relating to disputed testimony and issues.\textsuperscript{45} As a result of the \textit{Urban Council} decision, institutional decisionmaking in Minnesota parallels the federal system.\textsuperscript{46} Without the onerous burden of reading the entire record of each hearing, agency administrators may have more time to formulate policies and supervise subordinates.\textsuperscript{47} Allowing administrators to concentrate on policy making and supervisory functions should improve the operation and efficiency of the administrative system in Minnesota.

\textbf{Civil Procedure—Jurisdiction—Savchuk v. Rush: A Eulogy—}

In \textit{Seider v. Roth},\textsuperscript{1} the New York Court of Appeals held that a state may exercise quasi in rem jurisdiction\textsuperscript{2} over a nonresident defendant having

\textsuperscript{45} See id.

\textsuperscript{46} See notes 29–30 supra and accompanying text.

\textsuperscript{47} It may be questioned whether agency decisionmakers ever read the entire record of each hearing prior to Urban Council. Although this requirement seemed to be imposed on agency heads, it is unlikely that there was full compliance with the law. Practically speaking, it probably could not have been done. See notes 42–43 supra and accompanying text. It is for this very reason that the conclusion that the Urban Council rule will give administrators more time is suspect.

\textsuperscript{1} 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966). The principle established in this case is commonly referred to as \textit{Seider} jurisdiction.


The three types of jurisdiction—in personam, in rem, and quasi in rem—were defined summarily by the Supreme Court in \textit{Hanson v. Denckla}, 357 U.S. 235 (1958). The Court stated:

A judgment \textit{in personam} imposes a personal liability or obligation on one person in favor of another. A judgment \textit{in rem} affects the interests of all persons in designated property. A judgment \textit{quasi in rem} affects the interests of particular

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no forum contacts. Procedurally, this is accomplished by garnishing the contractual obligation of an insurer doing business in the state to defend and indemnify the insured in a lawsuit. Throughout fourteen years of controversy, only three states, including Minnesota, have adopted this

persons in designated property. The latter is of two types. In one the plaintiff is seeking to secure a preexisting 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.

Id. at 246 n.12, quoted in Shaffer v. Heitner, 433 U.S. 186, 199 n.17 (1977).

In regard to in personam jurisdiction, the strict territorial limitations announced in Pennoyer were replaced by the minimum contacts theory established in International Shoe v. Washington, 326 U.S. 310 (1945). The theory requires that "if . . . [the defendant] be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' " Id. at 316 (quoting in part Milliken v. Meyer, 311 U.S. 457, 463 (1940)). The standard is essentially one of reasonableness. The existence of minimum contacts depends upon "the quality and nature of the . . . [defendant's] activity." The assertion of jurisdiction is reasonable when "the defendant purposefully avails . . . [himself] of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." Hanson v. Denckla, 357 U.S. 235, 253 (1958). Thus, the focus of jurisdictional inquiry in in personam actions shifted from the Pennoyer emphasis on the sovereignty of a state over its territory to an examination of the relationship among the defendant, the forum, and the litigation. See Shaffer v. Heitner, 433 U.S. 186, 204 (1977); notes 54-62 infra and accompanying text.

In 1977 the Supreme Court in Shaffer v. Heitner, 433 U.S. 186 (1977), extended the minimum contacts theory to in rem and quasi in rem actions. See id. at 212. When the defendant in these actions lacks minimum contacts with the forum and when the property that serves as the basis of jurisdiction is unrelated to the cause of action, the assertion of jurisdiction is unconstitutional. See id. at 208-09. The Shaffer Court stated:

Thus, although 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. In the Court's view, basing jurisdiction solely on the presence of property in the state was "fundamentally unfair to the defendant." See id. at 212. All assertions of jurisdiction whether in personam, in rem, or quasi in rem, are to be evaluated according to the minimum contacts standard. See id. For further elaboration on the minimum contacts standard and the Shaffer decision, see notes 54-62 and 87-98 infra and accompanying text.

3. The defendant, a Canadian resident, was sued in New York by two New York residents for injuries arising out of an accident in Vermont. 17 N.Y.2d at 112, 216 N.E.2d at 313, 269 N.Y.S.2d at 100. New York acquired jurisdiction by attaching the contractual obligation of an insurance company, doing business in New York, to defend its insured against liability in any state in which an accident occurred. Id.

4. See notes 26-30 infra and accompanying text.

theory. Furthermore, the constitutionality of Seider jurisdiction has been


Under Minnesota law, Seider jurisdiction was first applied in Rintala v. Shoemaker, 362 F. Supp. 1044 (D. Minn. 1973), noted in Case Comment, supra note 5. In Rintala, a federal court, interpreting Minnesota law, found Seider jurisdiction valid. It allowed a Minnesota resident to acquire jurisdiction over a Michigan resident in a wrongful death action. The suit arose out of an automobile accident in Florida. Jurisdiction was obtained by garnishing the contractual obligation of the insurer, doing business in Minnesota, to defend and indemnify the defendant. The court found that the Minnesota garnishment statute allowed the attachment of an insurance policy before judgment for the purpose of establishing quasi in rem jurisdiction. Although the payment was contingent upon the outcome of the suit, the obligation to pay was absolute. 362 F. Supp. at 1051-52. For other Minnesota cases applying Seider, see Jeans v. Mitchell, 418 F. Supp. 730 (D. Minn. 1976); Adkins v. Northfield Foundry & Machine Co., 393 F. Supp. 1079 (D. Minn. 1974); Savchuk v. Rush, 311 Minn. 480, 245 N.W.2d 624 (1976), vacated and remanded, 433 U.S. 902 (1977), aff’d on remand, 272 N.W.2d 888 (Minn. 1978), rev’d, 444 U.S. 320 (1980); notes 1-5 supra and accompanying text; notes 7-42 infra.

A number of other New York cases refused to apply a Seider theory of jurisdiction on various grounds. See Farrell v. Piedmont Aviation, Inc., 411 F.2d 812 (2d Cir.), cert. denied, 396 U.S. 840 (1969) (neither the decedent nor defendants were New York residents, only


7. See generally notes 5-6 supra.

the United States Supreme Court rejected both of these rationales and laid to rest the ingenious theory of Seider jurisdiction.

