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10-1979

Rush v. Savchuk

Lewis F. Powell Jr.

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jurisdiction may constitutionally be based on the obligation of an insurance company to defend and indemnify a conresident 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

2. <u>FACTS & DECISIONS BELOW</u>: The controversy arose out of a single-car accident in Indiana. The car was driven by appt Rush and owned by his father; appee Savebuk was a passenger. The Rush car was insured by appt State Farm. Both Rush and Savehuk were residents of Indiana at the time of the incident. About a year and a half later, Savehuk 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 <u>quasi in rem</u> 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:

 For the purpose of establishing <u>quasi</u> <u>in rem</u> 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.

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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 Fourceenth 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 <u>quasi in rem</u> 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 <u>quasi in rem</u> 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 <u>Seider</u> v. <u>Roth</u>, 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 barsh and that ill effects could be ameliorated by invocation of the doctrine of <u>forum non conveniens</u>.

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 sharebolder's derivative suit in a Delaware court, naming as defendants 28 present or former officers or directors of Greybound (a Delaware corporation) and Greybound 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 lightlity. 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 guasi in rem and in personam jurisdiction. This Court rejected a categorical distinction of that sort reasoming that "if a direct assertion of personal jurisdiction over

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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 <u>International Shoe</u> 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 agend 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.

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Justice Otis dissented again, this time joined by two others. He though <u>Shaffer</u> 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 <u>plaintiff</u> while the test of . jurisdiction concerns the <u>defendent</u>'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. <u>CONTENTIONS</u>: Appts contend that the <u>Seider</u> procedure is inconsistent with <u>Shaffer</u> 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 <u>Seider</u> jurisdiction. And the New York courts generally have subtained the <u>Seider</u> procedure since <u>Shaffer</u>, but the issue is being hotly contested.

Resp distinguishes <u>Shaffer</u> 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 <u>Shaffer</u> 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 <u>Seider</u> issue in the past, <u>Victor</u> v. <u>Lyon Associates</u>, <u>Inc</u>., 21 N.Y.2d 695, 234 N.E.2d 459, dismissed for want of a substantial federal question <u>sub nom</u>. <u>Hanover Ins</u>. v. <u>Victor</u>, 393 U.S. 7 (1968), and denied

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cert in a decision upholding the constitutionality of the <u>Seider</u> procedure, <u>Minichiello</u> v. <u>Rosenberg</u>, 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. <u>DISCUSSION</u>: Appee's distinction of <u>Shaffer</u> 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 <u>id</u>., 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 <u>contract</u> 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

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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.

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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 <u>quasi in rem</u> analysis by the Shaffer decision.

This Court did teserve in <u>Shaffer</u> 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 tecently declined cert to review a Second Circuit decision upholding the <u>Seider</u> procedure despite this Court's <u>Shaffer</u> decision. <u>Lee-Hy Paving Corp. v. O'Connor</u>, No. 78-410 (Dec. 4, 1978). MR. JUSTICE POWELL, joined by MR. JUSTICE BLACKMUN, dissented at some length from that denial, finding <u>Shaffer</u> 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.

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February 16, 1979

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78-952 Rush v. Savehuk

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The Chief Justice Revenue

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To: The Calef Justice Mr. Justico Breanna Mr. Juscice Steaget 9 may all, in concurring smilling along fallouring lines : Mr. Justice White Mr. Justice Slaosnus Mr. Justice Pomeli Mr. Justice Rohmaj exullant op for the Ct, and Kr. Justica Stovy and that my durant from Frog: Mr. Justica Marshali nu demal of cent. in the they Par 2 6 OCT 19/9 (ate) suggests additioned Circulated: reasoning for revening the puring Recirculated: __ of un this case " las DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-952

Randal Rush et al., Appellants, *v*, Jeffrey D. Savehak

[Ortober --, 1979]

MR JUSTICE MARSITALL delivered the opinion of the Court.

This oppeal presents the question whether a State may constitutionally exercise quasi in *rear* 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 invisionity hite in concertion with the suit.

I

On January 13, 1972, two Indiana residents were involved in a single-car arcident in Elkhart, lod. Appellee Savchuk, who was a passenger in the car driven by appellent Rushwas infared. The car, owned by Rush - father, was resured by appellent State Farm Mutual Antonsobile Insurance Co. (State Farm) under a listuity assurance policy assured in Instana. Followa's guest statute would have barred a claim by Savchuk. Trail. Stat. § 9-3-3-1.

Savebak movies with his parents to Minnesola in Jane 1973.⁴ Or May 28, 1974, he commenced an action against Rush in the Minnesola state courts? As Rush had no contacts with Minnesola that would support *in personane* jurisdiction. Savehuk attempted to obtion quasi in zero jurisdic-

"Savdale most to Bousdeanies for this age four flat-

*The same set filed of the two year had an external initiations had run. 272 S. W. 26889, 891, n. 2 (1978).

I think the is a good opinion . Sworeld your - You

Excellent opinion gree Jonie, LFP 10/29/74

78/952- -OPINION

RESI & SAUCHUR

tion by garnishing State Farm's obligation under the insurgence policy to defend and indomnify Rush in connection with such a suit." State Farm does business in Minnesota." Rush was personally served in Indiana. The complaint alleged negligence and sought \$125,000 in dynamics?

As provided by the state garnishment statute, Savelink moved the trial coart for periodssion to file a supplemental complaint making the garnishee. State Farm, a party to the action after. State Farm's response to the garnishment summas

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"Ob Gebick at its a nonresident jump jump, or a family corporation, parttarblip or association.

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The Minnesot. Septemb Court doed d is version of the datate, control in 4976, in its option, an remend, 272 N W 24 888 (Minn 1978) (Su thak H^{+} . The consist of the statistical data was marfled at the tangent due of gived optimum d it. Minn, 488, 245 N W, 24 888 (1976) (Sociolar f), does not differ an any intpottant respect.

 $^{12}S(10)$ Form is an Hintois corporation, that also deployed proof 50, States, the District of Columpus, and several Carachia practices. The Instatione Almenia (10) (1979).

¹ The project was larger reduced collectarily to \$50,000, the sum appropriof the polyty.

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^{5.1} Money Scill § 571.42, subd. 2 (1978) (provides, in order out parts "Notwith-tandary anything to the contrary herein contained, a plain of in any action in a contribut resolution the recovery of many argos (some a game-base someways before judgment) the contribute following instances only:

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RUSH & SAVCHUR

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asserted that it over the defendant nothing.' Rush and State-Faces moved to dismiss the complaint for lack of jurisdiction over the defendant.' The trial court denked the motion to dismiss and granted the motion for leave to file the supplecountal complaint.

On appeal, the Mismesota Supreme Conet affirmed the trial court's decision, 311 Mino. 480, 245 N, W. 2d 624 (1976). (Savehak D). It hold, first, that the obligation of an insursure company to defend and indentify a successident insured under an automobile liability insurance policy is a garnishable res in Minnesota for the purpose of obtaining gravi in read jurisfiction when the incident giving rule to the action occars outside Minnesota but the plaintiff is a Minnesota resident when the star is filled. Scientif, the court held that the assertion of jurisdiction over Rush was constitutional because he had notice of the sust and an opportunity to defend, has liableity was littified to the amount of the policy, and the garnishment procedure may be used only by Minnesofa residents, The court expressly recognized that Rush had engaged in novoluntary activity that would justify the exercise of in jars summ jurisdiction. The court found, however, that considcrations of fairness supported the excreise of quasi in rem jarisliction because in accident hightion the insurer controls the defense of the case. State Farm does husiness in and is

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¹ [Can 53] — these where the germ-base signs ϵ liability, the pulgment cresitor runs in we there are a low runs is five the garastow is disk, egod, commuter to soft the pulgment delater and the garastow is the lower to file a supplemented complaint making the latter a planty to the action, and setting forth the tasts upon which is charms to charge binn and, of probable carse is shown such nonion dual be granted, $\epsilon = 0^{-1}$. A then Stat, § 571–55 (1978).

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The motion to dotates also alloged task of subject-matter jurisduction, insultaneous of process, and insufficiency of service of process.

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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 chains.

Rush appended to this Court. We variated the fadgment and remarkly the cause for further consideration in light of *Shaffer v. Hertner*, 443 U. S. 186 (1977). 433 U. S. 902 (1977).

On remond, the Minnesota Supreme Court held that the assertion of quasi in rem jurisdiction through gamisliment of an institut's obligation to an insufed complexit with the duprocess standards enunciated in Shaffer. 272 N. W. 2d 888 (Minn. 1978) (Sawbak H). The court found that the garhishment statute differed from the Delaware stock sequestration procedure held unconstitutional in Shaffer because the gamishest property was infinitely related to the litigation and the gamishment procedure paralleled the asserted state interest in "facilitating recoveries for resident plaintiffs" Id_{∞} at 891.° This appeal followed.

ΪĽ

The Mitmesute Supreme Court held that the Manusota garnishment statute embodies the rule stated in Scider v. Roth, 17 N, Y. 2d 111–216 N, E, 2d 312 (1966), that the contractast obligation of an usurance company to its usured under a liability insurance policy is a debt subject to attachment under state law if the insurer does business in the State? Scider jurisdiction was upheld against a due process challenge

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² Murnesota world opply its own comparative negligets: Long tather than Itsians/st encotributory negligets is tale. See Schwardz & Cossolidated Frequincies Corp. 300 Muor 187, 224 N. W. 2d 065 (19574). Appedianasserts that Murresota would also decline to apply the hotmes guest state on af this case with trad on Murresota. Juris Statement 50, a 21 ef-Stream H. 272 N. W. 2d at 801 802. The encodimentative of schools of law rule foot would opply for an law in these cremestances is not believe us. All Howe law v. Dick, 251 U. S. 307 (1950).

^{~272} N. W. 2d., at 891.

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RUSH & SAVCHUK

In Simpson v. Lochanne, 21 N, Y. 2d 305, 234 N E, 2d 609 (1967), rearg. denied, 21 N, Y. 2d 900, \longrightarrow N, E, 2d \longrightarrow (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 real 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 m a case such as the present is in full control of the fitigation" 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 controlersy." Simpson v. Inchmann, sapm, at 311, \longrightarrow N, E, 26, at —.

The United States Court of Appeals for the Second Circuit gave its approval to Seider in Minichiella v. Rosenberg (CA2 1968), 410 F. 2d 105, adhered to on bane, 410 F. 2d 117, cert denied, 396 U. S. 844 (1969), although on a slightly different rationale. Judge Friendly construct Scider as "in effect a judicially meated dariest action statute. The insurer doing husiness in New York is considered the real party in interest and the nonresident insured is viewed simply as a conduit. who has to be marted as a defendant in order to provide a concepteal basis for getting at the insurer." Id., at 100; see Danich itz v. Dunck (42/N, Y, 2d/138/142) --- N, E, 2d (---, —— (1977). The court held that New York could constitutamally exact a direct action statute, and that the restriction of liability to the amount of the policy coverage made the policyhulder's personal state in the litigation so slight that the exercise of jurisdiction dat not offend due process.

New York has continued to adhere to Seider.¹⁶ New Hampshire follows Seider if the defendant resides in a Seider juris-

¹⁶ Boden v. Stoplen, 45 N. Y. 20 889. \rightarrow N. E. 20 \rightarrow (1078). The State has decided, how der, to make the attaching graphical parametrize angulaties to nonresident parametrize. *Decay itz* v. *Onto k*, 42 N. Y. 26 138. \rightarrow N. E. 21 \rightarrow (1977).

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RUSH « SAVCHUK

diction." but not in other cases." Minnesots is the only other State that has adopted Scider-type jurisdiction." The Second Circuit recently realibrated its conclusion that Scider does not violate due process after reconsidering the doctrine in light of Shaffer V. Heitner. O'Commun. Lev-Hy Paving Corp., 579 F. 2d 194 (CA2), cert, denied \rightarrow U.S. \rightarrow (1978),

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In Shuffer v. Heltoer we held that "all assertions of statecourt jurisdiction must be evaluated according to the standards set forth in *International Show* and its progeny," 433 U. S., at 212. That is, a State may exercise jurisdiction over an absent defendant only if the defendant has "certaic minimum contacts with [the forum] such that the maintenance of the suit does not noted 'traditional notions of fair play and substantial justice." International Show 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 implify must forus on "the relationship among the defendant, the forum, and the Stigation." Shaffer v. Heitner, supra, at 204.

