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# Civil Procedure—Quasi-in-Rem Jurisdiction—Attachment of Insurer's Obligation to Nonresident Defendant (Seider Rule) Unconstitutional

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CIVIL PROCEDURE—QUASI-IN-REM JURISDICTION—ATTACHMENT OF INSURER'S OBLIGATION TO NONRESIDENT DEFENDANT (SEIDER RULE) UNCONSTITUTIONAL—*Rush v. Savchuk*, 444 U.S. 320 (1980).

Two Indiana residents were involved in a single car accident in Elkhart, Indiana on January 13, 1972. Savchuk was injured while riding as a passenger in a car driven by Rush. The car was owned by Rush's father who had a liability insurance policy issued in Indiana with State Farm Mutual Automobile Insurance Company (State Farm).

In June 1973, Savchuk moved with his parents to Minnesota, and in 1974 he brought suit against Rush in Minnesota state court.<sup>1</sup> Rush lacked sufficient contacts with the forum state to sustain in personam jurisdiction.<sup>2</sup> Savchuk therefore attempted to obtain quasi-in-rem jurisdiction over Rush<sup>3</sup> by garnishing State Farm's obligation to defend and indemnify Rush under the insurance policy since State Farm does business in Minnesota.<sup>4</sup> State Farm, in re-

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1. *Savchuk v. Rush*, 311 Minn. 480, 245 N.W.2d 624 (1976), *vacated and remanded*, 433 U.S. 902 (1977).

The plaintiff brought his action in Minnesota because his claim would have been barred by the Indiana Guest Statute. IND. CODE ANN. § 9-3-3-1 (Burns 1980). Also, by the time the trial court ruled on Savchuk's motion to file a supplemental complaint, the Indiana two-year statute of limitations would have run. The constitutionality of the choice-of-law rule that would apply forum law in this case was not contested. *Rush v. Savchuk*, 444 U.S. 320, 325 n.8 (1980).

2. In *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), the assertion of in personam jurisdiction was held to be predicated upon certain "minimum contacts" between the defendant, the forum, and the litigation. Prior to *International Shoe*, subject to some exceptions based on fictions, a defendant had to be present within the forum state for the state to exercise jurisdiction over the defendant. *Pennoyer v. Neff*, 95 U.S. 714 (1877).

3. There are two types of quasi-in-rem proceedings. In one the plaintiff is seeking to secure a pre-existing claim in the subject property. In the other, which will be discussed in this Note, "the plaintiff does not assert that he has an interest in the thing, but asserts a claim against the defendant personally and seeks, by attachment or garnishment, to apply the thing to the satisfaction of his claim against the defendant." RESTATEMENT (SECOND) OF CONFLICTS OF LAWS §§ 56-68, Introductory Note at 191 (1971). See *Harris v. Balk*, 198 U.S. 215 (1905).

4. *Savchuk v. Rush*, 311 Minn. 480, 482, 245 N.W.2d 624, 626 (1976), *vacated and remanded*, 433 U.S. 902 (1977). MINN. STAT. ANN. § 571.41, subd. 2 (Cum. Supp. 1981) states in pertinent part:

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

sponse to the garnishment summons, replied that it owed nothing to Rush. Savchuk moved for permission to file a supplemental complaint making State Farm a party to the action.<sup>5</sup> Rush and State Farm moved to dismiss the complaint for lack of jurisdiction. The trial court granted leave to amend the complaint and denied Rush's and State Farm's motion to dismiss.<sup>6</sup>

The Minnesota Supreme Court affirmed the judgment of the trial court holding that, under the Minnesota statute,<sup>7</sup> State Farm's obligation to defend and indemnify Rush is a res subject to prejudgment garnishment.<sup>8</sup> The court held that such garnishment could be used to obtain quasi-in-rem jurisdiction over a defendant in an action grounded on an incident occurring outside the forum state as long as the plaintiff is a resident of the forum state.<sup>9</sup> The court also held that the assertion of jurisdiction over Rush was constitutional because he had notice of the suit and an opportunity to defend, his liability was limited to the amount of the policy, and the garnish-

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 (b) If the court shall order the issuance of such summons, if a summons and complaint is filed with the appropriate court and either served on the defendant or delivered to a sheriff for service on the defendant not more than 30 days after the order is signed, and if, upon application to the court it shall appear that:

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

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

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

5. MINN. STAT. ANN. § 571.495 (Cum. Supp. 1981) requires the garnishee to disclose the amount of his debt to the defendant. Where the garnishee denies any liability, the judgment creditor may file a supplemental complaint making the garnishee a party to the action. MINN. STAT. ANN. § 571.51 (Cum. Supp. 1981).