Rush v. Savchuk arose out of a single car accident in Elkhart, Indiana, in which the plaintiff, Jeffrey Savchuk, was injured. At the time of the accident, both Savchuk, a passenger in the car, and the defendant Randal Rush, the driver of the car, were Indiana residents. The car was insured by State Farm Mutual Automobile Insurance Co. under a liability policy issued in Indiana. In June of 1973, Savchuk moved to Minnesota with his parents and in 1974 commenced a personal injury action in a Minnesota state court. Indiana's guest statute barred a suit by Savchuk in that state. Rush had no contacts with Minnesota that could be used to establish in personam jurisdiction. Therefore, Savchuk sought to obtain quasi in rem jurisdiction by garnishing State Farm's policy, the terms of which required State Farm to defend and indemnify Rush. Rush was personally served in Indiana.

Rush and State Farm appealed the trial court's denial of a motion to dismiss the complaint for lack of jurisdiction and insufficient process. The Minnesota Supreme Court affirmed the trial court's decision in Savchuk v. Rush (Savchuk I). On appeal, the United States Supreme Court vacated the judgment and remanded the case for further consid-

11. Id. at 322. The accident occurred on January 13, 1972.
12. Id.
13. Id. State Farm is an Illinois corporation that does business in all 50 states, the District of Columbia, and several Canadian provinces. Id. at 323 n.4.
14. Id. at 322. The complaint alleged negligence and sought $125,000 in damages, however, the complaint was later amended to $50,000, the face value of the insurance policy. Id. at 323 & n.5.
15. Act of June 7, 1937, ch. 201, § 1, 1937 Ind. Acts 1229 (codified at IND. CODE ANN. § 9-3-3-1 (West 1979)).
16. 444 U.S. at 322. The Indiana guest statute protects motor vehicle owners and operators from liability for injury to or death of a nonpaying passenger resulting from the operation of the motor vehicle, unless the injury or death results from the wanton or willful misconduct of the owner or operator. See IND. CODE ANN. § 9-3-3-1 (West 1979).
18. 444 U.S. at 322-23.
eration in light of its decision in *Shaffer v. Heitner*. On remand, the Minnesota Supreme Court, in *Savchuk v. Rush* (Savchuk II), reaffirmed its earlier ruling by distinguishing the case from *Shaffer*. The United States Supreme Court reversed.

The Minnesota Supreme Court in *Savchuk I* applied a theory of jurisdiction developed in 1966 in *Seider v. Roth*. Two legal fictions underlie this unique jurisdictional theory. First, the situs of a debt is said to follow a debtor. Therefore, the debt is subject to garnishment wherever the debtor is found. Second, a corporation is present for jurisdictional

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22. 433 U.S. 186 (1977). In *Shaffer*, a nonresident plaintiff attempted to bring a shareholder's derivative suit against 28 current or former officers and directors of a Delaware corporation. See id. at 189. Using a quasi in rem theory, the plaintiff sought to attach stock owned by nonresident defendants under a Delaware statute that established Delaware as the situs of ownership of stock in a Delaware corporation even if the certificates were located in other states. See id. at 190-92. The Court held that the minimum contacts standard of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) should be expanded to all assertions of state court jurisdiction. See id. at 212. By extending the minimum contacts standard, the *Shaffer* Court impliedly overruled *Harris v. Balk*, 198 U.S. 215 (1905), which served as the cornerstone for quasi in rem theory. The Court stated:

> It would not be fruitful for us to reexamine the facts of cases decided on the rationales of Pennoyer [v. Neff] and *Harris [v. Balk]* to determine whether jurisdiction might have been sustained under the standard we adopt today. To the extent that prior decisions are inconsistent with this standard, they are overruled.

*Shaffer v. Heitner*, 433 U.S. 186, 212 n.39 (1977). See note 2 supra. The Court, however, was silent on the effect *Shaffer* would have on *Seider* jurisdiction. The language of the opinion seemingly permitted a saving construction of the doctrine: "[w]hen claims to the property itself are the source of the underlying controversy . . . , it would be unusual for the state where the property is located not to have jurisdiction." *Shaffer* U.S. at 207. See notes 63-65 infra and accompanying text. The Court further declined to answer the "question [of] whether the presence of defendant's property in a state is a sufficient basis for jurisdiction when no other forum is available to the plaintiff." *Shaffer* U.S. at 211 n.37. This was the issue in *Rush*. See notes 13-18 supra and accompanying text.


24. 272 N.W.2d at 890-93.


26. See note 3 supra.

27. See *Rush v. Savchuk*, 444 U.S. 320, 328 (1980). The Court describes the conceptual bases of *Seider* jurisdiction as follows:

> The legal fiction that assigns a situs to a debt, for garnishment purposes, wherever the debtor is found is combined with the legal fiction that a corporation is "present," for jurisdictional purposes, wherever it does business to yield the conclusion that the obligation to defend and indemnify is located in the forum for purposes of the garnishment statute. The fictional presence of the policy obligation is deemed to give the State the power to determine the policyholder's liability for the out-of-state accident.

*Id.* (footnote omitted).

28. This fiction was first announced in the case of *Harris v. Balk*, 198 U.S. 215 (1905), overruled, *Shaffer v. Heitner*, 433 U.S. 186 (1977). In that case, Epstein, a Maryland resident, had an unsatisfied claim against the defendant Balk, a North Carolina resident. See 198 U.S. at 216. Another North Carolina resident, Harris, had an outstanding debt owed to Balk. Epstein, upon discovering that Harris was visiting Maryland, garnished the money owed to Balk. See id. Harris paid the amount of the debt to Epstein's North Caro-
purposes wherever it does sufficient business to render it amenable to the judicial authority of that state.29 Together, these two fictions yield the

lina attorney. See id. at 217. In a subsequent suit by Balk against Harris, the trial court disallowed Harris' contention that the full faith and credit clause of the Constitution required that payment of the debt to Epstein be treated as a discharge of Harris' obligation to Balk. See id. The basis of the court's refusal to accept Harris' argument was that the Maryland court had had no jurisdiction to attach the debt owed to Balk because Harris had been in Maryland only temporarily and the situs of the debt was North Carolina. See id. The United States Supreme Court held that Maryland did obtain jurisdiction over the debt and that the full faith and credit clause required North Carolina to honor the Maryland judgment. See id. at 226. The Court viewed the debt as an intangible form of property belonging to Balk, the situs of which traveled with the debtor. See id. at 223. The debt of an individual debtor could be attached in only one state at a time and the absentee defendant must be given proper notice of the garnishment proceedings and an opportunity to be heard. See id. at 227. The garnished res could then serve as the basis for jurisdiction, allowing a court to adjudicate the rights of the plaintiff against the absentee defendant and order a judgment to the extent of the garnished debt. See id.

