

Civil Procedure—In-Forum Injury May Constitute Forum Contact for Relatedness Prong of Specific Jurisdiction Inquiry—*Astro-Med, Inc. v. Nihon Kohden America, Inc.*, 591 F.3d 1 (1st Cir. 2009)

To properly exercise specific jurisdiction over a nonresident defendant, due process requires that the defendant have certain minimum contacts with the forum, such that it would be fair to hale him into court there to defend against a claim related to those contacts.¹ The First Circuit has refined its minimum contacts analysis by requiring that a plaintiff's claim relate to or arise out of the defendant's contacts, that the defendant have purposely availed himself of the forum, and that the exercise of jurisdiction be reasonable.² When a defendant, although not physically present in the relevant forum, intentionally engages in tortious conduct that injures a plaintiff located there, courts will evaluate the injuries or "effects" when analyzing whether a sufficient connection exists between the plaintiff's claim and the defendant's contacts.³ Traditionally, courts only considered in-forum effects under the purposeful availment prong of minimum contacts analysis, but in *Astro-Med, Inc. v. Nihon Kohden America, Inc.*,⁴ the First Circuit strayed from its precedent by considering such effects under the relatedness prong and holding that specific jurisdiction over the defendant was proper.⁵

The plaintiff, Astro-Med, Inc. (Astro-Med), is a Rhode Island company in

1. See *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945) (explaining function and purpose of jurisdictional inquiry). The minimum contacts analysis centers on an evaluation of the quality and nature of the defendant's activity in the forum as it relates to the orderly administration of the standards and laws that due process seeks to uphold. See *id.*

2. See *N. Am. Catholic Educ. Programming Found., Inc. v. Cardinale*, 567 F.3d 8, 16 (1st Cir. 2009) (stating three prong inquiry comprises basic due process analysis established in *International Shoe*); see also *United Elec., Radio & Mach. Workers v. 163 Pleasant St. Corp.*, 960 F.2d 1080, 1089 (1st Cir. 1992) (establishing tripartite probe to evaluate specific jurisdiction).

3. See *Calder v. Jones*, 465 U.S. 783, 789-90 (1984) (approving employment of effects test to evaluate connection between purported harm and specific forum). The fact that the defendant's actions that caused the harmful effects in the forum were performed elsewhere does not prevent the forum court from exercising jurisdiction over a claim arising out of those effects. See *id.* at 790 (stipulating purposeful direction of tortious actions at other forum triggers court's jurisdiction over actor). The *Calder* effects test has been characterized as requiring the following elements: the defendant perpetrated intentional tortious actions; the focal point of the harmful actions occurred in the forum state; and the defendant knew that the injurious conduct would cause the brunt of the harm to the plaintiff in the forum. See ROBERT D. SACK, *SACK ON DEFAMATION: LIBEL, SLANDER, AND RELATED PROBLEMS* § 15:1.3, at 15-17 to -18 (4th ed. 2010) (listing elements most commonly required under effects analysis).

4. 591 F.3d 1 (1st Cir. 2009).

5. See *id.* at 10 (providing substance of court's departure in its minimum contacts analysis and determination of specific jurisdiction).

the life sciences equipment market.⁶ Astro-Med sued one of its major competitors, California-based Nihon Kohden America, Inc. (Nihon Kohden), for hiring away an Astro-Med sales manager, Kevin Plant, which was in breach of an employee agreement (the Agreement) between Plant and Astro-Med.⁷ Prior to hiring Plant, Nihon Kohden learned of the Agreement, but, despite warnings from its lawyer about potential legal risks, the company persisted in its pursuit of Plant and extended him a job offer, which he accepted.⁸ Soon thereafter, an agent of Nihon Kohden emailed Plant asking if the two men could discuss various aspects of Astro-Med's product line; Plant agreed.⁹

In December 2006, Astro-Med filed suit against Plant alleging breach of contract, misappropriation of trade secrets, and unfair competition.¹⁰ Astro-Med later added Nihon Kohden as a defendant and asserted claims of tortious interference and misappropriation of trade secrets.¹¹ Nihon Kohden moved to dismiss on the ground that the district court lacked personal jurisdiction over it, but the motion was denied and the district court subsequently entered judgment against the defendants at the close of the jury trial.¹²

6. *Id.* at 6. Astro-Med's principal place of business is located in Warwick, Rhode Island. *Id.*

7. *See id.* 6-7 (reviewing background of claims and structure of suit). The Agreement contained a one-year noncompetition clause covering all of North America and Europe, a trade-secrets clause, and choice-of-law and forum-selection clauses dictating that any dispute would be governed by Rhode Island law and litigated in Rhode Island courts. *Id.* at 6. Foothill Ranch, California serves as the principal place of business for Nihon Kohden. *Id.* at 7.