^{*}Fusiker v. Royalow, 113 N. H. 617, 343 A '28 129 (1973).

¹⁰ Campa & Separko, 146 N. H. 281, 358 & 21 (20) (1976).

C.The practice has been rejected, based on state law or existing ional grounds, in *Holchell's* Given and Encylopes Ins. Co., — Md. — 385, A. 26, 750 (1998). January, A. Saparda, Cont., 17 Col. 36 (629, 552); 26, 728 (1997)); *Hart's* Core, (45 Nol., Super, 420, 367 A. 24 (1996); Low Distributed Noticelly, 265 Sec. 2d 400 (1998); 2074); *Addison v. Formers* Alignet Noticelly, 265 Sec. 2d 400 (1998); 2074); *Addison v. Formers* Alignet Noticelly, 265 Sec. 2d 400 (1998); 2074); *Addison v. Formers* Alignet Noticelly, 265 Sec. 2d 400 (1998); 2074); *Addison v. Formers* Alignet Noticelly, 265 Sec. 2d 400 (1998); 2074); *Addison v. Formers* Alignet Noticelline Co. 499 P. 2d 5857 (1001); 10721; Sect. ext. ed. Macarethical Englishment for Co. 8 Looky, 454 S.W. 24 902 (1000), 20700; *Homerol v. Alice*, 254 S.C. (55), 179 S. E. 2d (127) (10701); *De Hombus* V. Lawby, 406 S.W. 24 902 (100), App. 20700; *Homerol v. Alice*, 254 S.C. (55), 179 S.E. 2d (127) (10701); *De Hombus* V. Lawby, 406 S.W. 24 902 (2000), 416 (1001); *Hombus* V. January, N. (2000), 199 (1001); *De Hombus* Co., 19 U.(a), 201 125, 427 P. 2d (2000) (1997); *January v. Antonicula* Co., 19 U.(a), 2d 4125, 427 P. 2d (2000) (1997); *January v. Antonicula* Co., 19 U.(a), 2d 514 (1004). Sec. alson Tetrine v. State Form Matter for Co., 455 Y. (d) 1299 (CA1 1974). Kreatown v. Mikula, 113 F. 2d 816 (1035) (1755) (1751); *Hombus* W. 420 F. 2d 830 (123) (1575); Splex V. Hauf (30) Y. Supp. 1089 (Cons., 1975); *Rawkey v. Indials*, 614 U., 85(199).

78-382-OPINION

IUSH & SAVCHOK

It is conceled that Rush has never had any contacts with Minnesota and that the auto accident that is the subject of this action occurred in Industa and also had to connection to Minnesota. The only alfiliating circumstance offered to show a relationship among Rash, Minnesota, and this hawsuit is that Rush's insurance company does business in the State. Server constructed on ingenious jurisdictional theory ? to permit a State to ensurand a defendant to appear in its rourts on the basis of this factor alone. State Farm's contractual obligation to defend and indemnify Rash in connection with liability claims is treated as a debt excel by State Farm to Rush. The legal firtion that assigns a situs to a debt, for gamishment purposes, wherever the debter is found is combined with the legal firmum that a corporation is "present," for jurisdictional purposes, wherever it does business to yield the conclusion that the aidigation to defend and indentify is located in the fortice for purposes of the gamishment statule. The fictional presence of the judicy obligation is desired to give the State the power to determine the policyholder's nability for the out of state aerident."

We held in Shaffer that the more presence of property in a State does not establish a sufficient relationship between the owner of the property and the State to support the everyise of jurisdiction over an unrelated cause of action. The ownership of property in the State is a contact between the defendant and the forms, and it may suggest the presence of other ties. 433 U. S. in 200. 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 forato State suggests no further contacts between the

⁰ The conduston that State Kassa's addigation order the in-ordere poley, was gaunidable projectly as a matter of state law and therefore is not key fore as. Assuming that it was protoholde property, the question is what simulations: that for its to the zet-translip between the detendance the formation, and the heighting.

28-232-OPINION

MARK SYNCHIN

defendant and the forme, and the record supplies no evidence of any. State Farm's decision to do inviness in Minnesota was completely adventitions as far as Rosh was concerned. He had no control over that decision, and it is unlikely that he would have expected that by buying insurance in Irdiana he had subjected himself to suit in any State to which a potential future plaintiff neight decide to move. To short, it cannot be said that the defendant engaged in any parametrize attivity related to the form, that would make the exercise of jurisdiction fair, just, or reasonable, see Kullio v. Colliformic Superior Coast, 436 (1982), merely because his issurer does business there.

Not are there significant contacts between the litigation and the forum. The Minnesota Supreme Coart was of the view that the insurance policy was so important to the litigation that it provided contacts sufficient to satisfy the process." The insurance policy is not the subject matter of the case however, nor is it related in 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 fitigation, and growingly do not affect the court's jurisdiction unless they demonstrate the between the defendant and the forum.

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No !

With controls planced into the instance of the <u>instances of groups</u> of groups the defend and independent value or significance quick from a cident frequencies has an independent value or significance quick from a cident frequencies the accordant (rigg from however, it is inevitably the finals, determining the rights and obligation (sic) of the <u>incorder</u>. Us instruct, and for another speaking, the metric β sectors M=272, N=0.24, at 892 to upservise arrights and obligation (sic) of the <u>incorder</u>. Us instruct, and for another speaking, the metric β sectors M=272, N=0.24, at 892 to upservise in arright β . The construction of the "grantical relationship is environ the instruct and the possibility of the "grantical relationship" is evolved to the policy standard, and the sector time of the grant-hand γ recorders to resider that this, and concludent that if the relationship between the detected grantics, the original and the bottom state β such as 800, we sufficient the sets in the observice of the latent state β such that the sets in the observice of the instance of the sufficient the sets in the observice of the instance of the sufficient to sets in the observice of the instance of the sufficient to sets in the observice of the instance of the sufficient to sets in the observice of the instance of the sufficient to the set of the observice of the sufficient of the set of the observice of the sufficient of the set of the observice of the sufficient of the set of the observice of the sufficient of the set of the observice of the sufficient of the set of the observice of the sufficient of the set of the observice of the sufficient of the set of the

78-952-0PINION

RUSIE & SAVGIEUK

In fact, the fictitious presence of the insurer's obligation in Minnesotadoes not, without more, provide a basis for concluding that there is any contact in the *International Sine* sense between Minnesota and the insured. To say that "a debt follows the debtor" is simply to say that intengible property has to actual situs, and a debt may be said or 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 Culumbia. Under appellec's theory, the "debt" oved to Rash would be "present i in each of those jurisdictions simultaneously. It is apparent that such a "contact" can have no jurisdictional significance.

As alternative approach for finding minimum contacts in Seider-type cases, referred to with approval by the Minnesota Supreme Court," is to altribute the insuier's forgue contacts to the defendant by treating the attachment procedure as the functional equivalent of a cheer action against the insurer. This approach views Seider jurisdiction as fair both to the insuler, whose formin emityris would support in prisonam Jarisdicting even for an surelated rause of action, and to the "nowing defendant," Because hability is logiced to the policy amount, the defendant incurs no personal Enbility." and the judgment is satisfied from the policy proceeds which are not available to the insured for any purpose other than paying actionat claims, the issued is said to have such a slight stake in the litigation as a practical toatter that it is not unfair to make him a "nominal defendant" in order to obtain jurisdiction over the instrume company.

Scider actions are not equivalent to direct actions, however.¹¹ The State's shilling to exert its power over the "nomi-

9 In Second d the Manuscus Suppose Court rejected Realistic gas norm 200 the garmishment procedure amounted to a direct action, observe-

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ja '

^[8] Id., at 894-880, hart sign Sourceback J, 312 (Magabar) 488, 245 N. W. 7d, at 629.

^[9] See Social H. (27) N. W. (2018) Comparent Landonnia, C. N. Y. Margaret, 24 (N. 17) (1997) (1998).

78-932-0191NION

RUSH & SAVCHUK

and defendant" is analytically prerequisite to the insurer's entry into the case as a garnishee. If the Constitution forbids the assertion of jurischerion 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 jurischerion over the concession team ignored?" Moreover, the assumption that the defension has no real stake in the Lingation is for from self-evident."

The Minnesota court also attempted to attribute State Farm's contaits to Rush by considering the "defending parties" together and aggregating their forum contacts in determining whether it had jurisdiction.¹⁰ The result was the

¹⁶ Also observe telepton ships become the neuron and the detection could develop, for example, if underpte plantiffs site an different States for an eigenspite amount in example, if the policy duality if the instance sectors a constance dedepent ones as breach of the duty to cooperate, to the obligations to and marks, or if a successful class would offer the poles hold for instructulation. Further, the extension and quality of the metrellist the pole hold for instructulation for type of policy standard. Cf. *Discondly* & *Dirack*, 42 N. Y. 24 438; $\rightarrow N$, E 24 \rightarrow threshold independent. Protossional matrice there with we king composition the defendant's integrary and comparison fractions with we king composition the defendant's integrary and comparison for with we king composition the defendant's integrary and comparison for develop ables could be expected to bability even in the polyment is without the poly. (able).

ing fills dereadant, and the insurer is the party shell There is partition in the statute where suggests that the metric disable be same i = a desfendant i = 31a. Mann, at [388, 245 N, W [24]] at 625. See to 4, suggest

¹⁹ Computer the dimensional extents ophical on Romannia, Kampingers Liability Association (Computer Sits 1), Sci 66 (1985) 1, which was applied by early it the astrobut of diport eccurred in the State or the manned was doministration to recover allows on the state or the manned was doministration on the planetific to she the manner allow, restriction maining the manned is a determined of the planetific to she the manner allow, restriction maining the manned is a determined of the planetific to she the state.

When yow is relevant the relationship between the defendacy graties, the trigation and the forcin state. It enters be such that Minnesota backs some minimally-response frontacts, the for S which in three defending gradient is to offer all the respirate ats of the prices " S works to H_{1} 272 N_{1} W, 24, at 804 year(due)s achiev().

78-962-OPINION

HUSB & SAVCHOK

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 former. The requirements of *International Shar*, however, must be met as to each defendant over whom a state court exercises jurgaliction.

The justifications affered in support of Seider jurisfiction share a commany characteristic; they shift the focus of the impuity from the relationship among the defendant, the forum, and the lirigation to that among the plantoff, the forum, the lostner, 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 subtly shift in forms from the defendant to the plaintiff is most evident in the decisions functing Scales jurisdiction to actions by forum residents on the ground that permitting numeridents to avail themselves of the procedure would be unconstitutional." In other words, the plaintiff's contants with the forum are decisive in determining whether the defendant's due process rights are violated

Such an approach is forbidden by *International Shoc* and its progeny. If a defendant has certain judicially cognizable ties with a State, a variety of factors relating to the particular cases of action may be relevant to the determination whether the exercise of jurisdiction would compart with "traditional metions of this play and substantial justice." See McGee V. International Life Ins. Co., 355 (1) S (220) (1957); cf. Kulko V. California Superior Court, 436 U. S., at 98 (10). Here, however, the defendant has go constants with the forum, and the

 ¹Song et g., Farrell & Phylional Acig(ion, Inc., 11) § (4) S12 (CA2)
 ¹969(1) Hindub et Skonwahrer 362 F. Supp. 1044 (Ninne 1973); Domenity N. Duscek, 42 N. Y. 21 (38) — N. 4, 25 — et Spechast I.

RUSH (SAVCHUK

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

Reversed,

Supreme Court of the United States Mashington, P. C. 20543

CHAMBERS OF JUSTICE POTTER STEWART

.

October 30, 1979

.

