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Constitutional Law - Due Process - State Court Jurisdiction - Quasi in Rem Proceedings

David S. Wise

Recent Decisions

CONSTITUTIONAL LAW—DUE PROCESS—STATE COURT JURISDICTION—QUASI IN REM PROCEEDINGS—The United States Supreme Court has held that a state's assertion of *quasi in rem* jurisdiction over a nonresident defendant by attachment of the contractual obligation of the defendant's liability insurer, who is licensed to do business in the forum, is unconstitutional absent other contacts between the defendant and the forum.

Rush v. Savchuk, 444 U.S. 320 (1980).

On January 13, 1972, two Indiana residents, Jeffrey Savchuk and Randal Rush, were involved in a single car collision in Elkhart, Indiana.[1] The automobile, driven by Rush, was insured under a liability insurance policy issued in Indiana by State Farm Auto Insurance Company (State Farm).[2] Seventeen months after the accident, Savchuk moved with his parents to Minnesota where he brought suit against Rush[3] alleging negligence and seeking to recover damages[4] for injuries suffered in the collision.[5] Because Rush had no personal contacts with Minnesota to justify *in personam* jurisdiction,[6] Savchuk sought to obtain *quasi in rem* jurisdiction[7] on the basis that Rush's insurer, State

1. 444 U.S. 320, 322 (1980).

2. *Id.* State Farm is an Illinois corporation doing business in all 50 states, the District of Columbia, and several Canadian provinces. *Id.* at 323 n.4.

3. The action against Rush was filed on May 28, 1974. *Id.* at 322. Savchuk initiated this action in Minnesota rather than Indiana for two reasons: First, Indiana's guest statute, IND. CODE ANN. § 9-3-3-1 (Burns 1980), would have barred Savchuk's claim. *Id.* Second, the two-year Indiana statute of limitations had elapsed prior to Savchuk's commencement of this action. 444 U.S. at 322 n.2.

The decision of the Minnesota trial court was not reported.

4. Savchuk in his original complaint sought $125,000 in damages. 444 U.S. at 323. This was later voluntarily reduced to $50,000, the face value of Rush's liability insurance policy. *Id.* at 323 n.5.

5. *Id.* at 323.

6. *In personam* jurisdiction is based upon the court's authority over the defendant's person. Shaffer v. Heitner, 433 U.S. 186, 199 (1977). A judgment *in personam* imposes a personal liability on one person in favor of another. RESTATEMENT OF JUDGMENTS, ch. 1, Introductory Note at 5 (1942), *quoted in* Hanson v. Denckla, 357 U.S. 235, 246 n.12 (1958).

7. Jurisdiction based upon the court's authority over property is designated *in rem* or *quasi in rem*. 433 U.S. at 199. Strictly speaking, a proceeding *in rem* is one taken directly against designated property to determine the interests of all persons therein. An action *quasi in rem* is brought to determine the interests of particular persons in designated property. In one form of *quasi in rem* action, the plaintiff seeks to satisfy a claim against the defendant by securing designated property of the defendant. In another

Farm, did business in Minnesota[8] and that State Farm's insurance obligation[9] to Rush was a garnishable *res* present in Minnesota.[10] Following this theory, Savchuk garnished Rush's insurance policy[11] and sought to join State Farm, the garnishee, as a party to the action.[12] The Minnesota trial court denied a motion to dismiss for lack of jurisdiction[13] and granted Savchuk's motion allowing him to join State Farm by supplemental complaint.[14]

The Minnesota Supreme Court affirmed the trial court's ruling,[15] determining that an insurance company's obligation to defend and indemnify a nonresident under an automobile liability insurance policy is a garnishable *res* in Minnesota. Where the plaintiff is a Minnesota resident at the time of the suit, the policy obligation is sufficient to sustain *quasi in rem* jurisdiction over the nonresident even though the actionable incident occurred outside the forum.[16] The Minnesota court concluded that the result was fair because in accident litigation the insurer, not the insured, controls the defense of the case, and State Farm, the insurer, did business in and was regulated by the State of Minnesota.[17]

On appeal to the United States Supreme Court,[18] the Minnesota judgment was vacated and remanded for further consideration in light of *Shaffer v. Heitner*.[19] The Supreme Court had held in *Shaffer* that all

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form, the plaintiff seeks to establish his rights vis-a-vis those of the defendant in the designated property. RESTATEMENT OF JUDGMENTS, ch. 1, Introductory Note at 6-9 (1942), *quoted in* Hanson v. Denckla, 357 U.S. at 246 n.12.