8. 591 F.3d at 7 (discussing events, including potential issues, culminating in Nihon Kohden's decision to hire Plant).

9. *See id.* (setting forth sequence of communications between Plant and Nihon Kohden). A retiring Nihon Kohden sales representative personally recommended Plant for the position at Nihon Kohden because of his knowledge and experience in "neurology-based applications" as well as his insider information regarding Astro-Med's financial arrangements, marketing strategies, and pricing structures. *Id.* at 6-7.

10. *Id.* at 5 (detailing procedural history of suit and claims against Plant). Astro-Med originally filed the case in Kent County Superior Court in Rhode Island, but Plant removed the matter to the United States District Court for the District of Rhode Island on diversity jurisdiction grounds. *Id.* at 6 n.1. Neither defendant contested the district court's exercise of personal jurisdiction over Plant, meaning that most of the relevant evidence and witnesses would be heard, evaluated, and deliberated upon in Rhode Island regardless of whether Nihon Kohden was made a party to the suit. *See id.* at 7 n.2.

11. *Id.* (describing substance of Astro-Med's claims asserted against Nihon Kohden). To prove tortious interference with a contractual relationship, Rhode Island law requires that a plaintiff establish the following: the presence of a contract; the purported wrongdoer's awareness of the contract; the wrongdoer's intentional interference with the contract; and damages resulting from said interference. *See Smith Dev. Corp. v. Bilow Enters., Inc.*, 308 A.2d 477, 482 (R.I. 1973) (identifying elements plaintiff must prove to contend defendant's conduct substantially interfered with performance of contract). In matters sounding in tort, including Astro-Med's claim of tortious interference, a court must examine the causal nexus between the alleged tortfeasor's contacts with the forum and the plaintiff's cause of action in determining personal jurisdiction over the tortfeasor. *See* 591 F.3d at 9 (acknowledging connection between tortfeasor's actions and forum essential for pronouncement of personal jurisdiction).

12. *Astro-Med, Inc. v. Plant*, No. 06-533 ML, 2008 WL 4372727, at *2-4 (D.R.I. Sept. 23, 2008) (discussing findings and judgment against defendants), *aff'd sub nom. Astro-Med, Inc. v. Nihon Kohden Am., Inc.*, 591 F.3d 1 (1st Cir. 2009); *see also* 591 F.3d at 8 (summarizing basis of Nihon Kohden's motion and district court's methodology for denial of same). In *Astro-Med*, the district court chose to use the prima facie

The defendants appealed to the United States Court of Appeals for the First Circuit alleging nine separate claims of legal error, including that the district court erred in denying Nihon Kohden's motion to dismiss for lack of personal jurisdiction.¹³ The First Circuit rejected Nihon Kohden's argument that because it is a California business that hired a Florida resident to work as a sales agent in Florida, compounded with the absence of any direct contact between the company and Rhode Island, it should not have been haled into court in the Rhode Island territorial forum.¹⁴ After determining that Rhode Island's jurisdiction over Nihon Kohden was proper, the First Circuit affirmed the district court's judgment and maintained that venue was proper, that the Agreement was partially enforceable at all relevant times, and that the amount of damages was appropriate.¹⁵ Specifically, as to jurisdiction, the court stated that a defendant does not have to be physically located in the forum to cause injury there, and held that Nihon Kohden intentionally engaged in conduct it knew would injure—and that ultimately did injure—a Rhode Island plaintiff, thereby subjecting itself to jurisdiction in Rhode Island.¹⁶

For the purpose of personal jurisdiction analysis, a federal court sitting in diversity is the functional equivalent of a state court located in that forum state.¹⁷ When the forum state's long-arm statute reaches as far as the United

standard in evaluating Nihon Kohden's motion to dismiss, assessing only whether the plaintiff had provided enough credible evidence to support all findings of fact necessary to establish specific jurisdiction. 591 F.3d at 8. When a court must decide a motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of persuasion that such jurisdiction exists, though the court will construe the facts in a light most favorable to the plaintiff. See *Mass. Sch. of Law at Andover, Inc. v. Am. Bar Ass'n*, 142 F.3d 26, 34 (1st Cir. 1998) (announcing standard for jurisdictional analysis and clarifying plaintiff cannot rely on conclusory assertions in pleadings); see also *Foster-Miller, Inc. v. Babcock & Wilcox Can.*, 46 F.3d 138, 145 (1st Cir. 1995) (limiting presumption of truth to plaintiff's properly documented evidence in prima facie jurisdictional inquiry).

13. See 591 F.3d at 6 (proffering defendants' contentions for appeal). The First Circuit examined the lower court's use of the prima facie method in denying Nihon Kohden's motion under a *de novo* standard of review, which was acceptable to all parties because Nihon Kohden only contends the method was incorrect, rather than wholly inappropriate. See *id.* at 8.