6. Rush and State Farm moved to dismiss the complaint for lack of jurisdiction over the defendant and for lack of subject matter jurisdiction, insufficiency of process, and insufficiency of service of process.

7. MINN. STAT. ANN. § 571.41, subd. 2 (Cum. Supp. 1981).

8. Savchuk v. Rush, 311 Minn. 480, 485, 245 N.W.2d 624, 628 (1976), *vacated and remanded*, 433 U.S. 902 (1977).

9. *Id.* The court relied upon a threefold test for determining the constitutionality of garnishing the insurer's obligation to defend the insured: (1) proper notice must be given the defendant to afford him adequate opportunity to defend his property; (2) the defendant cannot be exposed to liability greater than the policy limits; (3) the procedure may be utilized only by residents of the forum state. The court was following a precedent set by the New York courts. *See Seider v. Roth*, 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966).

ment procedure is available only to Minnesota residents.<sup>10</sup> On appeal, the United States Supreme Court vacated the decision and remanded it<sup>11</sup> for further consideration in light of the Court's decision in *Shaffer v. Heitner*.<sup>12</sup>

The Minnesota Supreme Court held on remand that garnishment of an insurer's obligation to defend and indemnify an insured provides quasi-in-rem jurisdiction in compliance with due process standards.<sup>13</sup> This post-*Shaffer* affirmance was appealed to the United States Supreme Court which reversed and held that use of the garnishment procedure to obtain quasi-in-rem jurisdiction was unconstitutional. *Rush v. Savchuk*, 444 U.S. 320 (1980).

The exercise of state court jurisdiction is limited by the due process requirements of the fourteenth amendment to the United States Constitution.<sup>14</sup> The first case which attempted to delineate the scope of jurisdiction over persons and property under the due process clause was *Pennoyer v. Neff*.<sup>15</sup> The Court in *Pennoyer* determined that jurisdiction is coextensive with state sovereign power. The Court espoused two basic principles: A state has exclusive jurisdiction over persons and property within its territory; and "no State can exercise direct jurisdiction and authority over persons or property without its territory."<sup>16</sup> The Court emphasized the situs of the defendant's property and the physical presence of the defendant in the state.

The Court distinguished between assertion of jurisdiction over

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10. *Savchuk v. Rush*, 311 Minn. 480, 488, 245 N.W.2d 624, 629 (1976), *vacated and remanded*, 433 U.S. 902 (1977).

11. *Rush v. Savchuk*, 433 U.S. 902 (1977).

12. 433 U.S. 186 (1977). *Shaffer*, where the Court held that a defendant could not obtain quasi-in-rem jurisdiction by sequestering the defendants' shares of stock, extended the minimum contacts requirement of *International Shoe* to in rem cases by requiring that the property attached be intimately related to the litigation in order for the state to exercise in rem jurisdiction over the defendant.

13. *Savchuk v. Rush*, 311 Minn. 480, 497, 272 N.W.2d 888 (1978), *rev'd*, 444 U.S. 320 (1980). *Savchuk* distinguished *Shaffer* on the ground that Delaware's sequestration statute did not parallel the asserted state interest in management of the state-chartered corporation because the sequestration procedure could be used in any suit against a nonresident. The Minnesota Supreme Court argued that its garnishment procedure specifically premised jurisdiction on attachment of the obligation to defend the underlying claim. *Id.* at 502, 272 N.W.2d at 891.

14. U.S. CONST. amend. XIV; *Pennoyer v. Neff*, 95 U.S. 714, 722-23, 732-33 (1877); F. JAMES & G. HAZARD, CIVIL PROCEDURE § 12.13, at 626-27 (2d ed. 1977); Hazard, *A General Theory of State-Court Jurisdiction*, 1965 SUP. CT. REV. 241, 262-63.

15. 95 U.S. 714 (1877). See Hazard, *supra* note 14, which discusses at length the difficulties encountered by Justice Field in deciding *Pennoyer* and creating its new rule.

