, the State has a substantial and continuing relation with the controversy." *Simpson* v. *Loehmann*, *supra*, at 311, 234 N. E. 2d, at 672.

The United States Court of Appeals for the Second Circuit gave its approval to *Seider* in *Minichiello* v. *Rosenberg* (CA2 1968), 410 F. 2d 106, adhered to en banc, 410 F. 2d 117, cert. denied, 396 U. S. 844 (1969), although on a slightly different rationale. Judge Friendly construed *Seider* as "in effect a *judicially* created direct action statute. The insurer doing business in New York is considered the real party in interest and the nonresident insured is viewed simply as a conduit, who has to be named as a defendant in order to provide a nonconceptual basis for getting at the insurer." *Id.*, at 109; see *Dunkwitz* v. *Danek*, 42 N. Y. 2d 138, 142, 366 N. E. 2d 253, 255 (1977). The court held that New York could constitutionally enact a direct action statute, and that the restriction of liability to the amount of the policy coverage made the policyholder's personal stake in the litigation so slight that the exercise of jurisdiction did not offend due process.

New York has continued to adhere to *Seider*.[10] New Hampshire follows *Seider* if the defendant resides in a *Seider* juris-

[10] *Baden* v. *Staples*, 43 N. Y. 2d 888, 385 N. E. 2d 1310 (1978). The State has declined, however, to make the attachment procedure available to nonresident plaintiffs. *Dunkwitz* v. *Danek*, 42 N. Y. 2d 138, 366 N. E. 2d 253 (1977).

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We held in *Shaffer* that the mere presence of property in a State does not establish a sufficient relationship between the owner of the property and the State to support the exercise of jurisdiction over an unrelated cause of action. The ownership of property in the State is *a* contact between the defendant and the forum, and it may suggest the presence of other ties. 433 U. S., at 209. Jurisdiction is lacking, however, unless there are sufficient contacts to satisfy the fairness standard of *International Shoe*.

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Nor are there significant contacts between the litigation and the forum. The Minnesota Supreme Court was of the view that the insurance policy was so important to the litigation that it provided contacts sufficient to satisfy due process.[25] The insurance policy is not the subject matter of the case however, nor is it related to the operative facts of the negligence action. The contractual arrangements between the defendant and the insurer pertain only to the conduct, not the substance, of the litigation, and accordingly do not affect the court's jurisdiction unless they demonstrate ties between the defendant and the forum.

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[25] The court explained, "In the instant case, the insurer's obligation to defend and indemnify, while theoretically separate from the tort action, has no independent value or significance apart from accident litigation. In the accident litigation, however, it is inevitably the focus, determining the rights and obligations [sic] of the insured, and practically speaking, the victim." *Sunderlin II*, 272 N. W. 2d, at 902 (emphasis in original). The court considered the "practical relationship between the insurer and the natural defendant." *Ibid.* The limitation of liability to the policy amount, and the restriction of the garnishment procedure to resident plaintiffs, and concluded that "the relationship between the defending parties, the litigation and the forum state," *id.*, at 904, was sufficient to sustain the exercise of jurisdiction.

In fact, the fictitious presence of the insurer's obligation in Minnesota does not, without more, provide a basis for concluding that there is *any* contact in the *International Shoe* sense between Minnesota and the insured. To say that "a debt follows the debtor" is simply to say that intangible property has no actual situs, and a debt may be sued on wherever there is jurisdiction over the debtor. State Farm is "found" in the sense of doing business in all 50 States and the District of Columbia. Under appellee's theory, the "debt" owed to Rush would be "present" in each of those jurisdictions simultaneously. It is apparent that such a "contact" can have no jurisdictional significance.

An alternative approach for finding minimum contacts in *Seider*-type cases referred to with approval by the Minnesota Supreme Court,[7] is to attribute the insurer's forum contacts to the defendant by treating the attachment procedure as the functional equivalent of a direct action against the insurer. This approach views *Seider* jurisdiction as fair both to the insurer, whose forum contacts would support *in personam* jurisdiction even for an unrelated cause of action, and to the "nominal defendant." Because liability is limited to the policy amount the defendant incurs no personal liability,[8] and the judgment is satisfied from the policy proceeds which are not available to the insured for any purpose other than paying accident claims, the insured is said to have such a slight stake in the litigation as a practical matter that it is not unfair to make him a "nominal defendant" in order to obtain jurisdiction over the insurance company.

Seider actions are not equivalent to direct actions, however.[9] The State's ability to exert its power over the "quasi-

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[7] *Id.*, at 892–893, but see *Seider I*, 321 Minn. at 488, 243 N. W. 2d, at 620.

[8] See *Seider II*, 272 N. W. 2d, at 902; *Simpson v. Loehmann*, 21 N. Y. 2d 990, 991, 237 N. E. 2d 869 (1968).

