

# The Burger Court Opinion Writing Database

*Rush v. Savchuk*

444 U.S. 320 (1980)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

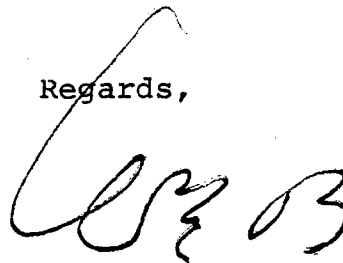
November 3, 1979

Re: 78-952 - Rush v. Savchuk

Dear Thurgood:

I join.

Regards,

A handwritten signature in dark ink, appearing to be "L. F. Powell, Jr.", written in a cursive style.

Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

November 19, 1979

RE: No. 78-952 Rush v. Savchuk

Dear Thurgood:

I'll circulate a dissent in the above in due  
course.

Sincerely,



Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

October 30, 1979

Re: No. 78-952, Rush v. Savchuk

Dear Thurgood,

I am glad to join your opinion for  
the Court.

Sincerely yours,

P.S.  
/

Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

November 16, 1979

Re: 78-952 - Rush v. Savchuk

Dear Thurgood,

Although my vote was tentatively the other way at Conference, I now join your opinion in this case. I would not think, however, that the judgment puts direct action statutes in jeopardy.

This would also let Bill Brennan know I do not intend to dissent.

Sincerely yours,



Mr. Justice Marshall

Copies to the Conference

cmc

28 OCT 1979

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 78-952

Randal Rush et al., Appellants,	} On Appeal from the Supreme Court of Minnesota.
v.	
Jeffrey D. Savchuk	

[October —, 1979]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This appeal presents the question whether a State may constitutionally exercise *quasi in rem* jurisdiction over a defendant who has no forum contacts by attaching the contractual obligation of an insurer licensed to do business in the State to defend and indemnify him in connection with the suit.

## I

On January 13, 1972, two Indiana residents were involved in a single-car accident in Elkhart, Ind. Appellee Savchuk, who was a passenger in the car driven by appellant Rush, was injured. The car, owned by Rush's father, was insured by appellant State Farm Mutual Automobile Insurance Co. (State Farm) under a liability insurance policy issued in Indiana. Indiana's guest statute would have barred a claim by Savchuk. Ind. Stat. § 9-3-3-1.

Savchuk moved with his parents to Minnesota in June 1973.<sup>1</sup> On May 28, 1974, he commenced an action against Rush in the Minnesota state courts.<sup>2</sup> As Rush had no contacts with Minnesota that would support *in personam* jurisdiction, Savchuk attempted to obtain *quasi in rem* jurisdic-

<sup>1</sup> Savchuk moved to Pennsylvania after this appeal was filed.

<sup>2</sup> The suit was filed after the two-year Indiana statute of limitations had run. 272 N. W. 2d 888, 891, n. 2 (1978).

p. 10

9 NOV 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-952

Randal Rush et al., Appellants,  
v.  
Jeffrey D. Savchuk

On Appeal from the Supreme  
Court of Minnesota.

[November —, 1979]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This appeal presents the question whether a State may constitutionally exercise *quasi in rem* jurisdiction over a defendant who has no forum contacts by attaching the contractual obligation of an insurer licensed to do business in the State to defend and indemnify him in connection with the suit.

I

On January 13, 1972, two Indiana residents were involved in a single-car accident in Elkhart, Ind. Appellee Savchuk, who was a passenger in the car driven by appellant Rush, was injured. The car, owned by Rush's father, was insured by appellant State Farm Mutual Automobile Insurance Co. (State Farm) under a liability insurance policy issued in Indiana. Indiana's guest statute would have barred a claim by Savchuk. Ind. Stat. § 9-3-3-1.