16. *Pennoyer v. Neff*, 95 U.S. 714, 722 (1877).

the person and jurisdiction over property and adopted separate requirements for each.<sup>17</sup> Service of notice within the state's boundaries was required for in personam jurisdiction.<sup>18</sup> However, in rem or quasi-in-rem jurisdiction could be obtained by attachment of property within the state and with substituted service of process.<sup>19</sup> The concepts of in personam jurisdiction and in rem jurisdiction developed separately until a century later when both were subjected to the same constitutional test in *Shaffer v. Heitner*.<sup>20</sup>

In personam jurisdiction was expanded considerably after *Pennoyer*.<sup>21</sup> Because of the rigid categories of in personam and in rem jurisdiction prescribed in *Pennoyer*, fictions of consent to jurisdiction and presence had to be relied on as bases for jurisdiction.<sup>22</sup> *International Shoe Co. v. Washington*<sup>23</sup> changed the constitutionally permissible basis of jurisdiction from the fictions of consent, domicile, or presence to reliance on "fair play and substantial justice." The United States Supreme Court in *International Shoe* held that in personam jurisdiction is justified when a defendant, though not in the territory of the forum, has certain minimum contacts with the forum state such that the suit does not offend "traditional notions of fair play and substantial justice."<sup>24</sup>

The Court in *International Shoe* emphasized the quality and nature of the defendant's activities within the state in relation to the

17. *Id.* Traditionally, the theory was that "Judgments in personam bind the persons who are before the court that renders the judgment, [while] judgments in rem were said to bind the things upon which the court acts." R. LEFLAR, AMERICAN CONFLICTS LAW § 19, at 29 (3d ed. 1977).

18. *Pennoyer v. Neff*, 95 U.S. 714, 721-22 (1877).

19. *Id.* at 723-24.

20. 433 U.S. 186 (1977). See R. LEFLAR, AMERICAN CONFLICTS LAW § 24A, at 40 (3d ed. 1977).

21. *Developments in the Law—State Court Jurisdiction*, 73 HARV. L. REV. 909, 918 (1960).

22. *Shaffer v. Heitner*, 433 U.S. 186, 201-02 (1978).

*Pennoyer* itself recognized some of these fictions to accommodate recurring issues such as divorce actions litigated in the plaintiff's home state, 95 U.S. at 733-35, and foreign corporations doing business in a state impliedly consenting to be sued, *id.* at 735-36. See *Milliken v. Meyer*, 311 U.S. 457 (1940) (domicile in a state sufficient for personal jurisdiction); *Hess v. Pawloski*, 274 U.S. 352 (1927) (approving a statute deeming nonresident motorists to have impliedly consented to the appointment of the secretary of state as agent for service of process); *Philadelphia & Reading Ry. v. McKibbin*, 243 U.S. 264 (1917) (corporation doing business in a state is considered to be present within the state for jurisdictional purposes); *International Harvester Co. v. Kentucky*, 234 U.S. 579 (1914) (same).

23. 326 U.S. 310 (1945).

24. *Id.* at 316. The *International Shoe* concept of fundamental fairness became the basis of examination of state court jurisdiction in the federal system. See *Developments in the Law—State Court Jurisdiction*, 73 HARV. L. REV. 909 (1960).

fair and orderly administration of the state's laws.<sup>25</sup> The shift in emphasis prompted many states to enact "long arm" statutes to aid residents in obtaining jurisdiction over nonresident defendants.<sup>26</sup>

The progeny of *International Shoe* further defined the minimum contacts rule. In *Perkins v. Benquet Consolidated Mining Co.*<sup>27</sup> the United States Supreme Court held jurisdiction to be justified when the cause of action did not arise within the forum but enough contacts were shown within the forum to establish fairness to a defendant corporation. The Supreme Court also supported in personam jurisdiction where the controversy arose out of obligations created by a single act within the state.<sup>28</sup> In *Hanson v. Denckla*<sup>29</sup> a new test was added to the minimum contacts rule. The Supreme Court held that the defendant must purposefully avail itself of the privilege of conducting activities in a state and invoking the benefits and protections of that state's laws.<sup>30</sup>

During the same time period jurisdiction over property was following a different path of case law. In the landmark case of *Harris v. Balk*<sup>31</sup> a debt of an absentee defendant was held to be a garnisha-

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25. *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945).

26. The long arm statutes authorize constructive service on a defendant for causes of action arising out of doing business within the state. "The basis of jurisdiction is the doing of acts or causing acts to be done within the state, of a type so affecting the public interest that the police regulation represented by these statutes is allowable." R. LEFLAR, *AMERICAN CONFLICTS LAW* § 38, at 65-66 (3d ed. 1977). See, e.g., *ARK. STAT. ANN.* § 27-2502 (1979).

27. 342 U.S. 437 (1952). The mining company was a Phillipine corporation. When the operations of the company were halted because of World War II, the company president returned to his home in Ohio and conducted his business from there. The Supreme Court held that where an Ohio nonresident filed suit in Ohio concerning the Phillipine operations, the court could accept jurisdiction consistent with *International Shoe*.

