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CASENOTES

CIVIL PROCEDURE — *QUASI-IN-REM* JURISDICTION — ATTACHMENT — INSURER'S OBLIGATIONS TO DEFEND AND INDEMNIFY INSURED NOT ATTACHABLE FOR PURPOSES OF JURISDICTION. *BELCHER v. GOVERNMENT EMPLOYEES' INSURANCE CO.*, 282 Md. 718, 387 A.2d 770 (1978).

In the recent decision of *Belcher v. Government Employees' Insurance Company*¹, the Court of Appeals of Maryland held that an insurer's contractual obligations to defend and indemnify its insured were merely "uncertain" and "contingent"² obligations and, therefore, were not attachable for purposes of obtaining *quasi-in-rem* jurisdiction.³ The court of appeals' holding is consistent with that of the growing number of jurisdictions that have refused to allow *quasi-in-rem* jurisdiction to be based upon the garnishment of an absent defendant's liability insurance policy.⁴ In a well-reasoned opinion, the court explicitly rejected the New York Court of Appeals' decision of *Seider v. Roth*,⁵ which held that an insurer's contractual obligations to defend and indemnify were attachable "debts," which could serve as the basis for *quasi-in-rem* jurisdiction over the insured.⁶ In rejecting *Seider*, the *Belcher* court refused to construe Maryland's attachment statute to allow what would have been, in effect, a direct action against the insurer, a procedure not sanctioned by the Maryland General Assembly.⁷

Despite the emphatic rejection of *Seider*, however, the court specifically recognized the strong public policy arguments favoring proper compensation for motorists injured on Maryland highways,⁸ intimating that "direct actions" against the insurer in situations similar to that presented may be appropriate, but require legislative

1. 282 Md. 718, 387 A.2d 770 (1978).

2. *Id.* at 723, 387 A.2d at 773.

3. A judgment *in rem* affects the interests of all persons in designated property. A judgment *quasi in rem* affects the interests of particular persons in designated property. The latter is of two types. In one the plaintiff is seeking to secure a pre-existing claim in the subject property and to extinguish or establish the nonexistence of similar interests of particular persons. In the other the plaintiff seeks to apply what he concedes to be the property of the defendant to the satisfaction of a claim against him. RESTATEMENT JUDGMENTS, 5-9.

Hanson v. Denckla, 357 U.S. 235, 246 n.12 (1958). This second type of *quasi-in-rem* judgment was further distinguished in *Shaffer v. Heitner*, 433 U.S. 186, 207-09 (1977), to include those cases 1) where the cause of action is related to rights and duties growing out of the ownership of property, e.g., duty of property owner to person entering land and injured thereon; and 2) where the cause of action is completely unrelated to the plaintiff's cause of action.

4. 282 Md. at 772 n.2, 387 A.2d at 773 n.2.

5. 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966).

6. *Id.* at 113, 216 N.E.2d at 314, 269 N.Y.S.2d at 101.

7. 282 Md. at 726, 387 A.2d at 775.

8. *Id.*

action. This Note examines the *Belcher* decision and analyzes the implications of direct action statutes as a possible legislative response.

I. FACTUAL BACKGROUND

The controversy in *Belcher*, presenting the "typical"⁹ *Seider*-type factual scenario, arose out of a three-car, chain-reaction collision at a Montgomery County intersection. The insured, Roger Norman Hall, drove his car into the rear of a car driven by Robert A. Hornickle.¹⁰ Hornickle's vehicle then struck the rear of a vehicle driven by Plaintiff Warren Belcher. The information Roger Hall gave to the investigating officer indicated that he resided in Hyattsville, Maryland.¹¹

Subsequent to the accident, Mr. Belcher, himself a Maryland resident, initiated settlement negotiations with Mr. Hall's insurance carrier, the Government Employees' Insurance Company (hereinafter GEICO). When the negotiations proved fruitless, however, Mr. Belcher and his wife filed suit in the Circuit Court for Montgomery County seeking \$150,000 in damages.¹² After two unsuccessful attempts at personal service on Roger Hall, the summons having been returned *non est*,¹³ the Belchers attempted both to find Hall by means of a locator service and to obtain his new address from GEICO. Such efforts were unavailing, and the Belchers concluded that Roger Hall was no longer a resident of Maryland.¹⁴ "Somewhat in desperation,"¹⁵ the Belchers resorted to the attachment procedures that became the focal issue of the case.

Aware that state law required Mr. Hall to maintain at least \$20,000 of automobile liability insurance,¹⁶ the Belchers amended

9. By "typical," it is meant that the facts present a situation whereby the plaintiff is unable to secure *in personam* jurisdiction over the responsible tortfeasor, and, therefore, resorts to attaching the defendant's liability insurance policy. See, e.g., *Minichiello v. Rosenberg*, 410 F.2d 106 (2d Cir. 1968), *aff'd on reh. en banc*, 410 F.2d 117, *cert. denied*, 396 U.S. 844 (1969); *Javorek v. The Superior Court of Monterey County*, 17 Cal. 3d 629, 552 P.2d 728, 131 Cal. Rptr. 768 (1976); *Seider v. Roth*, 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966).

10. Brief for Appellants at 2, *Belcher v. Government Emp. Ins. Co.*, 282 Md. 718, 387 A.2d 770 (1978).

11. *Id.* at 3.

12. 282 Md. at 719, 387 A.2d at 771.

13. *Id.* at 720, 387 A.2d at 771.

14. Plaintiffs attempted to secure Roger Hall's new address from GEICO. GEICO, however, refused to divulge this information, claiming such disclosure would be "contrary to the protection required by the policy and might be tantamount to 'bad faith'." Brief for Appellants at E-21, *Belcher v. Government Emp. Ins. Co.*, 282 Md. 718, 387 A.2d 770 (1978).

15. 282 Md. at 720, 387 A.2d at 771.

16. See MD. TRANSP. CODE ANN. §17-103(b) (1977) requiring automobile liability insurance, or other form of "security" to satisfy "claims for bodily injury or death arising from an accident of up to \$20,000 for any one person and up to \$40,000 for any two or more persons, in addition to interest and costs."

their declaration to demand that sum.¹⁷ The plaintiffs then sought the issuance of an attachment on original process¹⁸ against GEICO for "property or credits" in the company's hands that belonged to Roger Hall. The Belchers contended that GEICO's obligations under the terms of the insurance policy, specifically its obligations to defend any suit on Mr. Hall's behalf, and its obligation to indemnify the insured upon recovery of a judgment,¹⁹ constituted "property or credits" subject to attachment. The order for attachment on original process was issued by Judge Ralph Miller of the Circuit Court for Montgomery County.²⁰ When GEICO's subsequent motion to quash the attachment was granted by Montgomery County Circuit Court Judge Robert E. Clapp, Jr.,²¹ the Belchers sought appellate review of the order in the Court of Special Appeals. Because of the issue's significance, the Court of Appeals of Maryland granted certiorari.²²

II. THE *BELCHER* DECISION

Because attachment proceedings are "derived from a special and limited statutory power,"²³ it was incumbent upon the Belchers to bring their case within the applicable Maryland attachment statute, which provides that,

[A] court of law including the District Court, within the limits of its jurisdiction, may issue an attachment on original process against any property or credits, whether matured or unmatured, belonging to the debtor upon the

17. 282 Md. at 720, 387 A.2d at 771.

