CIVIL PROCEDURE: SEIDER WITH A MINNESOTA FLAVOR—A FEDERAL COURT IMPORTS QUASI IN REM JURISDICTION BASED ON GARNISHMENT OF LIABILITY INSURANCE OBLIGATIONS

I. INTRODUCTION

The effect of insurance upon the rules of legal liability, although still largely covert, intrudes with ever-increasing force upon the consciousness of the legal community. Whether the spiraling growth of the insurance industry is a cause or consequence of today's bias toward protecting the individual against the financial burden of modern society's inevitable casualties is a question of little more than academic interest. Regardless of the origin of the phenomenon, a blurring of the identities of the defendant and his insurer has spread far beyond the law of torts to invade other areas of the substantive law as well.

The trend is exemplified by an increasing impatience with procedural rules which bar the injured plaintiff's access to the insurance pool. Once

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1. A few years before his death, Dean Prosser noted with surprise that the widespread use of liability insurance had had but a limited overt effect upon the law of torts. W. PROSSER, THE LAW OF TORTS § 83 (4th ed. 1971).
3. The effect of insurance upon the law of torts may be most obvious in the movement toward no-fault insurance. Clearly, the current emphasis is upon the insurance rather than the tort-law aspects of the automobile accident reparation system. See, e.g., W. BLUM & H. KALVEN, PUBLIC LAW PERSPECTIVES ON A PRIVATE LAW PROBLEM 21-24 (1965). Indeed, the prevalence of liability insurance and the common view that its purpose is to compensate persons injured in automobile accidents form much of the impetus for the reform movement. See W. PROSSER, supra note 1, at § 83:

Dedicated advocates of sweeping change, in which liability insurance is to play a predominant part, have sought to buttress their arguments by the contention that such insurance already has revolutionized the law of torts; that it has rendered obsolete the rules of negligence which have become a mere set of formulae to which the courts still afford lip service while in fact looking to the insurance; that the change is half made and therefore should be completed.

See R. KEETON, supra note 2, at 126-29.
4. The Uniform Commercial Code, for example, frankly places the risk of casualty loss to goods in certain circumstances upon the party who has procured insurance coverage. See UNIFORM COMMERCIAL CODE § 2-510.
5. A good example is the widespread adoption of statutes which in effect convert automobile indemnity insurance into automobile liability insurance. Automobile liability insurance was originally a contract whereby the insurer agreed to indemnify its insured for losses sustained by him by reason of his tort liability to others. Thus, the insured could not require the insurer to pay the tort judgment obtained by victim, rather, he could only require the insurer to indemnify him after he had paid the judgment himself. Where its insured was insolvent, the insurer avoided liability altogether. For detailed discussion of this doctrine, see G. COUCH, CYCLOPEDIA OF
tolerantly viewed as a useful legal fiction,\textsuperscript{4} the rule that only the tortfeasor and not his liability insurer, is the real party defendant\textsuperscript{5} to a personal injury action,\textsuperscript{6} has recently fallen into disfavor. Many now recognize openly the role of the insurer in the trial of the lawsuit,\textsuperscript{9} and although their view has not been fully accepted, the separation between the insurer and its insured is commonly disregarded in order to prevent prejudice to the plaintiff.\textsuperscript{10}

Where the real-party-defendant rule effectively denies the plaintiff a forum, as it sometimes may in actions with multi-state contacts, the temptation to discard the fiction occasionally becomes overwhelming. Certainly, the equitable position of the plaintiff is persuasive when he must incur the often prohibitive expense of pursuing the defendant to a far-away forum to obtain personal jurisdiction, while defendant’s insurer, regularly transacting its business in plaintiff’s home state, remains impervious to suit.\textsuperscript{11}

“Direct action,” a doctrine permitting the plaintiff to name the insurer

\textsuperscript{4}See generally authorities collected note 84 infra.

\textsuperscript{5}Ins. Law §§ 45:16 to :26 (2d ed. 1964); R. Keeton, Basic Text on Insurance Law § 4.8(b) (1971). A number of states have adopted statutes requiring policy provisions that the insolvency or bankruptcy of the insured does not relieve the insurer of liability. See, e.g., Minn. Stat. § 170.40, subd. 6(2) (1971). See also G. Couch, supra, at § 45:26. In other jurisdictions, insurers, fearing legislative action, have included insolvency clauses in their standard policy forms. R. Keeton, supra at § 4.8(b).

\textsuperscript{6}6. Apparently, the original purpose of limiting the victim’s right to proceed against the insurer prior to obtaining a judgment against the tortfeasor was to avoid inflated verdicts which it was feared might result if the jury learned that the tortfeasor was insured and would not be required to pay the judgment himself. See R. Keeton, supra note 5, at § 7.11; Rudser, Direct Actions Against Insurance Companies, 45 N.D.L. Rev. 483, 484 (1969). Modern empirical studies have cast doubt upon the validity of this theory, however. Cf. Broeder, The University of Chicago Jury Project, 38 Neb. L. Rev. 744, 754 (1959).

\textsuperscript{7}7. This phrase is coined as a rough equivalent to “real party in interest.” Use of the latter term, though more familiar, is confusing in light of the fact that the rules of civil procedure limit its applicability to plaintiffs. Minn. R. Civ. P. 17.01.

\textsuperscript{8}8. In states which have adopted rules based upon the federal rules, which have relaxed requirements for joinder, the victim’s inability to join the liability insurer is not so much the result of any rule of law or procedure as of the fact that insurers universally include “no-action” clauses in their liability policies. See Rudser, supra note 6, at 483, 484; Note, The Liability Insurer as a Real Party in Interest: Proposed Amendments to the Minnesota Rules of Civil Procedure, 41 Minn. L. Rev. 784, 786-88 (1959). These clauses typically provide that no action shall lie against the insurer until the insured’s liability has been adjudicated in an independent action or until the claimant, insured, and insurer have entered into a settlement agreement. For an example of a standard no-action clause, see R. Keeton, supra note 5, at app. H.

\textsuperscript{9}9. See generally authorities collected note 84 infra.

\textsuperscript{10}10. Minnesota, for example, now permits the plaintiff to discover the limits of defendant’s insurance coverage. Minn. R. Civ. P. 26.02. In effect, a 1968 amendment expressly permitting such discovery overruled earlier case law. See Minn. R. Civ. P. 26.02, Advisory Committee Note. The Minnesota Supreme Court had interpreted the rules as previously constituted as not permitting discovery of this type since the information thus obtained could have no bearing on the merits of the action, but could only be relevant to the plaintiff’s strategic decision of whether to settle the action. Jeppesen v. Swanson, 243 Minn. 547, 68 N.W.2d 649 (1955).

as a defendant in the tort action, is one means which might be adapted to permit the plaintiff to sue at home. It has, however, found acceptance in only a few jurisdictions and then generally in a form unsuited to provide the resident plaintiff with a local forum when the injury occurs in another state. 12 Most courts which have desired to reach that result have instead seized upon newly-liberalized theories of jurisdiction to permit the plaintiff to establish quasi in rem jurisdiction 13 over the defendant in the plaintiff's home state if the defendant's insurer does business there. The insurer's obligations to


13. In a quasi in rem proceeding, the plaintiff seeks to enforce a personal claim against the defendant by applying the property of the defendant to the satisfaction of his claim through attachment or garnishment. Attachment and garnishment are statutory remedies for the collection of a debt. Property held by the debtor himself, in the case of attachment, or property belonging to the debtor and held by a third party in the case of garnishment, is seized as security for a potential judgment prior to any adjudication of the personal rights and obligations of the plaintiff and defendant. Both require that an attachable res exist, although it may consist of either intangible or tangible property.

