No. 23-_____

IN THE

Supreme Court of the United States

ERICA DAVIS, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ANDREW DALE DAVIS, DECEASED, AND MINOR CHILDREN, JC, MINOR CHILD, SD, MINOR CHILD; MICHAEL M. MASCHMEYER, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF R. WAYNE ESTOPINAL, DECEASED; JAMES JOHNSON, INDIVIDUALLY AND AS INDEPENDENT CO-ADMINISTRATORS OF THE ESTATE OF SANDRA JOHNSON, DECEASED; BRADLEY HERMAN, INDIVIDUALLY AND AS INDEPENDENT CO-ADMINISTRATORS OF THE ESTATE OF SANDRA JOHNSON, DECEASED,

Petitioners,

V.

CRANFIELD AEROSPACE SOLUTIONS, LIMITED,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether an out-of-forum defendant that establishes a continuing relationship with an in-forum company by contracting to help the in-forum company develop and sell a product in the forum purposefully avails itself of the forum for purposes of the Fourteenth Amendment's personal jurisdiction inquiry.

PARTIES TO THE PROCEEDING

The parties to the proceeding are named on the cover page.

RELATED PROCEEDINGS

Davis v. Cranfield Aerospace Solutions, Ltd.,
No. 2.20-cv-00536-BLW. U.S. District Court for the District of Idaho. Judgment entered January 4, 2022

Davis v. Cranfield Aerospace Solutions, Ltd,
No. 22-35099. U.S. Court of Appeals for the Ninth Circuit. Judgment entered June 23, 2023

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The Ninth Circuit's precedential opinion (Pet. App. 1a-33a) is published at 71 F.4th 1154. The district court's opinion (Pet. App. 34a-53a) is not in the Federal Supplement, but is available at 2022 WL 36488.

JURISDICTION

The Ninth Circuit issued its decision on June 23, 2023, Pet. App. 1a, and denied a timely petition for rehearing on August 30, 2023, *id*. at 54a. On November 28, 2023, Justice Kagan granted a timely application to extend the time to file this petition to and including January 12, 2024. *See* No. 23A467. This Court has jurisdiction under 28 U.S.C. § 1254.

STATEMENT OF THE CASE

I. Factual Background

1. This tort action arises out of a fatal air crash caused by a defective aviation product called the Active Winglet Load System (ATLAS), manufactured and installed by Tamarack Aerospace Group, a Washington corporation with its principal place of business in Idaho. *See* Pet. App. 3a. Petitioners are the family members and estates of the accident victims. *Id*. at 2a. Respondent is Cranfield Aerospace Solutions, a British company that enabled Tamarack to obtain key regulatory approvals that allowed it to install the ATLAS on aircraft. *Id*. at 2a-3a. Indeed, when the ATLAS was installed on the accident aircraft, Cranfield held the federal government approval that allowed Tamarack to install the system. *Id*. at 4a.

More specifically, Tamarack contractually retained Cranfield to help Tamarack obtain

Supplemental Type Certificates (STC), which are regulatory approvals from American and European aviation authorities that were necessary before Tamarack could sell the ATLAS in those jurisdictions. Pet. App. 3a-4a. Obtaining an STC requires the manufacturer to conduct appropriate testing on the product and present the results to regulatory agencies for approval. *See* 14 C.F.R. § 21.115. Tamarack initially retained Cranfield to obtain an STC for the ATLAS from the European Aviation Safety Agency (EASA), and later expanded the engagement to include an STC from the Federal Aviation Administration (FAA). Pet. App. 3a-4a.

Pursuant to these agreements, Cranfield and Tamarack enjoyed a continuous business relationship from 2013 until 2019 where Cranfield both oversaw Tamarack's testing work and also acted as its agent with the EASA and the FAA. *See* Pet. App. 3a-4a. Beginning in 2013, Cranfield took the lead role in preparing the STC applications as an agent for Tamarack. *Id*.; C.A. ER-36.[1] Cranfield oversaw Tamarack's testing, approved the resulting data, presented applications to the regulators on Tamarack's behalf, and even held a proprietary interest in the STCs for Tamarack's benefit, enabling Tamarack's production and sales of the ATLAS. S*ee* Pet. App. 24a-25a (Baker, J., dissenting in part) (summarizing Cranfield's obligations); *see also* C.A. ER-72-73; *id*. at 86-88; C.A. SER-83-86

[1] Citations to C.A. ER are to the Excerpts of Record filed in the Ninth Circuit; citations to C.A. SER are to the Supplemental Excerpts of Record. The cited documents include the transcript of testimony from Cranfield's head of design (taken during jurisdictional discovery), as well as the contracts between Cranfield and Tamarack.