[9] In *Seider I*, the Minnesota Supreme Court rejected Rush's argument that the garnishment procedure operated as a direct action, observ-

nal defendant" is analytically prerequisite to the insurer's entry into the case as a garnishee. If the Constitution forbids the assertion of jurisdiction over the insured based on the policy, then there is no conceptual basis for bringing the "garnishee" into the action. Because the party with forum contacts can only be reached through the out of state party, the question of jurisdiction over the nonresident cannot be ignored.[17] Moreover, the assumption that the defendant has no real stake in the litigation is far from self-evident.[18]

The Minnesota court also attempted to attribute State Farm's contacts to Rush by considering the "defending parties" together and aggregating their forum contacts in determining whether it had jurisdiction.[19] The result was the

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ing: "The defendant, not the insurer, is the party sued. There is nothing in the statute which suggests that the insurer should be named as a defendant." 311 Minn., at 488, 245 N. W. 2d, at 629. See n. 4, supra.

[17] Compare the direct action statute upheld in *Watson* v. *Employers Liability Assurance Corp.*, 348 U. S. 66 (1954), which was applicable only if the accident or injury occurred in the State or the insured was domiciled there and which permitted the plaintiff to sue the insurer alone, without naming the insured as a defendant. *Id.*, at 68, n. 4.

[18] A party does not extinguish his legal interest in a dispute by insuring himself against having to pay an eventual judgment out of his own pocket. Moreover, the purpose of insurance is simply to make the defendant whole for the economic costs of the lawsuit; but noneconomic factors may also be important to the defendant. Professional malpractice actions, for example, question the defendant's integrity and competence and may affect his professional standing. Cf. *Donawitz* v. *Danek*, 42 N. Y. 2d 138, 366 N. E. 2d 253 (1977) (medical malpractice action premised on *Seider* jurisdiction dismissed because plaintiff was a nonresident). Further, there may be some category of cases in which the defendant might have a substantial economic stake in *Seider* litigation—if, for example, multiple plaintiffs sued in different States for an aggregate amount in excess of the policy limits, or if a successful claim would affect the policyholder's insurability. For these reasons, the defendant's interest in the adjudication of his liability cannot reasonably be characterized as *de minimis*.

[19] The court stated: "We view as relevant the relationship between the *defending parties*, the litigation, and the forum state. It cannot be said

assertion of jurisdiction over Rush based solely on the activities of State Farm. Such a result is plainly unconstitutional. Naturally, the parties' relationships with each other may be significant in evaluating their ties to the forum. The requirements of *International Shoe*, however, must be met as to each defendant over whom a state court exercises jurisdiction.

The justifications offered in support of *Seider* jurisdiction share a common characteristic: they shift the focus of the inquiry from the relationship among the defendant, the forum, and the litigation to that among the plaintiff, the forum, the insurer, and the litigation. The insurer's contacts with the forum are attributed to the defendant because the policy was taken out in anticipation of such litigation. The State's interests in providing a forum for its residents and in regulating the activities of insurance companies are substituted for its contacts with the defendant and the cause of action. This subtle shift in focus from the defendant to the plaintiff is most evident in the decisions limiting *Seider* jurisdiction to actions by forum residents on the ground that permitting nonresidents to avail themselves of the procedure would be unconstitutional.[23] In other words, the plaintiff's contacts with the forum are decisive in determining whether the defendant's due process rights are violated.

Such an approach is forbidden by *International Shoe* and its progeny. If a defendant has certain judicially cognizable ties with a State, a variety of factors relating to the particular cause of action may be relevant to the determination whether the exercise of jurisdiction would comport with "traditional notions of fair play and substantial justice." See *McGee* v. *International Life Ins. Co.*, 355 U. S. 220 (1957); cf. *Kulko* v.

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that Minnesota lacks such minimum contacts, ties or relations to these *defending parties* as to offend the requirements of due process." *Savchuk II*, 272 N. W. 2d, at 893 (emphasis added).

[23] See, e. g., *Farrell* v. *Piedmont Aviation, Inc.*, 411 F. 2d 812 (CA2 1969); *Rintala* v. *Shoemaker*, 362 F. Supp. 1044 (Minn. 1973); *Donawitz* v. *Danek*, 42 N. Y. 2d 138, 366 N. E. 2d 253 (1977); *Savchuk I*.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 19, 1979

RE: No. 78-952 Rush v. Savchuk

Dear Thurgood:

I'll circulate a dissent in the above in due course.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 20, 1979

Re: 78-952 - Rush v. Savchuk

Dear Thurgood:

Since I voted the other way, I am waiting for Bill Brennan's dissent. Since I did not agree with him in the Volkswagen case, it may be necessary for me to write a short separate dissent after his comes in. I'll try not to delay you too long.

Respectfully,

JPS

Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 16, 1979

Re: 78-952 - Rush v. Savchuk

Dear Thurgood,

Although my vote was tentatively the other way at Conference, I now join your opinion in this case. I would not think, however, that the judgment puts direct action statutes in jeopardy.

This would also let Bill Brennan know I do not intend to dissent.

Sincerely yours,

Mr. Justice Marshall

Copies to the Conference

CRC

Circulated: 18 DEC 1979

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 78-1078 AND 78-952

World Wide Volkswagen Corporation et al., Petitioners, 78-1078 v. Charles S. Woodson, District Judge of Creek County, Oklahoma, et al.	On Writ of Certiorari to the Supreme Court of Oklahoma.
Rudal Rash et al., Appellants, 78-952 v. Jeffrey D. Savchuk.	On Appeal from the Supreme Court of Minnesota.