28. *McGee v. International Life Insurance Co.*, 355 U.S. 220 (1957). A Texas insurance company issued a reinsurance certificate on a life insurance policy to a resident in California and, according to the record, did no other business in California. When the insured died, the company would not pay under the policy claiming that the policyholder committed suicide. The contacts which supported the California court's jurisdiction over the Texas insurance company were that the policyholder and the beneficiary were residents of California, the policy was issued there, the premiums were mailed from there, and the witnesses were California residents. Also, California had a valid interest in providing a forum for its residents.

29. 357 U.S. 235 (1958). A Florida court attempted to obtain in personam jurisdiction over a Delaware trustee who had been administering a trust created by a testatrix when she lived in Pennsylvania. She subsequently moved to Florida. There was considerable business correspondence between the trustee and the testatrix but the Supreme Court held that the contacts were insufficient for the Florida court to exercise in personam jurisdiction over the trustee.

30. *Id.* at 253.

31. 198 U.S. 215 (1905). A resident of the forum state sought to enforce a claim by garnishing a debtor of a nonresident defendant. The garnishee admitted the debt, and the

ble res. It was held that a court that had personal jurisdiction over a debtor of the defendant could garnish the debt in the forum for purposes of obtaining quasi-in-rem jurisdiction. Expanding on the *Harris* holding, the New York Court of Appeals in *Seider v. Roth*<sup>32</sup> allowed the obligation an insurance company owed to its policyholder to be considered a garnishable "debt." In *Seider*, a plaintiff was allowed to bring a quasi-in-rem action by attaching a liability insurance obligation to a nonresident defendant.<sup>33</sup>

The *Seider* rule has been controversial from its inception.<sup>34</sup> Only the Second Circuit Court of Appeals and two state courts have followed the doctrine.<sup>35</sup> The Second Circuit based its decision on the fact that the attachment of the insurance policy was a judicially created equivalent of a direct action statute.<sup>36</sup> Many jurisdictions have considered and rejected the *Seider* doctrine.<sup>37</sup>

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plaintiff obtained judgment. Payment of the debt discharged plaintiff's claim, and the judgment would be recognized in the state in which the creditor lived. The debt was found to have a situs wherever the debtor was found.

32. 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966).

33. The plaintiffs, residents of New York, were injured in an automobile accident in Vermont, allegedly through the negligence of one of the defendants, a resident of Canada. Although the defendant's insurance policy was issued in Canada, the insurance company also did business in New York. The New York courts held that the contractual obligation was attachable. Since the policy required the insurance company to defend the policyholder in any automobile negligence action, the court found that a contractual obligation arose on the part of the insurance company as soon as the accident occurred. The court recognized that this was like a direct action against the insurer but found no policy reasons to disallow it. *Id.* at 112-13, 216 N.E.2d at 314-15, 269 N.Y.S.2d at 101-02. See also *Simpson v. Loehmann*, 21 N.Y.2d 305, 234 N.E.2d 669, 287 N.Y.S.2d 633 (1967), where a closely divided court upheld the *Seider* doctrine.

34. R. LEFLAR, *AMERICAN CONFLICTS LAW* § 25, at 43 (3d ed. 1977); Reese, *The Expanding Scope of Jurisdiction Over Non Residents—New York Goes Wild*, 35 *INS. COUNSEL J.* 118 (1968); Rosenberg, *One Procedural Genie Too Many or Putting Seider Back Into Its Bottle*, 71 *COLUM. L. REV.* 660 (1971).

35. *Minichiello v. Rosenberg*, 410 F.2d 106 (2d Cir. 1968), *cert. denied*, 396 U.S. 844 (1969). New Hampshire and Minnesota followed *Seider*. *Savchuk v. Rush*, 311 Minn. 480, 496, 272 N.W.2d 888 (1979), *rev'd*, 444 U.S. 320 (1980); *Forbes v. Boynton*, 113 N.H. 617, 313 A.2d 129 (1973).

36. *Minichiello v. Rosenberg*, 410 F.2d 106 (2d Cir. 1968), *cert. denied*, 396 U.S. 844 (1969). In *Minichiello* the court relied heavily upon *Watson v. Employers Liab. Assurance Corp.*, 348 U.S. 66 (1954), where the Supreme Court upheld a Louisiana direct action statute.

Direct action statutes permit an injured person to maintain an action directly against the tortfeasor's liability insurer, without first getting judgment against the tortfeasor. Such a statute may apply either if the contract of liability insurance was made in the state having the statute, on a contract characterization, or if the injury was inflicted there, on a tort theory.