Assuming that the defendant is a non-resident and that he is not subject to the personal jurisdiction of the court, the garnishee and the res ordinarily must both be within the court's jurisdiction. If the property is within the court's jurisdiction and the garnishee is not, the property may remain garnishable, but if the garnishee is subject to the court's jurisdiction while the property is outside of the state, the action will probably be dismissed. If neither the garnishee nor the property is subject to the jurisdiction of the court, the action cannot be maintained. See Beale, The Exercise of Jurisdiction In Rem To Compel Payment of a Debt, 27 Harv. L. Rev. 1017 (1913).

The basic elements of quasi in rem jurisdiction are the presence of the res within the state, the seizure of the res at the commencement of the proceedings, and an opportunity for the owner of the res to be heard. Pennington v. Fourth Nat'l Bank, 243 U.S. 269 (1917); Pennoyer v. Neff, 95 U.S. 714 (1877).

Though nominally in rem, quasi in rem is, in reality, a form of limited personal jurisdiction which allows the determination of the personal rights and obligations of the parties, with the plaintiff's recovery being satisfied out of the property which furnished the basis of the jurisdiction. It developed largely to ameliorate the harsh effects upon injured plaintiffs of the restricted territorial limitations on personal jurisdiction adopted by the United States Supreme Court in Pennoyer v. Neff, which permitted a court to exercise personal jurisdiction over a defendant only if process were served personally on a defendant while he was within the forum or by means of substituted service on a resident defendant. The modern expansion of the courts' power to exercise personal jurisdiction over non-resident defendants has led the commentators to debate whether quasi in rem jurisdiction remains necessary or desirable. See Carrington, The Modern Utility of Quasi In Rem Jurisdiction, 76 Harv. L. Rev. 303 (1962); Currie, Attachment and Garnishment in the Federal Courts, 59 Mich. L. Rev. 337 (1961).
the defendant are viewed as a res, with its situs in the state where plaintiff resides, to which quasi in rem jurisdiction may attach. Both techniques are of recent origin and limited acceptance and produce unsettled results.

In *Rintala v. Shoemaker*, the Minnesota federal district court chose quasi in rem jurisdiction to require a non-resident defendant and his resident insurer to defend to the limits of the liability insurance policy plaintiff’s wrongful death action, thereby moving Minnesota into the forefront of the controversy surrounding the use of this procedural device to subvert the real-party-defendant fiction. In *Rintala*, the plaintiff, a Minnesota resident, brought an action in the United States District Court for the District of Minnesota, for wrongful death arising out of a Florida automobile accident, claiming that defendant, a Michigan resident, negligently caused the death of her husband, a passenger in defendant’s vehicle. The plaintiff commenced the action by filing a complaint and having a garnishee summons served on the defendant’s insurance company, which was admitted to do business in Minnesota. Copies of the garnishee summons, along with the summons and complaint, were served on defendant in Michigan. Defendant’s insurer responded to disclosure interrogatories with a motion to dismiss the garnishee summons, alleging lack of jurisdiction and failure to attach a garnishable res, and to dismiss the main action for lack of jurisdiction, improper venue, and the taking of property without due process of law.

The court found that it had no personal jurisdiction over the defendant since he was not subject to Minnesota’s “long arm” jurisdiction, but held that quasi in rem jurisdiction had been validly obtained. It reasoned that the duties owed by the defendant’s insurance company to the defendant con-

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17. She was appointed trustee for the purposes of the wrongful death action pursuant to Minn. Stat. § 573.02(3) (1971).


19. The garnishee summons was actually served upon Minnesota’s Commissioner of Insurance, who, for purposes of service of process, was appointed the insurer’s agent. Minn. Stat. § 60A.19(3) (1971).

20. Fed. R. Civ. P. 4(e) provides that when a non-resident defendant is served notice to defend in an action by reason of the garnishment of his property, service may be made in accordance with the statute or rule of court of the state in which the federal court is located. Thus, plaintiff sought to obtain jurisdiction by complying with Minn. Stat. ch. 571 (1971) and Minn. R. Civ. P. 4.04.


22. 362 F. Supp. at 1046-47.


24. 362 F. Supp. at 1053.

25. The court was apparently referring to the insurance company’s contract obligations to defend and indemnify the defendant. See id. at 1047.
stituted a res which, by statute and because of the state's interest in protecting its residents, had a Minnesota situs and was properly garnishable there.26 Thus, upon garnishment of the res and proper notice to the defendant, plaintiff obtained valid quasi in rem jurisdiction. The court did state, however, that in order to satisfy the requirements of due process, defendant's liability would be limited to the amount of his insurance coverage.27

The rationale underlying the court's acceptance of garnishment of the insurer's obligation as a basis for quasi in rem jurisdiction was two-fold. First, the court found Minnesota's statutory scheme of pre-judgment garnishment sufficiently broad to encompass the obligations an automobile liability insurer owes its insured.28 Second, the court believed that the procedure satisfied the requirement of "overall fairness" to the parties required by due process.29 The court buttressed its second holding with the decisions of the New York Court of Appeals, and, more persuasively, with the decisions of other federal courts which have considered the application of due process requirements to this type of quasi in rem jurisdiction.30 For its first holding, however, the court was without guidance, for Rintala presented a question of statutory construction never considered by the Minnesota Supreme Court.31

Rintala, its constructional and theoretical foundation, and its implications for Minnesota litigants are extremely complex. An evaluation of the court's reasoning and an analysis of the decision's effect upon the law of Minnesota not only require that one bear in mind the goal of permitting the injured resident to sue at home, but also necessitate a review of the brief but troubled history of this type of quasi in rem jurisdiction.

II. THE TENTATIVE DEVELOPMENT OF QUASI IN REM JURISDICTION BY ATTACHMENT OF LIABILITY INSURANCE OBLIGATIONS

Rintala is one of the few progeny of Seider v. Roth,32 the first decision to hold, in an almost identical factual setting,33 that upon the happening of an automobile accident, the liability insurer's contractual obligations to defend and indemnify become subject to attachment as a basis for quasi in rem jurisdiction. Seider is grounded in the New York Court of Appeals' classification of the insurer's obligations as a "debt" attachable under New York

26. Id. at 1053.
27. Id. at 1054-55.
28. Id. at 1053.
29. Id. at 1057.
30. Id. at 1053-56.
31. Id. at 1047.
33. The typical Seider-Rintala situation arises when a plaintiff with a cause of action arising out of an out-of-state incident seeks to sue the non-resident defendant at home, rather than traveling to the state where the cause of action arose or where defendant resides, by attaching the obligations owed defendant by his insurer who does business in the state of plaintiff's residence.
Seider relied heavily upon and affirmed an earlier court of appeals decision that a liability insurance policy created a creditor-debtor relationship between the insured and the insurance carrier even though no judgment had been obtained against the non-resident insured or his estate. Borrowed by the Seider court from its original context of a proceeding for the issuance of ancillary letters of administration, that holding permitted the court to classify the insurer's obligations to its insured as a debt for all purposes thus allowing the direct application of New York statutes permitting the attachment of debts to the Seider situation.