[January — 1980]

MR. JUSTICE BRENNAN, dissenting.

The Court holds that the Due Process Clause of the Fourteenth Amendment bars the States from asserting jurisdiction over the petitioners in these two cases. In each case the Court so decides because it fails to find the "minimum contacts" that have been required since *International Shoe Co. v. Washington*, 326 U. S. 310, 316 (1945). Because I believe that the Court reads *International Shoe* and its progeny too narrowly, and because I believe that the standards enunciated by those cases may already be obsolete as constitutional boundaries, I dissent.

I

The Court's opinion focus tightly on the existence of contacts between the forum and the defendant. In so doing, they accord too little weight to the strength of the forum State's interest in the case and fail to explore whether there would be any actual inconvenience to the defendant. The essential inquiry in locating the constitutional limits on state-court jurisdiction over absent defendants is whether the par-

Justice Brennan's dissent substitutes "fairness" for current jurisdictional doctrine, and states that jurisdiction should turn on a weighing of all interests instead of simply the connection between forum state and defendant.

I am unsure whether you should not now write a separate concurrence in Rush. Emphasis on unfairness in that case (transporting witnesses, etc.) may cut the other way in WWV, and Justice Brennan may leap on that point. On the whole, I believe it would be better to rely on Justice White's and Justice Marshall's excellent opinions for the Court.

Jan

I am inclined to agree with you.

LFP 12/20

ticular exercise of jurisdiction offends "traditional notions of fair play and substantial justice." *International Shoe*, *supra*; *Milliken v. Meyer*, 311 U. S. 457, 463 (1940). The clear focus in *International Shoe* was on fairness and reasonableness. *Kulko v. California Superior Court*, 436 U. S. 84, 92 (1978). The Court specifically declined to establish a mechanical test based on the quantum of contacts between a State and the defendant:

> "Whether due process is satisfied must depend rather upon the quality and nature of the activity *in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure.* That clause does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has *no* contacts, ties, or relations." 326 U. S., at 319 (emphasis added).

The existence of contacts, so long as there were some, was merely one way of giving content to the determination of fairness and reasonableness.

Surely *International Shoe* contemplated that the significance of the contacts necessary to support jurisdiction would diminish if some other consideration helped establish that jurisdiction would be fair and reasonable. The interests of the State and other parties in proceeding with the case in a particular forum are such considerations. *McGee v. International Life Insurance Co.*, 355 U. S. 220, 223 (1957), for instance, accorded great importance to a State's "manifest interest in providing an effective means of redress" for its citizens. See also *Kulko v. California Superior Court*, *supra*, at 92; *Shaffer v. Heitner*, 433 U. S. 186, 208 (1978); *Mullane v. Central Hanover Trust Co.*, 339 U. S. 306, 313 (1950).

Another consideration is the actual burden a defendant must bear in defending the suit in the forum. *McGee*, *supra*. Because lesser burdens reduce the unfairness to the defendant, jurisdiction may be justified despite less significant con-

facts. The burden, of course, must be of constitutional dimension. Due process limits on jurisdiction do not protect a defendant from all inconvenience of travel, *McGee*, *supra*, at 224, and it would not be sensible to make the constitutional rule turn solely on the number of miles the defendant must travel to the courtroom.[1] Instead, the constitutionally significant "burden" to be analyzed relates to the mobility of the defendant's defense. For instance, if having to travel to a foreign forum would hamper the defense because witnesses or evidence or the defendant himself were immobile, or if there were a disproportionately large number of witnesses or amount of evidence that would have to be transported at the defendant's expense, or if being away from home for the duration of the trial would work some special hardship on the defendant, then the Constitution would require special consideration for the defendant's interests.

That considerations other than contacts between the forum and the defendant are relevant necessarily means that the Constitution does not require that trial be held in the State which has the "best contacts" with the defendant. See *Shaffer* v. *Heitner*, 433 U. S. 186, 228 (1977) (BRENNAN, J., dissenting). The defendant has no constitutional entitlement to the best forum or, for that matter, to any particular forum. Under even the most restrictive view of *International Shoe*, several States could have jurisdiction over a particular cause of action. We need only determine whether the forum States in these cases satisfy the constitutional minimum.[2]

II

In each of these cases, I would find that the forum State

[1] In fact, a courtroom just across the state line from a defendant may often be far more convenient for the defendant than a courtroom at the far corner of his own State.

[2] The States themselves, of course, remain free to choose whether to exercise that jurisdiction to embrace all defendants over whom the Constitution would permit exercise of jurisdiction.

has an interest in permitting the litigation to go forward, the litigation is connected to the forum, the defendant is linked to the forum, and the burden of defending is not unreasonable. Accordingly I would hold that it is neither unfair nor unreasonable to require these defendants to defend in the forum State.