In Seider cases, a liability policy is analogized to a debt, and if the debtor-insurer is present in the forum, the policy is garnishable and may serve as the basis for quasi in rem jurisdiction. See, e.g., Rintala v. Shoemaker, 362 F. Supp. 1044, 1047-53 (D. Minn. 1973); Savchuk v. Rush, 311 Minn. 480, 483-85, 245 N.W.2d 624, 627-28 (1976), vacated and remanded, 433 U.S. 902 (1977), aff'd on remand, 272 N.W.2d 888 (Minn. 1978), rev'd, 444 U.S. 320 (1980).

29. See Rush v. Savchuk, 444 U.S. 320, 328 (1980). Under the territorial concept of jurisdiction announced in Pennoyer v. Neff, 95 U.S. 714 (1878), overruled, Shaffer v. Heitner, 433 U.S. 186 (1977), a corporation doing business in a state was either deemed present within the territory for jurisdictional purposes, see, e.g., Philadelphia & Reading R.R. v. McKibbin, 243 U.S. 264 (1917); International Harvester Co. of America v. Kentucky, 234 U.S. 579 (1914), or was deemed to have consented to suit in that state, see Pennoyer v. Neff, 95 U.S. at 735-36. See generally Note, Developments in the Law—State-Court Jurisdiction, 73 HARV. L. REV. 909, 919-23 (1960); note 2 supra.

The rationales of jurisdictional “presence” and “consent” were superseded by the minimum contacts test of International Shoe Co. v. Washington, 326 U.S. 310 (1945). See note 2 supra; notes 55-62 infra and accompanying text. Under the minimum contacts test, the constitutionality of a state court’s assertion of jurisdiction over a foreign corporation depends upon the existence of “such contacts of the corporation with the State of the forum as to make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there.” International Shoe Co. v. Washington, 326 U.S. at 317.

Ordinarily, a corporation “doing business” in a state has “purposefully avail[ed] itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws” so that contacts between the corporation and the state are sufficient to render the assertion of jurisdiction reasonable. See Hanson v. Denckla, 357 U.S. 235, 253 (1958). Arguably, the Supreme Court decisions of Shaffer v. Heitner, 433 U.S. 186 (1976) and Rush v. Savchuk, 444 U.S. 320 (1980) invalidate jurisdiction over a foreign corporation if that jurisdiction is asserted solely on the basis of “doing business” and the cause of action sued upon is unrelated to the forum state. In both decisions, the Court held that “the relationship among the defendant, the forum, and the litigation” was determinative in assessing the constitutionality of a state court’s assertion of jurisdiction. See Rush v. Savchuk, 444 U.S. 320, 322 (1980); Shaffer v. Heitner, 433 U.S. 186, 204 (1976). This language may be interpreted in several ways.

First, it may indicate that in addition to contacts between the defendant and the forum, there must exist contacts between the cause of action and the forum. A strict
conclusion that for purposes of the garnishment statute the obligation to defend and indemnify exists in every forum in which a corporation is doing business.30

Several policy considerations underlie Seider jurisdiction. First, the theory provides direct remedies for the state’s injured residents.31 Second, it is an attempt to prevent uncompensated plaintiffs from becoming dependent on state aid.32 Third, the theory allows the state to regulate the activities of insurance companies that do business within its boundaries.33 Finally, Seider jurisdiction is in accordance with the Minnesota Supreme Court’s intention to extend its jurisdiction “to the maximum limits consistent with due process.”34

The New York and Minnesota courts adopted different rationales for

construction of this nature would necessitate a radical departure from past practice and theory. Even if a corporation were incorporated in a state, it could not be sued in that state if the cause of action arose from outside its boundaries. It is highly unlikely that the Court intended this result because situations could arise in which no forum exists in which to litigate.

Second, the Shaffer and Rush holdings could be construed to permit jurisdiction when either contacts between the defendant and the forum exist or contacts between the cause of action and the forum exist. Although plausible, this construction runs afoul of language in the Rush opinion that the defendant must at least have “judicially cognizable ties with a state, [before] a variety of other factors relating to the particular cause of action may be relevant to the determination whether the exercise of jurisdiction would comport with ‘traditional notions of fair play and substantial justice.’” Rush v. Savchuk, 444 U.S. at 332-33.

Third, and most likely, the decisions may require that a certain threshold of contacts exist between the defendant and the forum before other relationships and factors are considered. The above quoted language appears to support this construction. See id. Exactly what contacts between the defendant and the forum are sufficient was left unanswered. Furthermore, as indicated by Shaffer, the nature and quantity of contacts required may differ as applied to individuals and corporations. “The differences between individuals and corporations may, of course, lead to the conclusion that a given set of circumstances establishes state jurisdiction over one type of defendant but not over the other.” Shaffer v. Heitner, 433 U.S. at 204 n.19. Certainly, incorporation in a state would be sufficient as would express consent to suit; but whether a corporation licensed to do business or merely doing business in a state would be sufficient in the absence of other factors, remains unclear. For a general discussion of the holdings of Shaffer and Rush, see notes 87-98 infra and accompanying text.

30. See Rush v. Savchuk, 444 U.S. 320, 328 (1980). In a footnote, the Court indicated that it was a matter of state law whether an insurance company’s obligation fell within a state’s garnishment statute and therefore was not subject to the Court’s review. See id. at 328 n.14. The Court went on to say that even assuming the obligation was garnishable property, that fact alone did not indicate any relationship among the defendant, the forum, and the litigation. Id.