8. *See* note 2 *supra*.

9. The liability policy issued on the Rush automobile obligated State Farm to defend and indemnify Rush in any action covered under the policy. 444 U.S. at 322.

10. *Id.*

11. Service was made upon State Farm by delivery of a copy of the garnishment summons to the Commissioner of Insurance for Minnesota pursuant to Minnesota law. A copy of the garnishment summons along with the summons and complaint was served personally upon Rush in Indiana. Savchuk v. Rush, 311 Minn. 480, 481, 245 N.W.2d 624, 626 (1976), *vacated and remanded*, 433 U.S. 902 (1977).

12. 444 U.S. at 323.

13. *Id.* at 324. The defendant's motion to dismiss also alleged a lack of subject-matter jurisdiction, insufficiency of process, and insufficiency of service of process. *Id.* at 324 n.7.

14. *Id.* at 324.

15. 311 Minn. at 481, 245 N.W.2d at 626. The court split four to one in favor of affirming the trial court decision. *Id.* at 480, 245 N.W.2d at 625.

16. *Id.* at 485, 245 N.W.2d at 628. The Minnesota court also found this assertion of jurisdiction to be constitutional because Rush had notice of the suit and an opportunity to defend. Additionally, his liability was limited to the face amount of his insurance policy and the garnishment procedure was available only to Minnesota residents. *Id.* at 488, 245 N.W.2d at 629.

17. *Id.* at 488, 245 N.W.2d at 629.

18. 433 U.S. 902 (1977).

19. 433 U.S. 186 (1977).

assertions of state court jurisdiction must be supported by the same minimum contacts required of *in personam* jurisdiction.[20]

On remand, the Minnesota Supreme Court[21] found that the assertion of *quasi in rem* jurisdiction through the garnishment of an insurer's obligation to an insured complied with the due process standards enunciated by the *Shaffer* Court.[22] The Minnesota court determined that the garnished property was intimately related to the litigation between Savchuk and Rush.[23] The court thereby distinguished *Shaffer*[24] because the property providing the *quasi in rem* jurisdiction in *Shaffer* was completely unrelated to the asserted claim.[25] Accordingly, the Minnesota Supreme Court again affirmed the trial court's decision.[26] For the second time, the defendants appealed to the Supreme Court of the United States, where the Minnesota judgment was again reversed.[27]

Justice Marshall, writing for the majority,[28] addressed the issue of whether a state may constitutionally exercise *quasi in rem* jurisdiction over a defendant who has no forum contacts by attaching the contractual obligation of his insurer who is licensed to do business in the state.[29] The Court looked to the due process standards set forth in *International Shoe Co. v. Washington*[30] and *Shaffer v. Heitner*[31] as controlling. According to the rules enunciated in these two cases, the exercise of *quasi in rem* jurisdiction over nonresident defendants must be judged on the basis of the relationship among the defendant, the forum, and the litigation. This relationship must be indicative of certain minimum contacts with the forum.[32]

Applying these criteria, the majority observed that Rush never had any contacts with Minnesota, and the accident at issue had occurred in Indiana. The only premise offered by the plaintiff to support the

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20. *Id.* at 212. *See* note 78 *infra.*

21. Savchuk v. Rush, 311 Minn. 496, 272 N.W.2d 888 (1978), *rev'd*, 444 U.S. 320 (1980).

22. *Id.* at 497, 272 N.W.2d at 888.

23. *Id.* at 503, 272 N.W.2d at 892.

24. *Id.* at 502-03, 272 N.W.2d at 891-92.

25. *See* Shaffer v. Heitner, 433 U.S. at 208-09.

26. 311 Minn. at 496, 272 N.W.2d at 888.

27. 444 U.S. at 333. On the same day that *Rush* was decided, the Court handed down the decision in World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980), holding that minimum contacts were lacking for a state's exercise of *in personam* jurisdiction over foreign salesmen.

28. Chief Justice Burger and Justices Stewart, White, Blackmun, Powell, and Rehnquist joined in Justice Marshall's majority opinion. Justices Brennan and Stevens filed separate opinions in dissent.

29. 444 U.S. at 322.

30. 326 U.S 310 (1945) (due process requires that the defendant have certain minimum contacts with the forum).

31. 433 U.S. 186 (1977).