R. LEFLAR, *AMERICAN CONFLICTS LAW* § 153, at 316 (3d ed. 1977).

37. *E.g.*, *Javorek v. Superior Court*, 17 Cal. 3d 629, 552 P.2d 728, 131 Cal. Rptr. 768 (1976); *Grinnell v. Garrett*, 295 So. 2d 496 (La. App. 1974); *Belcher v. Government Employ-*

A century after *Pennoyer* differentiated between a state court's exercise of jurisdiction over property and persons, the principles of *International Shoe* were extended to govern assertion of in rem as well as in personam jurisdiction in *Shaffer v. Heitner*.<sup>38</sup> As early as 1950, the Supreme Court indicated that the requirements of the fourteenth amendment with respect to notice do not depend upon whether the jurisdiction is classified as in personam or in rem.<sup>39</sup> It was not until *Shaffer*, however, that the Court recognized that asserting jurisdiction over property is actually asserting jurisdiction over the owner of the property as well.<sup>40</sup>

In *Shaffer* the Supreme Court held that quasi-in-rem jurisdiction may not be exercised unless it can meet the minimum contacts test of *International Shoe*. In other words, for a court to exercise jurisdiction over property, the contacts must be such that the owner would be subject to personal jurisdiction.<sup>41</sup> The Court distinguished between quasi-in-rem proceedings where the property was the subject of the litigation and those where the only purpose of the res was to obtain jurisdiction over the personal interest of the defendant in that res.<sup>42</sup> The *Shaffer* Court expressly rejected the basis of the holding of *Harris v. Balk*,<sup>43</sup> holding that minimum contacts between the defendant and the forum are required for the exercise of quasi-in-rem jurisdiction.<sup>44</sup>

The *Shaffer* decision left several questions open for interpretation by the courts. The Supreme Court has tried to define more

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ees Ins. Co., 282 Md. 718, 387 A.2d 770 (1978); *State ex rel. Government Employees Ins. Co. v. Lasky*, 454 S.W.2d 942 (Mo. App. 1970); *Hart v. Cote*, 145 N.J. Super. 420, 367 A.2d 1219 (1976); *Jardine v. Donnelly*, 413 Pa. 474, 198 A.2d 513 (1964); *De Rentiis v. Lewis*, 106 R.I. 240, 258 A.2d 464 (1969); *Howard v. Allen*, 254 S.C. 455, 176 S.E.2d 127 (1970). *See also* *Jonnet v. Dollar Sav. Bank*, 530 F.2d 1123 (3d Cir. 1976); *Tessier v. State Farm Mutual Ins. Co.*, 458 F.2d 1299 (1st Cir. 1972); *Kirchman v. Mikula*, 443 F.2d 816 (5th Cir. 1971); *Robinson v. O.F. Shearer & Sons*, 429 F.2d 83 (3d Cir. 1970); *Sykes v. Beal*, 392 F. Supp. 1089 (D. Conn. 1975); *Ricker v. Lajoie*, 314 F. Supp. 401 (D. Vt. 1970).

38. 433 U.S. 186 (1977).

39. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

40. *Shaffer v. Heitner*, 433 U.S. 186, 212 (1977). In *Shaffer*, the plaintiff, a stockholder in the Greyhound Corp., sought to bring a stockholders' derivative action against some directors and officers of the corporation. To acquire jurisdiction in Delaware over the defendants, the plaintiff obtained an order, based on Delaware law, for sequestration of the defendants' shares of Greyhound stock. Because Delaware had no limited appearance statute, the defendants had to lose their stock or submit to in personam jurisdiction in Delaware. The defendants argued that the minimum contacts test of *International Shoe* should be applied.

41. *Id.* at 209. *See Comment, Minimum Contacts Analysis of In Personam Jurisdiction Over Individuals Based on Presence*, 33 ARK. L. REV. 159 (1979).

42. 433 U.S. at 209.

43. 198 U.S. 215 (1905).

44. *Shaffer v. Heitner*, 433 U.S. 186, 212 (1977).

specifically the meaning of "traditional notions of fair play and substantial justice" in recent decisions through factual inquiries into the existence of sufficient minimum contacts.<sup>45</sup> In *World-Wide Volkswagen Corp. v. Woodson*,<sup>46</sup> for example, the Court held that a defendant's connection with the forum state is sufficient if he should reasonably anticipate being haled into court there. The possibility that a product might make its way into a forum state is not an adequate basis of jurisdiction.<sup>47</sup> The Court also held that financial benefits accruing from a collateral relation to the forum state, by themselves, will not support jurisdiction.<sup>48</sup>

With the rejection of *Harris*, the viability of the *Seider* rule was questioned,<sup>49</sup> although the New York courts reaffirmed the *Seider* rule after *Shaffer*.<sup>50</sup> The United States Supreme Court first considered the constitutionality of the *Seider* rule in *Rush v. Savchuk*.<sup>51</sup> The Court held that garnishment of an insurer's obligation to an insured was unconstitutional and not the equivalent of a direct action statute.<sup>52</sup>