Turning to the relevant public policy considerations, the court stated that it saw no reasons which would militate against requiring the insurer and the defendant to defend the action in New York. Neither did it state policy reasons in favor of such a result, but instead relied upon precedent which had found a similar result not repugnant to the public policy of the state of New York. Denying that it created a right of "direct action" against a liability insurer, the court noted that the insurer had contracted to defend its insured wherever jurisdiction was properly obtained over him.

From the very beginning, Seider spawned controversy. The constitutionality of the procedure it established remained subject to doubt for several years, and its rationale was analyzed and reanalyzed in a line of state and

34. 17 N.Y.2d at 114, 216 N.E.2d at 314, 269 N.Y.S.2d at 102.
35. Id. at 114, 216 N.E.2d at 315, 269 N.Y.S.2d at 102.
37. N.Y. Civ. Prac. Law § 6202 (McKinney 1963) provides that any debt against which a money judgment may be enforced is subject to attachment. New York law defines a "debt against which a money judgment may be enforced" as follows:

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 § 5201(a) (McKinney 1963).
38. 17 N.Y.2d at 114, 216 N.E.2d at 315, 269 N.Y.S.2d at 102.
40. The arguments raised in the dissent in Seider itself are typical. It stressed a single conceptual problem with the majority's analysis, the classification of liability insurance obligations as a "debt," arguing that an attachable indebtedness must not depend upon a contingency but, rather, that the debt must be absolutely owing either at present or in the future. The plaintiffs were accused of indulging in circular reasoning to bootstrap themselves into jurisdiction. The promise to defend was assumed to furnish jurisdiction for a civil suit that must be validly commenced before the obligation to defend could ever possibly accrue. The dissent distinguished Riggle, which, because it dealt only with the appointment of an administrator, could, without prejudicing the rights of any person, include promises within the definition of property even though conditions precedent to their fulfillment were not yet due. 17 N.Y.2d at 115-18, 216 N.E.2d at 315-17, 269 N.Y.S.2d at 103-05 (Burke, J., dissenting).
41. See commentary collected at note 84 infra.
federal court decisions. A brief consideration of the travails of Seider jurisdiction in the New York courts is useful to an understanding of Rintala and its implications.

At first, the New York Court of Appeals upheld the constitutionality of the procedure it had established in the face of allegations that it denied the defendant due process of law. In Simpson v. Loehmann, the court concluded that it should adhere to Seider and approved the policies which underlie Seider jurisdiction. Noting that the rigid historical limitations on personal jurisdiction were giving way to a more realistic evaluation of the rights and interests of the parties and the forum state, limited only by considerations of fairness, it determined that the insurer's complete practical control of the litigation and the state's substantial and continuing interest in the controversy afforded sufficient basis for jurisdiction. The court did, however,

42. 21 N.Y.2d 305, 234 N.E.2d 669, 287 N.Y.S.2d 633 (1967). In Simpson, the defendant, a Connecticut resident, appealed from the trial court's denial of his motion to vacate the attachment of his liability insurance policy in New York, contending that the attachment violated his right to due process of law, imposed an undue burden on interstate commerce, and impaired the obligations owed under a contract. The decision focused on the first allegation and dispensed with the two latter constitutional objections in a footnote. In dealing with the interstate commerce argument, the court noted that even though the defendant lacked standing to raise the issue, the imposition of an attachment on a non-resident does not constitute an unconstitutional burden on commerce. To the defendant's argument that the attachment impaired contract obligations by inviting the insured to withhold cooperation in the defense of the action, the court responded that the insurer had satisfactory recourse in such an event, for it could assert his lack of cooperation as a defense to its duty to indemnify him for any resulting default judgment. Id. at 309 n.2, 234 N.E.2d at 670 n.2, 287 N.Y.S.2d at 635 n.2.

43. The court emphasized the state of New York's interest in providing a forum for its injured citizens and argued that this interest combined with the nexus furnished by the insurance company's policy obligations empower the courts to exercise in rem jurisdiction over the defendant. 21 N.Y.2d at 310, 234 N.E.2d at 671, 287 N.Y.S.2d at 636.

44. Id.

45. The insurer selected the attorneys for the defendant, decided if and when to settle, and made all procedural decisions in connection with the litigation. 21 N.Y.2d at 311, 234 N.E.2d at 672, 287 N.Y.S.2d at 635.

46. Id.

47. Id. The 5-2 decision in Simpson to affirm Seider is less than a mandate for the Seider procedure when one considers the make-up of the majority. Only two justices actually signed the plurality opinion. Another concurred in that opinion. Another concurred in the result, favoring it as a recognition of "realities," but viewing the decision, nevertheless, as an express sanction of a direct action against the insurer, the real party in interest. Id. at 314, 234 N.E.2d at 674, 287 N.Y.S.2d at 640 (Keating, J., concurring). The five-member majority was completed by two judges who concurred only to the extent that Simpson placed restrictions upon the use of the Seider procedure, and argued that both the theoretical basis and practical consequences of the Seider rule itself were vulnerable to attack. Id. at 314, 234 N.E.2d at 674, 287 N.Y.S.2d at 640 (Breitel & Bergan, JJ., concurring). The dissent saw no possible theory which could sustain the constitutionality of the Seider procedure. Viewing the rule as "direct action," they found insufficient contacts with the state to support jurisdiction. The insurance contract obligations were not viewed as "ordinary debts" falling within the rationale of Harris v. Balk, 198 U.S. 215 (1905). On the contrary, the assignment of New York situs to the intangible obligations was seen as being outside the "fairness" requirements of International Shoe Co. v. Washington, 326 U.S.
limit the plaintiff's recovery to the limits of defendants' liability coverage,\footnote{Limiting recovery to the limits of liability coverage} disavowing any intent to expand in personam jurisdiction.\footnote{Disavowing any intent to expand in personam jurisdiction.}

During the following year, the United States District Court for the Southern District of New York twice considered the constitutionality of the Seider procedure.\footnote{Seider procedure.} It first held that Seider jurisdiction deprived the defendant of due process of law\footnote{Due process of law} when viewed in conjunction with a New York statute which forbid limited appearances by the defendant.\footnote{New York statute prohibiting limited appearances by the defendant.} Whether based on the traditional theory that the obligation of the insurer constitutes an attachable res or the modern functional theory that the insurer is the real party in interest,\footnote{Theoretical basis for attaching the liability insurance policy.} the Seider procedure was held unconstitutional because of the dilemma it creates for the insured. Appearance might constitute a consent to the personal jurisdiction of the court, while non-appearance might constitute a breach of the cooperation clause of the liability insurance policy.\footnote{Dilemma faced by insureds.}

The federal court's decision was extremely short-lived. Immediately following the decision, the defendant in Simpson moved for a rehearing.\footnote{Simpson motion for rehearing.} In denying that motion, the New York Court of Appeals held that a defendant could proceed with a defense on the merits when Seider jurisdiction over him had been obtained, without subjecting himself to an in personam judgment in excess of the policy limits.\footnote{Simpson decision denying rehearing.} Subsequently, the federal district court, con-

\footnote{Simpson v. Loehmann, 21 N.Y.2d 990, 238 N.E.2d 671, 290 N.Y.S.2d 914 (1968) (denying rehearing).}
considering the issue for the second time that year, relied upon that decision to uphold the constitutionality of the Seider procedure.\textsuperscript{57}