14. *Id.* at 10 (describing Nihon Kohden's assertion regarding Rhode Island as improper forum to adjudicate subject lawsuit). The First Circuit declared that Nihon Kohden's argument construed the principle of personal jurisdiction too narrowly, especially in light of the series of events that precipitated Astro-Med's claim for tortious interference with its contractual relationship. See *id.* at 9-10. Also, the court refused to review *sua sponte* multiple issues that Nihon Kohden had failed to adequately address in its brief. *Id.* at 20-21.

15. See *id.* at 15-21 (upholding district court's findings and delineating Rhode Island court properly asserted jurisdiction over defendants).

16. See *id.* at 10. In justifying its holding, the court pointed to the email between the retiring Nihon Kohden sales agent and Plant as evidence of Nihon Kohden's intent to interfere because this invaluable insider information motivated the company to seek out Plant in the first place. *Id.* at 18-19. Although Nihon Kohden's conduct that led to the breached contract occurred in Florida and California, the breach, which was the actual injury to Astro-Med, happened in Rhode Island and was plainly related to the tortious interference claim in Astro-Med's complaint, therefore satisfying the "relatedness" prong of the minimum contacts test. See *id.* at 10.

17. *N. Laminate Sales, Inc. v. Davis*, 403 F.3d 14, 24 (1st Cir. 2005) (recognizing similarity in personal jurisdiction analysis regardless of level of court system). The same forum contacts and interests are considered

States Constitution allows, jurisdiction is assessed under the Due Process Clause.¹⁸ In *International Shoe Co. v. Washington*,¹⁹ the United States Supreme Court held that to properly exercise specific jurisdiction over a nonresident defendant, due process requires only that the defendant have certain minimum contacts with the forum state of such quality and nature that haling him into court there would be fair and just.²⁰ Thus, jurisdictional analysis is closely connected to the specific claims asserted and courts pay particular attention to how the underlying elements of the claim are tied to jurisdictional questions.²¹ For example, in tort cases—when the element of causation is central to the resolution of the entire dispute—courts probe the nexus between the defendant’s contacts and the plaintiff’s cause of action by looking specifically for a causal relationship.²²

whether a case is tried in a state court or a federal court located in that state, so the distinction between the two courts is disregarded for the purposes of personal jurisdiction analysis. *See* Gen. Contracting & Trading Co. v. Interpole, Inc., 940 F.2d 20, 23 n.4 (1st Cir. 1991) (illustrating reasoning behind treating federal and state courts as functional equivalents in personal jurisdiction context).

18. U.S. CONST. amend. XIV, § 1 (guaranteeing due process of law). In Rhode Island, specific jurisdiction is proper where a defendant has sufficient minimum contacts with the forum and the exercise of jurisdiction is not otherwise prohibited by the Constitution or the laws of the United States. R.I. GEN. LAWS § 9-5-33(a) (2011) (defining reach of personal jurisdiction); *see also* N. Am. Catholic Educ. Programming Found., Inc. v. Cardinale, 567 F.3d 8, 16 (1st Cir. 2009) (explaining Rhode Island’s long-arm statute designed to mirror constitutional reach).

19. 326 U.S. 310 (1945).

20. *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (reasserting minimum contacts language from *Milliken v. Meyer*, 311 U.S. 457 (1940)). In *International Shoe*, the Supreme Court reasoned that a defendant who conducts business or other activities in a forum thereby enjoys the benefits of its laws, and if a claim related to such activity arises under those laws, it would be fair to require the defendant to appear in that forum’s courts. *Id.* at 319 (underscoring importance of “not offend[ing] traditional notions of fair play and substantial justice”); *see also supra* note 1 and accompanying text (indicating focus on quality of contacts in light of fairness concerns).

21. *See Phillips Exeter Acad. v. Howard Phillips Fund, Inc.*, 196 F.3d 284, 289 (1st Cir. 1999) (demonstrating elements of claim modify aspects of personal jurisdiction inquiry). For a contract claim, a court charged with conducting the jurisdictional inquiry looks to the defendant’s involvement in the contract’s formation or breach; but in a tort claim, the court’s analysis requires a more direct causal nexus between the specific forum contacts and the particular cause of action. *See id.* (exemplifying varying jurisdictional exploration as to discrete claims); *see also* *Marino v. Hyatt Corp.*, 793 F.2d 427, 430 (1st Cir. 1986) (recognizing defendant’s forum conduct as important or material element of proof in plaintiff’s case); *supra* note 11 (listing elements required to establish tortious interference claim). Moreover, the Ninth Circuit explicitly applies a different test for personal jurisdiction contingent on the cause of action; “purposeful availment” for contract actions and “purposeful direction” for matters sounding in tort. *See* 4A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE & PROCEDURE § 1069.1 (3d ed. 2002) (noting Ninth Circuit’s refusal to apply effects analysis to contract actions).