Savchuk moved with his parents to Minnesota in June 1973.<sup>1</sup> On May 28, 1974, he commenced an action against Rush in the Minnesota state courts.<sup>2</sup> As Rush had no contacts with Minnesota that would support *in personam* jurisdiction, Savchuk attempted to obtain *quasi in rem* jurisdic-

<sup>1</sup> Savchuk moved to Pennsylvania after this appeal was filed.

<sup>2</sup> The suit was filed after the two-year Indiana statute of limitations had run. 272 N. W. 2d 888, 891, n. 2 (1978).

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 14, 1980

MEMORANDUM TO THE CONFERENCE

Re: Cases held for No. 78-952 - Rush v. Savchuk

- 
1. No. 78-1100 - Brown v. Blamey
  2. 78-1914 - Uniroyal Englebert Belgique  
v. Connelly
- 

These cases are also held for No. 78-1078, World-Wide Volkswagen, Inc. v. Woodson. As Byron observes in his memorandum to the conference, Rush is irrelevant to both cases. I agree with Byron's proposed disposition.

*Jm.*

TM



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 25, 1980

Re: No. 78-952 - Rush v. Savchuk

MEMORANDUM TO THE CONFERENCE

In response to a letter from the Chief Justice of the Supreme Court of New Hampshire, I have added a citation to the opinion in the above case.

Attached is a letter from Chief Justice Grimes and the reply I propose to send, if there is no objection.

*T.M.*  
T.M.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

October 31, 1979.

Re: No. 78-952 - Rush v. Savchuk

Dear Thurgood:

I am glad to join the opinion you have prepared.

Sincerely,



Mr. Justice Marshall  
cc: The Conference

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

October 31, 1979

Re: No. 78-952 - Rush v. Savchuk

Dear Lewis:

You will recall that I joined you in dissent from the denial of certiorari in Lee-Hy Paving Corp. v. O'Connor, 439 U.S. 1034 (1978). I liked your emphasis on the practicalities there, and if you choose to write something along the lines suggested in your note of October 30 to Thurgood -- or to expand somewhat thereon -- I would be pleased to join you. I think those practicalities are significant and important.

Sincerely,

*Harry*

Mr. Justice Powell

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

October 30, 1979

78-952 Rush v. Savchuk

Dear Thurgood:

Please join me in your excellent opinion for the Court.

I might add in concurring, something along the following lines:

"I join Mr. Justice Marshall's opinion for the Court, and add that my dissent from the denial of certiorari in Lee-Hy Paving v. O'Connor, 439 U.S. 1034 (1978), emphasizes some of the practical reasons for reversing the judgment of the Supreme Court of Minnesota."

Sincerely,



Mr. Justice Marhsall

lfp/ss

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 20, 1979

No. 78-952 Rush v. Savchuk

Dear Thurgood:

In my join note of October 30, I indicated that I might add a brief concurring opinion.

Now that the dissent has been circulated, I am content to rest on your opinion.

Sincerely,

*Lewis*

Mr. Justice Marshall

lfp/ss

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 20, 1979

No. 73-952 Rush v. Savchuk

Dear Thurgood:

In my join note of October 30, I indicated that I might add a brief concurring opinion.

Now that the dissent has been circulated, I am content to rest on your opinion.

Sincerely,

Mr. Justice Marshall

lfp/ss

cc: The Conference

- ✓ Harry: I have been a little hesitant to "bootstrap" on the basis of my own dissent in Lee-Hy Paving. In addition to the practical considerations that I mentioned there, I also was concerned about the possibility of a second suit and other factors. If I undertook a concurrence, I would have to get into these, which seems unnecessary.

L. F. P. Jr.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST



October 30, 1979

Re: No. 78-952 - Rush v. Savchuk

Dear Thurgood:

Please join me.

Sincerely,

Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

November 20, 1979

Re: 78-952 - Rush v. Savchuk

Dear Thurgood:

Since I voted the other way, I am waiting for Bill Brennan's dissent. Since I did not agree with him in the Volkswagen case, it may be necessary for me to write a short separate dissent after his comes in. I'll try not to delay you too long.