32. 444 U.S. at 327.

jurisdiction of the Minnesota court was that Rush's insurance company conducted business within the state.[33] The insurance policy, although related to the negligence action, was not the subject matter of the action. The Court concluded that this contact alone was insufficent to support jurisdiction.[34] The Court recognized that the ownership of property within a state may suggest the presence of other ties;[35] however, in this case, the defendant's ownership of a debt in the forum was not indicative of further contacts between the defendant and the forum. State Farm's decision to conduct business in Minnesota was completely unrelated to Rush.[36] Accordingly, the mere existence of State Farm's insurance obligation was not a sufficient basis for the jurisdiction of the Minnesota court over Rush.[37]

Having concluded that Minnesota could not justify assertion of jurisdiction over Rush based upon the minimum contacts analysis, the Court next addressed the theory that the attachment of the insurer's obligation was the functional equivalent of a direct action against the insurer.[38] This theory emphasizes the primary role of the insurer in the defense of the action, portraying the role of the insured as nominal because his liability is limited to the value of the insurance policy.[39] The *Rush* Court refused to recognize such an attachment as a direct action equivalent because the insurer's entry into the case is dependent upon the state's ability under the Constitution to assume jurisdiction over the insured.[40]

Justice Marshall concluded the opinion by observing that the Minnesota court had shifted the focus of the jurisdictional inquiry from the

33. *Id.* at 327-28. The Court noted that the state had combined two legal fictions in assuming *quasi in rem* jurisdiction over Rush, a nonresident: the legal fiction that a debt can be garnished where the debtor is found was combined with the legal fiction that a corporation is present for jurisdictional purposes wherever it is found. *Id.* at 328.

34. *Id.* at 329-30.

35. *See* Shaffer v. Heitner, 433 U.S. at 209.

36. 444 U.S. at 328-29. The majority believed it unlikely that Rush could have expected his purchase of insurance in Indiana to subject him to suit in any state where a future plaintiff might decide to relocate. *Id.* at 329.

37. *Id.* at 329-30.

38. *Id.* at 330. A direct action statute authorizes a lawsuit against the tortfeasor's insurer directly without involving the tortfeasor. *See* Watson v. Employers Liability Assurance Corp., 348 U.S. 66, 68 n.4 (1954) (upholding Louisiana direct action statute). In those states which have enacted direct action statutes, some contact with the forum other than power over the insurer and residence of the injured party is required. *See* LA. REV. STAT. ANN. § 22:655 (West 1978) (accident occurring within the state); P.R. LAWS ANN. tit. 26, § 2003(1) (1976) (accident occurring within the jurisdiction); R.I. GEN. LAWS § 27-7-2 (1979) (action on policy issued within the state when the assured cannot be served locally).

39. 444 U.S. at 330.

40. *Id.* at 330-31. The Court also cast doubt on the premise that an insured has no real stake in the litigation. *Id.* at 331 n.20.

relationship among the defendant, the forum, and the litigation to the relationship among the plaintiff, the forum, and the insurer. This subtle shift of focus placed greater emphasis upon the plaintiff's contacts with the forum than the defendant's.[41] The Court deemed such an approach to be contrary to the rules laid down by *International Shoe* and its progeny. The judgment of the Minnesota Supreme Court was reversed for the second time.[42]

Justice Stevens, dissenting in a brief opinion,[43] argued for the adoption of the direct action theory.[44] In his estimation, the rule of *Shaffer*, which precludes *quasi in rem* jurisdiction over a nonresident defendant where his property within the forum is completely unrelated to the litigation, does not also preclude the assertion of such jurisdiction where the property is related to the litigation.[45] Justice Stevens concluded that the assertion of *quasi in rem* jurisdiction is legitimate where the plaintiff is a forum resident and the state assumes no power over the individual defendant, dealing only with his debt present within the state.[46]

Justice Brennan, dissenting in a separately reported opinion,[47] found the Court's interpretation of *International Shoe* and its progeny unacceptable. He advocated a broader reading of *International Shoe*, limiting the exercise of state court jurisdiction only where it offends traditional notions of fair play and substantial justice.[48] His reading of *International Shoe* emphasized fairness and reasonableness as the key determinant of jurisdiction, with forum contacts serving only to aid in the determination of fairness and reasonableness.[49] Applying this test, Justice Brennan found Minnesota's assertion of *quasi in rem* jurisdiction neither unfair nor unreasonable. Because the insurer controlled the defense, Rush was not burdened by the imposition of out-of-state jurisdiction.[50] Even if the minimum contacts analysis were controlling, Justice Brennan believed that the requisite contacts between the defendant and the forum were present because Rush took advantage of a nationwide insurance network by choosing State Farm as his carrier.[51]