22. *See* *United Elec., Radio & Mach. Workers v. 163 Pleasant St. Corp.*, 960 F.2d 1080, 1089 (1st Cir. 1992) (demanding defendant’s in-forum conduct give “birth” to plaintiff’s cause of action). Due to the complexity of causation analysis, especially as it relates to tort law, there are numerous examples from First Circuit cases of relaxing or loosening the relatedness inquiry where circumstances dictate. *See* Braham Boyce Ketcham, Note, *Related Contacts for Specific Personal Jurisdiction over Foreign Defendants: Adopting a Two-Part Test*, 18 TRANSNAT’L L. & CONTEMP. PROBS. 477, 485-86 (2009) (comparing relatedness to proximate causation in tort law and discussing exceptions); *see also infra* note 24 (emphasizing lack of

The First Circuit uses a tripartite inquiry for specific jurisdiction, separately assessing relatedness, purposeful availment, and reasonableness.²³ The relatedness prong, often regarded as a flexible standard, looks to whether the plaintiff's claim arises out of or relates to the defendant's contacts or activity in the forum.²⁴ Focusing on intent and foreseeability, the purposeful availment prong requires that the defendant have voluntarily directed conduct or activity at the forum, such that he could reasonably anticipate the possibility of having to defend against a related claim in the forum's courts.²⁵ Finally, the reasonableness prong weighs the various interests of the parties, the forum, and the several states in light of efficiency and fairness factors of litigating a case in a given forum.²⁶

Where a defendant lacks forum contacts in the traditional sense, but where he nevertheless engaged in tortious conduct intending to injure a plaintiff in the forum, courts commonly look to the in-forum effects of that conduct as part of

development regarding relatedness and relaxed nature of same).

23. See *Foster-Miller, Inc. v. Babcock & Wilcox Can.*, 46 F.3d 138, 144 (1st Cir. 1995) (stating satisfaction of all three components assures compliance with constitutional due process mandate); *United Elec., Radio & Mach. Workers v. 163 Pleasant St. Corp.*, 960 F.2d 1080, 1089 (1st Cir. 1992) (clarifying minimum contacts analysis and establishing three part framework).

24. See *United States v. Swiss Am. Bank, Ltd.*, 274 F.3d 610, 621 (1st Cir. 2001) (explaining inquiry requires identifying contacts and establishing causal nexus of same to cause of action); see also *Nowak v. Tak How Invs., Ltd.*, 94 F.3d 708, 716 (1st Cir. 1996) (suggesting loosening standard when circumstances dictate due to difficult nature of fact-specific jurisdictional analysis); *Pritzker v. Yari*, 42 F.3d 53, 61 (1st Cir. 1994) (identifying relatedness as relaxed standard). The relatedness inquiry is the least developed prong of specific jurisdiction, though it is clear that the requirement generally focuses on the nexus between the defendant's contacts and the plaintiff's claim. See *Ticketmaster-N.Y., Inc. v. Alioto*, 26 F.3d 201, 206 (1st Cir. 1994) (reasoning disjunctive language of relatedness standard signals flexibility in application). Moreover, "the relatedness requirement . . . authorizes the court to take into account the strength (or weakness) of the plaintiff's relatedness showing in passing upon the fundamental fairness of allowing the suit to proceed." *Id.* at 207. But see *O'Connor v. Sandy Lane Hotel Co.*, 496 F.3d 312, 323 (3d Cir. 2007) (declaring relatedness independent constitutional mandate requiring jurisdictionally significant causal relationship).

25. See *Sawtelle v. Farrell*, 70 F.3d 1381, 1391 (1st Cir. 1995) (providing voluntariness and foreseeability as critical elements to concept of purposeful availment); *United Elec., Radio & Mach. Workers v. 163 Pleasant St. Corp.*, 960 F.2d 1080, 1088 (1st Cir. 1992) (stating enjoyment of forum's benefits may give rise to involuntary presence in forum courts). The purposeful availment inquiry has its own sources of confusion, such as the different conclusions courts can reach under the prong depending on whether the defendant explicitly intended to cause harm in the forum or merely anticipated such a result. See C. Douglas Floyd & Shima Baradaran-Robison, *Toward a Unified Test of Personal Jurisdiction in an Era of Widely Diffused Wrongs: The Relevance of Purpose and Effects*, 81 IND. L.J. 601, 633 (2006) (recognizing difficulty in analyzing gradations of intent when consequences not tied to particular geographic location).