A

In No. 78-952, a number of considerations suggest that Minnesota is an interested and convenient forum. The action was filed by a bona fide resident of the forum.[1] Consequently, Minnesota's interests are similar to, even if lesser than, the interests of California in *McGee*, *supra*, "in providing a forum for its residents and in regulating the activities of insurance companies" doing business in the State.[2] No. 78-952, *ante*, at 11. Moreover, Minnesota has "attempted to assert [its] particularized interest in trying such cases in its courts by . . . enacting a special jurisdictional statute." *Kulko*, *supra*, at 98; *McGee*, *supra*, at 221, 224. As in *McGee*, a resident forced to travel to a distant State to prosecute an action against someone who has injured him could, for lack of funds, be entirely unable to bring the cause

[1] The plaintiff asserted jurisdiction pursuant to 3 Minn Stat § 571.41, subd. 2 (1978), which allows garnishment of an insurer's obligation to defend and indemnify its insured. *See* No. 78-952, *ante* n. 6, and accompanying text. The Minnesota Supreme Court has interpreted the statute as allowing suit only in the insurance policy's liability limit. The court has held that the statute embodies the rule of *Seider v. Roth*, 17 N. Y. 2d 111, 216 N. E. 2d 312 (1966).

[2] To say that these considerations are relevant is a far cry from saying that they are "substituted for . . . contacts with the defendant and the cause of action." No. 78-952 *ante*, at 11. The forum's interest is the litigation's an independent point of inquiry even under traditional readings of *International Shoe*'s progeny. There is a shift in focus, it is not away from "the relationship among the defendant, the forum, and the litigation." *Ibid.* (emphasis added). Instead it is a shift within the same accepted relationship from the connection between the defendant and the forum to those between the forum and the litigation.

of action. The plaintiff's residence in the State makes the State one of a very few convenient fora for a personal injury case. The others usually being the defendant's home State and the State where the accident occurred.[3]

In addition, the burden on the defendant is slight. As Judge Friendly has recognized, *Shaffer* emphasizes the importance of abstractly the real impact of the lawsuit. *O'Connor v. Lee-Hy Paving Corp.*, 579 F. 2d 194, 201 (CA2 1978) (upholding the constitutionality of jurisdiction in a very similar case under New York's law after *Shaffer*). Here the real impact is on the defendant's insurer, which is concededly amenable to suit in the forum State. The defendant is carefully protected from financial liability because the action limits the prayer for damages to the insurance policy's liability limit.[4] The insurer will handle the case for the defendant. The defendant is only a nominal party who need be no more active in the case than the cooperation clause of his policy requires. Because of the ease of airline transportation, he need not lose significantly more time than if the case were at home. Consequently, if the suit went forward in Minnesota, the defendant would bear almost no burden or expense beyond what he would face if the suit were in his home State. The real impact on the named de-

[3] In every *International Shoe* inquiry, the defendant, necessarily, is outside the forum State. Thus it is inevitable that either the defendant or the plaintiff will be inconvenienced. The problem existing at the time of *Pennoyer v. Neff*, that a resident plaintiff could obtain a binding judgment against an out-of-state defendant, has virtually disappeared in this age of instant communication and cheaply, instant travel.

[4] It is true that the insurance contract is not the subject of the litigation (see No. 78-032, *ante*, at 8). But one of the negotiated clauses of the insurance policy is that the insurer will defend this action and pay any damages assessed, up to the policy limit. The very purpose of the contract is to relieve the insured from having to defend himself, and under the state statute there could be no case absent the insurance contract. Thus, in a real sense, the insurance contract is the center of the suit. See *Shaffer v. Heitner*, 433 U. S. 186, 207 (1977).

fendant is the same as it is in a direct action against the insurer, which would be constitutionally permissible. *Watson v. Employers Liability Corp.*, 348 U. S. 66 (1954); *Minichiello v. Rosenberg*, 410 F. 2d 106, 109–110 (CA2 1968). The only distinction is the format, "analytical [] prerequisite," No. 78–952, *ante*, at 10, of making the insured a named party. Surely the mere addition of petitioner's name to the complaint does not suffice to create a due process violation.[1]

Finally, even were the relevant inquiry whether there are sufficient contacts between the forum and the named defendant, I would find that such contacts exist. The insurer's presence in Minnesota is an advantage to the defendant that may well have been a consideration in his selecting the policy he did. An insurer with offices in many States makes it easier for the insured to make claims or conduct other business that may become necessary while traveling. It is simply not true that "State Farm's decision to do business in Minnesota was completely adventitious as far as Rush was concerned." No. 78–952, *ante*, at 8. By buying a State Farm policy, the defendant availed himself of the benefits he might derive from having an insurance agent in Minnesota who could, among other things, facilitate a suit for petitioner against a Minnesota resident. It seems unreasonable to read the Constitution as permitting one to take advantage of his nationwide insurance network but not to be burdened by it.

In sum, I would hold that petitioner is not deprived of due process by being required to submit to trial in Minnesota, first because Minnesota has a sufficient interest in and connection to this litigation and to the real and nominal defendants, and second because the burden on the nominal defendant is sufficiently slight.

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[1] Were the defendant a real party subject to actual liability or were there significant non-corporate relationships such as those suggested by the Court's note 20, a more substantial connection with the forum State might well be constitutionally required.