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45. *E.g.*, *Kulko v. Superior Court*, 436 U.S. 84 (1978). In *Kulko* the Court held that the state's interest in facilitating child support actions on behalf of resident children is not, by itself, enough to make the state a fair forum for a nonresident defendant. The defendant and his wife lived in New York with their two children before they separated and the wife moved to California. She subsequently obtained a divorce in Haiti which gave custody of the children to the defendant. Eventually the children moved to California with their mother, and she brought an action against the defendant in California to establish the Haitian decree as a California judgment, to modify the judgment so as to award her full custody of the children, and to increase the defendant's child support obligations. She attempted to base jurisdiction on the purchase of a oneway airline ticket to California for one of the children. The Court held that sufficient contacts did not exist for the California court to exercise jurisdiction over the defendant.

46. 444 U.S. 286 (1980).

47. In *World-Wide Volkswagen* the plaintiffs bought a car from a car dealer in New York while they were residents of New York. As the plaintiffs were driving through Oklahoma, they were involved in an accident, and they subsequently brought a products liability suit in Oklahoma against the dealer and its regional distributor. The Supreme Court held that the mere fact that a product may find its way to a particular forum does not create sufficient "contacts, ties, or relations" with that forum to sustain in personam jurisdiction over a defendant corporation. *Id.* at 298-99.

48. *Id.* at 299. The respondents contended that jurisdiction was supported by the fact that petitioners earned substantial revenue from goods used in Oklahoma.

49. Comment, *The Constitutionality of Seider v. Roth After Shaffer v. Heitner*, 78 COLUM. L. REV. 409 (1978).

50. *Baden v. Staples*, 45 N.Y.2d 889, 383 N.E.2d 110, 410 N.Y.S.2d 808 (1978). See also *O'Connor v. Lee-Hy Paving Corp.*, 579 F.2d 194 (2d Cir.), *cert. denied*, 439 U.S. 1034 (1978). The courts based their decisions that the *Seider* rule was still constitutional after *Shaffer* on the fact that the insurance policy was related to the injury and that the full force of the judgment rested on the insurer.

51. 444 U.S. 320 (1980).

52. *Id.* at 330-33.

The *Savchuk* court held that state court jurisdiction must be evaluated according to the standards set forth in *International Shoe* and its progeny. Minimum contacts must exist between the defendant and the forum state so that the assertion of jurisdiction will not offend "traditional notions of fair play and substantial justice."<sup>53</sup> The only contact Rush had with Minnesota was the fact that his insurance company did business in Minnesota.<sup>54</sup>

The Court restated its holding in *Shaffer* that mere presence of property in the state is not sufficient to support the exercise of jurisdiction over the property owner.<sup>55</sup> The Supreme Court held that, even assuming the insurance obligation is a garnishable res, it does not satisfy the minimum contacts analysis. The mere fact that the defendant's insurer does business in Minnesota does not lead to the conclusion that the defendant engaged in any purposeful activity related to the forum that would make the exercise of jurisdiction reasonable.<sup>56</sup> The Court reasoned that an insurance policy does not suggest any further contacts between the defendant and the forum and pertains only to the conduct of the litigation, not its substance.<sup>57</sup>

The Court also held that *Seider*-type actions are not the equivalent of a direct action statute.<sup>58</sup> It rejected the argument that the *Seider* approach is fair to the insured defendant because liability is limited to the policy amount and any judgment is satisfied from policy proceeds which can be used for no other purpose. The Court also disagreed that such actions were fair to the insurer because its forum contacts would support in personam jurisdiction even for an unrelated cause of action. The Court rejected the assumption that the defendant has no real stake in the outcome of the litigation. The Court said the defendant did not extinguish his legal interest by insuring himself. Noneconomic factors such as the defendant's integ-

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53. *Id.* at 332-33.

54. *Id.* at 328. The Court also stated:

In fact, the fictitious presence of the insurer's obligation in Minnesota does not, without more, provide a basis for concluding that there is *any* contact in the *International Shoe* sense between Minnesota and the insured. To say that "a debt follows the debtor" is simply to say that intangible property has no actual situs, and a debt may be sued on wherever there is jurisdiction over the debt. State Farm is "found," in the sense of doing business, in all 50 States and the District of Columbia. Under appellee's theory, the "debt" owed to Rush would be "present" in each of those jurisdictions simultaneously. It is apparent that such a "contact" can have no jurisdictional significance. *Id.* at 329-30 (emphasis in original).