26. *N. Laminate Sales, Inc. v. Davis*, 403 F.3d 14, 26 (1st Cir. 2005) (listing reasonableness or "gestalt factors"). An analysis of reasonableness turns on the defendant's burden of appearing in the forum, the forum's interest in hearing the suit, the plaintiff's choice of forum, the interstate judicial system's efficiency interests, and the social policy interests of the several states. *Id.* In *Northern Laminate*, the court held that litigating the suit in New Hampshire was reasonable because the State had a substantial interest in redressing harms against its own citizens and because the New Hampshire court was certainly familiar with the laws governing the dispute. *Id.*

their jurisdictional inquiry.²⁷ The United States Supreme Court first approved of the effects test in *Calder v. Jones*,²⁸ holding that jurisdiction is proper over a defendant who intentionally aims his tortious conduct at the forum and the conduct's effects cause injury to a plaintiff there.²⁹ Courts across the United States have struggled with the import of *Calder* by failing to define a consistent limit for the application of the effects test, although the First Circuit has expressly rejected the use of an effects analysis under the relatedness prong.³⁰ Nevertheless, recent First Circuit opinions, particularly in cases involving business torts, have left open the possibility of drawing a distinction between the in-forum effects felt after a completed tort and the in-forum injuries that constitute an element in the legal definition of the tort.³¹ In such a case, the

27. See *N. Laminate Sales, Inc. v. Davis*, 403 F.3d 14, 25 (1st Cir. 2005) (holding forum based injuries caused by intentional tort provide basis for jurisdiction). The *Northern Laminate* court held that jurisdiction over the defendant was proper despite the fact that he had not been in the forum for over a decade, noting that "a defendant need not be physically present in the forum state to cause injury . . . in the forum state." *Id.*; see also RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 37 (1971) (proposing intentional act done elsewhere treated like act committed in forum when reasonable).

28. 465 U.S. 783 (1984).

29. See *Calder v. Jones*, 465 U.S. 783, 789 (1984) (holding jurisdiction proper over defendants in California based on effects of intentional conduct in Florida). In *Calder*, the Supreme Court noted that the defendants had not committed mere untargeted negligence, but had "expressly aimed" their libelous statements at the California forum knowing the plaintiff would suffer the brunt of the injury there. *Id.* at 789-90. The Court reasoned that a plaintiff injured in California by intentional conduct originating from Florida need not travel to Florida to seek redress from defendants who purposefully engaged in the harmful conduct, thereby recognizing jurisdiction over the defendants in California although they are located outside of that forum. *Id.* at 790.

30. See *United States v. Swiss Am. Bank, Ltd.*, 274 F.3d 610, 623 (1st Cir. 2001) (delaying consideration of effects until after relatedness prong satisfied). In *Swiss*, the government's argument for effects based jurisdiction over the foreign defendant was rejected by the court because the legal injury of conversion occurs where the tort takes place—Antigua in this case—despite the fact that the seriously damaging effects of the loss of millions of dollars were felt primarily in the United States. *Id.* at 623-24. The court did indicate that a showing of in-forum injury, rather than mere consequences, could constitute forum contacts where the injury itself was an element of the plaintiff's cause of action. See *id.* at 624-25; see also *Sawtelle v. Farrell*, 70 F.3d 1381, 1390-91 (1st Cir. 1995) (citing flaw in plaintiffs' case as completion of tort outside forum where defendants suffered effects); Charles W. "Rocky" Rhodes, *The Predictability Principle in Personal Jurisdiction Doctrine: A Case Study on the Effects of a "Generally" Too Broad, but "Specifically" Too Narrow Approach to Minimum Contacts*, 57 BAYLOR L. REV. 135, 205-06 (2005) (noting jurisdiction often proper where forum injury part of operative facts for element of claim).

31. See *N. Laminate Sales, Inc. v. Davis*, 403 F.3d 14, 25 (1st Cir. 2005) (holding jurisdiction proper because tortious inducement injured plaintiff in forum and claim based on inducement); *supra* note 30 (distinguishing weight given to actual injuries from consideration afforded to after effects of harm); see also *United States v. Swiss Am. Bank, Ltd.*, 274 F.3d 610, 630-31 (1st Cir. 2001) (Lipez, J., dissenting) (suggesting in-forum effects as relevant jurisdictional contacts independent from any in-forum conduct). Some scholars suggest that the relatedness and purposeful availment prongs should not be analyzed separately because the weight that the *Calder* Court gave to the defendants' forum-directed conduct under purposeful availment was a result of that conduct forming a basis for the underlying cause of action itself. See A. Benjamin Spencer, *Terminating Calder: "Effects" Based Jurisdiction in the Ninth Circuit After Schwarzenegger v. Fred Martin Motor Co.*, 26 WHITTIER L. REV. 197, 204 (2004) (questioning separation of relatedness and availment inquiries when injury forms basis for claim).