18. The plaintiffs proceeded in accordance with Md. R. P. G40, which provides, in part, that:

[A]n attachment on original process may issue against any property or credits, whether matured or unmatured, belonging to the debtor upon the application of any person who has the right to become a plaintiff in an action in this State in any of the following instances:

a. *Non Resident Debtor*

Where the debtor is a nonresident individual or if a corporation, where the corporation does not have a resident agent.

See text accompanying note 24 *infra*, for similar provision in MD. CTS. & JUD. PROC. CODE ANN. § 3-302 (1974).

19. 282 Md. at 721-22, 387 A.2d at 772. For the insurance policy provisions, see note 25 *infra*.

20. Brief for Appellants at E-9, *Belcher v. Government Emp. Ins. Co.*, 282 Md. 718, 387 A.2d 770 (1978).

21. *Id.* at E-31.

22. 282 Md. at 718, 387 A.2d at 770. In his memorandum and order quashing the attachment, Judge Clapp ruled that the issue had "not been dealt with heretofore in Maryland." Brief for Appellants at E-30, *Belcher v. Government Emp. Ins. Co.*, 282 Md. 718, 387 A.2d 770 (1978).

23. *Id.* at 720, 387 A.2d at 772. See also *Northwestern Nat'l Ins. Co. v. Wetherall, Inc.*, 267 Md. 378, 384, 298 A.2d 1, 5 (1972); *Killen v. American Casualty Co. of Reading, Pa.*, 231 Md. 105, 108, 189 A.2d 103, 105 (1963); *Cole v. Randall Park Holding Co.*, 201 Md. 616, 623, 95 A.2d 273, 277 (1953).

application of a person who has a right to become a plaintiff in an action in the state.²⁴

Therefore, in order for the Belchers to initiate the suit by attaching the obligations under the liability insurance policy, it was necessary to establish that such obligations, specifically "the obligation of the garnishee [GEICO] to indemnify its assured for any judgment [petitioners] obtain, and [GEICO's] obligation to provide a defense to the claim against the insured"²⁵ were "property or credits" belonging to the absent Roger Hall.²⁶ In support of their position that the contract obligations were attachable, the Belchers attempted to persuade the court of appeals to adopt the reasoning of the

24. MD. CTS. & JUD. PROC. CODE ANN. § 3-302 (1974).

25. 282 Md. at 721-22, 387 A.2d at 772. Roger Hall's policy with GEICO provided, in pertinent part:

Part I — Liability

To pay on behalf of the insured all sums which the insured shall become *legally obligated* to pay as damages because of:

A. bodily injury, sickness or disease, including death resulting therefrom, hereinafter called 'bodily injury', sustained by any person;

B. injury to or destruction of property, including loss of use thereof, hereinafter called 'property damage'; arising out of the ownership, maintenance or use of the owned automobile or any non-owned automobile, and the *company shall defend any suit* alleging such bodily injury or property damage and seeking damages which are payable under the terms of this policy, even if any of the allegations are groundless, false or fraudulent; but the company may make such investigation and settlement of any claim or suit as it deems expedient.

* * *

CONDITIONS

* * *

6. Action Against Company — Part I:

No action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the company as a party to any action against the insured to determine the insured's liability, nor shall the company be impleaded by the insured or his legal representative.

Id. at 721-22 n.1, 387 A.2d at 772 n.1 (emphasis in original).

26. 282 Md. at 721, 387 A.2d at 772.

controversial²⁷ New York Court of Appeals' decision of *Seider v. Roth*.²⁸

The dispute in *Seider* arose when the plaintiffs, New York residents, were injured in an automobile accident in Vermont allegedly through the negligence of defendant Lemieux, a resident of Quebec.²⁹ Lemieux was insured under an automobile liability insurance policy issued to him in Quebec by the Hartford Accident and Indemnity Company (hereinafter Hartford), which also did business in New York. Although there was no basis for personal jurisdiction over Lemieux in New York,³⁰ plaintiffs attached the

27. *Seider v. Roth*, 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966), has not been well received by courts or commentators. Courts rejecting the *Seider* approach to the exercise of *quasi-in-rem* jurisdiction include *Tessier v. State Farm Mutual Ins. Co.*, 458 F.2d 1299 (1st Cir. 1972) (applying Massachusetts law); *Sykes v. Beal*, 393 F. Supp. 1089 (D. Conn. 1975); *Javorek v. The Superior Court of Monterey County*, 17 Cal. 3d 624, 552 P.2d 728, 131 Cal. Rptr. 768 (1976); *Kirchman v. Mikula*, 258 So. 2d 701 (La. 1972); *State ex rel. Government Emp. Ins. Co. v. Lasky*, 454 S.W.2d 942 (Mo. 1970); *Hart v. Cote*, 145 N.J. Super. 420, 367 A.2d 1219 (1976); *Johnson v. Farmers Alliance Mutual Ins. Co.*, 499 P.2d 1387 (Okla. 1972); *DeRentis v. Lewis*, 106 R.I. 240, 258 A.2d 464 (1969); *Howard v. Allen*, 254 S.C. 463, 176 S.E.2d 127 (1970). See also *Robinson v. O.F. Shearer*, 429 F.2d 83 (3d Cir. 1970) (applying federal maritime and Pennsylvania law); *Ricker v. LaJoie*, 314 F. Supp. 401 (D. Utah 1970); *Housley v. Anaconda Co.*, 19 Utah 2d 124, 427 P.2d 390 (1967); *Werner v. Werner*, 84 Wash. 2d 360, 526 P.2d 370 (1974). For commentators criticizing the *Seider* approach, see, e.g., Reese, *The Expanding Scope of Jurisdiction over Non-Residents — New York Goes Wild*, 35 INS. CO. L. REV. 660 (1971); Rosenberg, *One Procedural Genie Too Many or Putting Seider Back Into Its Bottle*, 71 COLUM. L. REV. 660 (1971); Stein, *Jurisdiction by Attachment of Liability Insurance*, 43 N.Y.U.L. REV. 1075 (1968); Comment, *Jurisdiction — Quasi in Rem: Seider v. Roth to Turner v. Evers — Wrong Means To a Right End*, 11 SAN DIEGO L. REV. 504 (1974); Note, *Seider v. Roth: The Constitutional Phase*, 43 ST. JOHNS L. REV. 58 (1968); Note, *Seider v. Roth: Attachment of an Insurer's Obligation to Defend*, 71 DICK. L. REV. 653 (1967).
28. 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966). *Seider* was reaffirmed in *Simpson v. Loehman*, 21 N.Y.2d 305, 234 N.E.2d 669, 287 N.Y.S.2d 633, *motion for reargument denied*, 21 N.Y.2d 990, 238 N.E.2d 319, 290 N.Y.S.2d 914 (1967). Although other courts have sustained the validity of *Seider*, these decisions generally limit or qualify its application. See, e.g., *Minichiello v. Rosenberg*, 410 F.2d 106 (2d Cir. 1968), *aff'd on reh. en banc*, 410 F.2d 117, *cert. denied*, 396 U.S. 844 (1969) (upholding the constitutionality of *Seider*, but emphasizing the fact that plaintiff was a New York resident); *Rintala v. Shoemaker*, 362 F. Supp. 1044 (D. Minn. 1973) (limited availability of *Seider* doctrine to resident plaintiffs); *Savchuk v. Rush*, ___ Minn. ___, 245 N.W.2d 624 (1976), *vacated and remanded*, 433 U.S. 902 (1977), *aff'd*, 47 U.S.L.W. 2290 (Minn. 1978), *prob. juris. noted*, 47 U.S.L.W. 3543 (U.S. 1979) (No. 78-952) (*Seider* available where plaintiff a resident of Minnesota); *Camire v. Scieszka*, 116 N.H. 281, 358 A.2d 397 (1976) (limiting *Forbes v. Boynton* to the facts of that case); *Forbes v. Boynton*, 113 N.H. 617, 313 A.2d 129 (1973) (*Seider* procedure available against a nonresident defendant where defendant's home state has approved *Seider*); *Donawitz v. Danek*, 53 A.D.2d 679, 366 N.E.2d 253, 385 N.Y.S.2d 134 (1977) (limited *Seider* to New York resident plaintiffs).
29. 17 N.Y.2d at 112, 216 N.E.2d at 313, 269 N.Y.S.2d at 100.
30. Lemieux, not having any "minimum contacts" with New York, was not amenable to personal jurisdiction under the doctrine of *International Shoe v. Washington*, 326 U.S. 310 (1945).

