

No. 18-1067

IN THE
Supreme Court of the United States

IN THE MATTER OF
HARBORVIEW MORTGAGE LOAN TRUST 2005-10

AMBAC INSURANCE CORPORATION,

Petitioner,

v.

U.S. BANK NATIONAL ASSOCIATION,

Respondent.

**On Petition For A Writ Of Certiorari
To The Minnesota Court of Appeals**

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Minnesota intermediate appellate court—in an unpublished, non-precedential opinion—appropriately exercised *in rem* jurisdiction over trust property, for purposes of a trust instruction proceeding under the new Minnesota Trust Code, based on an undisputed factual finding that the intangible right at issue in that proceeding (the right to initiate and direct ongoing litigation) is located in Minnesota.

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INTRODUCTION

Respondent U.S. Bank National Association (“U.S. Bank”) serves as trustee for a residential mortgage-backed securitization (“RMBS”) trust known as HarborView Mortgage Loan Trust 2005-10 (the “Trust”). In the wake of the last financial crisis, certain investors in the Trust directed U.S. Bank to initiate litigation against the originator of the underlying mortgage loans. After several years of litigation, a settlement offer was presented to U.S. Bank, a renegotiated version of which is at issue here.

In an effort to determine whether it should accept that offer, U.S. Bank initiated a “trust instruction” (or “TIP”) proceeding in Minnesota state court pursuant to the recently revised Minnesota Trust Code. This uncommon procedural mechanism allows trustees like U.S. Bank to obtain court direction regarding difficult questions of trust administration. Here, U.S. Bank sought instructions regarding whether to accept the settlement offer on the Trust’s behalf.

Petitioner Ambac Insurance Corporation (“Ambac”)—an insurer with a subrogated beneficial interest in the insured certificates issued by the Trust—objected to the Minnesota courts’ exercise of *in rem* jurisdiction over the Trust property. As a result, the Minnesota district court conducted a multifactor jurisdictional analysis, taking into account the nature of the Trust property and the interests of all relevant parties. It found jurisdiction present, both as a matter of state law and the federal Due Process Clause. The court’s holding was based, in particular, on its factual finding that the relevant

trust property at issue in the TIP proceeding—the intangible right to commence and direct the underlying litigation—is located in Minnesota, where, the court found, the decisions regarding the underlying litigation are made. The Minnesota Court of Appeals agreed in an unpublished opinion. The Minnesota Supreme Court declined further review.

This Court’s review is unwarranted for at least four independent reasons. First, Ambac effectively concedes that there is no division of authority. Indeed, none is likely to arise anytime soon, given that the decision below, which is not precedential even within Minnesota, turns on a Minnesota-specific law, an unusual kind of proceeding, and U.S. Bank’s organizational structure. Second, the question presented here, which implicates a new statute of a single State, is unimportant. The new Minnesota Trust Code, by its terms, applies to corporate trusts only if the trustee itself is located in Minnesota. Third, this petition is a poor vehicle for answering the question presented both because the petition is interlocutory and because Petitioner is an insurer, not a certificateholder. Finally, the decision below correctly applied this Court’s “minimum contacts” standard.

This Court is not ordinarily in the business of taking up questions that implicate the law of a single State—and it certainly should not do so when the highest court of that State has not yet considered the issue, the statute at issue is only a few years old and not well litigated, and the underlying opinion was based on specific, undisputed factual findings. Certiorari should be denied.

STATEMENT

A. THE TRUST

Respondent U.S. Bank is a national banking association with its principal place of business in Minneapolis, Minnesota. Pet.App.25a. U.S. Bank's principal corporate trust services office, which houses most of the corporate trust services department's senior management, is located in Saint Paul, Minnesota. *Id.* U.S. Bank has been administering trusts from its Minnesota offices for decades. *Id.*

HarborView Mortgage Loan Trust 2005-10 is one such trust. The Trust, like other RMBS trusts, holds a pool of residential mortgage loans for the benefit of investors, who make money from the principal and interest payments borrowers make on those loans. *See generally Fixed Income Shares: £Series M v. Citibank N.A.*, 130 F. Supp. 3d 842, 846 (S.D.N.Y. 2015). The more than 4,000 loans held by the Trust were originated by Countrywide Home Loans, Inc., and then sold to Greenwich Capital Acceptance, Inc. ("GCA") and Greenwich Capital Financial Products, Inc. ("GCFP"). Pet.App.2a. In 2005, GCA, GCFP, and U.S. Bank entered into a Pooling Agreement, pursuant to which the loans were aggregated into a trust for which U.S. Bank would serve as trustee. *Id.* at 2a–3a. In connection with that Agreement, Countrywide made various representations and warranties regarding the quality and characteristics of the underlying mortgage loans and agreed to repurchase defective loans should that prove necessary. *See id.* at 3a. The Pooling Agreement assigned to U.S. Bank the right to seek a remedy

against Countrywide for breach of those representations and warranties. *See id.* at 31a.