plaintiff's injury may be considered an in-forum "activity" for purposes of the relatedness inquiry when the tort is presumed by law not to be complete until the plaintiff is injured.³² Because of these varying standards and exceptions, effects-based jurisdictional analysis in the First Circuit remains a fact-sensitive endeavor that turns more on the nature of the underlying claim than on the mechanical application of a rigid test.³³

In *Astro-Med, Inc. v. Nihon Kohden America, Inc.*, the First Circuit considered whether specific jurisdiction over a defendant was proper when based solely on the plaintiff's in-forum injuries, which were caused by the defendant's tortious conduct outside of the forum.³⁴ The court emphasized that prior to employing Plant, Nihon Kohden was fully aware of the Agreement's legal ramifications and knowingly ran the risk of being sued by Astro-Med for tortiously interfering with the Agreement by hiring Plant.³⁵ The court explained that, consistent with Supreme Court precedent, a defendant's tortious conduct need not take place in the forum to cause injury there, and when that conduct is expressly aimed at the forum and causes the plaintiff's in-forum injuries, those injuries may be considered "activity" for jurisdictional purposes.³⁶ The court held that the breach of contract was not just causally related to Nihon Kohden's intentional conduct, but that it also established the elemental basis for Astro-Med's tortious interference claim, thus satisfying the relatedness prong of minimum contacts analysis.³⁷

The First Circuit correctly concluded that the district court's exercise of personal jurisdiction over Nihon Kohden was proper, marking an appropriate departure from more formalistic applications of the relatedness standard in past

32. See *supra* note 27 and accompanying text (explaining First Circuit previously considered in-forum injury as activity for jurisdictional purposes); see also *Janmark, Inc. v. Reidy*, 132 F.3d 1200, 1202 (7th Cir. 1997) (demonstrating location of injury "vital" to discerning where tort occurred).

33. See *Nowak v. Tak How Invs., Ltd.*, 94 F.3d 708, 716 (1st Cir. 1996) (recognizing difficulty in applying flexible standard as function of complexity of jurisdictional analysis); Mark M. Maloney, Note, *Specific Personal Jurisdiction and the "Arise from or Relate to" Requirement . . . What Does It Mean?*, 50 WASH. & LEE L. REV. 1265, 1270 (1993) (discussing uncertainty in application of specific jurisdiction analysis).

34. See 591 F.3d at 6-7 (summarizing background of jurisdictional issue).

35. See *id.* at 10 (highlighting Nihon Kohden's knowledge of Agreement and intent to facilitate breach of same). The court reasoned that because Nihon Kohden was aware of the Agreement's specific provisions, the company knew that hiring Plant could constitute a breach of that Rhode Island contract involving a Rhode Island company, which would be interpreted under Rhode Island law. See *id.*

36. See *id.* at 10 (quoting *N. Laminate Sales, Inc. v. Davis*, 403 F.3d 14, 25 (1st Cir. 2005) and citing *Calder v. Jones*, 465 U.S. 783, 789 (1984)). Because Nihon Kohden's conduct in Florida and California triggered injury to Astro-Med in Rhode Island and that injury was an element to Astro-Med's claim of tortious interference, the injury was deemed an in-forum activity of Nihon Kohden, which gave rise to jurisdiction in Rhode Island. See *id.*

37. See *id.* (construing injury as "activity" and noting direct relation to Astro-Med's cause of action). After establishing relatedness, the court held that both the purposeful availment and reasonableness prongs were also satisfied and that the Rhode Island court's assertion of personal jurisdiction over Nihon Kohden was therefore proper. See *id.* at 10-11.

First Circuit cases.³⁸ Nevertheless, the lack of consistent reasoning among the three appeals court judges in deciding the case represents a missed opportunity to add clarity to this otherwise murky area of civil procedure.³⁹ The majority opinion relies on a blanket application of *Northern Laminare Sales, Inc. v. Davis*,⁴⁰ a case that, while lacking a detailed explanation for its novel holding, contains language clearly equating in-forum injury with activity for the purpose of jurisdictional analysis, which lent strong support to the court's relatedness holding in the instant case.⁴¹ While both agreeing with the majority's application of this precedent and joining in its ultimate decision, Judge Lipez's concurring opinion lays out strong criticisms of the First Circuit's confinement of effects analysis and suggests that the court allow relatedness to be based purely on in-forum effects, even in the absence of any traditional contacts between the defendant and the forum.⁴² This proposition is fairly radical—calling for a relatedness inquiry even more forgiving than that used by the majority in reaching its decision in the present case—but does have some merit in that it seems illogical to give weight to in-forum effects under the purposeful availment prong, while prohibiting any consideration of these same effects in the relatedness inquiry.⁴³ The shortfall of such an approach, however, is that it

38. See 591 F.3d at 11 (holding Rhode Island court's exercise of jurisdiction over Nihon Kohden proper); *Mass. Sch. of Law at Andover, Inc. v. Am. Bar Ass'n*, 142 F.3d 26, 36 (1st Cir. 1998) (stating in-forum effects of extra-forum conduct insufficient for finding of jurisdiction without more); see also *supra* note 30 and accompanying text (discussing strict confinement of effects test to purposeful availment prong).