B

In No. 78-1078 the interest of the forum State and its connection to the litigation is strong. The automobile accident underlying the litigation occurred in Oklahoma. The plaintiffs were hospitalized in Oklahoma when they brought suit. Essential witnesses and evidence were in Oklahoma. See *Shaffer* v. *Heitner*, *supra*, at 181, 208. The State has a legitimate interest in enforcing its laws designed to keep its highway system safe, and the trial can proceed at least as efficiently in Oklahoma as anywhere else.

The petitioners are not unconnected with the forum. Although both sell automobiles within limited sales territories, each sold the automobile which in fact was driven to Oklahoma where it was involved in an accident.[7] It may be true, as the Court suggests, that each sincerely intended to limit its commercial impact to the limited territory, and that each intended to accept the benefits and protection of the laws only of those States within the territory. But obviously these were unrealistic hopes that cannot be treated as an automatic constitutional shield.[8]

An automobile simply is not a stationary item or one designed to be used in one place. An automobile is *intended* to be moved around. Someone in the business of selling large

[7] On the basis of this fact the state court inferred that the petitioners derived a substantial revenue from goods used in Oklahoma. The inference is not without support. Certainly, were use of goods accepted as a relevant contact, a plaintiff would not need to prove an exact count of the number of petitioners' cars that are used in Oklahoma.

[8] Moreover imposing liability in this case would not so undermine certainty as to destroy an automobile dealer's ability to do business. Amending jurisdiction does not expand liability except in the marginal case where a plaintiff cannot afford to bring an action except in the plaintiff's own State. In addition, these petitioners are represented by insurance companies. They not only could, but did, purchase insurance to protect them when they stand trial and lose the case. The costs of the insurance no doubt are passed on to customers.

Apparently the writer of this concurrence often the constitutional definition of jurisdiction

numbers of automobiles can hardly plead ignorance of their mobility or pretend that the automobiles stay put after they are sold. It is not merely that a dealer in automobiles foresees that they will move, No. 78–1078, *ante*, at 9. The dealer actually intends that the purchasers will use the automobiles to travel to distant States where the dealer does not directly "do business." The sale of an automobile does *purposefully* inject the vehicle into the stream of interstate commerce so that it can travel to distant States. See *Kulko*, *supra*, at 94; *Hanson* v. *Denckla*, 357 U. S. 235, 253 (1958).

This case is similar to *Ohio* v. *Wyandotte Chemicals Corp.*, 401 U. S. 493 (1971). There we indicated, in the course of denying leave to file an original jurisdiction case, that corporations having no direct contact with Ohio could constitutionally be brought to trial in Ohio because they dumped pollutants into streams outside Ohio's limits which ultimately, through the action of the water, reached Lake Erie and affected Ohio. No corporate acts, only their consequences, occurred in Ohio. The stream of commerce is just as natural a force as a stream of water, and it was equally predictable that the cars petitioners' released would reach distant States.[1]

The Court accepts that a State may exercise jurisdiction over a distributor which "serves" that State "indirectly" by "deliver[ing] its products into the stream of commerce with the expectation that they will [be] purchased by consumers in other States." No. 78–1078, *ante*, at 11. It is difficult to see why the Constitution should distinguish between a case involving goods which reach a distant State through a chain of distribution and a case involving goods which reach the same State because a consumer, using them as the dealer

[1] One might argue that it was more predictable that the pollutants would reach Ohio than that one of petitioners' cars would reach Oklahoma. The Court's analysis, however, excludes jurisdiction in a contiguous State such as Pennsylvania, as surely as in more distant States such as Oklahoma.

know the customer would, took them there.[11] In each case the seller purposefully injects the goods into the stream of commerce and those goods predictably are used in the forum State.[12]

Furthermore an automobile seller derives substantial benefits from States other than its own. A large part of the value of automobiles is the extensive, nationwide network of highways. Significant portions of that network have been constructed by and are maintained by the individual States, including Oklahoma. The States, through their highway programs, contribute in a very direct and important way to the value of petitioners' businesses. Additionally, a network of other related dealerships with their service departments operate throughout the country under the protection of the laws of the various States, including Oklahoma, and enhance the value of petitioners' businesses by facilitating their customers' traveling.

Thus, the Court errs in its conclusion, No. 78–1078, *ante*, at 12 (emphasis added), that "petitioners have *no* 'contacts, ties, or relations' " with Oklahoma. There obviously are contacts, and, given Oklahoma's connection to the litigation the contacts are sufficiently significant to make it fair and reasonable for the petitioners to submit to Oklahoma's jurisdiction.

III

It may be that affirmance of the judgments in these cases would approach the outer limits of *International Shoe*'s jurisdictional principle. But that principle, with its almost exclusive focus on the rights of defendants, may be outdated.

[11] For example, I cannot understand the constitutional distinction between selling an item in New Jersey and selling an item in New York expecting it to be used in New Jersey.

[12] The manufacturer in the case cited by the Court, *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N. E. 2d 761 (1961), had no more control over which States its goods would reach than did the petitioners in this case.