Certificates based on the trust's assets were ultimately sold to investors, who hold a beneficial interest in the underlying loans and a right to the income flowing from borrower payments. *See id.* at 3a. Petitioner Ambac Assurance Corporation ("Ambac") is an insurer of some of those trust certificates. *Id.* In that role, Ambac guaranteed payment to certain certificateholders in the event cash flow from the mortgage loans were ever to become inadequate and obtained a subrogated third-party beneficiary interest in the insured certificates. *Id.*

B. THE NEW YORK ACTIONS

In 2011, a group of certificateholders directed U.S. Bank, in its capacity as trustee, to commence litigation to enforce Countrywide's obligation to repurchase certain mortgage loans from the Trust. *Id.* at 23a. Consistent with that direction, U.S. Bank filed suit in New York state court against Countrywide and its successor in interest, Bank of America, N.A. *See id.*; *see also generally U.S. Bank Nat'l Assoc., as Trustee for HarborView Mortgage Loan Trust, Series 2005-10 v. Countrywide Home Loans, Inc. (d/b/a Bank of America Home Loans), et al.*, No. 652388/2011 (N.Y. Sup. Ct., N.Y. Cty.). U.S. Bank's complaint alleges that the defendants breached representations and warranties for the loans included in the Trust. *See Pet.App.23a.* U.S. Bank seeks to enforce Countrywide's obligation to repurchase certain of those loans. *See id.*

In December 2016, the defendants offered to settle with U.S. Bank for \$56,961,881, plus up to \$10,000,000 in litigation expenses. *Id.* at 3a. U.S. Bank notified the certificateholders of the offer, inviting them to respond and express their views on the proposed settlement. *Id.* at 23a. Ambac objected. *Id.* at 24a. And, on January 20, 2017, it filed suit in the Southern District of New York seeking to compel U.S. Bank to reject the proposed settlement. *Id.*; *see generally* *Ambac Assurance Corp. and The Segregated Account of Ambac Assurance Corp. v. U.S. Bank Nat'l Assoc.* (No. 17-CV-00446).

In February 2017, before U.S. Bank had acted on the original settlement offer, the defendants made an amended offer for an increased cash payment of approximately \$67 million. *See* Pet.App.23a–24a & n.2. U.S. Bank sent another notice to the certificateholders to notify them of this new offer and to inform them that it intended to commence a TIP proceeding to determine whether to accept or reject that offer. U.S. Bank also retained a valuation expert to assist in its evaluation of the offer. *See id.* at 24a n.3.

Throughout all this, decisions regarding the New York actions, like other important Trust decisions, were made or approved by senior managers at U.S. Bank's St. Paul office. *See id.* at 25a, 40a.

C. THE TRUST INSTRUCTION PROCEEDING

1. In March 2017, U.S. Bank initiated a trust instruction proceeding in Minnesota state court, pursuant to the new Minnesota Trust Code, seeking the court's instruction as to whether it should accept or reject the amended settlement agreement. *Id.* at

24a–25a. Although similar proceedings had previously taken place under Minnesota common law, this provision of the Minnesota Trust Code, which became effective in January 2016, formally established a procedural mechanism allowing trustees to obtain a court order approving or disapproving of their trust-related decisions. See Pet.App.10a (explaining that the “purpose of Minn. Stat. §§ 501C.0201–.0208 is to enable a trustee to obtain judicial rulings on a wide variety of matters related to trust administration”); *cf. also, e.g., In re Trusteeship Created by Am. Home Mortgage Inv. Trust 2005–2*, No. 14 Civ. 2494(AKH), 2014 WL 3858506, at *12 (S.D.N.Y. July 24, 2014) (explaining that such proceedings create a “procedure by which trustees (and other affected parties) can seek judicial guidance from the court about how to resolve immediate and difficult issues of interpretation of governing documents”).