39. See 591 F.3d at 10, 22-23 (exemplifying distinct approaches to personal jurisdiction issue used by each of three appeals court judges). Compare *N. Laminare Sales, Inc. v. Davis*, 403 F.3d 14, 25 (1st Cir. 2005) (holding in-forum economic damages related to extra-forum tortious inducement, satisfying jurisdictional requirements), with *United States v. Swiss Am. Bank, Ltd.*, 274 F.3d 610, 625 (1st Cir. 2001) (characterizing effects-based relatedness showing as tenuous and insufficient to constitute minimum contacts), and *Mass. Sch. of Law at Andover, Inc. v. Am. Bar Ass'n*, 142 F.3d 26, 36 (1st Cir. 1998) (announcing in-forum effects of extra-forum activities insufficient for minimum contacts).

40. 403 F.3d 14 (1st Cir. 2005).

41. See 591 F.3d at 10 (explaining court's reasonableness holding consistent with both First Circuit and Supreme Court precedent); *N. Laminare Sales, Inc. v. Davis*, 403 F.3d 14, 25 (1st Cir. 2005) (ruling in-forum injury constituted minimum contact for jurisdictional determination); see also *RESTATEMENT (SECOND) OF CONFLICT OF LAWS* § 37 (1971) (proscribing extra-forum intentional acts constitute in-forum activity unless unreasonable). The relatedness standard is designed to ensure that causation is the main focus of the inquiry. See *Ticketmaster-N.Y., Inc. v. Alioto*, 26 F.3d 201, 207 (1st Cir. 1994) (stating causation element should remain in forefront of due process analysis).

42. 591 F.3d at 23 (Lipez, J., concurring) (summarizing Judge Lipez's qualms regarding employment of effects test). Specifically, Judge Lipez takes issue with limiting the effects test's application until after the relatedness prong of specific jurisdiction analysis is satisfied, arguing that if no in-forum conduct exists, then the court will not even have the opportunity to analyze the relatedness prong, thereby altogether foreclosing on an application of the effects test. See *id.* Even an effects test based solely on in-forum effects provides some measure of protection because the plaintiff must still establish that the defendant acted for the purpose of inflicting those effects in the forum. See *United States v. Swiss Am. Bank, Ltd.*, 274 F.3d 610, 632 (1st Cir. 2001) (Lipez, J., dissenting).

43. See 591 F.3d at 23 (Lipez, J., concurring) (illustrating consequence for cases where court cannot square effects with injury, as court could here); see also *RESTATEMENT (SECOND) OF CONFLICT OF LAWS* § 37

risks establishing jurisdiction solely through attenuated connections between extra-forum conduct and in-forum effects, distant both geographically and temporally.⁴⁴

In considering examples of flexible applications of the relatedness standard as support for the generous inquiry undertaken by the court here, Judge Howard's concurring opinion provides the most in-depth reasoning for the court's decision.⁴⁵ Judge Howard's strongest argument, which should have been asserted in the majority opinion, is that jurisdiction is proper because the business tort at issue was by definition not completed until Astro-Med's injury occurred in Rhode Island, and that a court may consider this injury to be in-forum activity.⁴⁶ Also, in light of the underlying concerns of any jurisdictional inquiry—foreseeability and fairness—the First Circuit's decision can hardly be characterized as unreasonable given that Nihon Kohden ignored warnings from its own lawyer about the legal risks posed by hiring Plant, and could have certainly anticipated the possibility of being sued in Rhode Island for interfering with a contract formed there, thereby injuring a company located there.⁴⁷

The majority opinion could have been strengthened by squarely addressing the greatest hurdle in the court's own precedent, *United States v. Swiss American Bank, Ltd.*,⁴⁸ and pointing to the language in that decision that draws a clear distinction between injuries and effects.⁴⁹ The injury to Astro-Med was

(1971) (suggesting conduct intended to cause injury in forum treated as conduct occurring in forum); Spencer, *supra* note 31, at 204 (indicating weight of effects often derived from its status as basis for cause of action).

44. See 591 F.3d at 23 (Lipez, J., concurring); *United States v. Swiss Am. Bank, Ltd.*, 274 F.3d 610, 623 (1st Cir. 2001) (indicating jurisdiction fundamentally unfair when contact only minimally related to claim); *Mass. Sch. of Law at Andover, Inc. v. Am. Bar Ass'n*, 142 F.3d 26, 36 (1st Cir. 1998) (stating jurisdiction improper when relationship between conduct and claim too attenuated).