Any lingering doubts regarding the constitutionality of Seider jurisdiction\textsuperscript{58} were laid to rest by the exhaustive analysis of the Court of Appeals for the Second Circuit in Minichiello v. Rosenberg.\textsuperscript{59} Concluding that Seider had authorized direct action by judicial decision,\textsuperscript{60} the court held that the Constitution would limit the application of the doctrine to cases in which the forum state was either the place of the injury or the plaintiff's residence.\textsuperscript{61} Though approving the New York court's construction of the state's statutes to create a right to a limited appearance,\textsuperscript{62} the federal court concluded that due process also required that the defendant be further protected by denying a Seider judgment a collateral estoppel effect in an in personam action in another jurisdiction for an excess judgment.\textsuperscript{63}

Upon rehearing en banc, the second circuit adhered to its affirmance of Seider, and, relying on Harris v. Balk,\textsuperscript{64} rejected appellant's contention that the procedure imposed an excessive and unconstitutional burden upon non-residents.\textsuperscript{65} Pointing out that liability insurers would supply New York counsel for the individual defendants, and noting that the procedure would guarantee that liability insurance policies were applied to the purposes for which they were purchased,\textsuperscript{66} the court argued that convenience transfers\textsuperscript{67} § 320(c) to permit limited appearance in all cases in which the sole basis of jurisdiction was the attachment of the defendant's property.

\textsuperscript{58} Actually, few such doubts should have lingered after the procedure was again upheld as constitutional in Victor v. Lyon Associates, 21 N.Y.2d 695, 234 N.E.2d 459, 287 N.Y.S.2d 424 (1967), appeal dismissed for want of a substantial federal question sub nona. Hanover Ins. Co. v. Victor, 393 U.S. 7, rehearing denied, 393 U.S. 971 (1968).
\textsuperscript{60} Id. at 109.
\textsuperscript{61} Id. at 110.
\textsuperscript{62} Id. at 111.
\textsuperscript{63} Whatever the right rule may be as to quasi in rem judgments generally, we think it clear that neither New York nor any other state could constitutionally give collateral estoppel effect to a Seider judgment when the whole theory behind this procedure is that it is in effect a direct action against the insurer and that the latter rather than the insured will conduct the defense. Id. at 112.
\textsuperscript{64} 198 U.S. 215 (1905).
\textsuperscript{65} 410 F.2d at 117. The dissent in Minichiello agreed with the majority that Seider was in effect a judicially created direct action statute and subjected the majority position to a rigorous analysis based upon Watson v. Employees Liab. Ins. Corp., 348 U.S. 66 (1954), a United States Supreme Court decision upholding the constitutionality of Louisiana's direct action statute, and International Shoe Co. v. Washington, 326 U.S. 310 (1945). After balancing considerations of fairness to the parties, litigational convenience, and the interests of the state, the dissent concluded that a direct action purporting to provide a New York forum for all New York plaintiffs regardless of other local contacts or considerations would violate due process. Id. at 113-17 (Anderson, J., dissenting).
\textsuperscript{66} Id. at 118.
\textsuperscript{67} 28 U.S.C. § 1404(a) (1970) ("[F]or the convenience of parties and witnesses, in the interest
and the right of removal to the federal courts. Since each of the New York cases relied upon the construction of one or more state statutes, other states easily rejected Seider jurisdiction by construing their own statutes differently. Generally, the decisions distinguished the New York line of cases by arguing that the local garnishment statute, unlike that of New York, excluded from the purview of a garnishable res the insurer's obligation to defend and indemnify its insured.

With Turner v. Evers in 1973, a California intermediate appellate court became the first outside of New York to accept Seider jurisdiction. The combination of California's broad jurisdiction statute and the Minichiello decision, permitted the Turner court to address itself immediately to the question of the garnishability of insurance policy obligations. By broadly interpreting a California statute which included both debts and property within the definition of a garnishable res, the court gave an affirmative

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68. 28 U.S.C. § 1332 (1970). Seider-Rintala actions are, by their very nature—resident plaintiff and non-resident defendant—removable to federal court under the statutory provisions for diversity jurisdiction. 410 F.2d at 118-19.

69. 410 F.2d at 119.

70. See statutes cited in note 37 supra.


The Vermont statute at issue in Ricker is typical in requiring that anything owed the defendant be due absolutely and without contingency to be garnishable. The court found that an insurance company’s liability under one of its policies was contingent and thus not subject to garnishment. The Vermont court also found the dissent in Seider more persuasive than the majority opinion on the point of “contingency.” Ricker v. Lajoie, supra at 403.

72. See cases collected note 71 supra.


74. Cal. Civ. Pro. Code § 410.10 (West 1973) ("A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.").


response. Relying on an earlier case which had based probate jurisdiction on an insurance obligation, it concluded that the insured's rights were "property." Moreover, the court determined that the insurer's obligation was not contingent since the duty to defend and indemnify fell due upon the filing of an action against the insured and thereafter was contingent only as to amount. Finally, the court stressed the state's interest in protecting its injured residents, noting a movement away from the jurisdictional bias favoring defendants and toward permitting the plaintiff to require the defendant to come to him.

Like the New York courts before it, the Turner court recognized the need for limitations upon the right to exercise this sort of jurisdiction. It was careful to deny that it had expanded in personam jurisdiction or created a right of direct action against the insurer. To prevent harassment of non-resident defendants, it authorized the use of a form of forum non conveniens. Since the California Supreme Court has yet to pass upon the validity of Seider jurisdiction, the procedure has won the approval of the highest state court in only one state, New York. Most courts to consider it have rejected it outright. Seider jurisdiction has received an equally cool reception from the commentators, most of whom have criticized it severely.

79. Id. at 21-22, 107 Cal. Rptr. at 397-98.
80. Id. at 24, 107 Cal. Rptr. at 399.
81. The defendant in Turner raised a "direct action defense," claiming that the procedure permitted a direct action against the insurer, a result allegedly forbidden by California law. See CAL. INS. CODE § 11580 (West 1972). The court answered this contention with three points: (1) that since the action was against the insured and the insurer was only a garnishee, no direct action was involved; (2) that California law does not forbid direct actions, but rather, by placing a heavier burden on insurers than on the insured's other obligees, makes available such an action; and (3) that even if the provision of California law relied upon by defendant forbid direct actions, another section of the law made the insurer garnishee directly liable to plaintiff. 31 Cal. App. 3d at 22-24, 107 Cal. Rptr. at 398-99.
83. See cases cited note 71 supra.
84. The most persistent and prolific critic is Professor David Siegel, who, since 1966, has written annual commentaries on Seider in the Practice Commentary to N.Y. CIV. PRAC. LAW § 5201 (McKinney 1963). The other commentary has been almost unanimously unfavorable as well. See Rosenberg, One Procedural Genie Too Many or Putting Seider Back Into its Bottle, 71 COLUM. L. REV. 660 (1971); Stein, Jurisdiction by Attachment of Liability Insurance, 43 N.Y.U.L. REV. 1075 (1968); Note, Attachment of Automobile Liability Insurer's Obligations to Defend and Indemnify—Seider v. Roth, 8 B.C. IND. & COM. L. REV. 147 (1967); Comment, Attachment of "Obligations"—A New Chapter in Long Arm Jurisdiction, 16 BUFFALO L. REV. 769 (1967); Comment, Garnishment of Intangibles: Contingent Obligations and the Interstate Corporation, 67 COLUM. L. REV. 550 (1967); Note, Seider v. Roth: Attachment of an Insurer's Obligation to Defend, 71 DICK. L. REV. 653 (1967); Note, Minichiello v. Rosenberg: Garnishment of Intangibles—In Search of a Rationale, 64 NW. U. L. REV. 407 (1969); Note, Seider v. Roth: The Constitutional Phase, 43 ST. JOHN'S L. REV. 58 (1968); Comment, Jurisdiction—Quasi In Rem: Seider v. Roth to Turner v. Evers—Wrong Means to the Right End, 11 SAN
context, the result in *Rintala* was surprising. Some have seen the decision as an indication that the doctrine enunciated in *Seider* remains viable and that attitudes toward it may be changing.\(^5\) Whether the Minnesota Supreme Court will interpret Minnesota law as the federal court predicted it would\(^6\) remains to be seen. Nevertheless, *Rintala* presents an interesting illustration of the tension between technical jurisdictional issues and practical insurance problems, a tension that has given rise to both *Seider* jurisdiction and the controversy surrounding it.