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41. *Id.* at 332.
42. *Id.* at 332-33.
43. *Id.* at 333 (Stevens, J., dissenting).
44. *See* note 38 and accompanying text *supra*.
45. 444 U.S. at 333 (Stevens, J., dissenting).
46. *Id.* at 333-34 (Stevens, J., dissenting).
47. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 299 (1980) (Brennan, J., dissenting).
48. *Id.* at 300 (Brennan, J., dissenting).
49. *Id.*
50. *Id.* at 303 (Brennan, J., dissenting).
51. *Id.* at 304 (Brennan, J., dissenting).

Justice Brennan continued by questioning the reliance on *International Shoe* as jurisdictional precedent.[52] Citing the increased nationalization of commerce and ease of transportation and communication, he reasoned that the Court's preoccupation with the rights of the defendant is no longer justified. Justice Brennan argued that the interests of the forum state and parties other than the defendant are entitled to as much weight as those of the defendant.[53]

A close analysis of the case law defining state court jurisdiction reveals that the conclusion reached by the majority of the *Rush* Court is consistent with the precedent in this area. The body of law from which the conflict in *Rush* evolved has its roots in *Pennoyer v. Neff*[54] where the Supreme Court formulated the constitutional basis for state court jurisdiction.[55] Emphasizing the territorial nature of a state's power, the *Pennoyer* Court recognized the principle that each state maintains exclusive jurisdiction over persons or property within its territory.[56] This dichotomy between persons and property gave rise to two classifications of state court jurisdiction: (1) *in personam* jurisdiction, based upon the state's direct authority over the defendant and service of process upon the defendant within the forum state;[57] and (2) *in rem* jurisdiction, based upon the state's authority over property within the forum state where the action is brought to determine the interests of all persons in that property.[58] Although the distinction between these two classes of jurisdiction was recognized prior to *Pen-*

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52. *Id.* at 307-09 (Brennan, J., dissenting).

53. *Id.*

54. 95 U.S. 714 (1877). In *Pennoyer*, Mitchell had obtained a judgment in Oregon against Neff for collection of attorney's fees at a time when Neff was neither a resident nor a property owner of that state. When Neff later acquired property in Oregon, Mitchell used it to acquire jurisdiction over Neff pursuant to Oregon law, giving notice by publication. Neff did not appear and a default judgment was entered against him. Pennoyer purchased the land in question at a sheriff's sale held to satisfy the judgment against Neff. Neff brought an ejectment action in the United States Circuit Court for the District of Oregon against Pennoyer challenging the validity of jurisdiction in the prior action. The district court rejected the validity of Mitchell's judgment and awarded the property to Neff. The decision was affirmed by the Supreme Court. *Id.* at 733-36.

55. *See* Hazard, *A General Theory of State-Court Jurisdiction*, 1965 SUP. CT. REV. 241.

56. 95 U.S. at 722.

57. *See* Shaffer v. Heitner, 433 U.S. at 199. *See, e.g.*, International Shoe Co. v. Washington, 326 U.S. at 316; Pennoyer v. Neff, 95 U.S. at 720. *See also* note 6 *supra.*

58. *See* Shaffer v. Heitner, 433 U.S. at 199 & n.17. *See, e.g.*, Hanson v. Denckla, 357 U.S. at 246-48; Pennoyer v. Neff, 95 U.S. at 722-23. *See also* note 7 *supra.* The territoriality approach of *Pennoyer* remained good law until *Shaffer*, where the Supreme Court held that all assertions of state court jurisdiction must be supported by the same minimum contacts required of *in personam* jurisdiction. 433 U.S. at 212.

noyer, it was this case which first raised the dichotomy to a constitutionally significant level.[59]

The territorial approach to state court jurisdiction formulated in *Pennoyer* remained essentially unchanged[60] until *International Shoe Co. v. Washington*.[61] The Court in *International Shoe* abandoned the concept of territorial authority in *in personam* jurisdiction and adopted a broader theory requiring that the defendant have certain minimum contacts with the forum such that the state's exercise of jurisdiction does not offend traditional notions of fair play and substantial justice.[62]

A third classification of state court jurisdiction, denoted *quasi in rem*, is based upon the state's authority over property situated within the forum state and consists of two distinct types of actions.[63] In the first, the plaintiff seeks to assert his rights in the designated property as superior to those of the defendant.[64] This form of *quasi in rem* proceeding developed as a variation of the pure *in rem* proceeding and is often broadly designated *in rem* because both types of actions arise from the property forming the basis for jurisdiction.[65]

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59. Zammit, *Quasi-In-Rem Jurisdiction: Outmoded and Unconstitutional?* 49 ST. JOHN'S L. REV. 668 (1975) [hereinafter cited as Zammit].