45. See 591 F.3d at 22 (Howard, J., concurring) (suggesting generous relatedness inquiry appropriate for business torts, permitting best suited forum to handle dispute); see also *Phillips Exeter Acad. v. Howard Phillips Fund, Inc.*, 196 F.3d 284, 288 (1st Cir. 1999) (explaining determination of jurisdiction “written more in shades of grey than in black and white”); *Nowak v. Tak How Invs., Ltd.*, 94 F.3d 708, 716 (1st Cir. 1996) (stating relatedness not single concept for all tort cases precipitating occasion for changeability in inquiry); *supra* note 24 (discussing need for employing flexible standard).

46. 591 F.3d at 22 (Howard, J., concurring) (explaining plaintiff's injury provided basis for cause of action); *Janmark, Inc. v. Reidy*, 132 F.3d 1200, 1202 (7th Cir. 1997) (declaring state where tort victim suffers injury can entertain suit against accused tortfeasor); see also *N. Laminat Sales, Inc. v. Davis*, 403 F.3d 14, 25 (1st Cir. 2005) (holding extra-forum act may constitute in-forum activity for jurisdictional purposes).

47. See 591 F.3d at 10 (emphasizing defendants' awareness of legal risks and intentional conduct supports court's reasonableness holding); *Phillips Exeter Acad. v. Howard Phillips Fund, Inc.*, 196 F.3d 284, 287 (1st Cir. 1999) (professing due process meant to ensure foreseeability of calling defendant to account in forum courts); *Rhodes*, *supra* note 30, at 241 (asserting central function of jurisdictional inquiry as prevention of unpredictable jurisdictional assertion by forum courts).

48. 274 F.3d 610 (1st Cir. 2001).

49. See *United States v. Swiss Am. Bank, Ltd.*, 274 F.3d 610, 625 (1st Cir. 2001) (holding jurisdictional showing as “scant” because no contacts or injury in forum). The difference between effects and injuries is that effects can be felt in multiple places long after a tort has been completed, whereas an injury is experienced in a distinct location and itself marks the completion of the tort. See *id.* (distinguishing “consequences” of tort

not a mere consequence or effect felt in the forum after Nihon Kohden committed the tortious interference elsewhere, but marked the completion of the tort itself and constituted in-forum activity.⁵⁰ Had the court taken this approach, it would have been unnecessary to argue for an expansion of the effects test or for a special business tort exception because, by definition, Nihon Kohden engaged in in-forum “activity” and Astro-Med’s cause of action arose directly from it, satisfying even a strict application of the relatedness standard.⁵¹

In *Astro-Med, Inc. v. Nihon Kohden America, Inc.*, the First Circuit considered whether specific jurisdiction was proper over a defendant who committed an intentional tort outside of the subject forum and had no other relevant forum contacts, but whose conduct caused injury to the plaintiff in the forum. The court correctly concluded that such jurisdiction was proper because the defendants intentionally engaged in injury-producing conduct, knew that the plaintiff would suffer the brunt of the injury in the subject forum, and could therefore reasonably anticipate being haled into court in that forum to defend against a claim arising directly out of those injuries. All three appeals court judges agreed to the ultimate decision, but the fact that the three opinions each assert different reasoning for executing the jurisdictional analysis leaves the First Circuit without concrete precedent on this issue, which will likely give rise to further litigation discussing and disputing the import of the varied approaches in this decision.

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completed elsewhere from actual injury to plaintiff in subject forum).

50. 591 F.3d at 22 (Howard, J., concurring) (stating Astro-Med’s in-forum injury satisfies final element required for tortious interference claim). A plaintiff feeling injurious effects in a forum as a result of tortious activity completed elsewhere is wholly distinct from a plaintiff experiencing incidental or “ancillary” effects of extra-forum conduct. See *Sawtelle v. Farrell*, 70 F.3d 1381, 1390-91 (1st Cir. 1995) (distinguishing between qualifying effects and mere incidental contacts).

51. See 591 F.3d at 10, 22 (Howard, J., concurring) (illustrating tort not completed until Nihon Kohden suffered injury, which majority opinion treats as “activity”); *United Elec., Radio & Mach. Workers v. 163 Pleasant St. Corp.*, 960 F.2d 1080, 1089 (1st Cir. 1992) (requiring claim arise from defendant’s forum activities for finding of relatedness to establish jurisdiction); see also *Smith Dev. Corp. v. Bilow Enters., Inc.*, 308 A.2d 477, 482 (R.I. 1973) (outlining elements required for tortious interference claim).