Two additional features of the new Minnesota Trust Code merit mention. First, the new Code generally does not apply to corporate trusts. See Minn. Stat. § 501C.0102(c). There is an exception, however, for corporate trusts “administered by a trustee located in [Minnesota].” *Id.* Second, the new Code allows trustees initiating TIP proceedings to invoke either *in rem* or *in personam* jurisdiction. *Id.* § 501C.0204(1). The option to proceed *in rem*, which U.S. Bank exercised, does not exist under the Uniform Trust Code (“UTC”). See Uniform Trust Code § 202; *see also* Pet.8–9 (acknowledging this difference); Pet.App.10a–11a (same).

2. Ambac filed a motion to dismiss the Minnesota lawsuit, arguing that Minnesota courts

lack jurisdiction to instruct U.S. Bank regarding the New York litigation. *Id.* at 4a. The Minnesota district court denied Ambac's motion. *See id.* at 20a–41a. It found, first, that the new Trust Code applied, notwithstanding that the Trust is a corporate trust, because “U.S. Bank, as trustee, is located in Minnesota for purposes of the Trust Code.” *Id.* at 26a. In so doing, the court emphasized that “[t]he Minnesota Trust Code is separate and distinct” from federal laws. *Id.* at 27a.

Next, the district court found that it had *in rem* jurisdiction over the Trust under Minnesota law. *See id.* at 27a–38a. That ruling involved consideration of seven so-called *Sheridan* factors, including “(1) the location of the trust property (the situs of the trust assets), (2) the domicile of the trust beneficiaries, (3) the domicile of the trustees, (4) the location of the trust administrator, (5) the extent to which the litigation has been resolved, (6) the applicable law, and (7) an analysis of *forum non conveniens* principles.” *Id.* at 28a (citing *In re Trusteeship Created by the City of Sheridan, Colo.*, 593 N.W.2d 702, 705 (Minn. App. 1999)). On balance, the district court found that application of these factors supported jurisdiction in Minnesota. *Id.* at 38a.

Finally, the district court considered and rejected Ambac’s argument that Minnesota’s exercise of jurisdiction over the Trust “would violate notions of constitutional due process.” *Id.* The court’s reasoning, which relied on a declaration from a U.S. Bank employee, was straightforward:

The most important contact with the forum . . . is the fact that the Trust is effectively located in Minnesota. Decisions

regarding the New York Action were made or approved in Minnesota. Determinations regarding the Amended Settlement Offer were made in Minnesota. [And] [t]hroughout its existence, the Trust has been openly administered by a national corporation with its principle place of business in Minneapolis, Minnesota.

Id. at 39a. Accordingly, the district court concluded that “this matter has sufficient minimum contacts with the State of Minnesota to satisfy any due process concerns.” *Id.*

3. The Minnesota Court of Appeals affirmed in an unpublished order. *See id.* at 1a–18a. Like the district court, the Court of Appeals found that U.S. Bank is located in Minnesota for purposes of Minnesota law. *See id.* at 9a–10a. Like the district court, the Court of Appeals credited the U.S. Bank employee’s undisputed declaration that decisions regarding the New York litigation were made in Minnesota, applied the *Sheridan* factors, and found that *in rem* jurisdiction exists in Minnesota. *See id.* at 10a–16a. And like the district court, the Court of Appeals found that Minnesota’s exercise of personal jurisdiction did not offend constitutional due process. *See id.* at 16a–18a.

On that last point, the court reasoned:

[T]he trust’s intangible right to pursue litigation against Countrywide is inextricably connected with the bank’s decision-making processes, which determine whether the right will be asserted and how it will be asserted. Those decision-making processes occur in

Minnesota and potentially affect any interest a person may have in the New York action. This contact between the trust property and Minnesota satisfies the minimum-contacts standard in *International Shoe* [*v. Washington*, 326 U.S. 310 (1945)].

Id. at 18a.

4. The Minnesota Supreme Court denied Ambac's petition for further review. *See id.* at 19a. Because Ambac's appeal was interlocutory, Minnesota courts have not yet had an occasion to opine on the substance of U.S. Bank's TIP petition. *Id.* at 36a (“[N]o substantive action has been taken in this case past the pleading stage.”).