(contracts between Tamarack and Cranfield). Those years of collaboration allowed Tamarack to sell the ATLAS from its facility in Idaho to buyers in the United States and Europe. For this work, Tamarack paid Cranfield hundreds of thousands of dollars. *See* C.A. ER-88; C.A. SER-84.

Cranfield's work centered on Idaho. Shortly after the contracts were executed, Cranfield employees, including its head of design, visited Tamarack in Idaho to familiarize themselves with Tamarack's facilities, set the plan for the certification application, and help Tamarack begin its portion of the work in Idaho. C.A. ER-9-10. Cranfield's head of design agreed that the purpose of this visit was "to commence performance under the contract. To get it headed in the right direction to turn it over to engineering and to make sure that the contract was in force and effect." *Id*. at 39-40. These meetings happened in Idaho because Cranfield knew "that's where the testing was—was being done, the manufacturing was going to be done, and the sales were going to be done for [the ATLAS] system." *Id*. at 40. And the ATLAS was what the Cranfield employees "were in Idaho . . . to work on." *Id*. In addition to seeing a prototype of the system (including participating in a test flight), Cranfield employees met with approximately a dozen engineers "to go through what we call certification planning," which included "looking where we'd need input from Tamarack" so that that the engineers in Idaho understood "in terms of the contract how it's actually going to work in practical terms." *Id*. at 41. The Cranfield employees thus reviewed Tamarack's testing plan, which was "a long and detailed process to make sure that we helped send them off in

terms of doing then what we felt were the necessary activities." *Id*. at 43.

Cranfield's head of design testified that this meeting was part of "a typical launch activity with any customer" because "you need to get to know their team"; thus, the witness agreed that the Idaho visit was neither "fortuitous" nor "random," explaining that it was "definitely with a specific purpose in mind." C.A. ER-42. Pursuant to the contract, Tamarack paid the Cranfield employees' travel expenses, as well as a per diem. *Id*. at 38-39.

For years after the launch meeting, Cranfield worked closely with Tamarack, overseeing its testing activities in Idaho. Tamarack conducted the actual testing in Idaho, and the contract gave Cranfield unilateral power to deem any test that Tamarack conducted a failure, and thus to prevent its submission. C.A. ER-47. Pursuant to that responsibility to supervise testing in Idaho, Cranfield's chief stress engineer (*id*. at 49) traveled to Idaho in 2017 to witness tests. *Id*. at 47. "[H]e was not only there to observe the test in Idaho," but in fact "literally had control over whether or not the test was a pass or a fail"; and that was "true of all the work [Tamarack] did for [Cranfield]" in Idaho. C.A. ER-48. These tests were "a key step" in the process and were "critical to safety." *Id*. at 49. That trip lasted a week, *id*. at 51, and again Tamarack paid Cranfield's expenses plus an extra per diem pursuant to the contract's terms, *id*. at 52.

Over the years, Cranfield "reviewed thousands of pages of documents" prepared by Tamarack, and also had "regular[]" phone conferences with Tamarack employees. C.A. ER-53. Once Cranfield determined that Tamarack's testing was adequate, Cranfield applied

for the STCs in its own name because Tamarack was not qualified to hold them. *Id*. at 36; C.A. SER-53-54. To support that application, Cranfield used test reports produced by Tamarack in Idaho, then created "a version of this with our front cover on, that we would sign off as part of the certification." C.A. ER-46; *see also* C.A. SER-42.

When the STCs were granted, Cranfield held them for Tamarack's benefit, allowing Tamarack (in Idaho) to use Cranfield's STCs to sell the ATLAS. C.A. ER-54. Under this arrangement, "Cranfield's approval was necessary for Tamarack to install the ATLAS system on any aircraft"—including the accident aircraft in this case. Pet. App. 25a (Baker, J., dissenting); *see* 14 C.F.R. § 21.120. Ultimately—approximately six years after Cranfield was originally engaged, and after the accident—Cranfield transferred the STCs to Tamarack in Idaho. Pet. App. 4a (majority op.). All of that was contemplated by the contract, which had no fixed term (C.A. ER-75-76) and called for all of these interactions between Cranfield and Tamarack in Idaho.