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

Dear Thurgood,

 $1\mbox{ am glad to join your opinion for the Court.}$

Sincerely yours,



Mr. Justice Marshall

Copies to the Conference

Supreme Çourt of the Anited States Washington, B. C. 20543

CHAMBERS OF UNISTICE WILLIAM HI 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:

Flease 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-By 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 Mathsall

lfp/ss

cc: The Conference

Supreme Court of the United States Washington, D. C. 20943

CINAMERS OF JUSTICE WILLIAM M. REHNOLIST

October 30, 1979

Res No. 78-952 - Rush v. Savchuk

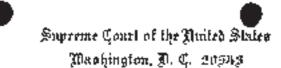
Dear Thurgood:

Please join me.

sincerely,

Mr. Justice Marshall

Copies to the Conference



UNIVERSAL OF A STACKMIN

October 31, 1979

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

Dear Thurgood:

I am glad to join the opinion you have prepared.

Sincerely,

dawy

Mr. Justice Marshall co: The Conference Appreme Court of the United States Machington, D. C. 20543

UNAVOUR OF UNDERSON A DESCRIPTION

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 <u>Lec-Hy Paving Corp.</u> v. <u>O'Connor</u> 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,

Mr. Justice Powell

cc: The Conference

Mr Justie -

Taut Cooper, the Markell clast who worked on the

opunon, disped by the afternoon to see if the imposity opinion could be changed in a manner that coorder permade you not to write a commence. I told her I would descuss this matter wills you. She proposes altering is 20 to unliede the prairies considerations you discussed in <u>Lee - Hy</u>. She does not plan to ite considerations you discussed in <u>Lee - Hy</u>. She does not plan to ite Supreme Court of the Ruited Sizies Bashington, D. C. 20543

CHANNES OF JUSTICE MARTY & 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 <u>Lee-Ny Paving Corp.</u> v. <u>O'Connor</u>, 439 U.S. 1034 (1978). I liked your emphasis on the gracticalities 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.

Sincercly,

Harry

Mr. Justice Powell

cc: The Conference

In- Hy , however , and she wishes to leave open the possibility that a state . She remains open to descussion on these points.

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11/2/79

Su Lee Hy Paring Comp. et al v O'Connor, No. 78-952, Rust v. Savebuk (Dec. 4, 1978, Powell,), dessenting from dense of certioneric) 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 resident of Minnesota brought suit in Minnesota ariging 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 "restities" that # (hour upon an alleged fortfeasher field in a jurisdiction remote

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lfp/ss_l1/2/79 Rider:A; p::l:(Rosh)	١
As noted by the Court, in Spider v.: Roth, (2)	/
17 M.Y.2d 11, 216 N.E.2d 312 (1966), the New York	
Court of Appeals enunciated the theory of <u>guasi</u> in	
rem jurisdiction that the Supreme Court of	
Minnesota applied in this case. In cases tollowing	
Sgider, the alleged tortfeasor has been described	
"the nominal defendant". See <u>@"Connor;retral.v:</u>	
<pre>hee+Hy:Paying:Corp:;;et;al; 9.2d (CA 1977).</pre>	
It is even said to be "ironical that such a	
defendant should complain even though they "will	
not pay the judoment, nor manage the defense".	
Id., atIt is novel doctrine, at least for	
me, (or 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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where the alleged tort occurred usually 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. Jurars 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 traifitionally associated with the most appropriate place to conduct tort litigation militate against what has come to be called the <u>figider doctrine:</u> To be sure, we are talking here about jurisdiction over a defendant, and the fundamental dim process considerations focus on a defendant's contacts with the jurisdiction in which the suit is commenced. I

which after all'in the cone meaning of due process They are, however, tot even though they are not irrelevant to the basic

fairness of the trial, are controlling. If a defendant's contacts in the Eoreign 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.

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ltp/ss 11/7/79

introduced.

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Rosh; Rider B

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. defendant had been subjected to a trial in a foreign state on the basis of quasi in rem jutiSdiction, 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 polycy, and the defendant would be forced to participate in a second trial - probably without the benefit of lawyers supplied by the insurance company. The hazards of a second trial can be substantial \mathcal{P} Witnesses seldom tell their story precisely the same way twice, and often new swidence is



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fundamental fairness enunciated in <u>International</u>
<u>Shoe:v::Washington:Co;</u>, 326 U.S. 310, 316 (3945),
and recently reiterated in <u>Shaffer:v: Heiter</u>, 433
U.S. 186 (1977).

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JS 11/2/79

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MEMORANDUM

To: Mr. Justice Powell Re: No. 78-952, Rush v. Savchak

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

In Lee-By you suggest that

the difficulties of belending a negligience 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 quography. In short, many of the factors traditionally considered under the doctrine of forum non conveniens--itself a doctrine based upon fairboss-may also pertain to the fairness of a court hundreds of miles from the location of an accident exercising its furisdiction over the parties to the resulting tort suit. (footnotes omitted)

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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 plainti(is 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 convenients weighs the interests of both partics, see F. James, Civil Procedure 5 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 <u>Seider</u> 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 guoted paragraph could be revised to refute that contention.

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No. 78-952, Rush v. Savehuk

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Mr. Justice Powell, concurring.

19. it necessary to add this concurrence I'll not circulate

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 <u>Lee-Hy</u> <u>Paving Corp, et al v.O'Connor,</u> U.S. ____ (Dec.

4, 1978)(Powell J., dissenting) are in perfect harmony with the views of the Court here and in

Morld-Wide Volkswagen v. Woodson.

In <u>Lee-By</u>, I expressed the view that application of the <u>Seider</u> doctrine was incompatible with our decision in <u>Shaffer v. Heitner</u>, 433 0.5. 186 (1977). I advanced three reasons in support of the view that a defendant was denied due process when forced to defend a <u>Seider</u> 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 commany upon the second and third of these considerations to support its conclusion. <u>Ante</u> at 9-10 & n.20.

In light of the dissent of MR. JUSTICE BRENNAN in both this case and <u>World-Wide Volkswagen</u> <u>v. Woodson</u>, it is appropriate to emphasize the limited role that I believe the practical difficulties thrust upon a <u>Seader</u> 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 <u>forum non conveniens</u>. See <u>World-Wide</u> Volkswagen v, Woodson, No. 78-1078 at 6-8.

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

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November 3, 1979

Re: 78-952 - Rush v. Savchuk

Dear Thurgood:

t jain.

Regards, 83

Mr. Justice Marshall

Copies to the Conference

lfo/ss 11/7/79

No. 78-952, Rush v. Savehuk 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 <u>hee-Hy:Paving:Corp; etjal:v::O'Connon;</u> U.S. <u>....</u> (Dec. 4, 1978, Powell, Br., 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 <u>Seider v: Noth</u>, 17 N.Y.2d 11, 216 N.E.2d 312 (1966), the New York Court of Appeals enunciated the theory of <u>quasi-in</u> <u>rem</u> jurisdiction that the Supreme Court of Minnesota applied in this case. In cases following <u>Seider</u>, the alleged tortfeasor has been described "the nominal defendant". See <u>B'Conner; etjalvi</u> <u>Loe-By Paving Corps; etjaly in</u> F.2d <u>in</u> (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 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 liticate 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

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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 <u>Seider doctrine</u>. 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

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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 domigiliary 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 <u>Seideriv; Roth</u> doctrine is inconsistent with the principles of fundamental fairness enunciated in <u>International</u> <u>Shoe:v::Washington:Co:</u>, 326 U.S. 310, 316 (1945),

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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 pof that state adheres to the contributory negligence doctrine whereas Minnesota has adopted comparative negligence as its rule of tort law. Respondent was a quest in petitioner's automobile. Thus, as this case illustrates, the Seider doctrine would invite forum showning to the serious disadvantage of a defendant.

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	Er. Justice Brennan
	Wr. Justice Stewart
	Mr. Justice White
	Mr. Justice Blackmun
	🔎 🎢 Sustice Foweri
	Mr. Justice Rehaquist
	Mr. Justice Stovens
	From: Mr. Justics Marshall
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No. 78 952

SUPBEME COURT OF T.

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Ramlat Rush et al., Appellants, v. Jeffrey D. Savchuk

[November -, 1979]

MR. JUSTICE MAINTAUL delivered the opinion of the Coart.

This appeal presents the question whether a State may constitutionally exercise quasi in new jurisdiction over a defendent 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.

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

Savehuk 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 personan jurisdiction, Salychuk attempted to obtain quasi in real jurisdic-

² The suit was likely after the two year frahmal statistic of himitations 2nd ron. 272 N.W. 2d 858, 894, n. 2 (1978).

lectrote 20 uns that the "malprotie" point come first Then wiro salstantus change for

[&]quot;Saycink moved to PennyDumin after this appeal was likely

78-952-OPINION

RUSH P. SAVCHUK

tion by garnishing State Farm's obligation under the insurance policy to defined and indemnify Rush in connection with such a suit." State Farm does business in Minnesota." Rush was personally served in Indiana. The complaint alleged negligence and sought \$125,000 in damagns."

As provided by the state gamishment statute. Savchak moved the trial court for permission to file a supplemental complaint making the gamishes. State Farm, a party to the action after State Farm's response to the gamishment summons

34 Miton Stat. § 571 41, silod 2 (1975) provides, in relevant parts.

"Notwithstanding anything to the constary herein contained, a plaintif in any attion by a court of month for the recovery of meany and issue a gamistos summous before judgment there is in the fall wing met mess only:

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"(b) If the $\cos(n)$ shall order the ison one of such summons, if s automore and complaint is first with the appropriate court and either served on the defendant or deficient to a sheriff for service on the defendant for more then 30 days after the order is second, and if, open application to the court it shall appear that:

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

"(b) defendant is a meanwidear judividual, or a foreign corporation, partmership or a-constant,

"(3) The gamidate and the debtat are parties to a contrast of carety-lip, guarantee, or instructed because of which the gamathes may be lobb to respond to any person for the claim asserted against the debtat in the main action, z_{ij} ."

The Minusota Suprese Coost cited this version of the statute, control in 1956, in its opinion on remark, 272 N, W, 24 888 (Man. 1978) (Southak II). The version of the statute that was market: it the time of the original opinion 213 Minus 488, 245 N, W, 24 888 (1976) (Southak I), does not object in sky important respect.

⁴ State Fath 1s an Illinois corporation that does business in all 50 States the District of Columbus, and several Canadam provinces. The Institutes Minaple 440 (1979).

The project was favor reduced valuetarily to \$50,000, the favo among of the policy.

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78-262--OPINION

RUSH F. SAVCHUK

asserted that it owed the defendant nothing." Rush and State Farm moved to dismiss the complaint for lack of jurisdiction over the defendant." 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 Muon, 480, 245 N. W. 26 624 (1976) (Savehak 1). It held, first that the obligation of an insurance company to defend and indomnify a nonresident insured under an automobile liability inversion policy is a garnishable res in Minnesota for the purpose of obtaining gausi in roug jurisdiction when the incident giving rise to the action occurs outside Minnesota but the plaintiff is a Minnesota resident when the soft is filed. Second, the court held that the assertion of jurisdiction over Rush was constitutional because he bud notice of the suit and an opportunity to defend, his liability was limited to the amount of the policy, and the garnishmost procedure may be used only by Minnesetu residents. The court expressly e-cognized that Rush had engaged in no volustary activity that would justify the exercise of in persourne jurisdiction. The court found however, that considerations of fairness supported the exercise of quasi in remjurisdiction because in accident litigation the insurer controls the defense of the case. State Farm does business in and is

The party-cornicher's not a defend on a

¹ The motion to demonstrate all goal lock of subject-matter jurisflation, insufficiency of presses, and neutriciency of service of process.

^{5.4} Mitra Stat. § 571.385 requires the gataislass to disclose the amount of his debt to the defend at a Settion 571.51 gravities, in movement parts.

[&]quot;[1]) all the constraints the garathese denies behilder, the fadement creditor may move the contributions time before the garathese is disclored, on non-constrained the judgeterid deleter and the garathese, for hence to life a sugglemental complete making the latter a party to the action, and setting forth the facts open which he chiral to charge burn and, if probable constains shown, such reaction shall be granted by T = 1 Mian. Stat. § 571.51 (1978).