As MR. JUSTICE MARSHALL wrote in *Shaffer* v. *Heitner*, *supra*, at 212, "'[T]raditional notions of fair play and substantial justice' can be as readily offended by the perpetuation of ancient forms that are no longer justified as by the adoption of new procedures. . . ."

International Shoe inherited its defendant focus from *Pennoyer* v. *Neff*, 95 U. S. 714 (1878), and represented the last major step this Court has taken in the long process of liberalizing the doctrine of personal jurisdiction. Though its flexible approach represented a major advance, the structure of our society has changed in many significant ways since *International Shoe* was decided in 1945. Justice Black, writing for the Court in *McGee* v. *International Life Insurance Co.*, 355 U. S. 220, 222 (1957), recognized that "a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents." He explained the trend as follows:

> "In part this is attributable to the fundamental transformation of our national economy over the years. Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time, modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity." *Ibid.*

As the Court acknowledges, No. 78–1078, *ante*, at 6, both the nationalization of commerce and the ease of transportation and communication have accelerated in the generation since 1957.[1] The model of society on which the *International Shoe*

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[1] Statistics help illustrate the increasing expansion in mobility since *International Shoe*. The number of revenue passenger miles flown on domestic and international flights increased by nearly three orders of magnitude, between 1945 (1,450 million) and 1976 (327 billion). Historical

Court based its opinion is no longer accurate. Business people, no matter how local their businesses, cannot assume that goods remain in the business' locality. Customers and goods can be anywhere else in the country usually in a matter of hours and always in a matter of a very few days.

In answering the question whether or not it is fair and reasonable to allow a particular forum to hold a trial binding on a particular defendant, the interests of the forum State and other parties loom large in today's world and surely are entitled to as much weight as are the interests of the defendant. The "orderly administration of the laws" provides a firm basis for according some protection to the interests of plaintiffs and States as well as of defendants.[1] Certainly I cannot see how a defendant's right to due process is violated if the defendant suffers no inconvenience. See No. 78–1078, *ante*, at 8.

The conclusion I draw is that constitutional concepts of fairness no longer require the extreme concern for defendants that was once necessary. Rather, as I wrote in dissent from *Shaffer* v. *Heitner*, *supra*, at 220 (emphasis added) minimum contacts must exist "among the *parties*, the contested transaction, and the forum."[2] The contacts between any two of

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Statistics of the United States, Part 2, 770 (1975); 1978 Statistical Abstract of the United States 679. Automobile vehicle-miles (including passenger car miles, and trucks) driven in the United States increased by a relatively modest 500% during the same period, growing from 250 billion in 1945 to 1,402 billion in 1970. Historical Statistics, *supra*, at 718; Statistical Abstract, *supra*, at 617.

[1] The Court is recognized that there are cases where the interests of justice can turn the focus of the jurisdictional inquiry away from the contacts between a defendant and the forum State. For instance, the Court indicated that the requirements of contacts may be greatly relaxed or indeed any personal contacts would be required where a plaintiff is suing a nonresident defendant to enforce a judgment procured in another State. *Shaffer* v. *Heitner*, 433 U. S. 186, 210–211, and n. 37 (1978).

[2] In some cases, the inquiry will resemble the inquiry commonly undertaken in determining which State's law to apply. That is fair to apply a State's law to a nonresident defendant is clearly relevant in determining

these should not be determinative. "[W]hen a suitor seeks to lodge a suit in a State with a substantial interest in seeing its own law applied to the transaction in question we could wisely set predominate conflicts confusion and uncertainty by adopting a liberal view of jurisdiction, unless considerations of fairness or efficiency strongly point in the opposite direction." *Id.*, at 225–226. Justice Black, dissenting in *Hanson* v. *Denckla*, *supra*, at 258–259 expressed similar concerns by suggesting that a State should have jurisdiction over a case growing out of a transaction significantly related to that State "unless litigation there would impose such a heavy and disproportionate burden on a nonresident defendant that it would offend what this Court has referred to as 'traditional notions of fair play and substantial justice.'" Assuming that a State gives a nonresident defendant adequate notice and opportunity to defend, I do not think the Due Process Clause is offended merely because the defendant has to board a plane to get to the site of the trial.

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whether it is fair to subject the defendant to jurisdiction in that State. *Shaffer* v. *Heitner*, 433 U. S. 186, 225 (1978) (Brennan, J., dissenting); *Hanson* v. *Denckla*, 357 U. S. 235, 258 (1958) (Black, J., dissenting). See n. 19, *infra*.

[6] Such a standard need be no more uncertain than the Court's test "in which few answers will be written in black and white. The grays are dominant and even among them the shades are innumerable." *Kulko* v. *Superior Court of California in and for San Francisco County*, 436 U. S. 84, 92 (1978).

[7] This strong emphasis on the State's interest is nothing new. The Court, permitting the forum to exercise jurisdiction over nonresident defendants in a tort case largely on the basis of the forum's interest in policing the tort, stated:

"[T]he interest of each state in providing means to close estates that exist for the benefit of its citizens and are administered under the supervision of its courts is so insistent and vital in custom as to establish beyond doubt the right of its courts to determine the interests of all claimants, resident or nonresident, provided its processes accords full opportunity to appear and be heard." *Mullane* v. *Central Hanover Trust Co.*, 339 U. S. 306, 313 (1950).