REASONS FOR DENYING THE PETITION

As Ambac effectively concedes, the question presented implicates no division of authority. Quite the opposite: This case turns on a recently enacted state law that the state's highest court has yet to interpret; on an unique proceeding specific to trust administration; and on an undisputed declaration laying out the situs of U.S. Bank's decision-making process in this litigation. In addition, the question presented is insufficiently important to merit this Court's intervention, as it implicates the application, in an unpublished intermediate court decision, of a single state's law to an unusual set of facts. This case is also a poor vehicle, both because of its interlocutory posture and because it is brought by an insurer (rather than a certificateholder). Finally, the Court of Appeals got it right: The Trust's connection with Minnesota is more than sufficient to satisfy the “minimum contacts” test given the nature of the TIP proceeding at issue, which entails asking a court to

instruct the Trustee on how to proceed in pending litigation. For all of these reasons, the Court should deny the petition for certiorari.

I. THE QUESTION PRESENTED IS SPLITLESS AND FACTBOUND.

Ambac does not even attempt to argue that its petition implicates a division of authority. The petition does not implicate a split, and that is unlikely to change: The question presented implicates the interpretation of a single State's new statute, as applied to an unusual proceeding and the situs of a specific management team.

1. A division of authority is unlikely to arise because this petition presents a question specific to a new Minnesota statute. As Ambac acknowledges, the new Minnesota Trust Code differs from the Uniform Trust Code in that, “[u]nlike the UTC,” which establishes only *in personam* jurisdiction, “the Minnesota Trust Code allows a petitioner to proceed either *in personam* or *in rem*.” Pet.8–9; *see also* Minn. Stat. § 501C.0204(1); Uniform Trust Code § 202. This case—consistent with Ambac’s own characterization—exclusively concerns the limits of *in rem* jurisdiction under that state statute. *See, e.g.*, Pet.2–3 (arguing that “Minnesota’s theory of *in rem* jurisdiction cannot be reconciled with the requirements of due process”); *id.* at 4 (asking the Court to clarify the “limits on the exercise of *in rem* jurisdiction”). Accordingly, it cannot possibly arise under the UTC. And Ambac nowhere suggests that it will arise under the law of any other State.

Indeed, the scope of *in rem* jurisdiction under the terms of the new Minnesota Trust Code, which was

enacted in 2015 and effective January 1, 2016, *see generally* Minn. Stat. § 501C.0101 *et seq.*, has not been considered by the Minnesota Supreme Court. The Minnesota Supreme Court declined to review the intermediate appellate court’s unpublished opinion in this matter. *See* Pet.App.19a. And that unpublished opinion is not precedential within Minnesota. *See* Minn. Stat. § 480A.08 sub.3 (“Unpublished opinions of the Court of Appeals are not precedential.”). Even if the Court were interested in resolving an issue arising exclusively under the law of a single State, it would not make sense to do so before the issue was considered by the state court of last resort, before it was allowed to percolate within the state courts, and before it was subject to at least an intermediate court ruling with precedential value. *Cf.* S.Ct. R. 10(b) (explaining that a “compelling” petition for certiorari might exist where “a state court of last resort” creates a division of authority).

2. In addition, the question presented is specific to TIP proceedings involving pending litigation. The decisions below relied on the fact that the relevant intangible right at issue in the context of this particular TIP proceeding is the trustee’s right to initiate and direct the underlying litigation. *See* Pet.App.17a (“The district court’s basis for exercising in rem jurisdiction is that the relevant trust property, the right to pursue litigation against Countrywide, is located in Minnesota where the bank administers the trust and where decisions regarding the action against Countrywide are made.”); *id.* at 40a (finding that “[t]he relevant Trust property by which U.S. Bank can establish *in rem*

jurisdiction” is “the right to pursue litigation against Countrywide”). And both lower courts agreed, after conducting a multifactor state-law analysis and crediting a declaration, that the right, and the decision-making with which it is irretrievably intertwined, is located in Minnesota. *See id.*

Ambac identifies no other case that has considered the application of *International Shoe*’s “minimum contacts” standard in the context of a TIP proceeding—much less in a TIP proceeding in which the trustee seeks direction as to how to exercise its right to direct pending litigation. To U.S. Bank’s knowledge, no such case exists. It goes without saying that without other cases on point there can be no division of authority.

The absence of other decisions addressing this issue also means that no other court has opined on such subsidiary questions as (1) whether the right to direct the underlying litigation is the relevant intangible right, or (2) how the location of that right should be ascertained. That matters. TIP proceedings are unusual. And they may involve any number of trust-administration issues other than directing litigation. When other trust-administration issues are at stake, the relevant intangible right for purposes of the jurisdictional analysis may not be the power to initiate and direct litigation. Instead, some other intangible right may control the jurisdictional analysis. Minnesota courts simply have had no occasion to decide.