28-952-0PINION

RUSH & SAVCHI'K

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

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 remaind the Minnesota Supreme Court held that the assertion of quasi in rem jurisdiction through garsishment of an insurer's obligation to an insured complied with the due process standards enumiated in Shaffer. 272 N. W. 26 888 (Minn, 1978) (Sarahuk II). The court found that the garnishment statute differed from the Delaware stock sequestration procedure held unconstitutional in Shaffer because the garnished property was intenately related to the litigation and the garnishment procedure paralleled the asserted state interest in "facilitating recoveries for resident plaintiffs," Id., at S91.2 This appeal followed.

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⁷ Minucouta would apply its own extraportative total generalize, tailler then history's contributory negligence rule. See Schwartz V. Consolidated Freightmany Coop. 300 Minu 487, 221 N. W. 50 065 (1974). Appendix assurts that Minuserth world else decline to apply the Indiana gravit statulu if this case were track in Minusson. Juris Statement (0, 6, 2) cf. Savehald $H_1(272, N, W/24)$ at 801-812. The consistent equily of a choice of law rule that would apply formulate in these encountraports is not below as. Cf. Home Jos v. Dick, 281 U. S. 397 (2020).

²²⁷² N. W. 244 at 801.

78-952-OPINION

RUSH & SAVCHUK

in Simpson V. Lochmann, 21 N. Y. 2d 305, 234 N. E. 2d 669 (1967), rearg. denied, 27 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]lewed realistically, the insurer in a case such as the present is in foll control of the litigation' and "where the plaintif 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. Lochmann, 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 Minichlello v. Rosenberg (CA2 1968), 410 F. 2d 406 adhered to en bane, 440 F. 2d 117, cert. denied, 396 U, S. 844 (1969), although on a slightly different rationale. Judge Friendly construed Solder 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 instruct is viewed simply as a conduit, who has to be maned as a defendant in order to provide a conceptual basis for getting at the insurer," Id_{in} at 109; see Donawitz v. Danck, 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 jurisliction did not offend due process.

New York has continued to adhere to Scider.¹⁰ New Hampshire follows Scider if the defendant results in a Scider juris-

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¹⁵ Hodow C. Staples, 45 N. Y. 2d 889, 383 N. E. 26 146 (1978). The State loss derived, however, in a day the structurent procedure available to nonresident plantific. *Dimension Comput.*, 42 N. Y. 2d 158, 366 N, 17, 23 264 (1977).

78-942-OPINRON

RUSH & SAVCHUK

diction.⁶ but not in other cases.³² Minnesota is the only other State that has adopted Seider-type jurisdiction.³⁴ The Second Circuit recently reafirmed its conclusion that Seider does not violate due process after reconsidering the doctrine in light of Shaffer N. Heither. O'Connor V. Lee-Hy Priving Corp., 579 F. 2d 194 (CA2), cert. denied, 439 U. S. 1034 (1978).

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To Shaffer v. Heitner we hold that "all assertions of statecourt jurisdiction must be evaluated according to the standards set forth in International Shoe and its progeny." 1433 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 sait 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 impuiry must forms on "the relationship among the defendant, the forum, and the litigation." Shaffer v. Heitner, supra, at 204.

¹⁰ The provise has been rejected based on state law at exactingloual grounds, in Belthel V. Gorermond Employees for Gr. 282 Md 718, 387 A. 24 770 (1978); Jacorek v Superior Grant 17 Col. 39 a20, 552 P. 24 728 (1976); Here v. Cole 115 N. J. Super 420, 367 A. 24 (210) (Law 16), 1976); Grinnell v Garcett 225 So 24 406 (Le. App. 1974), Johnson v. Furmers Allower Matual for Gu v Lacky, 664 S. W. 26 942 (Mo. App. 1976); Howard v. Allen, 254 S. C. 455, 176 S. E. 24 127 (1976); De Reatise v. Lacev. 106 R. 1 (24), 258 A. 24 406 (1969). Howard v. Allen, 254 S. C. 455, 176 S. E. 24 127 (1976); De Reatise v. Lever. 106 R. 1 (24), 258 A. 24 464 (1969). Howard v. Allen, 254 S. C. 455, 176 S. E. 24 127 (1976); De Reatise v. Lever. 106 R. 1 (24), 258 A. 24 464 (1969). Howard v. Allen, 254 S. C. 455, 176 S. E. 24 127 (1976); De Reatise v. Lever. 106 R. 1 (24), 258 A. 24 464 (1969). Howard v. Allen, 454, 198 A. 24 545, 176 S. E. 24 127 (1976); De Reatise v. Lever. 106 R. 1 (26), 258 A. 24 464 (1969). Howard v. Allen, 474, 198 A. 24 563 (1961). Size also Tessier v. Soure Form Matual Las. Co. 458 F. 24 (29) (CA1 (1972)). Kierboan v. Mikale, 443 F. 24 816 (CA5 1971)); Solver v. food, 364 F. Supp. 404 (V), 1970).

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¹⁰ Further v. Bountan, 113 N. H. 617, 313 A 24 129 (1973).

¹⁹ Gammers, Scienzka, 116 N. H. 281, 456 A. 2d 367 (1976).

78-952-0PINION

RUSH », SAVCHER

It is concribed that Rush has never had any contacts with Minnesota, and that the acto accident that is the subject of this action occurred in Judiann and also had no connection to Monnesots. The only affiliating excanostance offered to show a relationship among Rush, Minnesota, and this lawsuit is that Rush's insurance company does business in the State. Scider constructed an ingenious inrisdictional theory to permit a State to contoand a defendant to appear in its rourts on the basis of this factor alone. State Farm's contractual obligation to defend and indemnify Rush in commetion with liability claims is treated as a dobt owed by State Farm to Rush. The legal fiction their assigns a situa to a debt, for gamissionent purposes wherever the debtor is found is conclused with the legal fiction that a corporation is "present." for jurisdictional purposes wherever it does business to yield the conclusion tast the obligation to defend and indemnify is located in the forum for purposes of the gamishment 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 hold in Shaffer that the more 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 is the State is a contact between the defendant and the forum, and it may suggest the presence of other ties. 433 U. S. at 200, Jurisdiction is backing, however, talkes there are sufficient contacts to satisfy the fairness standard of International Shor.

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

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¹⁵ The conclusion that State Form's obligation under the insurance policy was garaishold property as a matter of state low and therefore is not before us. Assuming that it was garaishold property, the quastion is adopt significance that for has to the relation-hap between the detroclast, the formula and the brigation.

78-952-OPINION

BUSH C. SAVORUK

defendant and the forum, and the record supplies to evidence of any. State Farm's decision to do business in Minnesota was completely adventitions as far as Rush 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 have. In short, it exampt 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. Denekla, 357 U.S. 235, 253 (1952), merely breause his insurer does business there.

Nor are there significant cortacts between the litigation and the forage. 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 partain 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 forms.

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⁴⁸The court explained, "In the instant case, the inspired- obligation to defend and indemnify, while theoremsally separable from the term action, has vocidal pendent value of significance among fram coefficient frigation, however, it is involtably the increased on moning the tights and obligation [wib] of the inserter, the insured, and generically appoking, the vieture" statebook H, 272 N/W 2d/m 892 (emphasis in ariginal). The court coefficient of the "processed coefficient framework in the vieture" statebook H, 272 N/W 2d/m 892 (emphasis in ariginal). The court coefficient of the "processed relationship between the policy annual, and the restriction of the generation of hybrid vieture policy annual, and the restriction of the generation of hybrid vieture policy and out, and the testriction of the generation of hybrid defending policy is the ling spat, and the "time scatter," M, at 800, was definition to state the formation of a 800 policy of scattering the formation of the scatter of generation of the scatter of the scatter of the scatter of the scatter of the formation of the formation of the scatter of the scatter of the scatter of the scatter of the scatter of the formation of the scatter of the formation of the scatter of the scatte

78-952-OPINION

RUSH # SAVCHUK

In fact, the fietitions 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 Sine* 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 such on whenever 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" oved to Rush would be "present" is 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 Scider-type cases, referred to with approval by the Minnesota Supreme Court," is to attribute the issurer's forum conjects. 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 personant jurisdiction even for an unrelated cause of action, and to the "nominal defendant," Because liability is limited to the policy smount, the defendant incurs on personal liability." and the judgment is setisfied from the policy proceeds which are not available to the instance for any purpose other than paying arcident claims, the institud is said to have such a slight stake in the litigation as a practical matter that it is not estain to make him a "sominal defendant" in order to obtain juristiction over the insurance company.

Solder actions are not equivalent to direct actions, however." The State's ability to exert its power over the "nomis

¹⁵ In Southold J, the Manusche supreme Constructional Rush's argument that the gatoislanent procedure amounted to a direct series, observe-

¹⁹ Id., at 392-895; but see Societyd, I, 313 Minut, at 488 (245 N, W 2d) at 420.

¹⁴ See Solution II, 252 N. W. 26 at 802; Simple in V. Lowhammer, 21 N. Y. 51 (90), 901, 234 N. E. 24 Super 1988).

78-952—OPINION

RUSH F. SAVCHUK

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Scider actions are not equivalent to direct actions, however.¹⁶ The State's ability to exert its power over the "nomi-

[1] I.J. 802 803; 201 are Southook I, 311 Math. 49 198, 245 N. W. 2d., 81 620.

¹⁷ See Synchols H. 192 N. W. 21, a 3925 Simpson C. Lachmann, 21 N. Y. 23 986, 991, 253 N. E. 20480 (1968).

² In Sourbol J. the Manager. Supreme Court rejected Rock's argumetric that the gaussian experimentation to a direct action, observe-

78-932-OPINION

ROSH & SAVCHER

nal defendant" is analytically prerequisite to the insurer's entry into the case as a garaishee. If the Constitution forbids the assortion of jurisdiction over the insured based on the pulicy, then there is no correptual basis for bringing the "garaishee" into the action. Because the party with formacontacts can only be reached through the out of state party, the question of jurisdiction over the nonrelident cannot be ignored.¹⁴ Moreover, the assumption that the defendant has no real stake in the htigation is far from self-evident.¹⁵

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

22.22 count stated, "We view as noted at the relationship forward the defending protos, the any start, and the formulation. It is part be said."

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int. "The defendant, not the monter, is the party shed. There is nothing proton statute which suggests that the matter should be natural as a deferding "1 -344 Manua at 388, 245 N, W (20., at 629). See 0.4 sugges.

¹¹ Compare the diffect period statute upheld in Historius, *Employeus Liability Associates Corp.*, 345 11, S. 66 (1954), which was applied by early if the accident of matrix occurred in the State of the related was despeided there and which period call the planets to sure the associate alone, without period the planets to sure the associate alone, without period the matrix as a detection. $Pl_{\rm stat}(n_{\rm S},n_{\rm st})$

A party does not exting refer to be legal inverses for a dispate by instance h have C against having to pay an eventual pulgation of the basen packet. Moreover, the purpose of institution is simply to make the averaginant of the fortune control in dispate the extendent of the basen () but concomposite theorem, does be important to the debinder. Professional and prior too actions, for example, question for dispatcher is the prove (42.5, 12.2, 12.3, 12.3, 12.3, 12.3, 12.3, 12.3, 12.3, 12.3, 12.3, 12.3, 12.3, 13.3, 13.3, 14.3, 14.3, 15.3

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RUSH F. SAVCHUK

essertion 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 Show*, however, must be net as to each defendant over whom a state court exercises jurisdiction.

The justifications affered in support of Seider jurisdiction share a common characteristic; they shift the focus of the inquiry from the relationship among the defendant, the furum, and the litigation to that among the plaintiff, the forum, the insurer, and the fitigation. The insurer's contacts with the forum are strributed to the defendant because the policy was taken out in anticipation of such frigation. The State's interests in providing a forum for its residents and in regulating the activities of insurance companies are substitated for its contacts with the defendant and the cause of action. This subtle shift in forms from the defendant to the plaintiff is most evident in the decisions limiting Seider jurisdiction to actions by forum residents on the ground that perratting conresidents to avail themselves of the procedure would be unconstitutional." In other words, the pleintiff'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 progecy. If a defendant has certain indicially cognizable fies 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 compart with "Iraditional notions of fair play and substantial justice," See McGee v. International Life Ins. Co., 355 U. S. 220 (1957); cf. Kulko v.