60. In *Pennoyer*, Justice Field noted certain exceptions to the territorialist theory of jurisdiction. Actions involving personal status of the plaintiff, such as divorce, could be adjudicated in the plaintiff's home state even though the defendant could not be personally served there. 95 U.S. at 733-35. The Court also approved the legal fiction that a corporation impliedly consents to suit by conducting business within a state. *Id.* at 735-36. This same reasoning was later applied to achieve jurisdiction over an out-of-state motorist who used the state's highways. *See* Hess v. Pawloski, 274 U.S. 352 (1927).

61. 326 U.S. 310 (1945). In *International Shoe*, the State of Washington had asserted *in personam* jurisdiction over the International Shoe Company in a suit to collect unemployment taxes. The International Shoe Company was a Delaware corporation whose principal place of business was St. Louis, Missouri. All manufacturing facilities were located outside Washington. For the years in question, International Shoe employed between 11 and 13 Washington residents, under the supervision and control of the St. Louis office, to act as salesmen. Each salesman was supplied with samples and conducted sales operations without a permanent location. No contracts for sale or purchase were made in Washington. *Id.* at 313-14. Striking down the rule that a defendant must be present in the forum to be subject to personal jurisdiction, the Supreme Court held that due process required only that the defendant have certain minimum contacts with the forum such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *Id.* at 316. The Court found that the defendant's acts in systematically conducting business under the protection of the laws of Washington constituted such contact as to make the assertion of jurisdiction reasonable and just. *Id.* at 320.

62. *Id.* at 316.

63. *See* Shaffer v. Heitner, 433 U.S. at 199 & n.17. *See, e.g.*, Hanson v. Denckla, 357 U.S. at 246-48. *See generally* Zammit, note 59 *supra*. *See also* note 7 *supra*.

64. 433 U.S. at 199 n.17. This category includes such proceedings as actions to foreclose liens on real property and forfeiture proceedings for transgression of the custom laws. Smit, *The Enduring Utility of In Rem Rules: A Lasting Legacy of Pennoyer v. Neff*, 43 BROOKLYN L. REV. 600, 615 (1977) [hereinafter cited as Smit].

65. Smit, *supra* note 64, at 615 & n.55.

In the second type of *quasi in rem* action, the plaintiff seeks to apply property of the nonresident defendant to the satisfaction of a claim which is wholly unrelated to that property.[66] This type of proceeding developed gradually into its present form independent of the development of *in rem* proceedings.[67] In *Harris v. Balk*,[68] the Court extended the concept of attachable property to include intangibles, holding that a debt owed by a third party to the defendant was present wherever the debtor was present and consequently could be attached in any forum in which the debtor was found.[69] This concept was used by the New York Court of Appeals in fashioning the unique jurisdictional theory presented in *Seider v. Roth*.[70]

The plaintiffs in *Seider* were New York residents who suffered injuries in an automobile accident in Vermont, allegedly as a result of the negligence of the defendant, a citizen of Canada. The plaintiffs sought to establish *quasi in rem* jurisdiction by attaching the contractual obligation of the defendant's insurer to defend and indemnify the defendant under a policy of automobile liability insurance. In concluding that the plaintiffs could validly compel the defendant to defend in New York by attaching the contractual obligation, the court of appeals found that the obligation constituted an attachable debt under New York law.[71] The court, by its finding, created the theoretical basis for the *quasi in rem* jurisdiction asserted in *Rush*.[72]

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66. *Id.* at 615.

67. *Id. See generally* C. DRAKE, A TREATISE ON THE LAW OF SUITS BY ATTACHMENTS IN THE UNITED STATES § 4 (6th ed. 1885), *noted in* Smit, *supra* note 64, at 615 n.56. The *Pennoyer* Court spoke approvingly of the possibility of *quasi in rem* jurisdiction. 95 U.S. at 733.

68. 198 U.S. 215 (1905).