III. *SEIDER*-TYPE JURISDICTION COMES TO MINNESOTA—AN ANALYSIS OF *RINTALA* V. *SHOEMAKER*

Like *Seider* and *Turner* before it, *Rintala* is grounded in the construction of a garnishment statute.\(^7\) In Minnesota pre-judgment garnishment was for many years\(^8\) available at any time during the pendency of the main action, without regard to its purpose or the circumstances which prompted its use.\(^9\) In 1969, however, the garnishment statute was amended to limit the availability of pre-judgment garnishment.\(^10\) As a result, pre-judgment garnishment is now available only in two circumstances: first, where it is necessary to acquire quasi in rem jurisdiction, and second, where the garnishee and defendant are parties to a contract of suretyship, guarantee, or insurance whereby the garnishee may be held to respond to another person’s claim against the defendant.\(^11\)

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86. 362 F. Supp. at 1052-53.
88. For a history of garnishment including specific references to early Minnesota law, see Mussman & Riesenfeld, *Garnishment and Bankruptcy*, 27 MINN. L. REV. 1 (1942).
89. Minn. Laws 1945 ch. 424, § 1 (1945).
91. GARNISHMENT shall be permitted before judgment in the following instances only: (1) For the purpose of establishing quasi in rem jurisdiction . . . (c) [when] the defendant is a nonresident individual . . . . (2) When the garnishee and the debtor are parties to a contract of suretyship, guarantee, or insurance, because of which the garnishee may be held to respond to any person for the claim asserted against the debtor in the main action. *Id.* (emphasis added).
Both tangible and intangible personal property are subject to garnishment in Minnesota, but intangibles in the nature of obligations owed by one person to another, such as debts, are subject to the further statutory limitation that they be "due absolutely, and without depending on any contingency."92 The judicial decisions make clear that the existence of the obligation itself, not the extent of the obligation or the timing of its performance, is the contingency of which the statute speaks.93 When disallowing an attempted garnishment because of this statutory prohibition, the courts have consistently relied upon the lack of a judgment or other facts creating a certainty that the obligation would at some time fall due.94

The situs of intangibles for the purpose of obtaining quasi in rem jurisdiction over their owner is determined in accordance with the principles of Harris v. Balk.95 Debts and other obligations cling to the obligor and may be garnished wherever he can be found within the physical boundaries of the forum state.96

The Rintala court's ruling that the garnishment encompassed liability insurance obligations was based upon the 1969 amendment to that statute and upon the Minnesota Supreme Court's oft-stated interest in providing Minnesota residents a local forum in which to sue non-residents.97 The two rationales are closely intertwined.

While recognizing the general rule that contingent obligations are not subject to garnishment,98 the court declined to hold,99 as the Seider court had,100 that the duties an automobile liability insurer owes to its insured are not contingent but rather are absolutely owed after the happening of an accident. Instead, the court held, based on its interpretation of the 1969 amendment, that the Minnesota statutory authority for pre-judgment garnishment included these insurance contract obligations without regard to whether they were contingent.101

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92. Minn. Stat. § 571.43 (1971) ("No person or corporation shall be adjudged a garnishee by reason of: (1) Any money or other thing due to the judgment debtor, unless at the time of the service of the summons the same is due absolutely, and without depending on any contingency . . . .") (emphasis added).
93. S.T. McKnight Co. v. Tomkinson, 209 Minn. 399, 296 N.W. 569 (1941); Knudson v. Anderson, 199 Minn. 479, 272 N.W. 376 (1937).
94. See Northwestern Nat'l Bank v. Delta Studios, Inc., 289 Minn. 202, 184 N.W.2d 3 (1971) (unliquidated contract claim is contingent and not garnishable); Northwestern Nat'l Bank v. Hilton & Associates, 271 Minn. 564, 136 N.W.2d 646 (1965) (unliquidated tort claim is contingent and not garnishable); Smaltz Goodwin Co. v. Poppe, Inc., 172 Minn. 43, 214 N.W. 762 (1927) (claim under a fire insurance policy without sworn proof of loss is contingent and not garnishable).
95. 198 U.S. 215 (1905).
96. Harris v. Balk, 198 U.S. 215 (1905); Templeton v. Van Dyke, 169 Minn. 188, 210 N.W. 874 (1926); Harvey v. Great N. Ry., 169 Minn. 50, 52 N.W. 314 (1892).
97. 362 F. Supp. at 1050.
98. Id. at 1049.
99. Id. at 1049-50.
100. 17 N.Y.2d at 113, 216 N.E.2d at 314, 269 N.Y.S.2d at 101.
The court gleaned a legislative intent to change the rule regarding garnishment of insurance policy obligations from several facts. First, the amendment authorizing pre-judgment garnishment where the debtor and garnishee are parties to an insurance contract was more specific and more recently enacted than the provisions of the statute forbidding the garnishment of contingent obligations. Second, the amendment was adopted after the Seider decision, giving rise to the inference that the legislature had intended to authorize Seider procedure. Third, the provisions forbidding garnishment of contingent obligations, since they were phrased so as to apply to "judgment debtors," could be interpreted to have post-judgment application only.

The court found additional support for its holding in the Minnesota Supreme Court's expansive notions of personal jurisdiction which apparently derive from its desire to provide the state's residents with a local forum. The Minnesota court has reasoned that the state's interest in affording maximum protection to residents injured by acts of non-residents requires the extension of the extra-territorial jurisdiction of the courts to the maximum limits consistent with constitutional limitations. Conversely, the Minnesota court has refused to permit a non-resident plaintiff to establish jurisdiction over a non-resident defendant, though admitting that it would have granted succor to a resident plaintiff on the same facts. The Rintala court's unusual rationale, particularly its dependence upon legislative intent, was designed to avoid some of the conceptual and technical difficulties for which the Seider decision has been so severely criticized. The court has been complimented for accomplishing that objective. If its rationale is valid, the decision may give Seider jurisdiction a new respectability, especially in those states having garnishment statutes similar to Minnesota's. Thus, the basis of the court's decision is deserving of detailed scrutiny.