32. See Rintala v. Shoemaker, 362 F. Supp. 1044, 1052 (D. Minn. 1973); Note, supra note 9, at 419.

33. See Note, supra note 9, at 419.

34. Savchuk v. Rush, 311 Minn. 480, 485, 245 N.W.2d 624, 628 (1976), vacated and
applying *Seider* jurisdiction. Garnishment procedures necessary for the application of *Seider* are statutory. New York interpreted its garnishment statute\(^{35}\) to allow the prejudgment garnishment of an insurance policy on the ground that a claim asserted against an insurance policy is due and owing absolutely at the time that the liability-causing event occurs.\(^{36}\) By adopting this construction, the court indulged in circular reasoning. An indebtedness is not garnishable unless it is absolutely payable either at present or in the future and is not dependent upon any contingency.\(^{37}\) In cases involving an insurance policy, the contingency is a judgment against the insured. Furthermore, the court cannot obtain quasi in rem jurisdiction until the property that serves as the basis of jurisdiction is brought before the court through garnishment.\(^{38}\) Thus, the debt cannot exist until litigated, and it cannot be litigated until it is found to exist within the forum.\(^{39}\) By disregarding the contingent nature of an insurance policy, the New York court bootstrapped itself into asserting jurisdiction.\(^{40}\) In contrast, the Minnesota statute\(^{41}\) expressly per-

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\(^{35}\) N.Y. Civ. Prac. Law § 5201 (McKinney 1978) states:

A money judgment may be enforced against any debt, which is past due or 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 non-resident, 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 within or without the State.

N.Y. Civ. Prac. Law § 6202 (McKinney 1980) states that any debt against which a money judgment may be enforced under section 5201 is subject to attachment.


The *Seider* court relied heavily on an earlier court of appeals decision in *In re Estate of Riggle*, 11 N.Y.2d 73, 181 N.E.2d 436, 226 N.Y.S.2d 416 (1962). The decision in *Estate of Riggle* established that a creditor-debtor relationship existed between a nonresident insured and a liability insurer even though no judgment was rendered against the insured or his estate. *See id.* at 76, 181 N.E.2d at 438, 226 N.Y.S.2d at 417. The *Seider* court extended this holding to encompass the garnishment of an insurance policy for the purpose of establishing quasi in rem jurisdiction. The *Seider* dissent, however, distinguished *Estate of Riggle* on the ground that it dealt only with the appointment of an administrator. *See* Seider v. Roth, 17 N.Y.2d at 116, 216 N.E.2d at 315-16, 269 N.Y.S.2d at 103-04 (Burke, J., dissenting).

Because no rights have been determined in a proceeding to appoint an administrator a recognition of a creditor-debtor relationship in that context would not prejudice the parties. *See id.* at 116-17, 216 N.E.2d at 316, 269 N.Y.S.2d at 104 (Burke, J., dissenting).

\(^{37}\) *See* note 2, 28 *supra*.

\(^{38}\) *See* Note, *supra* note 9, at 412; note 2, 28 *supra*.


\(^{41}\) *See* Minn. Stat. § 571.41(2) (1980), which reads in part:

Notwithstanding anything to the contrary herein contained, a plaintiff in any
mits the prejudgment garnishment of an insurance policy even though
the obligation is not due absolutely and is contingent. Therefore, Min-
nesota did not have to engage in circular reasoning to justify Seider jurisdic-
tion.

A major concern of the Savchuk I court was the compliance of Seider jurisdiction with the constitutional requirement of due process. Before
the United States Supreme Court’s reversal of Savchuk II, the standard for
determining the constitutionality of a prejudgment garnishment pro-
cedure consisted of three parts: (1) defendant insured must be given

action in a court of record for the recovery of money may issue a garnishee sum-
mons before judgment therein in the following instances only:

(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, part-
nership 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.

Id.

The predecessor to the above statute was amended in 1969 to permit prejudgment garnishment. See Act of June 9, 1969, ch. 1142, § 1, 1969 Minn. Laws 2479, 2481 (codified at MINN. STAT. § 571.41(2) (1980)). In analyzing the effect of this amendment, a federal court stated:

[A] judgment is no longer necessary when seizing an insurance policy under
which the insurer may be liable for a claim asserted against its insured . . . .
The legislature’s intent in modifying Minn. Stat. § 571.41, by adding Subd. 2
after Seider can be inferred to allow this type of procedure in Minnesota.

Rintala v. Shoemaker, 362 F. Supp. 1044, 1050-51 (D. Minn. 1973) (emphasis in original). One potential problem in Seider is the difficulty in assessing the value of the insurer’s obligation to defend the insured under the liability policy. “Even if the obligation to defend were regarded as noncontingent, its inclusion would not make attachment feasible. It is at least arguable that the duty to defend would be exhausted in the course of the attachment proceeding.” Id. (quoting Comment, Garnishment Of Intangibles: Contingent Obligations And The Interstate Corporation, 67 COLUM. L. REV. 550, 552 (1967)). Minnesota, by expressly allowing the prejudgment garnishment of an insurance policy, avoided this troublesome issue entirely. See 362 F. Supp. at 1051.


The courts have interpreted this statute as it applies to the garnishment of insurance policies in two cases. In Adkins v. Northfield Foundry & Mach. Co., 393 F. Supp. 1079 (D. Minn. 1974), the court declared that the garnishment statute was limited to cases in which either the plaintiff is a resident of the forum or the accident occurred in the forum state. The court stressed the importance of avoiding blatant forum shopping, the necessity of the forum state in having a recognizable and protectable interest in the case, and the avoidance of any unfair burden that might be placed upon either the nonresident defend-
ant or its insurance company. See id. at 1081. In Rintala v. Shoemaker, 362 F. Supp. 1044 (D. Minn. 1973), the court interpreted the statute to provide for the prejudgment garnishment of an insurance policy. There need be only the possibility of a valid judgment against either the insured personally or against his property. See id. at 1051-52.