69. *Id.* at 225-26. Harris, a resident of North Carolina, owed money to Balk, also a resident of North Carolina. Epstein, a resident of Maryland, had a claim against Balk. When Harris happened to be in Maryland, Epstein garnished his debt to Balk. Harris did not contest the action and paid the debt to Epstein. When Balk later sued Harris in North Carolina, Harris pleaded the Maryland judgment in satisfaction. The Supreme Court held the Maryland garnishment valid and Harris' debt discharged. *Id.* at 226.

70. 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966).

71. *Id.* at 113, 216 N.E.2d at 314, 269 N.Y.S.2d at 101. Judge Burke, in his dissent, pointed out the bootstrap nature of the reasoning relied upon by the majority. Quite simply, the asserted jurisdiction was based upon a promise which did not mature until jurisdiction was established. *Id.* at 115, 216 N.E.2d at 315, 269 N.Y.S.2d at 103. This problem did not arise in *Rush* because Minnesota law made the insurer's obligation attachable. 444 U.S. at 328 n.14.

Seider-type jurisdiction has been rejected on the basis of state law or constitutional grounds in California, Connecticut, Louisiana, Maryland, Missouri, New Jersey, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Utah, and Vermont. *Id.* at 327 n.13.

72. *Seider*-type jurisdiction was adopted by only two states other than New York. Minnesota adopted *Seider* jurisdiction statutorily. New Hampshire courts recognized *Seider* jurisdiction where the defendant was a resident of a forum which had adopted *Seider* jurisdiction. 444 U.S. at 326-27.

Since the creation of the *Seider* doctrine by the New York Court of Appeals, its constitutionality has been sustained on two independent theories: the theory of *quasi in rem* jurisdiction; and the theory of a judicially-created direct action. Most courts have relied simultaneously upon both theories to sustain the *Seider* doctrine. The New York Court of Appeals sustained the constitutionality of *Seider* in *Simpson v. Loehmann*,[73] relying primarily on a *quasi in rem* theory and finding the insurer's contractual obligation to be a local property interest subject to attachment.[74] Although the court denied that it was creating a direct action, it emphasized the controlling role of the insurer in the defense as further justification for its action.[75]

The United States Court of Appeals for the Second Circuit first considered the *Seider* doctrine in *Minichiello v. Rosenberg*.[76] The majority opinion by Judge Friendly relied almost exclusively on the direct action theory in sustaining *Seider's* constitutionality. On rehearing, the court cited *Harris v. Balk* as support for the *quasi in rem* theory of an attachable debt present in the forum.[77]

The Supreme Court's decision in *Shaffer*[78] followed *Seider* by eleven years and raised significant questions about the validity of the *quasi in rem* jurisdiction imposed by the *Seider* court.[79] The *Shaffer* Court

73. 21 N.Y.2d 305, 234 N.E.2d 669, 287 N.Y.S.2d 633 (1967), *rehearing denied*, 21 N.Y.2d 990, 238 N.E.2d 319, 290 N.Y.S.2d 914 (1968).

74. *Id.* at 310, 234 N.E.2d at 671, 287 N.Y.S.2d at 636.

75. *Id.* at 311, 234 N.E.2d at 672, 287 N.Y.S.2d at 637.

76. 410 F.2d 106 (2d Cir. 1968), *cert. denied*, 396 U.S. 844 (1969).

77. 410 F.2d at 117, 118-19.

78. In *Shaffer*, Heitner had filed a shareholder's derivative suit in Delaware against Greyhound Corporation, a Delaware corporation, its subsidiary, and 28 present or former officers and directors of the corporation. The suit alleged activities resulting in antitrust liability which amounted to breach of duty. Heitner also filed a motion to sequester the nonresident defendants' stock in Greyhound Corporation. Although none of the certificates of ownership was present in Delaware, the situs of ownership under Delaware law was Delaware. 433 U.S. at 189-92. The Supreme Court overturned Delaware's assertion of *quasi in rem* jurisdiction over the nonresident corporate fiduciaries where the basis for jurisdiction over the nonresidents was the presence of their stock in the forum. The Court held that the standards of fairness set forth in International Shoe Co. v. Washington, 326 U.S. 310 (1945), *see* note 61 *supra*, should rule actions *in rem* and *quasi in rem* as well as actions *in personam*. 433 U.S. at 212. Consequently, a state may exercise *quasi in rem* jurisdiction over a nonresident defendant only if he has certain minimum contacts with the forum. *Id.*