55. *Id.* at 328.

56. *Id.* at 328-29.

57. *Id.* at 329.

58. *Id.* at 330.

riety and competence as well as economic factors like the possibility of the claim affecting the defendant's insurability should be considered.<sup>59</sup> Unlike a direct action, the insured has to be named as a defendant to make the insurer a party to the action.<sup>60</sup> Finding that the Constitution forbids the assertion of jurisdiction over the insured, the Court reasoned that there consequently is no basis for making the garnishee a party to the action.<sup>61</sup>

The Supreme Court held that the requirements of *International Shoe* must be met as to each defendant over whom a state court exercises jurisdiction.<sup>62</sup> The Court thus concluded that the Minnesota court's attempt to combine the forum contacts of the "defending parties" resulting in the assertion of jurisdiction over Rush based solely on the activities of State Farm was plainly unconstitutional.<sup>63</sup> Writing for the majority, Justice Marshall pointed out that justifications offered in support of the *Seider* doctrine shift the focus of the inquiry to the plaintiff's contacts with the forum state rather than the defendants' contacts.<sup>64</sup> The Court stated that such an approach is forbidden by *International Shoe* and its progeny.<sup>65</sup>

In his dissenting opinion in *Savchuk*, Justice Stevens argued that "the Minnesota statute authorizing jurisdiction is correctly characterized as the 'functional equivalent' of a so-called direct action statute." He stated that as long as it is clear that the forum may not exercise any power over the defendant, it does not matter if the suit is brought in his name or that of the insurance company.<sup>66</sup> He thought that in light of *Watson v. Employer's Liability Assurance Corp.*<sup>67</sup> the Constitution does not require that the Minnesota courts dismiss the action.<sup>68</sup>

Justice Brennan also dissented,<sup>69</sup> arguing that the Court gave too much weight to the consideration of contacts between the defendant and the forum. He felt that more weight should have been

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59. *Id.* at 331 n.20.

60. *Id.* at 330-31.

61. *Id.* at 331.

62. *Id.* at 332.

63. *Id.* at 331-32.

64. *Id.* at 332.

65. *Id.*

66. *Id.* at 333-34 (Stevens, J., dissenting).

67. 348 U.S. 66 (1954).

68. *Rush v. Savchuk*, 444 U.S. 320, 333-34 (1980) (Stevens, J., dissenting).

69. Justice Brennan issued one dissent applicable to both *Savchuk* and *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980).

given to the state's interest in supplying a forum for its residents.<sup>70</sup> Brennan argued that Minnesota had expressed its interest by enacting the garnishment statute.<sup>71</sup> The plaintiff's residence in the state made it one of the few forums available to him.<sup>72</sup> He felt that the Court should also have attached more importance to the actual burden on the defendant,<sup>73</sup> concluding that the real impact is the same as if a direct action were filed against the insurer.<sup>74</sup>

The Supreme Court in *Savchuk* finally resolved the conflict and controversy over the *Seider* rule which had endured fourteen years.<sup>75</sup> The Court expressly rejected the *Seider* doctrine. The Court's continued emphasis on fairness to the defendant led to this rejection. No argument in favor of the doctrine was left unanswered.

Some of the *Seider* jurisdictions may attempt to effectuate the state's interest in providing a forum for its residents by the enactment of a direct action statute. The application of such a statute, however, would probably be limited to injuries occurring within the state.<sup>76</sup> Thus, a plaintiff in *Savchuk's* position would still not have a forum in his resident state.

A trend seems to emerge from the post-*Shaffer* cases of restricting state court jurisdiction over a nonresident defendant.<sup>77</sup> A closer look at the language of the opinions indicates, however, that the Supreme Court is trying to establish a uniform standard for the exercise of jurisdiction over a nonresident defendant. The Court continually stresses fairness to the defendant with the application of the "minimum contacts" test and recognition of the "traditional notions of fair play and substantial justice."<sup>78</sup> The "minimum contacts" test

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70. *Id.* at 299 (Brennan, J., dissenting).

71. *Id.* at 302.

72. *Id.* at 303.

73. *Id.*

74. *Id.* at 303-04.

75. As recently as 1978, the Supreme Court had rejected a chance to review the *Seider* doctrine. *Lee-Hy Paving Corp. v. O'Connor*, 441 U.S. 918 (1978) (Justices Powell and Blackmun dissenting from the denial of certiorari).