3. The petition also turns on the district court’s specific factual findings regarding U.S. Bank’s management structure and the situs of its decisions regarding the pending litigation. In an undisputed

employee declaration that both courts credited, the affiant confirmed basic facts about U.S. Bank's Minnesota headquarters and stated that:

- “[f]rom the outset, the administration of the Trust was overseen by U.S. Bank’s Minnesota operations,” Pet.App.40a;
- “Trust employees in Boston and Chicago report to senior managers in the St. Paul headquarters office,” *id.* at 33a;
- “[w]hile ministerial and other routine duties are performed in the Boston office, substantive decisions, including decisions concerning the New York Lawsuit as well as consideration of the Settlement Agreement, are made at the St. Paul office,” *id.* at 33a–34a; and
- “the decision to seek this instruction was made at the St. Paul office,” *id.* at 34a.

Ambac has not disputed any of these facts, which controlled both the application of the state-law *Sheridan* factors and the federal due process analysis that followed. Nor has it come forth with evidence that other institutions organize themselves similarly.

II. THE QUESTION PRESENTED IS UNIMPORTANT.

For similar reasons, the question presented is not important enough to merit this Court’s attention. As explained, the Court of Appeals’ decision, which is not precedential even within Minnesota, implicates the law of a single state, an unusual procedural mechanism, and factual findings regarding U.S. Bank’s management. *See supra* Part I.

In addition, the new Minnesota Trust Code is far narrower in scope than Ambac suggests. In particular, it “[g]enerally . . . does *not* apply to corporate trusts.” Pet.App.5a (emphasis supplied). To be sure, there is a narrow “exception from this general rule” for trusts “administered by a trustee located in” Minnesota. *Id.* at 5a–6a (quoting Minn. Stat. § 501C.0208)). And that narrow exception applies in this case because, as the courts found, U.S. Bank is located in Minnesota for purposes of Minnesota law. The limited applicability of the new Minnesota Trust Code to corporate trusts belies Ambac’s suggestion that the question presented has consequences for all manner of financial instruments nationwide. *See* Pet.21–24.

Indeed, Ambac argued below that the new Minnesota Trust Code ought not apply to the Trust at all because, in Ambac’s view, U.S. Bank is “located” in Ohio, rather than Minnesota, for purposes of the Code. *See* Pet.App.6a–10a, 25a–27a. The Minnesota courts rightly rejected that argument, but Ambac’s prior position demonstrates the significance of the geographic limit.

III. THIS CASE IS A POOR VEHICLE.

Even if the question presented were otherwise worthy of this Court’s attention, this petition would be a poor vehicle for answering it. First, the petition is premature; second, it was filed by an entity with a limited interest in the jurisdictional analysis.

1. The Minnesota Court of Appeals’ decision does not finally resolve this case. The appeal here was from the district court’s order denying Ambac’s motion to dismiss for lack of jurisdiction. *See*

Pet.App.4a. The appellate court’s review, accordingly, was limited to issues raised in that motion. Given the appeal’s interlocutory posture, it is unsurprising that the Minnesota Supreme Court declined to intervene. *See id.* at 19a.

This Court should follow suit. Particularly where state courts are concerned, considerations of comity and efficiency often lead this Court to deny certiorari with respect to interlocutory cert petitions. *See, e.g., Wrotten v. New York*, 560 U.S. 959 (2010) (Sotomayor, J., respecting denial of certiorari). Those considerations apply with full force to this case, as no Minnesota court has had occasion to consider, much less definitively resolve, this case on the merits. *See* Pet.App.36a (“[N]o substantive action has been taken in this case past the pleading stage. This is the first substantive order issued in this case.”).

The Minnesota courts should be afforded that opportunity. Further proceedings could conceivably produce Ambac’s preferred outcome on the merits. And either way, the Minnesota Supreme Court will have another opportunity to weigh in on the unsettled questions of state law on which the decisions below turned.

2. In any event, the Court should not decide a question regarding the jurisdictional status of a trust where the trust’s certificateholders are not parties. Ambac is an insurer with a subrogated third-party beneficiary interest in only the insured certificates. *Id.* at 3a. No certificateholder—the parties who directed U.S. Bank to exercise its right to conduct the New York litigation—have objected to the Minnesota courts’ jurisdiction.