The Court opinion in No. 78–1078 suggests that the defendant ought to be subject to a State's jurisdiction only if he has contacts with the State "such that he should reasonably anticipate being haled into court there." *Ante*, at 10. There is nothing unreasonable or unfair, however, about recognizing commercial reality. Given the tremendous mobility of goods and people, and the inability of businessmen to control where his goods are taken by his customers (or retailers), I do not think that the defendant should be in complete control of the geographical stretch of his amenability to suit. Jurisdiction is no longer premised on the notion that nonresident defendants have somehow impliedly consented to suit. People should understand that they are held responsible for the consequences of their actions and that in our society most actions have consequences affecting many States. When an action in fact causes injury in another State, the actor should be prepared to answer for it there unless defending in that State would be unfair for some reason other than that a State boundary must be crossed.[1]

In effect the Court is allowing defendants to assert the sovereign rights of their home States. The expressed fear is that otherwise all limits on personal jurisdiction would disappear. But the argument's premise is wrong. I would not abolish limits on jurisdiction or strip state boundaries of all significance, see *Hanson*, *supra*, at 260 (Black, J., dissenting); I would still require the plaintiff to demonstrate sufficient con-

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[1] The Court suggests that this is the critical foreseeability rather than the likelihood that the product will go to the forum State. But the reasoning begs the question. A defendant cannot know if his actions will subject him to jurisdiction in another State until we have declared what the law of jurisdiction is.

[2] One consideration that might create some unfairness would be if the choice of forum also imposed on the defendant an unfavorable substantive law which the defendant could justly have assumed would not apply. See n. 16, *supra*.

torts among the parties, the forum, and the litigation to make the forum a reasonable State in which to hold the trial."

I would also, however, strip the defendant of an unjustified veto power over certain very appropriate fora—a power the defendant justifiably enjoyed long ago when communication and travel over long distances was slow and unpredictable and when notions of state sovereignty were impractical and exaggerated. But I repeat that that is not today's world. If a plaintiff can show that his chosen forum State has a sufficient interest in the litigation (or sufficient contacts with the defendant), then the defendant who cannot show some real injury to a constitutionally protected interest, see *O'Connor v. Lee-Hy Paving Corp.*, 579 F. 2d 191, 201 (CA2 1978), should have no constitutional excuse not to appear.[7]

The plaintiffs in each of these cases brought suit in a forum with which they had significant contacts and which had significant contacts with the litigation. I am not convinced that the defendants would suffer any "heavy and disproportionate burden" in defending the suits. Accordingly, I would hold that the Constitution should not shield the defendants from appearing and defending in the plaintiffs' chosen fora.

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[7] For instance, in No. 78-952, if the plaintiff were not a bona fide resident of Minnesota when the suit was filed or if the defendant were subject to [illegible] I might well reach a different result. In No. 78-1078, I might reach a different result if the accident had not occurred in Oklahoma.

[1] Presumably, of course, the defendant will be able to influence the choice of forum through traditional doctrines, such as venue or *forum non conveniens*, permitting the transfer of litigation. *Shaffer v. Heitner*, 433 U. S. 186, 228, n. 8 (1978) (BRENNAN, J., dissenting).

December 20, 1979

No. 78-952 Rush v. Seychuk

Dear Thurgood:

In my join note of October 30, I indicated that I might add a brief concurring opinion.

Now that the dissent has been circulated, I am content to rest on your opinion.

Sincerely,

Mr. Justice Marshall

lfp/ss

cc: The Conference

Harry: I have been a little hesitant to "bootstrap" on the basis of my ~~on~~dissent in Lee-Wy Paving. In addition to the practical considerations that I mentioned there, I also was concerned about the possibility of a second suit and other factors. If I ~~withdrew~~ a concurrence, I would have to get into these, which seems unnecessary.

L.F.P., Jr.

SUPREME COURT OF THE UNITED STATES

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

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 78-410. Decided December 4, 1978

The petition for a writ of certiorari is denied.

MR. JUSTICE POWELL, with whom MR. JUSTICE BLACKMUN 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 sole 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 arena of personal injury litigation. Moreover, it seems to me that the rationale of our recent decision in *Shaffer v. Heitner*, 433 U. S. 186 (1977), is at odds with the decision of the Court of Appeals here. I therefore would grant certiorari 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 decedent (a New York resident) was killed when Lee-Hy's grader, operated by petitioner Clem, struck

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[1] Along with *Lee-Hy Paving Corp. v. O'Connor*, the Court of Appeals decided two other cases with respect to which certiorari is sought: *Gilmore v. Schwartz*, No. 78-268, and *Boston Hospital for Women v. Schwartz*, No. 78-501. In each of these cases, residents of other States were sued in New York on torts occurring outside of New York. The sole basis for jurisdiction in each is the insurance policy of the defendant, issued by a company doing business in New York. Although I write only with respect to *Lee-Hy Paving Corp. v. O'Connor*, the reasons stated in my opinion here would support the granting of certiorari in all three cases.

him near Richmond, Va. The respondent instituted this suit in the District Court for the Eastern District of New York as executrix for her husband's estate, claiming damages for the wrongful death of her husband. In order to obtain jurisdiction over the petitioners, 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 business in New York to defend and indemnify Lee-Hy. The District Court denied 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. § 1292 (b).