insurer's obligations to defend and indemnify its insured as a basis for *quasi-in-rem* jurisdiction. Hartford was served the attachment papers in New York, and defendant Lemiux was personally served with summons and complaint in Quebec.³¹

The New York Court of Appeals, over sharp dissent,³² upheld the attachment as a valid exercise of *quasi-in-rem* jurisdiction.³³ The court, interpreting New York's attachment statutes,³⁴ found Hartford's obligations under the policy, to "defend Lemiux in any automobile negligence action and, if judgment be rendered against Lemiux, to indemnify him therefor,"³⁵ to be a debt or cause of action within the meaning of the New York statute, and therefore subject to attachment.³⁶ Judge Burke, dissenting, noted that "[t]he so-called 'debt' which is supposed to be subject to attachment is a mere promise made to the nonresident insured by the foreign insurance carrier to *defend and indemnify* the Canadian resident *if a suit is*

31. 17 N.Y.2d at 112, 216 N.E.2d at 313, 269 N.Y.S.2d at 100.

32. The reasoning in Judge Burke's dissent has been adopted by most courts that have rejected *Seider*. See, e.g., *Javorek v. The Superior Court of Monterey County*, 17 Cal. 3d 624, 552 P.2d 728, 131 Cal. Rptr. 768 (1976).

33. 17 N.Y.2d at 113, 216 N.E.2d at 315, 269 N.Y.S.2d at 101.

34. N.Y. Civ. Prac. Law §5201(a) (McKinney 1978) provides in part:

A money judgment may be enforced against any debt, which is past due or which is yet to become due, certainly or upon demand of the judgment debtor, whether it was incurred within or without the state, to or from a resident or nonresident, unless it is exempt from application to the satisfaction of the judgment. A debt may consist of a cause of action which could be assigned or transferred accruing within or without the state.

In conjunction, N.Y. Civ. Prac. Law § 6202 (McKinney 1978) provides that "[a]ny debt or property against which a money judgment may be enforced as provided in section 5201 is subject to attachment. The proper garnishee of any such property or debt is the person designated in section 5201"

35. 17 N.Y.2d at 113, 216 N.E.2d at 314, 269 N.Y.S.2d at 101. The *Seider* majority reasoned that "as soon as the accident occurred there was imposed on Hartford a contractual obligation that should be considered a 'debt' within the meaning" of the New York attachment statutes. *Id.* The majority found that such decision necessarily followed the result reached in their earlier decision in *Matter of Riggle's Estate*, 11 N.Y.2d 73, 181 N.E.2d 436, 226 N.Y.S.2d 416 (1962). In that case, Mabel Wells, a New York resident, brought a negligence action in New York against Robert Riggle, an Illinois resident, for injuries suffered in an automobile accident in Wyoming. Riggle was personally served with summons and complaint in New York. He died, however, prior to trial. To maintain the action in New York, the trial court appointed an administrator for any property Riggle left in New York. The only property allegedly left by Riggle in that state was the obligation of the insurance carrier to defend and indemnify him. The court of appeals concluded that this obligation constituted "a debt owing to a decedent by a resident" of New York, which was regarded as personal property under the Surrogate's Court Act sufficient for the appointment of an ancillary administrator. 11 N.Y.2d at 76, 181 N.E.2d at 437, 226 N.Y.S.2d at 417. In *Seider*, therefore, the majority concluded that if the obligation of the carrier was a debt that could be administered, it was likewise a debt that could be attached for the purpose of acquiring *quasi-in-rem* jurisdiction. 17 N.Y.2d at 114, 216 N.E.2d at 312, 269 N.Y.S.2d at 99.

36. 17 N.Y.2d at 115, 216 N.E.2d at 315, 269 N.Y.S.2d at 102.

commenced and if damages are awarded against the insured."³⁷ Such an obligation, he observed, was merely contingent and not within the definition of an attachable debt as defined by the New York statute.³⁸ Judge Burke reasoned that the policy obligations of the insurer did not become certain until jurisdiction over the insured was properly obtained.³⁹ Therefore, the plaintiff's assertion that jurisdiction could be based upon a promise that did not even mature until there was jurisdiction over the insured was untenable.⁴⁰

The existence of the policy is used as a sufficient basis for jurisdiction to start the very action necessary to activate the insurer's obligation under the policy. In other words, the promise to defend the insured is assumed to furnish the jurisdiction for a civil suit which must be validly commenced before the obligation to defend can possibly accrue It is indisputable that prior to the commencement of the suit the insurer owed no 'debt' to the insured.⁴¹

37. *Id.* at 116, 216 N.E.2d at 315, 269 N.Y.S.2d at 103 (emphasis in original).

38. Judge Burke, citing *Dutch-American Mercantile Corp. v. Safticraft Corp.*, 17 A.D.2d 421, 234 N.Y.S.2d 683 (1962), and *Sheehy v. Madison Square Garden Corp.*, 266 N.Y. 44, 193 N.E. 633, 272 N.Y.S. 433 (1934), noted that "under our statutes 'a contingent right which did not ripen into an obligation' may not be the basis for an attachment to supply jurisdiction." *Id.* at 116, 216 N.E.2d at 316, 269 N.Y.S.2d at 104. See also *Fredrick v. Chicago Bearing Metal Co.*, 221 A.D. 588, 224 N.Y.S. 629 (1927); *Herman & Grace v. City of New York*, 130 A.D. 531, 114 N.Y.S. 1107 (1909), *aff'd mem.*, 199 N.Y. 600, 93 N.E. 376 (1910).