79. The United States Court of Appeals for the Second Circuit considered the post-*Shaffer* constitutionality of *Seider* jurisdiction in O'Connor v. Lee-Hy Paving Corp., 579 F.2d 194 (2d Cir.), *cert. denied*, 439 U.S. 1034 (1978). The court relied upon both the *quasi in rem* theory and the direct action theory to sustain *Seider*-type jurisdiction. Although the direct action nature of the arguments was not expressed, the court found the controlling role of the insurer and the nominal burden on the defendant to be important. The *quasi in rem* theory was asserted when the court distinguished *Shaffer* on the basis of the

recognized that jurisdiction over property is actually jurisdiction over the interests of a person in the property.[80] Based on this premise, the Court extended the minimum contacts standard of *International Shoe* and its progeny to encompass actions *in rem* and *quasi in rem* as well as *in personam*.[81] The *Shaffer* Court held that the mere presence of the defendant's property in the state was insufficient to support the state's jurisdiction, although the presence of this property might suggest the existence of other contacts among the defendant, the forum, and the litigation.[82] Where, as in *Shaffer*,[83] the property attached is completely unrelated to the asserted cause of action, the property's presence does not suggest other contacts and an assertion of jurisdiction cannot be justified.[84]

In applying the minimum contacts analysis demanded by *International Shoe* and *Shaffer*, the *Rush* Court was consistent with the Court's prior constructions of that test.[85] Savchuk asserted that the insurer's obligation was property related to the cause of action and, thus, was distinguishable from the property in *Shaffer* which was completely unrelated to the asserted claim.[86] This argument, however, does not support Minnesota's assertion of jurisdiction, for the heart of the jurisdictional analysis is the triad of contacts among the defendant, the forum, and the litigation.[87] The presence of the defendant's property within the forum constitutes a contact between the defendant and the forum, but one which is insufficient to support jurisdiction by itself.[88]

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debt attached. In *Shaffer* the debt was completely unrelated to the cause of action. In *O'Connor* the court found a unique relationship between the insurer's contractual obligation and the litigation. *Id.* at 198-99.

80. 433 U.S. at 207.

81. *Id.* at 212.

82. *Id.* at 209.

83. The *Shaffer* Court spoke of three types of relationships between the property and the cause of action. Where the property is the source of the underlying controversy, jurisdiction may be acquired by attaching the property. The Court stated that presence of the property may favor jurisdiction where the cause of action is related to rights and duties growing out of ownership of the property, as in injury suffered on land of a nonresident. Finally, the Court stated that jurisdiction is not justified where the property is completely unrelated to the cause of action. *Id.* at 207-08.

84. *Id.* at 209.

85. *See* Shaffer v. Heitner, 433 U.S. 186 (1977) (attachment of nonresident defendants' stock in a locally chartered corporation is insufficient contact to support *quasi in rem* jurisdiction); Hanson v. Denckla, 357 U.S. 235 (1958) (domicile within the forum of settlor and most of the parties is insufficient contact to support *in personam* jurisdiction over nonresident trustee); International Shoe Co. v. Washington, 326 U.S. 310 (1945) (foreign corporation conducting limited sales operation within the forum has sufficient contacts to support *in personam* jurisdiction).

86. Appellee's Motion to Dismiss or Affirm at 3.

87. *See* text accompanying note 32 *supra*.

88. 433 U.S. at 209.

The role of the relationship between the defendant's property and the cause of action is one of utility, that is, to point to the existence of additional contacts that might exist within the triad.[89] Where no additional contacts are suggested by the existence of the property within the forum, appropriate minimum contacts are lacking and the assertion of jurisdiction is void. Thus, the *Rush* Court's conclusion that the attached property must be either the subject matter of the action or related to the operative facts of the negligence action[90] is consistent with *Shaffer*.