The Rintala court particularly wished to avoid the circular reasoning

102. Id. at 1052.
103. Id. at 1050.
104. Id. at 1051-52.
105. Id. at 1052.
111. I.e., the duty to defend and indemnify which forms the basis for jurisdiction cannot fall
and nice questions of statutory interpretation involved in the construction of such phrases as "contingent obligation," "property," and "debt." In California, the insurer's obligations are "property," extant and garnishable; in New York, they constitute "debt." Nevertheless, the garnishment statutes of these two states are not noticeably different from those of the states which have held that such obligations are not property or not debts or that, as contingent obligations, they are simply not garnishable. All of the courts which had previously considered Seider jurisdiction had become embroiled in these semantic problems, which defied consistent analysis and which, after all, had little to do with the merits of quasi in rem jurisdiction.

The Rintala approach avoids another problem, the valuation of the obligation. The Seider court has been severely criticized for basing jurisdiction upon an obligation, the duty of the insurer to defend its insured, which would be exhausted during the course of the litigation. The Rintala interpretation of the statute renders such a criticism irrelevant.

The rationale employed by the Rintala court avoids many of the pitfalls which have subjected Seider and its progeny to criticism. Nevertheless, its underpinning—the construction of the 1969 amendment to authorize pre-judgment garnishment of insurance obligations, without regard to whether they are contingent—is not free of doubt.

First, the amendment was intended to restrict, not expand, the availability of pre-judgment garnishment. Prior to the amendment, a garnishee summons could be issued at any time during the pendency of an action. After the amendment, the summons may be issued at any time after default or judgment, but pre-judgment garnishment is limited, for our purposes, to cases of quasi in rem jurisdiction and cases where the garnishee and the...
debtor are parties to a contract of insurance. Arguably, then, the amendment should not be construed to expand pre-judgment garnishment beyond the limitations in effect prior to the amendment. Those limits included a prohibition upon the garnishment of contingent insurance obligations.

Second, the Rintala court reasoned that because the 1969 amendment was enacted 3 years after Seider was decided and specifically mentioned insurance contracts, the legislative intent was to provide for the Seider procedure. This conclusion seems to ignore the circumstances surrounding the adoption of the amendment. The amendment’s temporal coincidence with Sniadach v. Family Finance Corp. indicates that the legislative action may have been prompted by the legal environment which gave rise to Sniadach rather than that from which Seider developed. The Sniadach decision was announced and the amendment signed into law the same day. Though the coincidence does not necessarily prove that one event caused the other, it seems safe to conclude that limitation of pre-judgment garnishment was an idea whose time had come. Sniadach is cited as causing the downfall of several statutes, including the Minnesota garnishment statute. Under the circumstances, the view that the amendment was intended to assure that Minnesota’s pre-judgment garnishment procedure complied with due process is equally as plausible as the Rintala court’s explanation.

Third, the court’s conclusion that the provisions of the Minnesota statute which prohibit the garnishment of contingent obligations exclude pre-judgment garnishment from their purview is vulnerable to criticism. The court’s analysis ignores the fact that the term “judgment debtor,” which it takes to be language of limitation, is defined for the purposes of pre-judgment garnishment to include potential judgment debtors. The definition was added as a part of the 1969 amendment and can easily be construed to permit the application of the contingent-obligation prohibition to pre-judgment fact situations.

Fourth, the canons of statutory construction adopted in Minnesota would appear to require that effect be given both to the provision of the garnish-

122. See note 91 supra and accompanying text.
129. 362 F. Supp. at 1051-52.
130. Minn. Stat. § 571.41, subd. 3 (1971).
ment statute requiring that garnishable obligations be due absolutely and the one permitting the pre-judgment garnishment of an insurer. The court, it seems, interpreted the latter as an exception to the former, on the theory that one of the provisions would necessarily govern the other.133 Proceeding directly to apply the canons of construction to determine which section was to control,134 the court ignored the rule which requires that seemingly inconsistent statutory provisions are to be construed, if at all possible, so as to reconcile them and give effect to both.135

In this case both provisions of the garnishment statute could be given effect. The Legislature might have intended the insurance provisions to apply to the classic case where the funds which provide the only source of protection for the garnishor are likely to be dissipated prior to the rendition of judgment in the main action. While the due process considerations underlying Sniadach may forbid wholesale pre-judgment garnishment of the debtor's personal property to prevent its dissipation,136 insurance policy proceeds, particularly proceeds which the insurer is obligated to pay over to the plaintiff in the main action, are arguably an exception to the Sniadach rule. Pre-judgment garnishment of those proceeds, unlike garnishment of other types of assets, will seldom deprive the defendant of valuable property that he could apply to his own use during the pendency of the main action.137 Since the policy reasons which led to the decision in Sniadach are generally not present in cases where an obligation arising under an insurance policy is owed, the Legislature may well have intended to retain traditional pre-judgment garnishment in these situations.

Given this interpretation, the insurance section may be reconciled with the contingency provision. The two may be read together to permit garnishment only after the loss foreseen by the insurance policy has occurred, causing the proceeds to become absolutely due and owing, but the resolution of a collateral issue requires litigation causing the garnishor to seek protection against the possible dissipation of the proceeds.138 When read to contemplate

133. “Although this statute [contingency section] is still in force it is clearly superseded by Minn. Stat. § 571.41, subd. 2 [1971]. . . .” 362 F. Supp. at 1051.
134. Id. at 1051-52.
135. MINN. STAT. §§ 645.16, .17(2) (1971).
137. Practical rather than legal reasons compel this conclusion. First, since the proceeds of a first party casualty policy are generally limited to net loss, they will as a practical matter be consumed by the insured's bills and will be unavailable to be spent for other purposes. See G. COUCH, CYCLOPEDIA OF INSURANCE LAW § 1.9 (2d ed. 1959). Second, the drafting of the statute contemplates that the garnishor will have a direct interest in the proceeds of the policy. See MINN. STAT. § 571.41, subd. 2 (1971). Thus, the action is likely to involve proceeds to which the insured himself is not entitled, either because third party coverage is involved, as the result of assignment of benefits, or for some other reason.
138. Such situations may frequently arise under health and accident policies. Where the illness or injury, and thus liability itself, is admitted, litigation between the insured and the third party may still be necessary. For example, disputes over the need for or cost of medical products
these situations, the section authorizing pre-judgment garnishment need not supersede the contingency provision.

Fifth, some significance may be attributed to the Legislature's failure to amend the garnishment statute to provide explicitly for the Seider procedure. The 1969 amendment was not limited to the pre-judgment garnishment sections of the statute but included the contingency provisions as well. Thus, it would have been a simple matter for the Legislature to repeal the prohibition on garnishment of contingent obligations or, alternatively, to except Seider situations from its operation by explicit language. It seems fair to draw a negative inference from the Legislature's failure to take advantage of this opportunity.

Finally, the garnishment statute lists the existence of a contract of insurance between debtor and garnishee and the establishment of quasi in rem jurisdiction as alternative grounds for pre-judgment garnishment. Had the Legislature intended by the insurance amendment to permit Seider jurisdiction, it seems that it would have stated the two grounds in the conjunctive to clarify its intent. The insurance amendment could have been drafted as a subclass of the provision permitting garnishment for the purposes of acquiring quasi in rem jurisdiction. The alternative language suggests that the Legislature had something other than Seider jurisdiction in mind when it enacted the amendment.