Although Ambac may well have incentives to minimize its own potential liability, it has no legitimate interest in the jurisdictional expectations of the Trust’s certificateholders. Ambac itself argues that those expectations are key to the jurisdictional inquiry. In particular, Ambac repeatedly insists that the jurisdictional inquiry should have focused more on “the *defendant*,” Pet.16 (quoting *Rush v. Savchuk*, 444 U.S. 320, 332 (1980))—*i.e.*, the certificateholders. But Ambac offers only its own speculation about the knowledge and expectations of the non-present, non-objecting certificateholders. *See, e.g., id.* (arguing that “[t]he exercise of jurisdiction . . . cannot be justified based on the Trust beneficiaries’ purported awareness of U.S. Bank’s connection with Minnesota”). Insomuch as those are relevant considerations, this Court should not have to take an insurer’s word for it.

IV. THE DECISION BELOW IS CORRECT.

Finally, the decision below is correct. The Minnesota state courts made factual findings regarding the location of the Trust’s intangible assets. Those findings support jurisdiction in Minnesota both as a matter of state law and as a matter of constitutional due process. Moreover, there is no conflict with this Court’s due process precedents.

1. The decisions below turned on an employee declaration that described U.S. Bank’s organizational structure—particularly as applied to the decision-making process surrounding the New York litigation. *See* Pet.App.33a–34a, 40a. Ambac did not challenge the content of that declaration. In reliance thereon, the Minnesota courts made a

factual finding that U.S. Bank’s right to pursue litigation against Countrywide—like its decision-making processes relating to that litigation—is located in Minnesota.

That factual finding is sufficient to support personal jurisdiction in Minnesota as a matter of state law in a TIP proceeding involving litigation decision-making. Although the Minnesota courts acknowledged that “[t]he physical documents constituting the Mortgages are not and never were located in Minnesota,” “[t]he Mortgages themselves are not physical, tangible assets.” *Id.* at 29a. And “[t]he intangible rights included in the Mortgages include the cash that is generated from real property in 37 states and the District of Columbia.” *Id.* at 30a. More important, “[t]he Mortgages and the rights attached to them are not the only property encompassed by the Trust.” *Id.* The rights granted in the Trust’s governing documents are also intangible trust property. *Id.* And for purposes of the TIP proceeding—in which U.S. Bank seeks instruction regarding the direction of a particular lawsuit—the most relevant intangible right is the right to direct the litigation at issue. *See id.* at 31a–32a.

Of course, the decisions below did not stop there. The Minnesota courts also considered the domicile of the trust beneficiaries (unknown), the domicile of the trustee (Minnesota), the location of the trust administrator (Minnesota), the litigation’s progression (minimal), the governing law (New York), and *forum non conveniens* considerations (neutral). *See id.* at 32a–38a, 10a–16a. As both

courts determined, the greater weight of those factors favors *in rem* jurisdiction in Minnesota.

2. The same factual findings support personal jurisdiction in Minnesota as a matter of federal due process. As the decisions below duly recognized, the Due Process Clause sets a constitutional floor for States' exercise of personal jurisdiction. *See id.* at 16a, 38a. "The standard for determining whether an exercise of jurisdiction over the interests of persons is consistent with the Due Process Clause is the minimum-contacts standard elucidated in *International Shoe*." *Shaffer v. Heitner*, 433 U.S. 186, 207 (1977). *International Shoe*, in turn, recognized that due process requirements are context-specific and depend "on the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure." 326 U.S. at 319. The overarching question in that analysis is whether there exist "minimum contacts with [the forum state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Id.* at 316 (internal quotation marks omitted); *see also Shaffer*, 433 U.S. at 207 (holding that this test applies to *in rem* jurisdiction).

As Ambac nowhere disputes, the Minnesota courts undertook the very "minimum contacts" inquiry this Court's precedents dictate. In so doing, they did not "rely on the presence of the trust property alone as a basis for jurisdiction." Pet.App.17a. Instead, they carefully considered "[t]he inextricable connection between the trust's right to pursue litigation and the bank's authority as

trustee to assert that right,” concluding that, on these particular facts, “exercising jurisdiction over the trust in the state where the bank exercises the right to pursue the litigation does not offend traditional notions of fair play and substantial justice.” *Id.* at 18a. That was the right result. After all, the bar imposed by the “minimum contacts” test is, by design, minimal.