Respectfully,



Mr. Justice Marshall

Copies to the Conference



1

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

78-952 - Rush v. Savchuk

From: Mr. Justice Stevens

Circulated: JAN 3 '80

Recirculated: \_\_\_\_\_

MR JUSTICE STEVENS, dissenting.

As the Court notes, appellant had no contact with Minnesota that would support personal jurisdiction over him in that State. Ante, at 1. Moreover, Shaffer v. Heitner, 433 U.S. 186, precludes the assertion of quasi-in-rem jurisdiction over his property in that forum if the intangible property attached is unrelated to the action. It does not follow, however, that the plaintiff may not obtain quasi-in-rem jurisdiction over appellant's insurance policy, since his carrier does business in Minnesota and since it has also specifically contracted in the policy attached to defend the very litigation that plaintiff has instituted in Minnesota.

In this kind of case, the Minnesota statute authorizing jurisdiction is correctly characterized as the "functional equivalent" of a so-called direct action statute. The impact of the judgment is against the insurer.<sup>1/</sup> I believe such a direct action

<sup>1/</sup> It seems to me that the possible impact of a default judgment on the reputation of an individual, see ante, at 10, n.20, who has no contacts whatever with the forum state is far too remote to affect the analysis of the constitutional issue in this case.

To: The Chief Justice ✓  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: \_\_\_\_\_

Recirculated: JAN 4 '80

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 78-952

Randal Rush et al., Appellants, } On Appeal from the Supreme  
v. } Court of Minnesota.  
Jeffrey D. Savchuk.

[January —, 1980]

MR. JUSTICE STEVENS, dissenting.

As the Court notes, appellant had no contact with Minnesota that would support personal jurisdiction over him in that State. *Ante*, at 1. Moreover, *Shaffer v. Heitner*, 433 U. S. 186, precludes the assertion of *quasi-in-rem* jurisdiction over his property in that forum if the intangible property attached is unrelated to the action. It does not follow, however, that the plaintiff may not obtain *quasi-in-rem* jurisdiction over appellant's insurance policy, since his carrier does business in Minnesota and since it has also specifically contracted in the policy attached to defend the very litigation that plaintiff has instituted in Minnesota.

In this kind of case, the Minnesota statute authorizing jurisdiction is correctly characterized as the "functional equivalent" of a so-called direct action statute. The impact of the judgment is against the insurer.\* I believe such a direct action statute is valid as applied to a suit brought by a forum resident, see *Watson v. Employers Liability Corp.*, 348 U. S. 66, 72, even if the accident giving rise to the action did not occur in the forum State, see *Minichiello v. Rosenberg*, 410 F. 2d 106 (CA2 1968), cert. denied, 396 U. S. 844, so long as it is understood that the forum may exercise no power whatsoever over

\*It seems to me that the possible impact of a default judgment on the reputation of an individual, see *ante*, at 10, n. 20, who has no contacts whatever with the forum State is far too remote to affect the analysis of the constitutional issue in this case.

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: \_\_\_\_\_

Recirculated: JAN 10 '80

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-952

Randal Rush et al., Appellants,  
v.  
Jeffrey D. Savchuk. } On Appeal from the Supreme  
Court of Minnesota.

[January —, 1980]

MR. JUSTICE STEVENS, dissenting.

As the Court notes, appellant had no contact with Minnesota that would support personal jurisdiction over him in that State. *Ante*, at 1. Moreover, *Shaffer v. Heitner*, 433 U. S. 186, precludes the assertion of *quasi-in-rem* jurisdiction over his property in that forum if the intangible property attached is unrelated to the action. It does not follow, however, that the plaintiff may not obtain *quasi-in-rem* jurisdiction over appellant's insurance policy, since his carrier does business in Minnesota and since it has also specifically contracted in the policy attached to defend the very litigation that plaintiff has instituted in Minnesota.

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