The Second Circuit affirmed. The court based its ruling on the theory of *quasi in rem* jurisdiction adopted by the New York Court of Appeals in *Seider v. Roth*, 17 N. Y. 2d 111, 216 N. E. 2d 312 (1966). In *Seider*, personal 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 v. Rosenberg*, 410 F. 2d 106 (1969), the Second Circuit affirmed the constitutionality of *Seider* 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 Assurance Corp.*, 348 U. S. 66 (1954). The *Minichiello* court recognized that the *Seider* doctrine differed in one important respect from the Louisiana direct action statute of *Watson*: Under *Seider*, there was no requirement that the tort for which redress was sought have occurred in the State asserting jurisdiction. Despite the Court's emphasis in *Watson* on the location of the tort, the Second Circuit in *Minichiello* ruled that New York's interest in protecting its residents and providing them with a ready means of suing foreign tortfeasors

was sufficient to justify *Seider* jurisdiction under the Due Process Clause.[2]

In the case at bar, the petitioners unsuccessfully urged reconsideration of *Minichiello* on the ground that the *Seider* doctrine had been undermined by *Shaffer* v. *Heitner*, *supra*. The Court of Appeals viewed the "overriding teaching of *Shaffer*" as requiring courts to look to the "realities" of the asserted grounds for jurisdiction. As far as the insurance companies were concerned, the court found no unfairness in their being subject to the jurisdiction of New York courts, as they do business 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 hundred miles from the site of the accident, the residences of the defendants, and the location of the witnesses. The court reached a similar conclusion concerning the fairness of a suit brought in New York against "the nominal defendants" (the petitioners here). The court thought it ironical that they should complain, even, though they "will not pay the judgment, nor manage the defense."

I find the Court of Appeals' decision disturbing. Although the contacts of insurance companies 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*

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[2] In his persuasive dissent in *Minichiello*, Judge Anderson argued that *Watson* was based primarily on a State's strong interest in having jurisdiction with respect to actions occurring within the State's borders. See *Minichiello*, 410 F. 2d, at 113–117. Thus Judge Anderson concluded that "statutes asserting jurisdiction of the state where the accident occurred qualify as due process whereas the assertion of jurisdiction by the state of the plaintiff's residence does not," *Id.*, at 116 (footnote omitted).

[3] "The court did not decide whether a state could constitutionally give collateral estoppel effect to a *Seider* judgment." Although I agree that no such effect should be allowed, the court's opinion in this regard is dictum that may or may not be followed in other jurisdictions.

Assurance Corp., 348 U. S., at 72. Often those difficulties are substantial. It is routine procedure for the judge and jury[4] to view the scene of the accident, often more than once. Jurors drawn from the vicinity of the accident may be better able to understand testimony pertaining to local conditions and geography. In short, many of the factors traditionally considered under the doctrine of *forum non conveniens*—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 jurisdiction over the parties to the resulting tort suit.[5]

Moreover, the Court of Appeals' reference to the petitioners as "nominal defendants" disregards many of the "realities" that bear upon whether an alleged tortfeasor, sued in a jurisdiction remote from his home and the location of the accident, is denied the fairness required by the Due Process Clause. It is novel doctrine, at least for me, to refer to the interest of defendants in negligence actions as "nominal" merely because they have insurance. In this case, for example, petitioners will be summoned 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 it 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 suit in the jurisdiction 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 sure, a judgment against the petitioners in the New York courts cannot exceed the amount of indemnification provided

[4] See 2 Cleary, McCormick on Evidence § 216 (2d Ed. 1972).

[5] See *Gulf Oil Corp. v. Gilbert*, 330 U. S. 501, 507–508 (1947).

under the insurance policies. But judgments for civil damages, especially in recent years, often have exceeded insured limits. In this case, for example, if respondent wins a judgment that exhausts the obligation of the insurers, the respondent will be free to sue petitioners in Virginia where they would be forced to go through a second trial—possibly without the benefit of lawyers supplied by the insurance companies. Moreover, as every litigation lawyer knows, the hazards of a second trial may exceed those of the first: witnesses seldom 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 Shoe Co.* v. *Washington*, 326 U. S. 310 (1945), are applicable?

In sum, the judicially created *Seider* doctrine raises serious questions of due 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 reiterated in *Shaffer* v. *Heitner*, *supra*. The issues presented are of concern to insurers and insureds in every State, as well as to state legislatures responsible for the fairness of long-arm statutes. The case merits plenary consideration by this Court.

				10/6/79				
Joan TM 11/3/79	will dissent 11/14/79	Joan TM 10/30/79	Joan TM 11/16/79	1st draft 10/25/79	Joan TM 11/3/79	Joan TM 10/30/79	Joan TM	await dissent 1/21/79
				2nd draft 11/5/79				typed draft 1/3/80
								expected draft dissenting 1-9-80
								2nd draft 1/10/80

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