The upshot is that Cranfield contracted with Tamarack in Idaho; advised and supervised Tamarack in conducting necessary tests in Idaho (including by sending high-level employees to the State); obtained the necessary FAA approval that allowed Tamarack to sell the ATLAS in Idaho, and approved Tamarack's installation of the ATLAS on the accident aircraft in Idaho. This relationship lasted for six years.

2. When the ATLAS caused a fatal air crash (in Indiana), petitioners sued both Tamarack and Cranfield in federal district court in Washington, where Tamarack is incorporated. Pet. App. 4a. The action against Tamarack remained there; the action against

Cranfield was dismissed for lack of personal jurisdiction, and petitioners brought a new action against Cranfield in federal district court in Idaho. *Id*.

The district court ordered jurisdictional discovery, where Cranfield's head of design testified about the work Cranfield performed—including in Idaho. *See supra* pp.3-4. Notwithstanding that testimony, the district court granted Cranfield's motion to dismiss for lack of personal jurisdiction, holding that Cranfield's contacts with Idaho did not constitute purposeful availment. *See* Pet. App. 35a. The district court found it particularly significant that Tamarack sought out Cranfield (and not the other way around), and that Cranfield performed the bulk of its work in England. *See id*. at 48a-49a. The district court accordingly ordered the action dismissed. *Id*. at 53a.

3. A sharply divided panel of the Ninth Circuit affirmed in a precedential decision. The court held that it would be reasonable to apply both the tests for purposeful direction and purposeful availment to determine whether Cranfield was subject to personal jurisdiction. *See* Pet. App. 7a-9a. It determined that the purposeful direction test was not met because no harm occurred in Idaho. *Id*. at 9a-10a.

Turning to purposeful availment, the court of appeals, like the district court, concluded that:

> Appellants failed to establish that Cranfield purposefully availed itself of the benefits and protections of Idaho. While Tamarack is an Idaho resident, there's no evidence that Cranfield sought out Tamarack in Idaho or benefitted from Tamarack's residence in Idaho. Neither the contract's negotiations, terms,

> nor contemplated consequences establish that Cranfield formed a substantial connection with Idaho. And while the course of dealings show that Cranfield employees entered Idaho several times, those transitory trips into the forum state do not sufficiently reflect purposeful availment.

Pet. App. 11a.

The court recognized that "the contract contemplated that Cranfield would hold the EASA and FAA supplemental type certification on behalf of Tamarack," and that Cranfield held these "at the time of the crash." Pet. App. 13a. But the court concluded that this was insufficient, comparing it to the "'normal incidents of [legal] representation.'" *Id*. In this regard, the court of appeals emphasized that although Cranfield held the certificates, "Tamarack remained responsible for any modifications to the FAA certification and any testing or analysis necessary for the modifications." *Id*.

The court also held that it was not enough that Cranfield engaged in substantial remote work for Tamarack, nor that Cranfield's employees made trips "to Tamarack's Idaho facility as part of the contract." Pet. App. 14a. The court concluded that these trips were "too attenuated to establish minimum contacts with the State" because "the employees traveled at Tamarack's request and expense, and the trips did not suggest a 'special place' in Cranfield's years-long performance of its contract with Tamarack." *Id*. at 16a. "While observing testing of the ATLAS system is important, the record shows that approval of the testing could have occurred in the United Kingdom," and so the fact that such observation actually occurred in-person in Idaho was immaterial. *Id*.

The panel decision was not unanimous. A vociferous dissent explained that petitioners "lopsidedly carried [their] burden by showing that Cranfield undertook continuing obligations entailing substantial activity directed toward Tamarack . . . in Idaho for over six years." Pet. App. 17a (Baker, J., dissenting).