39. 17 N.Y.2d at 115, 216 N.E.2d at 315, 269 N.Y.S.2d at 103. The dissent distinguished *Riggle*, *supra* note 35, on two bases. First, it pointed out that *in personam* jurisdiction over the tortfeasor in *Riggle* had been properly obtained before his death. Thus, in *Riggle*, the insurer's obligation to defend had already matured. *Id.* at 116, 216 N.E.2d at 315, 269 N.Y.S.2d at 103. Second, Judge Burke reasoned that "[w]hile an obligation to defend, even if contingent in nature, might constitute the estate of the decedent within the statute governing the appointment of an administrator, it could not, under other pertinent statutes, be the basis of an attachment so as to supply jurisdiction." *Javorek v. The Superior Court of Monterey County*, 17 Cal. 3d 629, 634, 552 P.2d 728, 733, 131 Cal. Rptr. 768, 773 (1976).

40. 17 N.Y.2d at 115, 216 N.E.2d at 315, 269 N.Y.S.2d at 103. Judge Burke called the majority's approach a "bootstrap situation," a term frequently used to describe the circular reasoning of the *Seider* approach to the exercise of jurisdiction in this context. *Id.* See, e.g., Siegel, SUPPLEMENTARY COMMENTARY TO N.Y. CIV. PRAC. LAW § 5201 (McKinney 1978); Note, 71 DICK. L. REV. 653, 660 (1967). See also Comment, Garinishment of Intangibles: Contingent Obligations and the Interstate Corporation, 67 COLUM. L. REV. 550, 555 (1967).

41. 17 N.Y.2d at 115, 216 N.E.2d at 315, 269 N.Y.S.2d at 103. *Seider* has also been criticized because under its approach, even after a cause of action is brought, "there is nothing of economic value to which the insured may make claim, receive, or assign." *Simpson v. Loehman*, 21 N.Y.2d 305, 315, 234 N.E.2d 669, 674, 287 N.Y.S.2d 633, 641, *motion for rearg. denied*, 21 N.Y.2d 990, 238 N.E.2d 319, 290 N.Y.S.2d 914 (1967) (Breitel, J., concurring). This criticism was reiterated in Note, 53 CORNELL L. REV. 1108, 1111 (1968). See also *Belcher v. Government Emp. Ins. Co.*, 282 Md. 718, 725 n.4, 387 A.2d 770, 774 n.4 (1978). This criticism, however, may also be true of any case in which intangibles are sought to be attached.

The *Belcher* court agreed with Judge Burke's analysis and refused to adopt the *Seider* majority's reasoning,⁴² finding the *Seider* approach inconsistent with prior Maryland cases holding that a contingent or uncertain interest is not attachable under the Maryland attachment statute.⁴³ The *Belcher* court reasoned that the contractual obligation to indemnify arises "only after a judgment is rendered against the insured,"⁴⁴ and that GEICO's duty to defend arises only after "litigation is properly instituted against the insured with service of process upon him requiring him to respond."⁴⁵ Thus, if the court were to allow the attachment of Hall's policy as the basis for instituting the suit, it would be sanctioning a policy whereby the obligations of the insured were used to furnish the jurisdiction for a suit which must have been validly commenced

42. 282 Md. 718, 725-26, 387 A.2d 770, 774-75. Despite Judge Burke's criticisms, and the general rejection of *Seider* by other courts and commentators, see note 27 *supra*, New York continues to apply its basic concepts. *Seider* has been limited by the New York courts in some respects, however. For example, in *Simpson v. Loehman*, 21 N.Y.2d 305, 234 N.E.2d 669, 287 N.Y.S.2d 633, *motion for rearg. denied*, 21 N.Y.2d 990, 238 N.E.2d 319, 290 N.Y.S.2d 914 (1967), the court reaffirmed *Seider* and rejected various constitutional arguments. Denying reargument, the New York Court of Appeals held that any recovery under *Seider* was "necessarily limited to the value of the asset attached, that is, the liability insurance policy. For the purpose of pending litigation, which looks to an ultimate judgment and recovery, such value is its face amount and not some abstract or hypothetical value." *Id.* at 310, 238 N.E.2d at 320, 290 N.Y.S.2d at 916. Moreover, the court, in a statement that one commentator has termed "miraculous," Siegel, *Practice Commentaries*, N.Y. Civ. Prac. Law & Rules, § 5201 at p. 15 (McKinney Supp. 1968); but see *Minichiello v. Rosenberg*, 410 F.2d 106, 111 n.7 (2d Cir. 1969), *aff'd on reh. en banc*, 410 F.2d 117, *cert. denied*, 396 U.S. 844 (1969), declared "[t]his, it is hardly necessary to add, means that there may not be any recovery against the defendant in this sort of case in an amount greater than the face amount of the insurance policy *even though he proceeds with the defense on the merits.*" 21 N.Y.2d at 990, 238 N.E.2d at 320, 290 N.Y.S.2d at 916 (emphasis added). The "miracle" may be explainable, however, if *Seider* is viewed as a judicially created direct action. See note 53 *infra*.

Additionally, the New York court recently limited the availability of *Seider*-type attachments to resident plaintiffs. The court declined to re-examine *Seider*, however, on the basis of *stare decisis* and the fact that the legislature had made no move in the eleven years since the decision to nullify or change its effect. *Donawitz v. Danek*, 42 N.Y.2d 138, 142, 366 N.E.2d 253, 255-56, 397 N.Y.S.2d 592, 595 (1977). See also *Baden v. Staples*, 47 U.S.L.W. 2291 (N.Y. 1978).

43. "[W]here an interest is uncertain and contingent — in that it may never become due and payable — it is not subject to attachment as not within the scope of Maryland's attachment statute." *Belcher v. Government Emp. Ins. Co.*, 282 Md. at 723, 387 A.2d at 773-74. See also *Suskin and Berry, Inc. v. Rumley*, 37 F.2d 304, 306 (4th Cir. 1930) (interpreting Maryland law); *Fairfax v. Savings Bank of Baltimore*, 175 Md. 136, 141, 199 A. 872, 875 (1938); *Safe Deposit & Trust Co. v. Independent Brewing Ass'n*, 127 Md. 463, 468-69, 96 A. 617, 619 (1916); *Hodge & McClane, The Law of Attachment in Maryland*, § 29 (1895). MD. CRTS. & JUD. PROC. CODE ANN. § 3-302 (1974) provides for attachment of interests that are merely "unmatured," but fails to provide for the attachment of interests that are "contingent," and thus may never become due.

44. 282 Md. at 725, 387 A.2d at 774.