43. See 311 Minn. at 483, 245 N.W.2d at 627.
proper notice, affording him adequate opportunity to defend his property;44 (2) defendant cannot be subjected to liability beyond the amount of his insurance policy;45 and (3) the procedure may only be employed by residents of the forum state.46

Most insurance policies require the cooperation of an insured with the insurer in the defense of a claim.47 If a defendant in a Seider case fails to appear in the court of jurisdiction, his right to indemnification is jeopardized.48 If a defendant makes an appearance, and if it is treated as a "general appearance," which subjects a defendant to the personal jurisdiction of the court, a defendant risks exposure to liability greater than the amount of the insurance policy.49 What started as quasi in rem jurisdiction could result in personal jurisdiction over a defendant.50 To avoid

44. See Rintala v. Shoemaker, 362 F. Supp. 1044, 1054 (D. Minn. 1973). In the first Savchuk decision, the defendant was given proper notice and an adequate opportunity to defend his property when he was served personally in Indiana with the summons and complaint and a copy of the garnishment summons. See 311 Minn. at 482, 245 N.W.2d at 626.


46. New York limits the application of Seider jurisdiction to cases in which the plaintiff is a resident of New York at the time that the cause of action arose. See O'Connor v. Lee-Hy Paving Corp., 579 F.2d 194, 199 n.6 (2d Cir.), cert. denied, 439 U.S. 1034 (1978); Farrell v. Piedmont Aviation, Inc., 411 F.2d 812, 817 (2d Cir.), cert. denied, 396 U.S. 840 (1969). In Vaage v. Lewis, 29 A.D.2d 315, 288 N.Y.S.2d 521 (1968), the court held that Seider jurisdiction was not applicable. The plaintiff, a Norwegian citizen, was injured in an automobile accident that occurred in North Carolina. The defendants were North Carolinians insured by an Ohio insurance company that issued a policy to the defendants in North Carolina. The only New York contact was the insurance company's authorization to do business in New York. Id. at 318, 288 N.Y.S.2d at 524-25.

The Minnesota Supreme Court, on the other hand, has extended Seider jurisdiction to its extreme by applying it to a plaintiff who was not a Minnesota resident at the time his injuries occurred. See Savchuk v. Rush, 311 Minn. 480, 482, 245 N.W.2d 624, 626 (1976), vacated and remanded, 433 U.S. 902 (1977), aff'd on remand, 272 N.W.2d 888 (Minn. 1978), rev'd, 444 U.S. 320 (1980). In light of the United States Supreme Court's decision in Shaffer, the distinction between New York and Minnesota law is no longer relevant. The Court focuses its constitutional analysis on the relationship of the forum to the defendant and to the litigation. See Shaffer v. Heitner, 433 U.S. 186, 209 (1977); note 29 supra and accompanying text; notes 54-62, 87-98 infra and accompanying text.


48. See id.

49. A defendant's general appearance traditionally has been recognized as a basis for asserting in personam jurisdiction because the defendant is then found within the boundaries of the state. Therefore, he is within the territorial power of the jurisdiction. See generally RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 33 (1971).

this violation of due process, both New York and Minnesota recognize “limited appearances” in Seider cases and restrict recovery against the defendant to an amount not greater than the face value of the insurance policy. Similarly, Seider judgments have not been given res judicata treatment in other jurisdictions nor have prior adjudications of liability been given collateral estoppel effect because to do so transforms a quasi in rem judgment to one in personam.

In Shaffer v. Heitner, the United States Supreme Court adopted a new standard for the assertion of quasi in rem jurisdiction. Shaffer applied the minimum contacts theory of International Shoe Co. v. Washington to quasi in rem jurisdiction, and concluded that without minimum contacts, state courts cannot assert jurisdiction over a nonresident defendant. In essence, the minimum contacts theory is the yardstick against which due process “reasonableness” is measured for assertions of jurisdiction. Under International Shoe, the contacts must be such that “maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” The adequacy of the contacts depends on the nature, quality,
and circumstances of the contacts. Sufficient contacts may be established by continuous and systematic activities by a defendant in the forum, or by the presence of a defendant’s property in the forum that is the subject matter of the litigation. The Shaffer Court stated that the classification of an action as in rem or in personam should not determine if due process has been met because “the phrase, judicial jurisdiction over a thing, is a customary elliptical way of referring to jurisdiction over the interests of persons in a thing. ”The application of the minimum contacts theory results in a shift in emphasis from a plaintiff’s relationship to the forum to an almost exclusive focus on a defendant’s relationship to the forum and the forum’s relationship to the litigation.

Denckla, 357 U.S. 235, 253 (1958) (requiring that defendant engage in purposeful activity in forum state thereby invoking the benefits and protections of its laws, which renders exercise of jurisdiction fair, just, or reasonable).


World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980), decided with Rush, identified factors that should be weighed in applying the International Shoe standard: (1) the burden on the defendant; (2) the forum’s interest in adjudicating the dispute; (3) the plaintiff’s interest in obtaining convenient and effective relief (at least when that interest is not adequately protected by the plaintiff’s power to choose the forum); (4) the interstate judicial system’s interest in obtaining the most efficient resolution of controversies; and (5) the shared interest of the several states in furthering fundamental, substantive social policies. Id. at 292.

In World-Wide Volkswagen, plaintiffs brought a products liability action in an Oklahoma court against the manufacturer of Audi automobiles, its importer, its regional distributor, and its retail dealer for an accident arising in Oklahoma. Neither the regional distributor nor retail dealer, both New York corporations, did business in Oklahoma. Id. at 288-89. The Court held that the foreseeability that a purchaser of an automobile in New York would suffer an accident in Oklahoma was not a sufficient basis for the assertion of in personam jurisdiction. See id. at 295-96. The Court specifically rejected plaintiffs’ argument that the purposeful actions of defendants in choosing to become part of a nationwide network for marketing and servicing automobiles established the necessary minimum contacts to support the exercise of jurisdiction. See id. at 298-99. For a further discussion of the holding in this case, see notes 93-98 infra and accompanying text.

60. The Shaffer Court stated:

When claims to the property itself are the source of the underlying controversy between the plaintiff and the defendant, it would be unusual for the State where the property is located not to have jurisdiction. In such cases, the defendant’s claim to property located in the State would normally indicate that he expected to benefit from the State’s protection of his interest.