¹³ See, e. g., Patrid' v. Piedmant Achilles, Inc., 411 F. 24 572 (CA2) 1999; Hietaly v. Shaswaler, 302 F. Supp. 1913 (Manu. 2003), Dynamics v. Dunck, 42 N. Y. 24 138 [ins. N. 11 24 253 (1977)], Nucleik I.

⁽¹⁾ Manusata hasks such minimally-requisite (source), thes ar relations to these defineding particle as to offer d the requirements of due process?" Succlust Rev272 N=W 2d or 803 (couples), addis().

\$\$-952-OPINION

RUSH & SAVCHUK

California Superior Court. 436 U. S. at 98-101. Here, however, the defendant has an 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, tics, or relations." International Shor Co. v. Washington, 326 U. S. at 319. The judgment of the Momesota Supreme Court is, therefore,

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Reversed,

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P. 10 (Helpful siste

fo: The Chief Justice			
Mr. Justice Brennan			
Mr. Juutice Stowart			
Mr. Justice White			
Mr. Justice Blacksun			
Mr. Justice Blacksun "Mr. Justice 20#011 "Ur. Justice Rohnquist			
Ur. Justice Rohnquist			
Mr. Justice Stevens			
From: Mr. Justice Marshall			
Circulated:			
Bentreulated - 9 NOV 1972			

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-952

Ramfal Rosh et al., Appellants, *v* Jeffrey D. Savekuk

[November --, 1979]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This appeal presents the question whether a State may constitutionally exercise quasi in row 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 defect and indemnify him is connection with the suit.

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On Jabuary 13, 1972, two Indiana residents were involved in a single-car accident in Elchart, Ind. Appellee Savehak, who was a presenger in the car driven by appellied Rush, was mjored. The car, owned by Rush's father, was insured by appellant State Farm Mutual Automobile fastnarce Co. (State Farm) under a lightity insurance policy issued in Indiana. Indiana's guest statute would have harred a claim by Savehuk. Ind. Stat. § 9-3-3-1.

Savefulk 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 personator jurisdiction, Savehak attempted to obtain quasi in rem jurisdice-

9 i-e Joined - + may | shel add a "communic

[&]quot;Savebak moved to Pennsylvapia after this appeal was filed

⁴ The soft was filled other the two-vest hadron estatute of limit arises load ran. 272 N.W. 2d 888, 891, n. 2 (1978).

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RUSH & SAVCHON

tion by gamishing State Farm's obligation under the insurance pulley to defend and indennify Rush in romertion with such a suit." State Farm does business in Minnesota." Rush was personally served in Indiana. The complaint alleged negligence and sought \$125,000 in damages."

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

"Netwithstanding anything to the number phenomenophist is plainted in any action in a court of month for the retriety of money only issue a gameline summon before judgment therein in the following instances only:

10(b) If the entry shall order the issuance of each summaries if a summary and complaint is filed with the appropriate point or it either served on the defendant so delivated to a sheriff for service or the defendanc not entry tion 30 days after the order is spreaf, and 0, upon apply atten to the court it shall appear that:

*(2) The purpose of the gamislapent is to establish quasi in new jurisdistiop and that

 $\gamma(b)$ defendant is a conversion balividual, or a foreign corporation, part-terts up or association,

*(3) The gardishes and the debtor are particle to a reactive of anticivality, guarantee, ar incatance, because of which the gardishes play be held to respond to any period for the claim asserted against the debter in the many action, , , , , "

The Minnesota S (group Court chief this version of the statute, encoded in 1976), in its opision on rearrand, 272 N W 2.3 888 (Minn 1978) (Sucritark II) – The version of the structure that was in effect at the transfer the original opinion 311 Minn, 488, 245 N, W 26 888 (1976) (Secolute 1), downor differ in any important respect.

¹State Farre is an Himos experiation that does business in all 50 States the District of Colombia, and several Canad, in previous 7. The 1999, new Almania 149 (1979).

¹ The project was later reduced solutionly to \$50,000, the face smooth of the project.

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^{#4} Maps, Stat. § 57141, subd. 2 (1978) provides, in relevant parts

75-952-OPINION

RUSH & SAVCHUN

asserted that it owed the defendant nothing." Rush and State Fatto moved to dismiss the complaint for lack of pre-siletion over the defendant." 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 roart's decision, 311 Mino, 489, 245 N. W. 2d 624 (1976) (Sauchak I). It held, first, that the obligation of an insurmee company to defend and indemnify a nonresident insured under an automobile liability insurance policy is a gamislable res in Minnesota for the purpose of obtaining quasi in real jurisdiction when the buchlest giving rise to the action occurs. outside Minnesota but the philituff is a Minnesota resident. when the suit is filed. Second, the court held that the assortion of jurisdiction over Rush was constitutional because he had notice of the sait and an opportunity to defend, his liabily ity was limited to the automat 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 persomencipatistiction. The court found, however, that cousiderations of farmess supported the exercise of quari in remjurisdiction because in accident filigation the insurer controls the defense of the case. State Farm does business in and is

^{5.4} Mitor, Start § 571 495 requires the garaiday to dischool the amount of his ability of the defend on a Section 574.51 provides, in relevant part

[&]quot;[1] a skill, it covers where the gatalship device halofter the (highlen) ergebor 20 means the court of any time byfore the garmidace is discharged, on matter to both the indgment debrat and the garmidace to both the indgment debrat and the garmidace, for the vector filler supplemental composited making the factor a posty to the charm and setting forch the factor open wheth the claims to be reported and, of probable concerns showly, such more our showline graphed, z = 1 - 1 Matrix stat, § 571.51 (1075).

The party gataishes is not a defendant.

¹⁴The matien to dismiss also alleged lack of subject-matter periodicition, insufficiency of process of d insufficiency at service of process.

TS-952-OPINION

RUSH v. SAVCHUK

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 chains.

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

On remaind, the Minnesota Supreme Court held that the assertion of quasi in rem jurisdiction through garnishment of an insurer's obligation to an insured completed with the day process standards counciled in *Shaffer*. 272 N. W. 2d 888 (Minn, 1978) (*Sourbak II*). The court found that the garinshment statute differed from the Delaware stock sequestration procedure held unronstitutional in *Shaffer* because the garnishment procedure paralleled the asserted state interest in "facilitating recoveries for resident plaintiffs." Id_{ij} at 891.°. This appeal follower.

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The Minnesota Supreme Court held that the Minnesota garnishment statute embodies the rule stated in Scider 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 debr subject to attachment under state law if the insurer does business in the State? Seider jariediction was upheld against a due process challenge

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⁵ Minnwota would apply its awarcomputative a glugenee law, tablet ile (i Inducade contributory negligence rule. See Schwartz v. Considerated Freightways Corp. 300 Minn 487, 221 N. W. 2d 665 (1974). Application exerts that Minnesine would also decline to apply the holining good statinte if this care were tried in Minnesota. Jour. Statement 10, no. 2) cf. Swerhold H, 272 N. W. 2d, at 801–802. The constitutionality of a choice of law rule that would apply form law in these discussions is not before no. Uf. Howe has v. DisC(281 U. 8, 397 (1980)).

^{#272} N. W. 2d., st 891.

78-952-011 MON

RUSH 5. SAVCHUK

in Simpson v. Lochman, 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 *Barris v. Balk*, 198 U. S. 215 (1905), in halding that the presence of the debt in the State was sufficient to permit gauss in real jurisdiction over the absent defendant. The court also concluded that the exercise of jurisdiction was permissible under the Due Process Clause because, "1v (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 formor state and the insurer is present in and regulated by it, the State has a substantial and continuing relation with the reactroversy," *Simpsone v. Lochmann. supra* at 311, 234 N. F. 2d, at 672,

The United States Court of Appeals for the Second Circuit gave its approval to Seider in Minichiello v. Rostoberg (CA2) 1968), 410 F. 2d 106, solvered to en bane, 410 F. 2d 117, cert. decod. 396 U.S. 844 (1969), although on a slightly different rationale. Judge Friendly construct Scider 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 noaresident insured is viewed simply as a confuit, who has to be usual as a defendant in order to provide a conceptual basis for getting at the insurer." Id., at 109; see Domawitz v. Danck, 42 N. Y. 24 138, 142, 366 N. E. 2d 253. 255 (1977). The coart 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 dat not offend due process,

New York has continued to adhere to Seider." New Hampshire follows Seider if the defendant resides in a Seider juris-

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¹⁶ Baden V. Staplez, 45 N. Y. 2d 889, 183 N. E. Od 110 (1978). The State has declined, however, to make the attackment providing readable for conversion phononics. *Districtly & Drask*, 12 N. Y. 2d (38, 366 N. E. 2d 253 (1977).

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IUSH F. SAVCHUR

diction.³⁹ but not in other cases.³⁴ Minacsota is the only other State that has adopted Scider-type jurisdiction.³⁴ The Second Circuit recently restituted its conclusion that Scider does not violate due process after reconsidering the doctrine in light of Shaffer v. Redner. (Connot v. Lee-Hy Polying Corp., 579 F. 2d 194 (CA2), cert, denied, 439 M. S. 1034 (1978).

IΠ

In Shaffer v. Heitner we held that "all essertions of statecourt jurisdiction must be evaluated according to the standands set forth in *International Shoc* 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 insistemance of the suit does not offend 'traditional notions of fair play and substantial justice." *International Shoc 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 forus on "the relationship subary the defendant, the forum, and the itigation." Shaffer v. Heitner, supra, at 204.

¹⁴Consists v. Sciencher (10 N/H/287, 658 A/M 387 (1970)).

¹¹ The proving has been rejected, based on state how or constitution 3 gravital, in Berlin et al. Gravitational Englander Int. Co. 282, MJ, 718, 285, A. 26 (75) (1978); Jaharek & Superno Court, 17 Cal. 34 628, 552 P, 24 728 (1970); Hart & Cole (45 N, 3 Superno Court, 17 Cal. 34 628, 552 P, 24 728 (1970); Hart & Cole (45 N, 3 Superno Court, 17 Cal. 34 628, 552 P, 24 728 (1970); Hart & Cole (45 N, 3 Superno Court, 17 Cal. 34 628, 552 P, 24 728 (1970); Hart & Cole (45 N, 3 Superno Court, 17 Cal. 34 628, 552 P, 24 728 (1970); Grinnek & Garrett, 255 So. 24 766 (25, App. 1971); Jaharee N, Catawa Aliance Matani Ine. Co. 498 P, 261 1387 (1971); Matani N, Catawa K, 456 S, W, 20 042 (Ma, App. 1970); Handed & Alian 254 S, P, 458 (76 S, E, 26 127 (1970); De Reating A Ine. 16 8 P, 26 (26 127 (1970); De Reating A Ine. 26 (26 126 (26 127 (1970); De Reating A Ine. 26 (26 126 (26 127 (1970); De Reating A Ine. 26 (26 126 (26 127 (1970); De Reating A Ine. 26 (26 126 (26 127 (1970); De Reating A Ine. 26 (26 126 (26 127 (1970); De Reating A Ine. 26 (26 126 (26 127 (1970); De Reating A Ine. 26 (26 126 (26 127 (1970); De Reating A Ine. 26 (26 126 (26 127 (1970); De Reating A Ine. 26 (26 126 (26 127 (1970); De Reating A Ine. 26 (26 127 (1970); De Reating A Ine. 26 (26 126 (26 127 (1970); De Reating A Ine. 26 (26 126 (27 (1970); De Reating A Ine. 27 (1970); De Reating A Ine. 26 (27 (1970); De Reating A Ine. 27 (1970); De Reating A Ine. 26 (26 127 (1970); De Reating A Ine. 26 (26 127 (1970); De Reating A Ine. 27 (1970); De Reating

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¹¹ Fordexic Begintors, 101 N, 19 (617) 313 A 424 (1993).

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RUSH 5, SAVCHUK

It is conceded that Rush has never had any contacts with Minnesota, and that the auto accident that is the subject of this action permitted in Indiana and also had no connection to Minnesota. The only affiliating circonstance offered to show a relationship among Rosh, Minnesota, and this lawsuit is that Rush's insurance company noes business in the State. Solder 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 itability claims is treated as a debt owed by State Fram to Rush. The legal fiction that assigns a situs to a debt, for gamishment purposes, wherever the delator is found is combined with the legal fiction that a cornoration is "present," for jurisdictional purposes, wherever it does busisness to yield the coordination that the obligation to defend and indemaify is located in the forum for purposes of the gamishment statute. The fictional presence of the policy obligation is deemed to give the State the power to determine the policyholder's lightly for the out of state accident.¹⁴

We held in Sbaffer that the more 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. 433–17, S., at 200. Jurediction is lacking, however, unless there are sufficient contacts to satisfy the fairness standard of International Shae.