45. *Id.*

before the obligations could even accrue.⁴⁶ The court declined to adopt such circular reasoning, criticizing *Seider* as a "classic example of the tail wagging the dog, a bit of judicial wizardry in which we decline to engage."⁴⁷

Despite its refusal to adopt the *Seider* approach, the court of appeals was particularly sympathetic to the compelling public policy arguments advanced by the Belchers in support of a contrary result.⁴⁸ Specifically, the court noted that the General Assembly's enactment of compulsory automobile liability insurance legislation⁴⁹ indicated a "growing belief that all those injured while using the highways of this State should be properly recompensed."⁵⁰ The court recognized that Maryland citizens would be faced with additional expenses because of increased reliance on public aid for support when the injured are unable to work or to pay medical bills incurred as a result of their injuries.⁵¹ Moreover, these results would follow even though the insurer "ha[d] collected his fees to pay for just such occurrences and very likely ha[d] set up a reserve fund containing all the money necessary to reimburse the injured parties."⁵² Nonetheless, the *Belcher* court refused to construe Maryland's attachment statute "to allow what, in fact, would be a direct action against insurers which the General Assembly has not

46. This criticism, the focal point of Judge Burke's dissent in *Seider*, has convinced most courts considering the question to adopt reasoning similar to that of the *Belcher* court. *E.g.*, *Sykes v. Beal*, 392 F. Supp. 1089, 1096 (D. Conn. 1975); *Javorek v. The Superior Court of Monterey County*, 17 Cal. 3d 629, 552 P.2d 728, 131 Cal. Rptr. 768 (1976); *Hart v. Cote*, 145 N.J. Super. 420, 367 A.2d 1219 (1976).

47. 282 Md. at 725-26, 387 A.2d at 775. This criticism may be unwarranted, however, if *Seider* is viewed as a "judicially created" direct action statute. See note 53 *infra*.

48. 282 Md. at 726, 387 A.2d at 775.

49. Codified as MD. TRANSP. CODE ANN. §§ 17-101 through-301 (1977).

50. 282 Md. at 726, 387 A.2d at 775.

51. *Id.*

52. *Id.*

seen fit to permit,"⁵³ and affirmed the circuit court's order to quash the writ of attachment.⁵⁴

53. *Id.* For previous federal and state decisions refusing to "judicially create" a direct action statute, see *Complaint of Harbor Towing Co.*, 335 F. Supp. 1150 (D. Md. 1971); *Gorman v. St. Paul Fire Ins. Corp.*, 210 Md. 1, 121 A.2d 812 (1956). *But see* *Kirchen v. Orth*, 390 F. Supp. 313 (E.D. Wis. 1975) (direct action allowed against insurer without benefit of statutory authority — Wisconsin's direct action statute being inapplicable).

The question of whether *Seider* "judicially created" a direct action statute has generated considerable controversy. Compare *Minichiello v. Rosenberg*, 410 F.2d 106, 111-12 (2d Cir. 1968), *aff'd on reh. en banc*, 410 F.2d 117, *cert. denied*, 396 U.S. 844 (1967); *Kirchen v. Orth*, 390 F. Supp. 313, 319 (E.D. Wis. 1975); *Donawitz v. Danek*, 42 N.Y.2d 138, 366 N.E.2d 253, 397 N.Y.S.2d 592 (1977), all finding that *Seider* judicially created a direct action, *with* *Forbes v. Boynton*, 313 A.2d 129 (N.H. 1973); *Katz v. Umansky*, 92 Misc. 2d 285, 399 N.Y.S.2d 412 (S. Ct. 1977); *Wallace v. Target Store*, 92 Misc. 2d 454, 400 N.Y.S.2d 478 (S. Ct. 1977), all denying that *Seider* judicially created a direct action.

For a direct action statute that the legislature has sanctioned, see MD. ANN. CODE art. 48A, § 481 (1972) (claimant may sue insurer after judgment if insured cannot satisfy).

54. 282 Md. at 726, 387 A.2d at 775. Because *Belcher* was decided on the basis of the court's interpretation of the Maryland attachment statute, and its refusal to create judicially a direct action against insurers, the court did not reach the issue of whether "*Seider*-type" attachments remain constitutional. However, since the Supreme Court decision in *Shaffer v. Heitner*, 433 U.S. 186 (1977), this issue has generated much discussion and litigation. See, e.g., *O'Connor v. Lee-Hy Paving Corp.*, 437 F. Supp. 994 (E.D.N.Y. 1977), *aff'd*, 579 F.2d 194 (2d Cir. 1978), *cert. denied*, 47 U.S.L.W. 3168 (U.S. 1978); Note, 6 HOFSTRA L. REV. 393, 410-18 (1978); Comment, *Shaffer v. Heitner: The Supreme Court Establishes a Uniform Approach to State Court Jurisdiction*, 35 WASH. & LEE L. REV. 131, 145-46 n.88 (1978).

Seider v. Roth has heretofore survived constitutional due process attacks because of the continued validity of *Harris v. Balk*, 198 U.S. 215 (1905), which held that "the obligation of a debtor to pay his debt was property which accompanied the debtor at all times and could be garnished for purposes of acquiring quasi in rem jurisdiction over the creditor in any state in which the debtor could be served." *Id.* at 223. See Comment, *Shaffer v. Heitner: The Supreme Court Establishes a Uniform Approach to State Court Jurisdiction*, 35 WASH. & LEE L. REV. 131, 133 n.22 (1978). As stated by Chief Judge Fuld, writing for the New York Court of Appeals in *Simpson v. Loehman*, 21 N.Y.2d 305, 310, 234 N.E.2d 669, 671, 287 N.Y.S.2d 633, 636, *motion for rearg. denied*, 21 N.Y.2d 990, 238 N.E.2d 319, 290 N.Y.S.2d 914 (1967):

It was our opinion when we decided [*Seider*], and it still is, that jurisdiction in rem was acquired by the attachment in view of the fact that the policy obligation was a debt to the defendant. And we perceive no denial of due process since the presence of that debt in this state (see, e.g. *Harris v. Balk*, 198 U.S. 215, 25 S.Ct. 625, 49 L. Ed. 1023) — contingent or inchoate though it may be — represents sufficient of a property right in the defendant to furnish the nexus with, and the interest in, New York to empower its courts to exercise an in rem jurisdiction over him.

Thus, the mere "presence" of the debt in the forum state was sufficient contacts for that state to exercise in rem jurisdiction. See *Pennoyer v. Neff*, 95 U.S. 714 (1878).

Shaffer v. Heitner, 433 U.S. 186 (1977), however, declared that a court's exercise of jurisdiction in rem could not be based solely on the presence of property in the forum state, and that henceforth in rem jurisdiction should be tested under the "minimum contacts" standard of *International Shoe v. Washington*, 326 U.S. 310 (1945). Recognizing that the phrase "judicial jurisdiction over a thing", is a customary elliptical way of referring to jurisdiction

III. DIRECT ACTIONS AGAINST INSURERS

The *Belcher* holding, adopting a position consistent with that taken by the majority of states considering the question,⁵⁵ was based upon the proper interpretation of Maryland's attachment statute. The result may be inequitable, however, because plaintiffs in positions similar to that of Warren Belcher will not be compensated for injuries received at the hands of a negligent motorist. Moreover, the *Belcher* decision cannot be reconciled with previous legislative enactments designed to facilitate recovery for those injured on

over the interests of persons in a thing," 433 U.S. at 207, the Court reasoned that "in order to justify an exercise of jurisdiction *in rem*, the basis for jurisdiction must be sufficient to justify exercising jurisdiction over the interests of persons in a thing." *Id.* The standard for determining "whether the interests of persons is consistent with the Due Process Clause is the minimum contacts standard elucidated in *International Shoe*." *Id.* Thus, the Court concluded,

[A]lthough the presence of the defendant's property in a State might suggest the existence of other ties among the defendant, the state, and the litigation, the presence of the property alone would not support the State's jurisdiction. If those other ties did not exist, cases over which the State is now thought to have jurisdiction could not be brought in that forum.