76. See *Watson v. Employers Liab. Assurance Corp.*, 348 U.S. 66 (1954). In *Watson* the Supreme Court held a Louisiana direct action statute to be constitutional. The opinion placed great emphasis on the facts that the plaintiff was injured in Louisiana, the defendant carried on many activities within the state, and the state had a vital interest in the out of state contract. See also *Rush v. Savchuk*, 444 U.S. 320, 331 n.19 (1980); R. LEFLAR, *AMERICAN CONFLICTS LAW* § 25, at 44 (3d ed. 1977).

77. *Rush v. Savchuk*, 444 U.S. 320 (1980); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980); *Kulko v. Superior Court*, 436 U.S. 84 (1978).

78. The requirements were espoused in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), and applied to in rem jurisdiction in *Shaffer v. Heitner*, 433 U.S. 186 (1977).

of *International Shoe* expanded in personam jurisdiction to allow assertion of jurisdiction over a nonresident defendant who has minimum contacts with the forum state even if the traditional requirements of presence within the state are not met. This same constitutional test, on the other hand, restricts in rem jurisdiction by basing the exercise of jurisdiction over a nonresident defendant on whether there are sufficient contacts between the defendant, the forum, and the litigation regardless of the fact that the attached property has a situs within the state.

When the assertion of in personam jurisdiction was based on the traditional test that a defendant had to be within the state's boundaries, obtaining quasi-in-rem jurisdiction was a convenient way to counteract the strict in personam jurisdiction requirements. With the relaxation of these requirements in *International Shoe*,<sup>79</sup> the quasi-in-rem garnishment procedure was not as necessary to a plaintiff in most situations, and attachment of property merely for the purpose of obtaining jurisdiction over the nonresident defendant is contrary to the emphasis on "fair play and substantial justice." The Supreme Court will probably continue to reject this application of quasi-in-rem jurisdiction where the property is not the subject of the litigation or very closely related to the litigation.

While *McGee v. International Life Insurance Co.*<sup>80</sup> appeared to be an extreme extension of jurisdiction over a nonresident defendant, it can still be reconciled with *Savchuk*. Although the Supreme Court upheld jurisdiction in *McGee* based on only one insurance policy issued in the forum state, it is clear that the Court's emphasis was on the relationship of that policy to the litigation. The policy was, in fact, the subject of the litigation. The policyholder, his beneficiary, and the witnesses were all residents of the forum state.<sup>81</sup> In *Savchuk* the car accident, not the policy, was the subject of the litigation and only the plaintiff was a resident of the forum state.

The first restriction of the "minimum contacts" test was recognized in *Hanson v. Denckla*.<sup>82</sup> It was here the Supreme Court adopted the view that to satisfy the "minimum contacts" test the defendant should have purposely availed himself of the privilege of conducting activities in a foreign state, thus having invoked the protections of that state's laws.<sup>83</sup> The Court was considering the intent

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79. 326 U.S. 310 (1945).

80. 355 U.S. 220 (1957).

81. *Id.* at 223.

82. 357 U.S. 235 (1958).

83. *Id.* at 253.

of the defendant to conduct activity in a state and bring himself within that state's jurisdiction. *Hanson* is still valid under the rationale of *Savchuk*. In *Savchuk* the Court appears to be adhering to the *Hanson* test where it found that the mere fact the defendant's insurer does business in Minnesota does not indicate that the defendant engaged in any purposeful activity related to the forum that would make the exercise of jurisdiction reasonable.<sup>84</sup>

It is clear from the Court's opinions that there are no hard and fast rules on jurisdiction over a nonresident defendant. The facts of each case will have to be weighed. This may necessitate more rulings by the Supreme Court in this area. At this point, the continuing emphasis seems to be on fairness to the defendant. This emphasis has greatly restricted a plaintiff's chance of bringing suit against a nonresident defendant in the plaintiff's state. Based on the *Savchuk* decision, when an injury occurs outside of the plaintiff's state of residence,<sup>85</sup> he will have to incur the burden and expense of bringing his action in the state where the injury occurred unless the litigation has contacts with his home state.

*Mary Harmon*

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84. *Rush v. Savchuk*, 444 U.S. 320, 328-29 (1980). *Cf.* *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980) (products liability case involving car bought in New York which burned in wreck in Oklahoma in which local dealer and his distributor had no contacts with or activity in Oklahoma to justify their being sued there).

85. In *Savchuk* the defendant moved to Minnesota after the accident occurred. In other *Seider*-type actions, however, the plaintiffs were residents of the forum state when the event being litigated occurred. *Rush v. Savchuk*, 444 U.S. 320 (1980). *See* *Minichiello v. Rosenberg*, 410 F.2d 106 (2d Cir. 1968), *cert. denied*, 396 U.S. 844 (1969); *Seider v. Roth*, 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966).