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

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¹⁹ The conclusion that State Farm's excision nuclei the involution policy was garai-hable property is a factor of state law and the refere is not because. Assuming that 0 we a garai-hable property, the operator is what significance that fact has to the relationship between the defendant, the forum, and the hitigation.

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BUSH F. SAVCHUK

defendant and the forum, and the record supplies no evidence of any. State Farm's decision to do business in Minnesota was completely advectitions as far as Rush 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 hinself to shit in any State to which a potential future plaintiff might decide to move. In short, it eacnot be said that the defendant engaged in any purposeful activity related to the forum that would make the exercise of jurisdiction fait, just, or reasonable, see Kulleo v. California Superior Court. 436 U. S. 84, 93–94 (1978); Hanson v. Denekla, 357 U. S. 235, 253 (1952), merely because his insurer does business there.

Not are there significant contacts between the liferation and the forum. The Minnesota Supreme Court was of the view that the insurance policy was so important to the liferation that it provided contacts sufficient to satisfy due process.¹⁷ 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 liferation, 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 exploited, "In the instant case, the instance's obligation to defend and indemnify, while theoremsuly separable from the toru metion, has to independent value or significance up at from to alone highligation. In the accident litigation, hencever, β is meanably the form, does determining the rights and obligation field on the moment, the astrophysical probability speaking, the electric β' four does H (272, N, W, OI, at S02 four phases in objective and the court mensioned the "practical relation ship between the instance of the figure of helpedicity to the policy amount, and the restruction of the garaxiement procedure to resident plantalis, and concluded that "the relationship between the defending period, the fitting four and the former state," d_{0} of S03, was sufficient to service of particle, at S03, was sufficient to service of particles.

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RUSH & SAVCHER

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 intengible property has no actual situs, and a debt new he sund 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 appelles's theory, the "debt" oved to Rush would be "present" in each of those jurisdictions simultuocously. It is apparent that such a "contact" can have no jurisdictional significance.

An alternative approach for finding adaptoing costgets in Scider-type cases referred to with approval by the Minnesota Supreme Court?' is to attribute the justmer's forum contacts to the defendant by freating the attachment procedure as the functional equivalent of a direct action against the instate-This approach views Seider jurisdiction as fair both to the insurer, whose for an contacts would support by personant jurisdiction even for an accelated cause of action, and to the "nominal defendant." Because hability is limited to the policy amount, the defendant incurs no personal liability,¹⁵ and the judgeoot is satisfied from the pulley proceeds which are not available to the insured for guy purpose other than phylog areident claims, the testinod is said to have such a slight stake in the Brigation as a practical matter that it is not colair to node bits a "commal detendant" in order to obtain jurisflection over the instrume company.

Solder actions are not equivalent to direct actions, howover.¹⁵ The State's ability to exert its power over the "non-

¹⁵ In Successful 4, the Manasata Supreme Court rejected Resh's summer ment that the gatabilitiest presidence measured to a single sector, wheety-

¹⁹ Id., et 882-893, but we Swedick I, 311 Minn. at 458 (245) N. W. 24, ht 629.

¹⁷ See Succhak H, 372 N, W 24, 30892 [Subpose v. Lochanne 21 N, Y 21 (60) 901, 251 N, H. M 690 (1968).

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RUSH C. SAVCHER.

nal defendant" is analytically prerequisite to the insurer's entry into the case as a garnisher. If the Constitution forbids the assertion of jurisdiction over the inserval based on the policy, then there is no conceptual basis for Lenging the "garnisher" 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 conresident cannot be ignored." Moreover the assumption that the defension has no real stake in the intigation is far from self-evident."

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

¹⁰ The court stated. We view as relevant the relationship fortwood the delevating particle the Righton, and the forum state. It estimat the such

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ing "The defendant not the insurer is the jurity and There is nothing in the statute which suggests that the net reer should be manaclus it defendant," [311] Munit, at 385, 285 N. W. 2d., at 629. See in d. sugar,

¹⁶ A postholics and excitigated his log function on displace by instring binnel(against lexing to power exciting targeted or to be own packet. Mathematically, the particles of the function is simply to make the definition value for the control is costs of the function is simply to make the definition value for the control is costs of the function is simply to make the definition value by important to the definition. Final we made malphase for extrem, for example (against the definition) is integrity and malphase for extreme affect the profession the definition of provide at *Boxel*, (2000) Y (2010), 300 N, F (2112000) 1977). Produce a diprovide a from predicted an Soule particulation discussed because platent? We determine the barrier sole of statements of the state in *Soule* (1977). Produce a diprovide a from predicted by barrier to compare discussed because platent? We determine models by the power of some sole concrete of cases at which the determine mathematical barrier is sole and the state in *Soule* (1973) of algorithm of the statement is a specific time sole of statestate in *Soule* (1973). The statement is a constraint of the prime of the state is the determinant of the planet of the state of the statement is a constraint of the planet is the statement of the planet of the planet is the state of

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RUSH F. SAVCHEN

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 *leternational Shoc*, however, must be that as to each defendant over whom a state court excreises jurisdiction.

The justifications offered in support of Scider jurisdiction share a routition characteristic: they shift the forus of the inquiry from the relationship among the defendant, the forum, and the litigation to that among the plaintiff, the forem the insurer and the litigation. The insurer's contacts with the forum are artributed to the defendant because the policy was taken but 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 jurisdirtion to actions by formul residents on the ground that permitting contesidents to avail themselves of the procedure would be unconstitutional.¹³ In other words, the philatiff's contacts with the forum are decisive in determining whether the defendant's due process rights are violated.

Such an approach is furthidden by International Shoe and its progeny. If a defendant has certain judicially engnizable 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 compart with "traditional notions of fair play and substantial justice." See MiGree v. International Life Des. Co., 355 U. S. 220 (1957): ef. Kutho v.

⁴⁴Sev. e. 4. Fastell v. Problemst Aciation, Int. 111 F. 2d 812 (CA2) 19699; Ridnig v. Sharensko, 362 F. Sepp. 1044 (Mars. 1973); Dimensize v. Danel., 42 N. Y. 2d 168, 300 N. E. 2d 253 (1977); Surcleak I.

that Minursota locks arehemininally symplectic bracksets, these regulators to these abdicating prefact as to official the topal emets of the process," Success H1, 272 N. W. 26, at 893 (supplied) (ideal).

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Sapro	me Court of the United States	
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CHANNERS OF JUSTICE W. J. BRENNAN, JP.	November 19, 1979	
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RE: <u>No. 78-952</u>	Rush v. Savchuk	. !
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Dear Thurgood:		
	late a dissent in the above in due "	
course.		
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	Sincerely,	
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Mr. Justice Mary	الفتنا	
cc: The Conferen		
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Supreme Court of the Anited States Washington, D. C. 20543

EVANINE DE DE 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 <u>Volkswagen</u> 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,

Jul

Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States Washington, D. C. 20343

CONVERSE OF A CONTRACTACT OF A CONTRACTACT OF A CONTRACTACT OF A CONTRACTACT OF A CONT

November 16, 1979

Re: 78-952 - Rush v. Savehuk

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

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; •	Mc. Justice Stevart Mr. Justice Stevart Mr. Justice White
	Kr. Justice Marshell
•	Mr. Justice Blackmun (Ar. Justice Powell
	Wr. Justice Rehaquist
	Mr. Justice Stevens
	Erour Mr. Justice Brennan
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Justia Beaunin's	SUPBEME COURT OF THE UNITED STATES
•	Nos. 78-1078 AND 78-952
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"formen" for workent	World Wide Volkswagen Cor- portion et al., Petitioners, Communication and Communication
provedictional dectance,	78-102 v On Writ of Corforari to the
and states that	Charles & Woodson, District Bound,
senditive should ture	Judge of Crick County, Okhlioma, et al. Randal Rosh et al., Appellants, 78-952 v, Jeffry D. Savchuk. [January – 1980] Mic Justice Brennan eliseoting. The Sayrt Loids that the Due Process Clause of the Four-
on a weighing of all	Randai Rash et al., Appellants, On Appeal from the Supreme
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and defendant.	MR JUSTICE BRENNAN dissenting.
v v	The Sourt holds that the Due Process Clouse of the Four- teenth Appendiment bars the States from asserting jurisdiction
I am answe whether	over the peritingers in these two cases. In each case the $-$
you should we now	Court'so decides because it fails to fact the "minimum con- tacts, that have been required since International Shoe Co
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whenes, etc.) may cut	The Court's epinious focus tightly on the existence of con-
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WWW, and Junto	State's present in the case and fail to explore whether there.
Brennen may leap ou	words by any actual inconvenience to the defendant. The essential inquiry in locating the constitutional limits on stare-
that point. On the	court/jurisdiction over absent defendants is whether the par-
whole, I betwee it is	out be Letter to sely on Justice White and Justice Marchall'- excellent
opinions for the Cours	1. Jan

78-2078 & 78-952-DISSENT

WOLDD WIDE VOLKSWAGEN CORP >, WOODSON

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ticular exercise of jurisdiction offends "traditional notions of fair obsy and substitutial justice." International Shor, sapra; Millikeo v. Meyer, 311 U. S. 457, 463 (1940). The chear focus in International Shoc was on fairness and reasonableness. Kullo v. California Superior Court, 436 U. S. 84, 92 (1978). The Court specifically declined to establish a mechanical test insert 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 personant 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.

Sundy, Integrational Shot contemplated that the significance of the contacts near-stary to support jurisdection would dimarish if some other consideration helped (stabilish that jurisdiction would be fair and reasonable. The interests of the State and other parties in proceeding with the case in a particular formulare 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 efficient. See also Kalko v. California Superior Coart, supra, at 92; Shaffer v. Heitner, 433 U. S. 186, 208 (1978); Mallane v. Central Hanover Trast Co., 339 U. S. 306, 313 (1950). Arother consideration is the actual burden a defendant must beat in defending the sum in the form. McGee, supra-

Because lesser burdens reduce the unfairness to the defendant, jurisdiction may be justified despite less significant con-

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WOLGD WIDE VOLKSWAGEN CORP. 7. WOODSON

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tacts. The burden, of course, must be of constitutional dimension. Due process limits on jurisdiction do not protect a definedant from all inconvenirance of travel, McGre, 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.' Instead, the constitutionally sigofficant "ourner" to be analyzed relates to the mobility of the defendant's defense. For instance, if having to travel to a foreign forger would hamper the defense hermose witmesses 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, they the Constitution would required special consideration for the defendant's interests.

That considerations other than contacts between the format
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. Heitmer, 433 U. S. 486, 228 (1977) (BRENNAN, J.,
descoting). The defendion has up constitutional rotate-
most to the best forum or, for that matter, to any particular
forum. Under even the most restrictive view of International
Shoc, several States could have jarisfliction over a particular
cause of action. We need only determine whether the forum
States in these cases satisfy the constitutional minimum -

II

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

The factor contribute just before the state line frame a defendant may refer be set more isoveride) for the defendate than a contribute in a distrial conter of his away State.

The States thenselves of control souring free to choose whether to extend that jurisduction to embrace of defendants over which the Constitution would gramit everyse of jurisdiction.