3. Contrary to Ambac’s suggestion, there is no conflict with any of this Court’s prior decisions. The Minnesota courts faithfully applied *International Shoe* to the unique facts at hand. And their ultimate conclusion is consistent with the two precedents on which Ambac primarily relies: *Rush v. Savchuk*, 444 U.S. 320 (1980), and *Standard Oil Co. v. State of N.J.*, 341 U.S. 428 (1951).

a. *Rush* was a personal injury case involving two Indiana residents who were involved in a car accident in Indiana. 444 U.S. at 322. After moving to Minnesota, the plaintiff attempted to sue the defendant in Minnesota state court. *Id.* The defendant had no contacts with Minnesota, so *in personam* jurisdiction did not apply. Undeterred, the plaintiff attempted to create quasi *in rem* jurisdiction by garnishing the contractual obligation of the defendant’s car insurance company (which did have a Minnesota presence) to indemnify him in connection with an accident-related lawsuit. *Id.* Post-garnishment, the plaintiff claimed that the insurer’s presence in Minnesota was sufficient to establish jurisdiction. *Id.*

The Supreme Court rejected the plaintiff’s transparent (albeit creative) attempt to manufacture personal jurisdiction over the plaintiff “based solely

on the activities of [his insurer].” *Id.* at 332. The plaintiff, the Court reasoned, could never “have expected that by buying insurance in Indiana he had subjected himself to suit in any State to which a potential future plaintiff might decide to move.” *Id.* at 328–29. Moreover, the insurance policy was neither “the subject matter of the case . . . nor [was] it related to the operative facts of the negligence action.” *Id.* at 329.

This case bears no resemblance to *Rush*. Unlike in *Rush*, the jurisdictional finding below was based not on some third-party’s conduct, but on the location of the very intangible right at issue in the TIP proceeding: the trustee’s right to pursue and direct litigation. *See* Pet.App.17a–18a, 39a–41a. Unlike in *Rush*, the Minnesota courts found as a matter of fact that trust beneficiaries had every reason to expect that litigation might occur in Minnesota. *See id.* at 35a. And unlike in *Rush*, the intangible *res* at issue “is at the heart of this case”—rather than something whose “only role . . . is to provide the basis for bringing the defendant into court.” *Id.* at 40a (quoting *Shaffer*, 433 U.S. at 209); *see also id.* at 17a (“The instruction proceeding was not initiated to provide a basis for the bank to pursue litigation against Countrywide; the bank brought the action against Countrywide in New York before it initiated the instruction proceeding.”).

The bird’s eye view of “fair play and substantial justice” looks very different, too. In *Rush*, the Court had every reason to reject the Minnesota courts’ exercise of jurisdiction over a run-of-the-mill negligence suit involving out-of-state conduct and an out-of-state defendant. It makes nothing but sense,

however, for a Minnesota trustee to go to the Minnesota courts for direction regarding its administration of a Trust asset located in Minnesota.

b. *Standard Oil* involved a New Jersey court's exercise of jurisdiction over stock and dividends belonging to a New Jersey corporation. 341 U.S. at 429. The Court's reasoning was straightforward. The defendant was "a corporation of New Jersey, amenable to process through its designated agent at its registered office." *Id.* at 438. "This gave New Jersey power to seize the" stock and dividends at issue. *Id.* In other words, "where the debtor and creditor are within the jurisdiction of a court, that court has constitutional power to deal with the debt." *Id.* at 439.

That decision, if anything, affirmatively supports the Minnesota courts' exercise of jurisdiction here. *Standard Oil* focused primarily on "the persons whose relationships are the source of the rights and obligations" at issue. *Id.* (internal quotation marks omitted). The Minnesota Court of Appeals observed that there has never been a dispute in this case that "the parties in the relationships created by the trust documents are within the jurisdiction of the district court." Pet.App.13a (noting that "the parties do not dispute" this point). Moreover, Ambac is simply wrong to suggest that the decisions below purport to "assert jurisdiction over all persons with an interest in property simply because *one* person is within the court's reach." Pet.19. Instead, the Minnesota courts relied on the location of the intangible right to pursue and direct litigation. See Pet.App.17a–18a, 39a–41a. And its jurisdictional analysis took full

account of the certificateholders' contacts and expectations. *See id.* at 13a, 32a, 34a–35a.

CONCLUSION

The petition for certiorari should be denied.

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Respectfully submitted,

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