Taken in the aggregate, the doubts outlined above raise serious question as to the soundness of basing Seider jurisdiction on Minnesota's amended garnishment statute. It would seem that the Rintala court avoided the conceptual and constructional problems other courts have found with Seider jurisdiction only to encounter some different difficulties of equal magnitude.

The Rintala court's approach to the constitutional and procedural issues involved in this sort of quasi in rem jurisdiction suffers from similar weaknesses. Relying heavily on the New York courts' analyses of these matters, the court left many pertinent questions unanswered.

The court held that the jurisdiction it authorized complied with due process for two reasons. First, as a mechanical matter, the garnishee was and services may arise between the supplier of those products and services and the insured. In such a case the supplier, entitled to the policy proceeds by reason of an assignment of benefits or through subrogation, may wish to garnish the insurance proceeds during the pendency of his action against the insured, particularly where other suppliers are competing for the funds. Analogous problems arise with liability insurance. Even where liability is admitted it may be necessary to proceed to trial to determine the amount of damages. The resultant delay can prove extremely prejudicial to a claimant if the policy in question contains per-incident coverage limit and the claims of the several claimants exceed that limit. As the multiple claimants, some of whom may already have procured judgments or settlement agreements, may seek to deplete the fund, the claimant litigating the extent of his damages will wish to garnish the funds to prevent the other claimants from taking more than their pro rata share.

139. Minn. Laws 1969 ch. 1142, § 3.
141. Id. § 571.41, subd. 2.
142. Id. § 645.08(1).
subject to personal jurisdiction of the Minnesota courts. The first basis for the finding of constitutionality was a simple one. When quasi in rem jurisdiction is sought by means of garnishment, the garnishee must, of course, be subject to the personal jurisdiction of the court in which the action is commenced. Well-settled principles of due process require that a party have certain "minimum contacts" with the state so that "traditional notions of fair play and substantial justice" are not offended by the exercise of personal jurisdiction over him. The court found that the garnishee's transaction of a substantial amount of business in the state and its registration, pursuant to state statute, with the Commissioner of Insurance, appointing him its agent for service of process, met the minimum contacts requirement.

Determining whether the procedure afforded the fairness required by due process was a more complex issue. The court concluded that the standard could be met only if certain limitations were placed upon the exercise of this type of quasi in rem jurisdiction. First, it required that the defendant-insured be given a notice sufficient to afford him an opportunity to come to the state and defend the action. Second, the defendant must have the right to make a limited appearance and defend the action on the merits without exposing himself to in personam judgments in excess of his insurance policy limits. Finally, the right to invoke jurisdiction in this manner must be limited to residents of the forum to avoid unduly burdening the insured and his insurer.

The notice requirement is consistent with long-standing requirements of due process, and was clearly satisfied by the procedure used by the garnishee in Rintala, personal service of a summons and complaint and garnishee summons upon the defendant. The limited appearance requirement and the limitation to resident plaintiffs are peculiar to Seider jurisdiction and were

143. 362 F. Supp. at 1054.
144. Id. at 1056.
145. See note 13 supra.
147. MINN. STAT. § 60A.19 (1971).
149. Id. at 1054-56.
150. Id. at 1054.
151. Id. at 1054-55.
152. Id. at 1055-56.
borrowed from the decisions of the New York state and federal courts.

It was the non-availability of a limited appearance which had caused the *Seider* procedure to be held unconstitutional by a federal court in New York, and it was the existence of a right to a limited appearance which caused the subsequent approval of the procedure by the federal courts in New York.\(^5\)

The Minnesota court noted this sequence of events and similarly held that the absence of a limited appearance would place the defendant in an unconscionable dilemma.\(^6\) Appearance would constitute submission to personal jurisdiction and expose him to an in personam judgment for sums in excess of the policy limits.\(^7\) The defendant's non-appearance would result in a default judgment, since the insurer's opportunity to defend would be precluded by the defendant's failure to appear.\(^8\) The net result would be to grant plaintiff in personam jurisdiction over the defendant, a result which would offend due process.\(^9\)

Unlike the New York courts, however, the *Rintala* court did not conclude that the absence of a right to a limited appearance rendered the procedure unconstitutional. Instead of waiting for the Minnesota Supreme Court to determine whether the rule prohibiting such appearances\(^10\) applied to *Seider*-type actions or certifying the question to the Minnesota court for immediate resolution,\(^11\) the federal court proceeded immediately to resolve the tension between the respective rights and liabilities of the insurer and the insured in these actions. With something of a leap of faith, it predicted that the Minnesota court would interpret Minnesota's appearance rules to permit a defense on the merits without exposure beyond the policy limits.\(^12\)

Limiting the availability of the procedure to actions brought by resident plaintiffs was similarly borrowed from the New York federal courts.\(^13\) Reasoning that unlimited access to *Seider* jurisdiction would unduly burden garnishees who, like the insurer in *Rintala*, did business in all 50 states,\(^14\) and lead to blatant forum shopping,\(^15\) the court followed *Minichiello* in limiting the action to resident plaintiffs.\(^16\)

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155. See notes 50 to 69 *supra* and accompanying text.
156. 362 F. Supp. at 1054-55.
157. *Id*.
158. The liability insurer has not only a duty but also a correlative right to defend the plaintiff's action. Defendant's non-appearance, in violation of the cooperation clause which is standard in liability insurance policies, will thus relieve the insurer of the duty to indemnify, exposing the insured to full liability. *Id*.
159. *Id* at 1055.
160. MINN. R. CIV. P. 4.04.
161. MINN. STAT. § 605.09(i) (1971).
162. 362 F. Supp. at 1055.
164. 362 F. Supp. at 1056.
165. In *Rintala* itself, plaintiffs were residents of Minnesota and the court noted that there was nothing to indicate the presence of forum shopping in the case. *Id*.
166. *Id*.
Arguing that Seider jurisdiction was clearly constitutional when so limited, the court praised the fairness of the procedure. The court failed, however, to advance the analysis of the New York and California courts and ignored the procedural, constitutional, and logical problems which are coming to light as the courts gain more experience with Seider cases. A number of these issues are particularly complex and all render Seider procedure difficult to use in practice.

The destruction of the principle of avoiding multiple litigation gives rise to a number of the most difficult problems. Ordinarily, if the defendant in a quasi in rem action appears and defends on the merits, the matter is litigated to a complete judgment. In order to conform Seider jurisdiction to the requirements of due process, however, that salutary procedure has been eliminated. Though the trier of fact will not be bound to limit its damage verdict to the policy limits, the plaintiff will be required to relitigate the question of damages in another forum to recover the excess. To give the Seider judgment a res judicata effect as to the issue of damages in an in personam action in another jurisdiction would be equivalent to disallowing a limited appearance in the Seider action and would presumably be constitutionally objectionable for the same reasons.

Whether a Seider judgment will be res judicata as to other issues, such as liability, is subject to serious doubt. The plaintiff may be required to relitigate the entire action in the second forum. Similarly, it remains unclear whether the defendant may raise the Seider judgment as res judicata in the second action if he wins in the first or if the verdict is less than the policy limits.