61. 433 U.S. at 207 (quoting Restatement (Second) of Conflict of Laws, Introductory Note § 56 (1971)).

On remand, the Minnesota Supreme Court attempted to distinguish *Savchuk II* from *Shaffer*. The court recognized that the defendant had no contacts with Minnesota that would allow imposition of personal jurisdiction over him, but argued that the insurance company, which was the real party in interest, satisfied the minimum contacts requirement. The court further argued that the insurance policy was the subject matter of the litigation. The court viewed the policy as the true focus of judicial scrutiny, since it determined the rights and obligations of both the insured and the insurer.

On appeal, the United States Supreme Court rejected the reasoning of the *Savchuk II* court. The Supreme Court held that "it cannot be said that the defendant engaged in any purposeful activity related to the forum that would make the exercise of jurisdiction fair, just or reasonable . . . merely because his insurer does business there," and stated further that the insurance policy was not the subject matter of the litigation. In the Court's view, judicial inquiry is focused upon the defendant's conduct rather than the contractual relationship between the insured and insurer. Furthermore, no contacts as defined by *International Shoe* existed between defendant Rush and the forum state. The Court in *Rush* held that the Minnesota court's aggregation of the forum contacts of State Farm and Rush to find jurisdiction under the minimum contacts standard is unconstitutional. The requirements of *International Shoe* must be satisfied for each defendant before a state court may exercise jurisdiction.

Although in *Rush* no other forum was available to the plaintiff, the Court focused exclusively on the absence of the forum's contacts with the defendant. If a plaintiff's contacts with a forum determine jurisdiction, courts would be unable to control forum shopping. Extending *Seider*
jurisdiction to cases in which the plaintiff was not a resident at the time the cause of action arose subjects Minnesota to this criticism.\textsuperscript{74} As one dissenting justice in \textit{Savchuk I} stated: “Allowing a potential plaintiff to move to this state after his cause of action has arisen and to invoke \textit{Seider} to bring the case to Minnesota means that a plaintiff has a choice of 50 jurisdictions in which to sue.”\textsuperscript{75}

The garnishment procedure as applied in \textit{Seider} cases appears to authorize a direct action against an insurer.\textsuperscript{76} A direct action statute allows an injured party to sue the tortfeasor’s insurer without joining the insured.\textsuperscript{77} Underlying a direct action statute is the recognition that liability insurance “is not issued primarily for the protection of the insured, but for the protection of the public.”\textsuperscript{78}

\textit{Seider} jurisdiction has been criticized as judicial legislation.\textsuperscript{79} At present, no legislation permitting direct actions against insurers has been enacted in either New York or Minnesota,\textsuperscript{80} nor has there been any

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74. \textit{See} 311 Minn. at 495, 245 N.W.2d at 633 (Otis, J., dissenting).


76. \textit{See} Watson v. Employees Liability Assurance Corp., 348 U.S. 66 (1954). The \textit{Watson} Court upheld the constitutionality of Louisiana’s direct action statute, but the statute was applicable only if the cause of action arose in the state or the insured was domiciled there. \textit{See id.} at 68 n.4. Thus, the statute would not have conferred jurisdiction in a case similar to \textit{Rush} because the accident occurred outside the state and the insured was not a resident.


80. Direct action bills have been proposed in both the Minnesota House and Senate. \textit{See} S.F. 2262, 71st Minn. Legis., 1980 Sess.; H.F. 2212, 71st Minn. Legis., 1980 Sess. Under the proposed legislation, an insurer that conducts business in this state would be directly liable to an injured party entitled to recover under a policy issued by the insurance company. A direct action would be permitted even if the liability of the insurer is contingent upon a final judgment against the insurer.

Should these bills be enacted into law, the application of the law might be constitutionally challenged. Of particular concern is whether the mere fact that an insurance company is licensed to do business in a state satisfies the minimum contacts standard as required by International Shoe Co. v. Washington, 326 U.S. 310 (1945), and renders the exercise of jurisdiction fair, just, or reasonable. \textit{See} Rush v. Savchuk, 444 U.S. 320, 328-29 (1980). The Court in \textit{Shaffer} v. \textit{Heitner}, 433 U.S. 186 (1977), stated: “Although the pres-
attempt in either state to modify legislatively the direct action implications of Seider. From a direct action perspective, the real party in interest is the insurance company. The insured is but a nominal defendant who is obligated to cooperate with the insurer. Judgment for a plaintiff will not deprive a defendant of anything substantial. The defendant cannot use the insurance policy for anything other than to protect himself from liability.

The United States Supreme Court in reversing Savchuk II rejected the idea that Seider actions are equivalent to direct actions. Before a state court may exercise jurisdiction over the insurer it must be able to exert its power over a nominal defendant. The Court also implied that a defendant in a Seider action may have more than a nominal interest in the litigation. For instance, a defendant's integrity, competence or professional standing may be jeopardized. Furthermore, a defendant who is sued by multiple plaintiffs in several states could be liable for an amount in excess of the policy limits. For these reasons, the impact of the litigation on a nonresident defendant cannot be ignored.

In light of the United States Supreme Court's reversal of Savchuk II, Seider jurisdiction is no longer valid. In Seider jurisdiction, the emphasis was placed upon the relationship of a plaintiff, rather than that of a defendant, to the forum. The contractual obligation of an insurer to defend 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." Id. at 209.

Another constitutional issue that would arise in relation to a direct action statute is the extent to which a state may apply its own law without violating due process. Minnesota courts have consistently applied the law most favorable to plaintiffs in long-arm cases. See Myers v. Government Employees Ins. Co., 302 Minn. 359, 225 N.W.2d 238 (1974); Schwartz v. Consolidated Freightways Corp., 300 Minn. 487, 221 N.W.2d 665 (1974), cert. denied, 425 U.S. 959 (1976); Milkovich v. Saari, 295 Minn. 155, 203 N.W.2d 408 (1973). The Minnesota court's approach in these cases may have extended jurisdiction beyond constitutional limits by ignoring the forum's relationship to the cause of action and the defendant. But see Allstate Ins. Co. v. Hague, 101 S. Ct. 633 (1981), discussed in note 105 infra.