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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. Ac<u>ordingly I would hold that it is acither unfair agring preasonable to require these defendants to defend in the forum Stare.</u>

In No. 78–952, a number of considerations suggest that Minnesota is an interested and convenient forum. The action was filed by a hum fide resident of the forum.⁴ Consequently, Minnesota's interests are similar to, even if lesser thus, the interests of California in McGce, supre, "in providing a forum for its residents and in regulating the activities of insurance companies" doing business in the State,¹ No. 78-952, and e. at 11. Moreover, Minnesota has "attempted to assert fits] particularized interest in trying such cases in its courts by ..., enarching a special jurisdictional state($c_i^{(n)} = Kalka, supra,$ at 98) McGre, 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 hits could, for lack of finids, be entirely mable to bring the cause

А

The phairs of asserted juri-derivate par-state to 3 Minur Stat § 57144, such 2 (1978), which allows goard-durant of an insurer's obligation to defend and achieved its invariable $S \approx No.$ 75–952, note in β_1 and a companying the ... The Mannesota Supreme Court has interpreted the statege as allowing with only to the insurance policy's holders. The entry has held that the statege embodies the rate of Scales *v*, *Rath*, 47 N, Y 2M 111, 246 N, E. 2d 312 (1966).

The set 0.2 there considers times are relevant is a far ery from saying that they are substituted for z_{i+1} contacts with the defendant and the states of action 2. No 78-962 order z_{i+1}^{*} M_{i+1} . The formula interval z_{i+1} is the set z_{i+1}^{*} in the set z_{i+1}^{*} is z_{i+1}^{*} and independent point of many even under traditional realizes of *International plane's* privates. If there is a shift in factor, it is ant away train the relationship theory if a fertilezing the formula the formula and the logation? This relationship theory is a shift within the same accepted relationship from the contractions between the deformant and the formula to they form to observe the deformant and the formula to the set of the formula and the formula the formula z_{i+1} in the formula the formula z_{i+1} form the same accepted relationship from the contractions between the deformant and the formula they are the formula and the formula z_{i+1} (the formula z_{i+1}) is a formula z_{i+1} (the formula z_{i+1}) in the formula z_{i+1} (the formula z_{i+1}) is a shift of the formula z_{i+1} (the formula z_{i+1}) is a shift of the formula z_{i+1} (the formula z_{i+1}) is a shift of the formula z_{i+1} (the formula z_{i+1}) is a shift of the formula z_{i+1} .

WOLRD WIDE VOLNSWAGEN CORP. 8, WOODSON

of action. The plaintiff's residence in the State makes the State one of a very lew convenient for a for a personal injary case. This objects usually being, the dependent's hour: State and the State where the secident occurredit?

In addition, the burden on the defendant is slight. As Judge Friendly has recognized, Shaffer emphasizes the importance of <u>alontalying</u> the real inspact of the lawsuit. [7] TConnor v. Lee-Hy Paying Corp., 579 F. 2d 194, 200 (CA2) 1978) (upbolding the constitutionality of jurisdiction in a very similar case ander New York's law after Shuffer). Here the real impact is on the defendant's insurer, which is concededly accorable to suit in the forum State. The defendant is carefully protected from funccial liability because the action impits the prayer for damages to the insurance policy's Nadolity Junit? The insurer will hundle the case for the defendant. The defendant is only a nominal party who need by no more active in the case than the conjugation clause of his pulicy requires. Because of the case of arrhite transportation, he need not lose significantly more time than if the case were at hume. Consequently, if the suit went forward in Minnesota, the defendant would bear almost no

<u>burden or expense beyond what he would face if the suit</u> were in his home State. The real impact on the named do-

All avery International Show implify, the defeted on an oversarily, is ontside the formal State. Thus it is inevitable that other the defendant or the plantiff will be inconvenient. The problem existing at the time of *Problem v. Vell*, the convenient plaintiff could obtain a binding judgment.

2 getter are not expecting, distant definition, has write dly despipered in this age of instance manufaction and critically metalet great.

While true that the institutes contract is not the subject of the hightion. No. 78-952 mate, at 8. Her one of the trad-partial charses of the institute pairs is that the institute will defend this action and pay any data gets accessed, up to the policy limit. The very purpose of the contract is to releve the institut from baying to defend long-if, and under the state statute their would be no one absent the automate contract. Thus, is a final sector the matrice extinuity is the source of the source Sec-Staffer v. Higher, 633 fit 8, 186, 217 (1957).

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78-1078 & 78-952--DISSENT

8 WOLRD-WIDE VOLKSWAGEN CORP. c. WOODSON

fondant is the same as it is in a direct section 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 (1968). The only distinction is the formal, "enalytical"] prerequisite." No. 78-952, ante. at 10, of making the manered a named party, Sarely the mark addition of petitioner's mine to the complaint does not suffice to create a due process violation."

Finally, even were the relevant inquiry whether there are sufficient contacts between the forum and the naturel defendant. I would find that such contacts exist. The insurer's presence in Musesota is an advantage to the defendant that may well have been a rousideration in his selecting the policy be did. An insurer with offices in many States makes it easier for the insured to make claims or conduct other busimess that may become necessary while traveling. It is simply not true that "State Farma's decision to do busaness in Minnesota was considerely adventitions as far as Rush was concerned." No. 78-952, ante, at 8. By buying a State Fator policy, the defendant availed himself of the langing he longht derive from having an insurance agent in Minnesota who could annong other things, facilitate a sure 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 treal in Minnesota, first because Minnesota has a sufficient interest in and connection to this litigation and to the real and nominal defendants, and <u>second because the burden on the nominal defendant</u> is sufficiently slight.



⁷ Were the detendant a trul party subject to actual holdfite or were force significant non-orienteen consequences such as those suggests; by the Court's note 20, a more substantial connection with the forum State neglitiwith the constant analytic quitted.

[5] 78-1078 & 78-952-DISSENT

WOLRD-WIDE VOLKSWAGEN CORP. r. WOODSON

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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 Oklahoms. The plaintally were huspitalized in Oklahuma when they brought suit, Essectial witnesses and evidence were in Oklahoma. See Shuffer v. Hastner, supra, st 486, 208. The State has a logitimate interest in enforcing its laws designed to keep its highway system side, and the trul can proceed at least as efficiently in Oklahoma as suywhere else,

The petitioners are not unconfigered with the forum, [A]though both soll automobiles within limited sales territories, tach sold the automobile which in fact was driven to Okla-"homa where it was involved in an accident." 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 nurcalistic hopes that cannot be treated as an automatic constitutional shield."

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

"Moreover improving hability in this case would not as undermine certainty as to destroy an automobile dealer's ability to do business. Amorting juri-distant does not expect hability everyting the parginal case where a particulation context allored to bring an actival except in the plaintiff's own State <u>In addition, these petitionets are represented by insurance cons</u> <u>station</u>. They not only really has did, parchase manages to protect them the first they stand that and one the case. The costs of the insurance as doubt are presedue to costoners: doubt are presedue to costoners: doubt are presedue to costoners: doubt are presedue to costoners:

[&]quot;On the losis of this fast the state court inferred that the peritusions derived substantial revenue from goods used in Oklahoma. The interenas not without support. Company, were use of grands accepted as a relevant contact, a plaintiff would not need to have an exact count of the number ad petitioners' core that are used in Oklahapa.

78-1078 & 78-982-DISSENT

WOLDD-WIDE VOLKSWAGEN CORP & WOODSON

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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, *ande*, at 9. The dealer generally intends that the purchasers will use the automobiles to travel to distant States where the dealer does not directly "do basiness." The sole of an automobile does purposefully inject the vehicle into the stream of interstate commerce so that it can used to distant States. See Kulko, supra, at 94; Horson v. Deakly, 357 1, \$, 245, 253 (1958).

This case is similar to Ohio V. Wyondotte Chammals Corp., 401 F. S. 403 (1971). There we indicated, in the course of denying heave to file an original jurisdiction case, that corporations having no direct contact with Ohio could constitutionally be brought to trial in Ohio because they damped pollutants into streams outside Ohio's limits which ultimately, through the action of the water, reached Lake Eric acid 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 ears petitioners' released would reach distant States."

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, onte, at 11. It is difficult to see why the Constitution should distinguish between a case involving goods which mach 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

³⁵⁰Ore adight argue that it was more productable that this pollutions would reach Ohio Gen that operat partitioners' cars would reach Oklationa. The Court's analysis, have so excludes preisher an in a configuous strate such as Benny bank, as servity as in there sustant is new such as Oklahyma.

78-1078 & 78-982-DISSENT

WOLRD-WIDE VOLKSWAGEN CORP. v. WOODSON

knew the customer would, took them there.¹⁵ In each case the soller purposefully injects the goods into the stream of commerce and these goods predictably are used in the forum State.¹⁵

Furthermore an automobile seller derives substantial henefits 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 <u>bootacts are so</u> ciently significant to make it fair and reasonable for the petitioners to submit to Oklahoma's jurisdiction.

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

¹⁰ For example, I cannot understand the constitutional distinction has tween selling an atom in New Jerzey and selling an atom in New York expecting to to be used in New Jerzey.

¹⁰ The manufactures in the case sited by the Court, Grap V. Asserizan Radiator & Standard Summary Corp., 22 [1] 2d 142 (156 N) F [20] 761 (1961), had no more control over which States at good, would reach that dbd the participants in this case.

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As Ma, JUSTICE MARSIMUL wrote in Shaffer V. Heitmer, supra, at 212, ""[T] inditional notions of fair play and substantial justice can be as relatily offended by the perpetuation of noclect forms that are no longer justified as by the adoption of new procedures, $z_{ij}z^{ij}$

International Show inherited its defendant focus from Priceoger 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 more International Since 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 memore 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 much across state lines. At the same time modern transportation and communication, have made it much best hundensome for a party such to defend himself in & State where be engages in communicativity." Thief.

As the Court acknowledges, No. 78-1078, note at 6, both the notionalization of commerce and the case of transportation and communication have accelerated in the generation since 1957.1^{15} . The model of society on which the *International Shap*

¹² Statistics help illustrate the encoding expension in mobility since International Show. The transfer of recome pressager rates there on characterized in transmissional flights increased by nearly three orders of tragginude between 1945 (450) pollimit and 1970 (4579 follow). Suscepting.

78-1078 & 78-082-DISSENT

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Court base? its opinion is an longer securate. Business prople, 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 form large in today's world and surely preentitled to as much weight as are the interests of the defendant. The "orderly administration of the laws" provides a farm basis for according some protection to the interests of plaint@s and States as well as of defendants." Certainly I cannot see how a defendant's right to due process is violated if the defendant suffers to inconvenience. See No. 78-1078, mile, at 8.

The combinion I draw is that constitutional concepts of tair<u>mess no longer require the extreme concern for defendants</u> that was once measury. Rather, as I wrote in disset from *Shaffer v. Heitoer, supra*, at 220 (emphasis golded) minimum roctacts must exist "among the *parties*, the contested transaction, and the forum." ¹¹ The contacts between any two of

Statistics of the function States, Part 2, 770 (1975): (978 Mutistical Abstraof the United States 679). Automobile vehicleounles probability productors busis, and tracked driven in One Gented States increased by a redutivity modest 500% during the same period, growing from 200 halom in 1945 to 1,409 billion in 1976. Mistorical Statistics, support of 718. Statestical Abstract. support, at 647

¹⁰ The Court bis recognized that there are cases where the interests of justice can turn the focus of the jurisdictional monity away from the contacts between a defendent and the formal State. For instance, the Court indicated that the requirement of concarts may be greatly relaxed (if indexed may personal contacts would be required) where a plant if is sting a contributed decodarie to enforce a prigmove produced of another State. Shafler v. Reducet, 433 G.S. (86, 210, 211, no. 10, 37, (1978))

25.23 - One carry, the impury will recentive the nequire commonly understaken in determining which Stately involvingly. The stais this negative 5 Stately have to apply. The stais this negative 5 Stately have to a consystem to the state in determining.

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these should not be determinative. "[W]hen a suitor seeks to ledge a snit w a State with a substantial interest in seeing its own law applied to the transaction in question, we could wisely act to communic conflicts, confusion, and uncertainty by adopting a liberal view of parisdiction, unless considerations of fairness or efficiency strongly point in the opposite direction. 🗥 👘 Id., .at 225-226. Justice Black, dissenting in Hanson X. Dewilda, supra, at 258–259, expressed singlar concerus by suggesting that a State should have jurisdiction over a case growing out of a transaction significantly related to that State runless litigation there would impose such a heavy and disproportionate barden on a conresident defendant that it would officed what this Court has referred to as 'traditional notions of this play and substantial justice [11]? Assuming that a State gives a nonresident defendant interprate notice and opportunity to defend. I do not think the Due Process Chutse is offended metery because the defendant has to bound a plane to get to the site of the trial.

whether 5 is Lir to subject the defendant to jurisduction in this State, Singlet v. Heitmer, 434–55 S (198), 225 (1978) (Since SAN, d., describing)), Harrow v. Dens Gu. 357 D: S (235, 258 (1958) (Black 1), describing)). See eq. 19, Infer.