Id. at 209.

Because *Shaffer* significantly undermined the type of *quasi-in-rem* action typified by *Harris v. Balk*, a conflict of authority developed respecting the continued constitutional validity of *Seider*. Two New York Supreme Court decisions, *Katz v. Umansky*, 92 Misc. 2d 285, 399 N.Y.S.2d 412 (1977) and *Wallace v. Target Store, Inc.*, 92 Misc. 2d 454, 400 N.Y.S.2d 478 (1977) rejected, in light of *Shaffer v. Heitner*, attempts at *quasi-in-rem* "Seider-type" attachments where the defendant's only contact with the forum state was the "presence" of the policy obligations. In *O'Connor v. Lee-Hy Paving Corp.*, 437 F. Supp. 994 (E.D.N.Y. 1977), *aff'd*, 579 F.2d 194 (2d Cir. 1978), *cert. denied*, 47 U.S.L.W. 3168 (U.S. 1978), however, the district court, after concluding that *Seider* and its progeny were "sui generis," *id.* at 1002, and that such cases could not be "pigeon holed," *id.* as *in rem* or *in personam*, held that *Shaffer* did not require rejection of either *Seider v. Roth* or *Simpson v. Loehman*. Similarly, the highest courts of the states of New York and Minnesota have recently upheld the validity of *Seider*. See *Baden v. Staples*, 47 U.S.L.W. 2291 (N.Y. 1978) and *Savchuk v. Rush*, ___ Minn. ___, 245 N.W.2d 624 (1978), *vacated and remanded*, 433 U.S. 902 (1977), *aff'd*, 47 U.S.L.W. 2290 (Minn. 1978), *prob. juris. noted*, 47 U.S.L.W. 3543 (U.S. 1979) (No. 78-952). Thus, at least among the appellate courts that have considered the issue, there is agreement that *Seider* remains constitutional.

For commentators discussing *Seider's* continued constitutional validity, see Comment, *Shaffer v. Heitner: The Supreme Court Establishes a Uniform Approach to State Court Jurisdiction*, 35 WASH. & LEE L. REV. 131, 145-46 n.88 (1978); Note, 6 HOFSTRA L. REV. 393, 410-18 (1978); Note, 24 LOYOLA L. REV. 171, 179-80 (1978).

In *Belcher*, the property sought to be attached was not the only contact between the defendant, the state, and the litigation. In that case, the accident itself occurred in Maryland, and both plaintiff and defendant were Maryland residents at the time of the mishap. Because of these ties with the forum state, it is likely that the *Shaffer* standards would have been satisfied had the court found the policy obligations attachable for purposes of jurisdiction.

55. See note 27 *supra*.

Maryland roadways.⁵⁶ Thus, a legislative response to the *Belcher* decision appears imminent.

This response will probably result in the consideration of a direct action statute,⁵⁷ whereby the injured party is permitted to sue the insurer directly without first establishing the liability of the insured.⁵⁸ These statutes, rather than using the insured as a conduit to reach the insurance carrier, as is done in *Seider* and its progeny, allow the plaintiff to proceed against the insurer in the first instance, thereby avoiding circuitous and piecemeal litigation.⁵⁹ Moreover, direct action statutes avoid the practical and constitutional problems caused by the attachment of insurance policy obligations. And, by allowing the injured party to sue the insurance carrier, whose contacts with the forum state allow the court to exercise *in personam* jurisdiction,⁶⁰ direct action statutes effect recovery of a judgment even though the tortfeasor himself is not subject to jurisdiction or is evading service of process.⁶¹

Several states have enacted such legislation.⁶² In Louisiana, for example, an injured party may, at his option, bring an action directly against the insurer within the terms and limits of the policy.⁶³ This right of action exists regardless of whether the policy

56. See note 49 *supra*. See also MD. ANN. CODE art. 48A, §§ 538-547 (1972) (Motor Vehicle Casualty Insurance — Required Primary Coverage); MD. ANN. CODE art. 48A, §§ 243-243N (1972) (Maryland Automobile Insurance Fund).

57. "A direct action statute expresses the state's public policy to be that all liability policies, subject to their terms and applicable limits, are issued for the benefit of all persons injured because of the negligence of the insured." 2 R. LONG, THE LAW OF LIABILITY INSURANCE § 20.06[1] (1978). The *Belcher* court refused to "judicially create" such a statute. 282 Md. at 726, 387 A.2d at 775. *Seider* has been criticized for so doing. See note 53 *supra*.

Although direct action statutes allow the injured person to proceed directly against the insurer, it must be remembered that such statutes in no way dispense with the requirement of fault on the part of the insured. Note, 24 LA. L. REV. 118, 119 n.5 (1963).

58. Under present Maryland law, an injured party may proceed against the insurer after a judgment has been obtained if the insured cannot satisfy such judgment. MD. ANN. CODE art. 48A, § 481 (1972).

59. Note, *Direct Action Statutes: Their Operational and Conflict-of-Law Problems*, 74 HARV. L. REV. 357 (1960).

60. *Id.* at 362, where the author states:

Because of the great public interest in insurance and the consequent broad regulatory power of the state, if the action is based on even a single policy written in the direct action state, there is apparently no constitutional bar to subjecting the company to service in that jurisdiction.

See *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957).

61. See text accompanying note 91 *infra*.

62. GA. CODE ANN. § 68-612 (1967); LA. REV. STAT. ANN. § 22-655 (West 1959); R.I. GEN. LAWS § 27-7-1 (1956) (1968 Reenactment); WIS. STAT. ANN. § 803.04 (West 1976). See also ARK. STAT. ANN. § 66-300 (1959) (right of direct action against governmental subdivision otherwise immune when such government carries liability insurance); P.R. LAWS ANN. tit. 26, § 2003 (1966).

63. LA. REV. STAT. ANN. § 22-655 (West 1959).

was written in Louisiana and regardless of whether the policy contains a provision forbidding direct actions,⁶⁴ provided that the accident or injury occurred in Louisiana.⁶⁵

Wisconsin law is substantially similar to that of Louisiana.⁶⁶ That state's statute provides that in any action for damages caused by negligence, in which the insurer has an interest in the outcome of the controversy, the insurer may be made a proper party defendant.⁶⁷

Rhode Island limits the availability of such direct actions to cases in which the officer serving any process against the insured returns such process "*non est.*"⁶⁸ Thus, under Rhode Island law, the injured party must make a good faith effort to locate and serve process on the insured tortfeasor before resorting to the direct action against the insurer.⁶⁹ While these three statutes vary somewhat in form, in substance they are the same because they embody the direct action concept.