Choice-of-law problems which always abound in automobile accident cases

167. Id. at 1056-57.
168. Id. The court also briefly considered another constitutional issue—whether Seider jurisdiction, if accepted in many states, might become an unreasonable burden on interstate commerce. While not eliminating consideration of the issue should it be raised in a later case, the court concluded that there had been no showing that an undue burden existed or would ever occur. It noted that the insurer in this case was simply exposed to an action in one more jurisdiction than it would otherwise be, which was not an intolerable burden. Id. at 1056. See International Milling Co. v. Columbia Transp. Co., 292 U.S. 511 (1934). In connection with the interstate commerce argument, the court also rejected the garnishee's contention that its valid expectations had been ignored. The court noted that the Seider procedure had been accepted in New York 5 years previously and that the insurer had issued the policy in question after Seider was decided so that it could not argue that it had no expectation that this type of action might be permitted in additional states. See Erlanger Mills, Inc. v. Cohoes Fibre Mills, Inc., 239 F.2d 502, 507 (4th Cir. 1956).

169. These are compiled and set out in some detail in Siegel, Attaching Insurer's Obligation to Defend and Indemnify, Supplementary Practice Commentary, N.Y. Civ. Prac. Law § 5201 (McKinney Supp. 1973).
170. See, e.g., id. at 35.
172. See id.
with multi-state contacts, are exacerbated by the adoption of Seider jurisdiction. Where the substantive tort law of the states having contacts with the incident differs it is unsettled whether the Seider forum has a sufficient interest in the action to apply its own law. Moreover, if an in personam action for an excess judgment is brought in a case with multi-state contacts there is the possibility that different rules of substantive law will be applied in the two actions because of the different choice-of-law rules followed by the two forum states.

Rintala's limitation of the action to resident plaintiffs fails to contemplate the possibility of an action brought by multiple plaintiffs, some residents and some non-residents. Whether the resident plaintiffs should be entitled to preference over the non-residents, whether all plaintiffs should enjoy the advantages normally accorded to residents only, or whether the entire action should be dismissed is open to debate.

The details of the limited appearance which the Rintala court felt certain that the Minnesota Supreme Court would authorize remain vague. There is the possibility that any affirmative action by a defendant making a limited appearance, such as filing a counterclaim or engaging in pretrial discovery, will convert the limited appearance into a general one. Defendant and his counsel, who is likely to be the insurer's counsel as well, will have no model for the mechanics of the limited appearance, and the trial courts of the state will be similarly without guidance.

The Rintala court also failed to state against whom the resultant judgment will run. Arguably, it should not be against the insured, since he is liable only to the extent of his insurance coverage. But it would hardly seem that it can run against the insurer who is not even a party to the suit.

Finally, it is not even clear whether the Rintala procedure will apply in tort cases arising other than out of automobile accidents, and if so, whether it will apply to cases which sound other than in tort.

Though this listing of problems and issues is far from exhaustive, it raises doubts regarding the practicality of the Seider procedure. When considered together with the shaky conceptual and constructional base upon which the Rintala court grounded the procedure, the wisdom of importing Seider jurisdiction to Minnesota seems questionable.

IV. CONCLUSION—TOWARD A FUNCTIONAL RESOLUTION OF THE PROBLEM—RINTALA AND DIRECT ACTION

The issues raised by and giving rise to decisions such as Seider and Rintala

174. See id. at 28-29.
175. Id. at 24, 40-42.
176. Id. at 37-39.
177. See, e.g., id., at 50-51.
178. Additional examples may be found in Siegel, supra note 169, and authorities collected note 84 supra.
are certainly not clean, logical questions of law. As in many diversions of a
main stream of the law, social policies are basic, if not explicit, determinants
of judicial opinion. Arguably, the old policy of forcing the plaintiff to travel
to the defendant's domicile to bring an action contemplates only "typical"
litigations involving individual plaintiffs suing individual defendants of
similar resources. Where an individual plaintiff sues a defendant whose in-
surer will bear total defense responsibility, the old doctrine may be unrealistic.
In view of the disparity of resources and of the insurance company's capa-
bility and readiness to defend anywhere it does business, arguments that per-
mitting a plaintiff to sue at home will unduly burden the defendant seem to
fly in the face of both economic reality and social policy.

Rintala is not to be criticized for recognizing these realities, but rather for
recognizing them incompletely and for attempting to solve modern social
problems with last century's legal techniques. Many of the conceptual, con-
stitutional, and practical problems imported to Minnesota along with Seider
jurisdiction are a direct result of the use of quasi in rem jurisdiction to
achieve the desired result.179

That criticism is generally accompanied by a suggestion that since Seider
jurisdiction is functionally a direct action against the insurer, the quasi in rem
fiction should be discarded in favor of open acceptance of direct action.180
This suggestion, however, suffers from the same failing as does the adoption
of Seider jurisdiction. Neither is designed to meet the precise problem sought
to be solved and both produce undesirable side effects.

Direct action, particularly when accomplished by judicial decision, rather
than by statute,181 brings its own procedural and technical difficulties which
may be as knotty as those accompanying Seider jurisdiction.182 Further, most
direct action statutes presently in effect are over-inclusive and under-inclusive
when adapted to the Seider-type of problem. Most do not permit direct action
when the tort occurred outside of the enacting state,183 making them seriously
under-inclusive. The fact that most permit the direct action when the tort-
feasor is a resident184 and when the plaintiff is a non-resident185 makes them
over-inclusive as well.

Perhaps what is needed is a direct action statute modeled after that of

179. See Siegel, supra note 169, at 52: "The in rem trappings do not help one whit, and hurt
intensely. They take endless quantities of judicial time, to say nothing of that of the lawyers,
without adding one jot of benefit to justify the effort."
180. See, e.g., Comment, Seider v. Roth to Turner v. Evers—Wrong Means to the Right End, supra note 84.
181. See, e.g., Comment, Civil Procedure: Judicial Creation of Direct Action Against Auto-
182. See, e.g., Note, Direct-Action Statutes: Their Operational and Conflict-of-Law Prob-
lems, supra note 15.
184. See statutes collected supra note 12.
185. See statutes collected supra note 12.
Rhode Island which permits direct action only when the plaintiff cannot obtain personal jurisdiction over the tortfeasor.\textsuperscript{186} Perhaps not. While a statute could be drafted to permit direct action only when a resident plaintiff cannot obtain personal jurisdiction over a non-resident defendant or cannot do so in a reasonably convenient forum, further study might show such a statute to be cumbersome and unworkable.

The point is that the advocates of direct action statutes as a solution to the whole matter have placed the emphasis on the wrong word. What is needed is not a direct action statute or a quasi in rem statute, but simply a statute, grounded in a thorough legislative study of the matter, and precisely tailored to deal with the \textit{Seider} situation and no other. It must be drafted to meet the particular problem: the inability of some plaintiffs in a mobile society to obtain personal jurisdiction over tortfeasors or to do so without exhorbitant expense. It must take into account the particular commercial fact that may solve plaintiff's plight: the defendant's coverage by an insurance company doing business in plaintiff's home state. It must state precisely who may sue whom, under what circumstances an action may be brought, how the action is to be prosecuted, and the consequences that will flow from the litigation.

A statute of that sort, breaking free from the traditional legal concepts, unfettered by the old labels, could confront the real social and economic issues that led to \textit{Seider} in the first instance. Even more than the direct action statute such a statute would take cognizance of the fact that liability insurance is here to stay, that its effects have extreme economic significance, and that lawmakers must begin to delineate its role if the law is to remain responsive to the litigants' real needs.

\textsuperscript{186} R.I. \textsc{Gen. Laws Ann.} § 27-7-1 (1969).