84. See Rush v. Savchuk, 444 U.S. at 331.

85. See id. at n.20.

86. See id.

87. See notes 63-71 supra and accompanying text.
fend and indemnify the insured was used to establish quasi in rem jurisdiction. The Supreme Court now has firmly established the minimum contacts standard articulated in *International Shoe* as the sole basis for jurisdiction over a nonresident defendant. The focus in such cases is on the relationship of a defendant to the forum and the relationship of the forum to the litigation. The contractual obligation between a defendant and his insurer does not satisfy the minimum contacts requirement and thus jurisdiction under the *Seider* doctrine cannot be invoked.

In most instances, the abandonment of *Seider* jurisdiction will not leave a plaintiff without a remedy in the state in which the accident occurred or in which the defendant resides. *Rush* was an exception because the plaintiff in Indiana was barred by that state's guest statute. In *Rush*, the Supreme Court did not discuss specifically the situation in which no other forum is available. The *Rush* Court reiterated the conclusion in *Shaffer* that the central focus of the minimum contacts analysis rests not on the plaintiff but on the defendant, the forum, and the litigation. In *World-Wide Volkswagen Corp. v. Woodson*, however, a case decided the same day as *Rush*, the Court identified factors other than the relationship among the defendant, forum, and litigation that should be weighed in applying the *International Shoe* standard. Five factors were listed by the Court: (1) the burden on the defendant; (2) the forum's interest in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief (at least when that interest is not adequately protected by the plaintiff's power to choose the forum); (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and (5) the shared interest of the several states in furthering fundamental, substantive social policies. Of particular interest is the third factor which considers the plaintiff's interest in litigating in the forum. If no other forum is available to a plaintiff, a plaintiff's contacts with the forum may be a factor in deciding whether jurisdiction is appropriate.

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88. See *Rush v. Savchuk*, 444 U.S. at 327-28; notes 55-62 *supra* and accompanying text; notes 89-97 *infra* and accompanying text.
89. See note 62 *supra* and accompanying text.
90. See notes 63-71 *supra* and accompanying text.
91. See note 15-16 *supra*.
92. The *Rush* Court stated:

The justifications offered in support of *Seider* jurisdiction share a common characteristic: they shift the focus of the inquiry from the relationship among the defendant, the forum, and the litigation to that among the plaintiff, the forum, the insurer and the litigation. In other words, the plaintiff's contacts with the forum are decisive in determining whether the defendant's due process rights are violated.

Such an approach is forbidden by *International Shoe* and its progeny.

444 U.S. at 332.
94. *Id.* at 292. See note 59 *supra*. 
This apparent contradiction between the two decisions may be explained by the last paragraph of the Rush opinion. The Court stated that when "judicially cognizable ties" exist between a defendant and the forum, other unspecified factors related to the subject matter of the litigation would be relevant to the International Shoe reasonableness standard. In Rush, however, the Court stressed that the defendant had no ties with the state. Thus, the Court implied that when some contacts exist, other interests, presumably the World-Wide Volkswagen factors, should be considered.

The Rush decision abrogated a doctrine that has been the focus of vigorous legal debate since its inception. Seider jurisdiction has been criticized primarily for promoting forum shopping and exposing defendants to unknown risks of litigation by the mere fortuity of where their insurance companies happen to do business. It has been criticized further for the inconvenience it imposes on a defendant. When the imposition of jurisdiction is unduly burdensome on a defendant, courts may allow a transfer of the case based on forum non conveniens. This remedy, how-

95. See 444 U.S. at 332-33.

96. See id. at 332. The Court, however, did not cite World-Wide Volkswagen after this language, even though doing so would have clarified the Court's reasoning.

97. Id. at 332-33. ("Here, however, the defendant has no contacts with the forum . . . ." (emphasis in original)).


Professor Woods proposes a three-step analytical model to assess the due process basis for any assertion of jurisdiction. First, the inquiry must focus on whether the forum has a legitimate governmental interest in the subject matter of the litigation. This initial inquiry, which Professor Woods views as being identical to the minimum contacts analysis, is designed to identify the minimum rational nexus between the parties, the forum, and the litigation. If a sufficient nexus is absent, any additional inquiry is precluded. If a sufficient nexus exists, a court is said to have "preliminary jurisdiction." Second, it must be ascertained whether the contact(s) between the defendant and the forum results from "purposeful activity" as defined by Hanson v. Denckla, 357 U.S. 235, 253 (1958). If "purposeful activity" exists, the defendant is deemed to have "fair notice" that the forum may exercise jurisdiction over him. In the absence of "purposeful activity" a court is prohibited from asserting jurisdiction. Finally, it must be determined whether the assertion of jurisdiction over the defendant offends "traditional notions of fair play and substantial justice" as developed by a long line of case law. See Woods, supra at 881-98.

99. See note 5 supra.


ever, is not always available to a defendant\textsuperscript{102} and reliance on the freedom of transfer presupposes jurisdiction.\textsuperscript{103}

In essence, Seider cases are in personam actions "parading in in rem disguise."\textsuperscript{104} With the additional complications posed by multiple party litigation and conflicts of law,\textsuperscript{105} Seider theory presents jurisdictional


\textsuperscript{104}. Siegel, Simpson Upholds Seider—Problems for Both Sides, 159 N.Y.L.J. \S 16, at 1, col. 3 (1968).

\textsuperscript{105}. In Savchuk v. Rush, 272 N.W.2d 888 (Minn. 1978), rev'd, 444 U.S. 320 (1980), the court stated that "Minnesota's legitimate interest in facilitating recoveries for resident plaintiffs not only requires provision of a local forum, but may override traditional choice of law analysis." 272 N.W.2d at 891-92. Therefore, the Minnesota court presumably would have applied Minnesota's comparative negligence statute rather than Indiana's contributory negligence rule and would have declined to apply Indiana's guest statute. See Savchuk v. Rush, 311 Minn. 480, 496, 245 N.W.2d 624, 633 (1976) (Otis, J., dissenting), vacated and remanded, 433 U.S. 902 (1977), aff'd on remand, 272 N.W.2d 888 (Minn. 1978), rev'd, 444 U.S. 320 (1980).