The *Rush* Court concluded that *Seider* actions are not the equivalent of direct actions. In a direct action, the plaintiff need only acquire valid *in personam* jurisdiction over the insurer.[91] In a *Seider* action, valid jurisdiction must be obtained over the defendant-tortfeasor before the insurer may be brought into the action.[92] The question left unanswered by the Court is whether a direct action statute granting a cause of action against the insurer without regard to the insured's contacts with the forum is consistent with due process.[93] This issue did not confront the Court in *Rush*. A combination of several factors, however, suggests that this question may well arise in the future. The first of these factors is the Court's opinion in *Watson v. Employers Liability Assurance Corp.*[94] The primary issue considered in *Watson* was whether the United States Constitution forbids Louisiana to apply its own law and compels it to apply the law of the state where the insurance contract was formed or the state in which the corporate defendant was incorporated.[95] In sustaining the constitutionality of Louisiana's direct action statute, the *Watson* Court concluded that Louisiana's interest in caring for those injured within the forum outweighed the interest of Massachusetts in safeguarding the freedom of contract among its residents.[96] Although the Louisiana statute required that the injury occur within the forum,[97] the *Watson* Court did not discuss the nature of the contacts between the parties and the forum constitutionally required

89. *Id.* at 208.

90. 444 U.S. at 329.

91. *See* note 38 *supra*.

92. 444 U.S. at 330-31.

93. There is a distinction between a direct action statute and the direct action theory advanced to support *Seider*-type jurisdiction. In the former the insurer is the only defendant; whereas in the latter the insured and the insurer are defendants.

The constitutionality of a direct action statute may involve issues other than the minimum contacts between the insured and the forum required by due process. *See* note 95 and accompanying text *infra*.

94. 348 U.S. 66 (1954).

95. *Id.* at 69.

96. *Id.* at 73.

97. *See* note 38 *supra*.

for a valid direct action statute.[98] As a result, the reasoning used by the *Watson* Court in sustaining the direct action statute has been interpreted by some as suggesting that a *Seider*-type direct action statute is constitutionally valid,[99] while others reach the opposite conclusion.[100]

The second of the factors suggesting that the Court may someday have to consider the constitutionality of a *Seider*-type direct action statute is the importance attached by the courts of New York and the Second Circuit to the direct action theory in sustaining *Seider* jurisdiction.[101] Implicit in the justification of a *Seider* action based on an analogy to a direct action is the assumption that a direct action statute which grants a cause of action against the insurer in *Seider* situations is constitutional in light of *Watson*. The absence of any discussion of this issue by the *Rush* Court leaves room for the interpretation that such a statute is indeed constitutional. In view of the extended effort required to dispel *Seider* from the judicial arena, it is not altogether unlikely that a *Seider*-type direct action statute will one day confront the Court.

Despite the opinion's lack of discussion of direct action statutes, it is difficult to conceive how merely changing the origin of a legal result can remedy its due process transgressions. In *Shaffer* the Court indicated that if a direct assertion of jurisdiction over the defendant would violate the Constitution, an indirect assertion of that jurisdiction would be equally impermissible.[102] It would seem that a direct action statute granting a cause of action against the insurer without regard to the minimum contacts among the tortfeasor, the forum, and the litigation amounts to little more than an indirect assertion of jurisdiction over the tortfeasor and, thus, is unconstitutional.

The *Rush* Court completed a job begun several years before by the *Shaffer* Court, putting a resolute end to the *Seider* doctrine. As

98. Justice Black, writing for the majority, emphasized that Louisiana had a substantial interest in safeguarding the rights of persons injured in Louisiana. 348 U.S. at 72-73. The appearance of this statement at several points in the opinion forms the basis for the argument that Louisiana's direct action statute would not have been constitutional had the injury in *Watson* occurred outside the forum. Justice Black also made a statement, however, which could be interpreted as implying that an economic interest on the part of Louisiana, as in compensating a hospital for treatment of an accident victim, would be sufficient to sustain the validity of the direct action statute. *See id.* at 72.

99. *See* Minichiello v. Rosenberg, 410 F.2d at 110; Note, *Judicially Enacted Direct Action Statutes: Soundness of the New York Rule*, 10 B.C. INDUS. & COM. L. REV. 711, 721 (1969).

100. *See* Note, *Minichiello v. Rosenberg: Garnishment of Intangibles—In Search of a Rationale*, 64 NW. U.L. REV. 407, 419-22 (1970); Note, *Minimum Contacts Analysis Extended to Assertions of In Rem Jurisdiction: Shaffer v. Heitner*, 19 B.C.L. REV. 772, 793-95 (1978).

101. *See* text accompanying notes 73-77 and note 79 *supra*.

102. 433 U.S. at 209.

jurisdictional case law, *Rush* is foreshadowed by *International Shoe* and *Shaffer* because it does little more than reaffirm and perhaps strengthen the minimum contacts doctrine announced therein. The importance of the case lies in its conclusive rejection of the remnants of the *Seider* doctrine which had survived *Shaffer*.

David S. Wise