¹⁵ Such a standard and be no more uncertain than the Court's rest finwhich fear assarts will be written in black and achieve. The grows are dominant and even around them the shocks are improperable? Estimate Estim. 304 U, S. 542, 545 (1998), ¹⁵ Kulka & California Superior Court, 436 L. S. 84, 92 (1978).

²⁵ H is strong encloses on the State's interest is antising new. This Court, permutting the formula to exercise jurisdiction over some detailed channels to a track 2^{12} right on the basis of the forms's interest in classing the track, statistic

¹⁹[T]] is interest of web state in providing means to close trusts that exist for the grave of its laws and are administered under the supervision of its found is so arised an administered under the supervision of its fight of its courts to determine the interests of all characters resident of means that interests of all characters resident of means in the mean π provided its procedure accords full opportunity to appear and be bound. The Mollow su Control Housing Trust Co., 3(b) U, S, 306, 333 (1950)].

78-1078 & 78-052-DISSIONT

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The Court opinion in No. 78-1078 suggests that the defendand ought to be subject to a State's jurisdiction only if he has contacts with the State "such that he should reasonably anticipate being haloi into court there," " . Ante, at 10, There is nothing unreasonable or unfair, however, about recognizing contoercial 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. Jarasdiction is no longer promised on the notion that nonresident defendants have somehow impliedly consented to suit. People should understand that they are held responsilde for the consequences of their actions and that in our society least actions have consequences affecting many States. When an action in fact causes mjury in another State, the actor should be prepared to answer for it there unless defending as that State would be unfair for some reason other those

that a State bunndary must be crossed."

In effect the Court is allowing defendants to assert the sovcreign rights of their home States. The expressed fear is that otherwise all limits on personal jurisdiction would disappear. But the argument's precise is wrong 1 would not abolish limits on periodiction or strip state homehries of all significance, see Hanson, supra, at 260 (Back, J., disjenting); I would still require the planniff to demonstrate sufficient con-

¹⁶ The Court suggests that this is the stritical fore-evolubility rather than the likelihood that the product will go to the forum State. But the trasmilug begs the question. A detendant cathor know if his actions will subject built to pura-diction in quarter State purifies have declared whit the law of purischation is.

²⁵ One consideration that might create some optionness would be if the choice of terms also impossed on the defendant on enforcement would not s_{2} , pby . See **n**, 15, super-

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torts among the parties, the forum, and the litigation to make the forum a reasonable State in which to hold the trial.²⁹

I would also, however, strip the defendant of an unjustified velo power over certain very appropriate fora—a power the defendant justifiably enjoyed long ago when roomenication and travel over long distances was slow and unpredictable and when notions of state sovereignty were unpractical and exagerated. But I repeat that that is not today's world. If a pisintiff can show that his chosen forum State has a sufficient interest in the defendant who earnot show some real injury to a constributionally protected interest, see O'Conner v. Lee-Hy Packag Corp., 579 F. 2d 194, 201 (CA2 1978), should have no constitutional excess not to appear.²⁰

The plautiffs in each of these cases brought suit in a forum with which they had significant contacts and which had significant contacts with the heightion. I am not convinced that the defendants would suffer any "heavy-mod-disponantionate burdent" in defending the sents. Accordingly, I would hold that the Constitution should not shield the defendents from appearing and defending in the plantiffs' chosen form.

²⁵ For instance, in No. 78-952, if the plaintiff were soft a bolic fide rasident of Mume-ota when the suit way filed or <u>if the defendant mate schiect</u>, <u>in Simulant Induity</u>, <u>Limphy will match</u>, <u>different result</u>. In No. 78-1078, <u>Limitation and a different scale of the schiect result</u>.

I wight reach a deferent result of the arcident had not occurred in Oklahoma.

²¹ Frequently, af course, the defendant will be able to influence the those of formultirough traditional doctrines, such as come or former noncontribution, permutting the transfer of fitigation. Shaffer v. Herbard, 433U.S. 186, 228, a.S. (1978) (Browners, J., discourse).

December 20, 1979

No. 78-952 Rush v. Saychuk

Dear Thirgood:

In my join note of October 30, 1 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/sa

cc: The Conference

Herry: I have been a little hesitant to "bootstrap" on the basis of my an dissent in <u>Lee-Hy Paving</u>. 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 miderback a concurrence, I would have to get into these, which seems unnecessary.

L.F.P., Jr.

SUPREME COURT OF THE UNITED STATES

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

ON EXITING FOR WATT OF CERTINEARLY TO THE A NUTER SPATES. COURT OF APPEALS FOR THE SECOND CIRCLAT

No. 75 410 Decided December 5, 1978.

The petition for a writ of certiorari is denied.

MR. JUSTICE POWELL, with whom MR. JUSTICE BLACKMUNjoins, discoring.

This case presents the question whether the Due Process Clause permits a tort phantiff to obtain jurisdiction in New York over a defendant whose sole contact with the State arises from the defendant's contract for indennity with a company that does business in New York." The case presents are issue of considerable importance, with troublesome ramifications in the spacious areas of personal injury litigation. Moreover, it seems to me that the rationale of our recent decision in *Shaffer v. Heilbert*, 433 U. S. 186 (1977), is at adds 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

⁴ Along with *Levelle Parlow Coopers*, *O'Converse* the Control Appeldecided two other excess with respect 55 which excitionity is sought: *Collegues v. Schwartz*, *Nuc* **78** 268, and *Restore Haspital for Wearners's Schwarth*, *Nuc* **78** 661. The cash of these costs, residents of other States were such in New York for corest accurately outside of New York. The cash how for presidential resolution to work as the mourance policy of the defendant, reach by a company decay interaction. New York – Although with tespertic *Levella Parloy Coopers*, *O'Convers*, the recomposited on president bare world support the gravital generative mounts in all three size.

LEE-HY PAVING CORP. v. O'CONNOR

bion near Richmond, Va. The respondent instituted this suit in the District Court for the Eastern District of New York as excentrix 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 hav an order attaching the contractual obligations of two insurance companies doing busisuess in New York to defend and indennify Lee-Hy. The District Court denied petitioner's motion to variate the attachment and dismiss the suit. Arknowledging that there was a "substaticial 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 Appeal's under 28-U. S. C. § 1292 (5).

The Second Creati affirmed. The court based its ruling on the theory of quasi in reac jurischetion solopted by the New York Court of Appeals in Seider v. Roth, 47 N. Y. 2d 111, 216 N. E. 2d 312 (1996) In Scider, personal jurisdiction was producted on the fiction that the insurance company's obligation to indemnify the policybolder was a "dolor" that the plaintiff in a negligence suit could attach as a "res." In Minishiello v, Rosenberg, 410 F, 2d 106 (1968), the Second Circuit affirmed the constitutionality of Scider jurisdiction. reasoning that the New York Court of Appeals had created judicially a direct action law smullar to the Louisiana statute held constitutional in Watson v. Employers Linbility Assurnuce Corp., 348 U. S. 66 (1954). The Minakalla court recognized that the Seider doctrine differed in one important respect from the limistance direct action statute of Watson; Under Suder, there was no requirement that the tort for which redress was sought have occurred in the State asserting jurischeffon. Despite the Court's emphasis in Watson on the location of the tort, the Second Circuit in Minishiella ruled that New York's interest in protecting its residents and providing them with a ready means of sning foreign tortfeasors;

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JARAIN PAMING CORP. 6. O'CONNOR-

was sufficient to justify Scider invisitietion under the Due Process Clause?

In the case at bur, the petitionors possecressfully arged reconsideration of Minuchaello on the ground that the Seuler doctrine had been undernised by Shaffor v. Hertory, supra, The Court of Appeals viewed the "overriding reaching of Shuffer" as requiring courts to look to the "realities" of the asserted grounds for invisdiction. As far as the insurance tampanes were concerned, the fourt found no unfairness in their being subject to the invisibilition 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 easily to insurers) to defeed a law-sail brought several handred index from the site of the accident, the residence of the defendants, and the location of the witnesses, The court reached a similar conclusion concerning the fairness of a suit brought is New York against "the nominal defends ants' (the peratoners here). The court thought it inmical that they should complain even though they "will not pay the judgment, nor realinge the defense."

I find the Court of Appeals' decision disturbing. Although the assurance companies' contact with New York is important in determining whether it is fair for the New York courts to asserv their jurisdiction, our decision in Walson indicated that the difficulties of defending a negligence case far from the place of the jujing should be taken into account under the Due Process Clause. See Walson y, Encylogers Liability

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⁽In his periods) is divert in *Mashkalla*, dudge Amerson (equal dud Hubbox was based primarily on a particle energy interest or his ing periodiction with respect to corrigons accurate within the State's borders. See *Miniskinth* 400 [17,6] at 115–117. Thus, Judge furthers on erachided that "statute? asserting jurisdiction of the state where the accident securited qualify as due process, whereas the assertion or purablements by the state of the phajoral consistence does rat, "The at 115 these constraints of the state.

³ The court data out that an output structure stabilities at the initially give well-trap estapped effection a second judgment.³ Although 1 agree that pargues effective should be also all the court's opinion in this regard quadration that may of pay per backelence in other pure data to as.

LEDITY PATES CORP. & OCONNOR.

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Assurance Corp., 348 11, S., at 72. Often these difficulties are substantial. It is contine procedure for the judge and jury 'to view the score of the accident, often more than once, Jurers drawn from the version of the accident may be better able to understand testimony pertaining to local conditions and geography. In short, onlive of the factors traditionally considered order the doctrine of *forum non-conveniens*—itself a doctrine based on formesses may also pertain to the fairness of a court hundreds of rules from the location of an accident exercising its jurisdiction over the parties to the resulting tort suit.)

Moreover, the Court of Appeals' reference to the partitioners as "notional defendants" disregards many of the "realities" that hear upon whether an alleged fortfensor, stud in a jurisdiction remote from his home and the location of the arcident, is denied the fairness required by the Due Process Charse. It is novel doctrine at least for me, to refer to the interest of defendants to negligence actions as "nominal" merely because they have insurance. To this case for example, partitioners will be summered to appear in a court in New York, and will be required to participate in the defense of the suit in essentially the same moment 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 pased for both the insurer and the insured by a litigation located bundleds of miles from the scene of the fort, there is the ever-present possibility of a second soft in the jurisdiction where the accident occurred. The upinion of the Court of Appeals scenes to assure, by its reference to petitocters 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

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See E. Gleary, McCauntik on Evidence § 216 (2d D), 1972).

^[488] Galf Od Carp. v. Gilbert, 330 16, S. 507, 507-509 (1947).

LEE-RY PAVING CORP. & OCONNOR-

under the insurance policies. But judgments for eval damages, especially in occur years, often have exceeded insured hmits. In this case, for example, if respondent wins a judgment that exhausts the obligation of the ausurers, the respondent will be free to sue petitioners in Virginia where they would be forced to go through a second triid—possibly without the benefit of lawyers supplied by the insurance con-Moreover, as every lifigation lawyer knows, the panies. hazards of a second trial may exceed those of the first; witnesses seldom tell their story precisely the same way twice. and often new evolence is introduced. To say that the legal rights of insured defendants are not being goljudicated, despite their substantial role in the defense of the sust and despite the patential loss of their right to the assurance company's legal representation, begs the optestion. To what extent must no individual by involved in the hligation before the fundamental fairness requirements of International Shoc Co. v. Wirshington, 326 15; 8: 310 (1945), are applicable?

In sum the judicially created Schler doctrine cases serious questions of due process. To me it does not appear constonant with the standards of fairness counciated to International Slote v. Washington, 326 U. S. 310 (1945), and strongly restorated in Shaffer v. Heither, supra. The issues presented are of concern to concerts and insureds in every State, as well as to state legislatues responsible for the farness of long-arm statutes. The case merits plenary consideration by this Court.

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