Several cases illustrate the extent to which the Minnesota Supreme Court has stretched choice of law analysis. In Hague v. Allstate Ins. Co., 289 N.W.2d 43 (Minn. 1978), aff'd, 101 S. Ct. 633 (1981), the court applied Minnesota law that permitted the "stacking" of uninsured motorist coverages in a suit against a nonresident corporation doing business in Minnesota. The injury occurred in Wisconsin and involved Wisconsin residents, one of whom worked in Minnesota although the injury was unrelated to his employment. Plaintiff, decedent's widow, subsequently moved to Minnesota, had her husband's will probated in the state, and brought suit in Minnesota to recover insurance benefits. The only apparent contacts between the parties, forum, and litigation were that plaintiff was a Minnesota resident at the time of suit, that the decedent worked in Minnesota, and that defendant was doing business in Minnesota. See 289 N.W.2d at 47.

In Follese v. Eastern Airlines, 271 N.W.2d 824 (Minn. 1978), the court applied Minnesota workers' compensation law in an action against a foreign corporation that did business in the state. The suit arose out of a personal injury that occurred outside of Minnesota. The plaintiff, although technically a Minnesota resident, had been living in Florida for eight years and had signed her employment contract there. See id. at 832-33.

In Schwartz v. Consolidated Freightways Corp., 300 Minn. 487, 221 N.W.2d 665 (1974), the court applied the Minnesota comparative negligence statute, rather than the Indiana rule of contributory negligence, to an action against a foreign corporation that was licensed to do business in the state. As in the preceding cases, the injury and the defendant's business were unrelated to the forum. See id. at 489, 221 N.W.2d at 666-67.

"Judicial jurisdiction," which refers to the power of a court to affect legal interests before it, must be distinguished from "legislative jurisdiction," which refers to the power of a state to apply forum law. See generally R. LEFLAR, AMERICAN CONFLICTS LAw §§ 29-55 (3d ed. 1977). It is clear that a state deprives a party of due process by applying the law of a forum having no interest in the matter. See id. § 55, at 105-06. Minimum contacts analysis governs the constitutionality of choice of law as well as assertions of jurisdiction. The issue, however, of what contacts are sufficient to satisfy "fair play and substantial justice" in regard to legislative and judicial jurisdiction is different. "The question of what law may govern and what court may act are similar though not the same. The lines that
problems so unusual that they are difficult even to articulate. The \textit{Rush} decision conclusively settled this controversy. By declaring \textit{Seider} jurisdiction unconstitutional, the Court provided clarity and consistency to an ambiguous and confusing area. One developing standard, guided by minimum contacts analysis, now governs any constitutional assessment of jurisdiction. Unless revived by the legislature through a direct action statute, \textit{Seider} jurisdiction has become a relic of the past.

delineate the answers to the questions seem to be converging but they have not merged." \textit{Id.} at 106.

Prior to the recent Supreme Court decision in Allstate Ins. Co. v. Hague, 101 S. Ct. 633 (1981), the leading case on the constitutional limits of choice of law was Home Ins. Co. v. Dick, 281 U.S. 397 (1930). \textit{See} John Hancock Mut. Life Ins. Co. v. Yates, 299 U.S. 178 (1936). \textit{Dick} involved a fire insurance contract entered into in Mexico, by Mexican parties, on a boat operating in Mexican waters with insurance proceeds payable in Mexico. The contract stipulated that liability was limited to actions filed within one year after date of loss. This provision was valid under Mexican law but invalid under Texas law. The policy was subsequently assigned to the plaintiff who was a Texas resident although living in Mexico. The boat burned in Mexican waters. The Supreme Court held that Texas could not apply its law to invalidate the limitation clause without violating due process. \textit{See id.} at 410. The Texas residence of the plaintiff was not sufficient to support application of Texas law, particularly when that residence was "technical" because he actually lived in Mexico. \textit{See id.} at 408.

In Allstate Ins. Co. v. Hague, 101 S. Ct. 633 (1981), the Supreme Court further defined the constitutional limits on choice of law. Affirming Minnesota's application of forum law, the Court stated that Minnesota had three contacts with the parties and cause of action which, in aggregate, proved sufficient under the full faith and credit and due process clauses. \textit{See id.} at 640. The Court found Minnesota's most significant connection with the decedent was that Minnesota was decedent's place of employment. In the Court's view, the fact that the decedent "was not killed while commuting to work or while in Minnesota does not dictate a different result." \textit{Id.} at 641. In addition, the Court noted defendant's presence and business activity within Minnesota and the respondent's current Minnesota residence. \textit{See id.} at 642-43. In regard to this last factor, the Court stated "that a postoccurrence change of residence to the forum state was insufficient in and of itself to confer power on the forum state to choose its law . . . ." \textit{Id.} at 643 (citing John Hancock Mut. Life Ins. Co. v. Yates, 299 U.S. 178 (1936)). The Court also held that "[w]e express no view whether the first two contacts, either together or separately, would have sufficed to sustain the choice of Minnesota law . . . ." \textit{Id.} at 644 n.29.

Although in \textit{Rush}, the Court did not directly address the conflicts of law issue, the facts seem remarkably similar to the \textit{Dick} and \textit{Yates} cases. \textit{See} 444 U.S. at 325 n.8. The injury arose outside Minnesota between then Indiana residents. The action was brought by a plaintiff whose Minnesota residence may be characterized as "technical" because he moved to Minnesota after the cause of action arose. Although defendant's insurer did business in Minnesota, the most significant factor stressed by the \textit{Hague} Court, that of decedent's employment in Minnesota, was not present within the facts of \textit{Rush}. The \textit{Rush} Court, by failing to find judicial jurisdiction, refused to reach this troublesome issue. It appears likely, however, that if the issue had been ripe for consideration, the Court would have found Minnesota's contacts with the parties and the cause of action insufficient to sustain the application of forum law.


\textit{107. See} note 80 \textit{supra}.