These direct action statutes have presented the courts with a variety of questions. Although the constitutionality of Louisiana's statute was upheld by the United States Supreme Court in *Watson v. Employer's Liability Assurance Corporation*,⁷⁰ where the Court found that a "no action" clause⁷¹ in an insurance contract issued in

64. *Id.* See also 2 R. LONG, THE LAW OF LIABILITY INSURANCE § 20.06[2] (1978) where it is stated that "[t]he statute [Louisiana's] has validly and completely abrogated the no action provision of liability policies; thus, the insurer can be joined in an action or sued alone even though a policy contains a no action provision enforceable in the state where it was issued and delivered."

65. LA. REV. STAT. ANN. § 22-655 (West 1959).

66. WIS. STAT. ANN. § 803.04 (West 1976). Former WIS. STAT. ANN. § 260.11(1) (1967) limited the availability of such direct actions to motor vehicle actions. The current law "expanded the statute to accord direct action to all negligence actions." *Hasselstrom v. Rex Chainbelt, Inc.*, 50 Wis. 2d 487, 497, 184 N.W.2d 902, 907 (1971).

67. WIS. STAT. ANN. § 803.04 (West 1976).

68. R.I. GEN. LAWS § 27-7-1 (1956).

69. "'Good faith' as used in this context, connotes something more than the absence of fraud. The term presupposes a reasonably diligent effort to obtain service on the insured such as would be made if no question of insurance were involved." *Lemieux v. American Universal Ins. Co.*, 116 R.I. 685, 698, 360 A.2d 540, 547 (1976). See also *Collier v. Travelers Ins. Co.*, 97 R.I. 315, 321, 197 A.2d 493, 496 (1964).

70. 348 U.S. 66 (1954).

71. The typical "no action" clause provides as follows:

No action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the company.

Watson v. Employers Liability Assurance Corp., 348 U.S. 66, 68 n.3 (1954). Following *Watson*, the Wisconsin legislature amended its statute to provide that a direct action was proper "even though the policy was written outside such state and contained a no action provision, provided the right of action arose in . . .

Massachusetts was without effect under Louisiana's statute, other questions relating to these statutes have not been definitely answered.⁷² For example, there remains the question of whether the insured's breach of a policy obligation, "such as giving notice of an accident and cooperating in the defense of an action,"⁷³ should relieve the insurer from liability under the policy. This issue has received inconsistent treatment, depending upon the jurisdiction. The Louisiana court, reasoning that the direct action statute was designed primarily to protect injured parties,⁷⁴ has held that the right of direct action should not be divested by acts of the insured that violate the provisions of his policy.⁷⁵ Conversely, the Wisconsin position is that "the insurer would be placed at too great a disadvantage if it were deprived of the policy defenses,"⁷⁶ and therefore has allowed such breaches to be used as a defense.⁷⁷

Another question is whether the insurer should be allowed to take advantage of personal defenses available to the insured. Although it has been criticized for creating liability where none previously existed,⁷⁸ Louisiana has denied the insurer certain defenses such as interspousal and charitable immunity.⁷⁹ Wisconsin, on the other hand, has held that where there is immunity on the part of the insured, the insurer is similarly immune from suit.⁸⁰

Finally, there is a difference of opinion as to whether direct action statutes should be applied retroactively to contracts predating

[Wisconsin]." 2 R. LONG, THE LAW OF LIABILITY INSURANCE § 20.06[3] (1978). See also LA. REV. STAT. ANN. § 22-655 (West 1959) ("This right of direct action shall exist . . . whether or not such policy contains a provision forbidding such direct action, provided the accident or injury occurred within the State of Louisiana.").

72. For an exhaustive discussion of the many problems posed by direct action statutes, including a thorough examination of the collateral estoppel and res adjudicata issues posed by such statutes, see Note, *Direct Action Statutes: Their Operational and Conflict-of-Law Problems*, 74 HARV. L. REV. 357 (1960).

73. *Id.* at 365.

74. *West v. Monroe Bakery, Inc.*, 217 La. 189, ____, 46 So. 2d 122, 129-30 (1950).

75. See *West v. Monroe Bakery, Inc.*, 217 La. 189, 46 So. 2d 122 (1950); *Edwards v. Fidelity & Cas. Co. of New York*, 11 La. App. 176, 123 So. 162 (1929); Note, 24 LA. L. REV. 118 (1963).

76. Note, *Direct Action Statutes: Their Operational and Conflict-of-Law Problems*, 74 HARV. L. REV. 357, 366 (1960).

77. See, e.g., *Tillman v. Great Am. Indem. Co. of New York*, 207 F.2d 588 (7th Cir. 1953) (cooperation clause); *Cespuglio v. Cespuglio*, 238 Wis. 603, 300 N.W. 780 (1941) (cooperation clause).

78. Note, *Direct Action Statutes: Their Operational and Conflict-of-Law Problems*, 74 HARV. L. REV. 357, 364 (1960).

79. See *Harvey v. New Amsterdam Cas. Co.*, 6 So. 2d 774 (La. Ct. App. 1942) (interspousal immunity); *Messina v. Societe Francaise de Bienfaisance et D'Assistance Mutuelle De La Nouvelle Orleans*, 170 So. 801 (La. Ct. App. 1936) (charitable immunity).

80. *Fehr v. General Accident Fire & Life Assur. Corp.*, 246 Wis. 228, 16 N.W.2d 787 (1944) (interspousal immunity).

the statute's enactment. Louisiana courts have held that the legislation was designed solely to effect a reform in remedy and procedure, and hence could be applied retroactively without impairing the obligation of the insurance contract.⁸¹ Wisconsin, however, has held that the "no action" clause in a policy secures a valuable right, and thus has refused to allow direct suits on contracts predating the statute.⁸² To avoid like problems of interpretation, any statute considered by the Maryland General Assembly should necessarily explicitly provide for such contingencies.

These divergent results, while a significant consideration in determining the desirability and content of direct action legislation, are not the principal objection to such statutes. The most frequently expressed objection is the fear that juries will not evaluate testimony fairly when the defendants before them are multi-state insurance companies with extensive assets.⁸³ It is reasoned that disclosure of the insurance company as the real party defendant will result in more numerous and inflated verdicts,⁸⁴ and that for this reason it is necessary to allow the insurer to continue to defend "under cover without disclosing its identity to the jury."⁸⁵ Although historically this argument may have been valid, its continued validity is questionable given the prevalence today of liability insurance.⁸⁶ Moreover, the fact of liability insurance may be disclosed, inadvertently or not, in a variety of other ways.⁸⁷ For example, the existence of insurance may be relevant to the question of agency or ownership of the vehicle⁸⁸ or as bearing upon the credibility of a witness.⁸⁹

81. See *Churchman v. Ingram*, 56 So. 2d 297, 306 (La. Ct. App. 1951); *Rossville Commercial Alcohol Corp. v. Dennis Sheen Transfer Co.*, 18 La. App. 725, 731-32, 138 So. 183, 187 (1931).

82. *Pawlowski v. Eskofski*, 209 Wis. 189, 244 N.W. 611 (1932).

83. Note, *Direct Action Statutes: Their Operational and Conflict-of-Law Problems*, 74 HARV. L. REV. 357, 358 (1960). It is interesting to note that Louisiana and Wisconsin, two states with direct action statutes, "have experienced very low verdicts in comparison with other states." Note, 11 SAN DIEGO L. REV. 504, 511 (1974).

84. Note, *Direct Action Statutes: Their Operational and Conflict-of-Law Problems*, 74 HARV. L. REV. 357, 358 (1960).

85. 2 R. LONG, THE LAW OF LIABILITY INSURANCE § 20.06 (1978).

Maryland adheres to the evidentiary rule that disclosure of defendant's coverage by liability insurance is inadmissible. See, e.g., *Snowwhite v. State*, Use of Tennant, 243 Md. 291, 301, 221 A.2d 342, 347 (1966) ("Generally speaking, the law is well established that in an action to recover for personal injuries or wrongful death, evidence which informs the jury that the defendant is insured is inadmissible.").

86. Note, 41 MINN. L. REV. 784, 789 (1957). See also *Takoma Park Bank v. Abbott*, 179 Md. 249, 263, 19 A.2d 169, 176 (1941).

87. C. McCORMICK, HANDBOOK OF THE LAW OF EVIDENCE § 201 (2d ed. 1972).

88. *Snowwhite v. State*, Use of Tennant, 243 Md. 291, 301 n.1, 221 A.2d 342, 347 n.1 (1966). See also C. McCORMICK, HANDBOOK OF THE LAW OF EVIDENCE § 201 (2d ed. 1972).

89. *Id.*

Furthermore, where reference to insurance is made at trial by the defendant or his witness, "the testimony is admissible and is subject to legitimate comment and argument."⁹⁰ Thus, given these exceptions to the general nondisclosure rule, coupled with the widespread existence of liability insurance, it is doubtful that today's jurors are totally ignorant of the fact that any damage award will be paid at least partially by an insurance company. Hence, the objection against disclosure of the insurer's interest in the litigation for fear of inflated verdicts may be without substance.

Additionally, it should be noted that there may be advantages to the insurance company in disclosing their interest in the litigation. By revealing their involvement the insurer has the opportunity to instruct the jury on the true function of liability insurance, together with the social consequences resulting from the imposition of an unfair burden upon the company.⁹¹ Moreover, by disclosing its interest, the insurer avoids antagonizing informed jurors by its "secretive behavior."⁹² Direct action legislation thus has the effect of allowing the injured plaintiff to sue the "real party in interest,"⁹³ while not imposing a substantially unfair burden upon the insurer.⁹⁴ Finally, direct action statutes "avoid the practical and constitutional problems caused by the attachment"⁹⁵ of insurance policies, and provide a more desirable means to achieve basically the same result.

The enactment of a direct action statute would prevent the decision in *Belcher* from being used affirmatively to avoid liability under the insurance policy, and would further the public policy favoring compensation to those injured on Maryland roadways.⁹⁶ Even under a statute similar to Rhode Island's, requiring that service of process be returned "*non est*" before the insurer may be made a party defendant,⁹⁷ the plaintiff is permitted eventually to proceed directly against the insurer. Such a procedure appears fair, especially considering that "the insurer has collected his fees to pay for just such occurrences and very likely has set up a reserve fund containing all the money necessary to reimburse the injured parties."⁹⁸ The court of appeals, however, rejected *Seider's* "judicially

90. *Snowwhite v. State*, Use of Tennant, 243 Md. 291, 302, 221 A.2d 342, 348 (1966).

91. Note, *Direct Action Statutes: Their Operational and Conflict-of-Law Problems*, 74 HARV. L. REV. 357, 358-59 (1960).

92. *Id.* at 358.

93. *Minichiello v. Rosenberg*, 410 F.2d 106, 109 (2d Cir. 1968), *aff'd on reh. en banc*, 410 F.2d 117, *cert. denied*, 396 U.S. 844 (1969); Note, 11 SAN DIEGO L. REV. 504, 512 (1974).

94. Note, *Direct Action Statutes: Their Operational and Conflict-of-Law Problems*, 74 HARV. L. REV. 357, 359 (1960).

95. Note, 11 SAN DIEGO L. REV. 504, 512 (1974).

96. See text accompanying note 50 *supra*.

97. See text accompanying note 68 *supra*.

98. 282 Md. at 726, 387 A.2d at 775.

created" direct action solution⁹⁹ to the problem by refusing to misconstrue Maryland's attachment statute. Rather, the court intimated that the appropriate solution should come from the legislature.

IV. CONCLUSION

The court of appeals in *Belcher* adopted a position consistent with that taken by the majority of courts which have considered the question of whether an insurer's contractual obligations to defend and indemnify are attachable "debts" for purposes of *quasi-in-rem* jurisdiction. The court, finding the contract provisions "uncertain" and "contingent," held, consistent with previous opinions interpreting Maryland's attachment statute, that such interests are not "property or credits" within the scope of that statute. Therefore, such interests could not serve as the base upon which to predicate *quasi-in-rem* jurisdiction.

The *Belcher* court itself, however, recognized inequities in its decision. In particular, Maryland citizens would be burdened with additional expenses resulting from increased reliance on public aid for support when the injured are unable to work and pay medical bills incurred as a result of their uncompensated injuries. And, the decision would be inconsistent with previous legislative enactments indicating a "growing belief" that those injured on Maryland roadways should be properly recompensed. Even considering these strong policy arguments, however, the court was not constrained to misconstrue Maryland's attachment statute. Rather, the court intimated that the response should come from the legislature. In light of this implicit suggestion from the court, coupled with the legislature's attitude favoring proper compensation for injured motorists, consideration of a direct action statute is likely to be forthcoming.¹⁰⁰

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99. See *Shington v. Bussey*, 223 So. 2d 713, 715 (Fla. 1969) for a true judicially created direct cause of action. The Florida court concluded that a "direct cause of action now inures to a third party beneficiary against an insurer in motor vehicle liability insurance coverage cases as a product of the prevailing public policy of Florida." See also Note, 11 SAN DIEGO L. REV. 504, 517-22 (1974).

100. In fact, on January 16, 1979, in response to the *Belcher* decision, Senate Bill No. 122 was introduced in the Maryland General Assembly. This bill authorizes service of process upon a defendant's insurance carrier in any motor vehicle tort action once the plaintiff satisfies the court that service of process on the insured defendant has twice been returned *non est*, and that all reasonable efforts to obtain service upon the defendant have been made.

Although this bill is not, in form, a "true" direct action statute because the insurer is merely the "agent" of the insured for purposes of accepting service of process, and not a party to the action, the bill is in the "nature" of a direct action statute, and would serve basically the same function.

The bill received an unfavorable committee report and was not enacted.