In the dissent's view, the correct legal rule is that "[a] nonresident purposefully avails itself of the forum state when it undertakes (1) continuing obligations (2) entailing some meaningful activity directed toward or producing effects in the forum." Pet. App. 18a. "On the other hand, if a nonresident's contract with a forum resident does not create any *ongoing* obligations, purposeful availment does not exist." *Id*. at 20a (quotation marks omitted). "And even if a nonresident's contract with a forum resident does involve continuing obligations, purposeful availment is not satisfied if the nonresident's obligations do not entail any significant activity toward, or create effects within, that forum." *Id*. The dissent argued that this test was met because the contract between Cranfield and Tamarack "created, and the parties' course of dealing reflected, continuing and meaningful Idaho-facing obligations by Cranfield until 2019 when the British company transferred the ATLAS certification to Tamarack." *Id*. at 21a.

The dissent elaborated that the contract's terms showed that "the two companies partnered—with Cranfield acting as the senior partner because it would 'oversee' the junior partner's work in Idaho." Pet. App. 24a (quoting the contract). Thus, the contract required Cranfield to "approv[e] . . . test schedules and reports provided by Tamarack," "define and outline certification requirements," and "'ensure' Tamarack's 'compliance with all applicable laws and regulations.'" *Id*.

(quoting the contract). The dissent also emphasized that the contract required Cranfield to maintain the certification for Tamarack's benefit. "As the certification holder, Cranfield's approval was necessary for Tamarack to install the ATLAS system on any aircraft." *Id*. at 25a.

The dissent further explained that "no federal court—until today—has ever held that continuous supervision or management of forum-state activities is insufficient to establish personal jurisdiction." Pet. App. 30a. It accordingly cited precedents from "the Supreme Court and our sister circuits" reaching the opposite conclusion. *Id*. at 30a-31a.

The dissent also addressed each of the concerns that motivated the majority, including that Tamarack initiated the contractual relationship, Pet. App. 21a, that the contract contained a choice-of-law clause selecting New York, *id*. at 22a, that most of Cranfield's work was done remotely, *id*. at 23a-24a, 28a-30a, and that the two visits by Cranfield's employees were random or fortuitous, *id*. at 31-32a. The dissent explained that in light of Cranfield's years-long active role, and substantial Idaho-facing conduct, Cranfield had minimum contacts with Idaho.

The dissent concluded sharply:

> Sometimes we decide close cases, where only a slight breeze might tip the balance. This is not one of them. Plaintiffs have established that in over six years of continuing obligations, Cranfield remotely supervised Tamarack's work in Idaho, physically supervised that work in two visits expressly contemplated by their contract, held a regulatory

> certification on Tamarack's behalf that allowed the transaction of business within the forum, and specifically approved Tamarack's installation of the ATLAS system on the accident aircraft in Idaho. That's much, much, more than enough to establish purposeful availment under our published cases. I respectfully dissent from today's aberrational decision.

Pet. App. 32a-33a.

4. Petitioners sought rehearing en banc, which was denied, with the dissenting judge recommending that the petition be granted. Pet. App. 54a.

5. This petition followed.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted because the Ninth Circuit's precedential decision conflicts with the decisions of other courts of appeals, state courts of last resort, and this Court. The questions posed by this case are also important and frequently recurring, and this case is a suitable vehicle to resolve them.

In *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985), this Court explained that where a defendant "deliberately has engaged in significant activities within a State, or has created continuing obligations between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there" for purposes of establishing minimum contacts. *Id*. at 475-76 (citations and quotation marks omitted). The Court was clear that "[j]urisdiction in these circumstances may not be avoided merely because the defendant did not *physically* enter the forum State." *Id*. That was because, even in 1985, it was "an

inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State in which business is conducted." *Id*.

Applying that precedent, federal circuit courts and state courts of last resort hold that when a defendant enters into and performs a contract creating continuing obligations between itself and a forum resident, that is sufficient to establish minimum contacts. Here, however, the Ninth Circuit disregarded that bright-line rule, giving short shrift to facts that other courts deem sufficient to create jurisdiction. The conflict is acute because Cranfield did far more than merely create continuing obligations with Tamarack in Idaho: It controlled Tamarack's in-forum testing activities, physically visited Idaho twice, and then held the certification on Tamarack's behalf, thus controlling whether Tamarack could install the ATLAS on planes in Idaho—including the accident aircraft. Most other circuits would hold that such contacts easily constitute purposeful availment of the State, and this Court should grant certiorari to resolve the conflict.

I. The Ninth Circuit's Precedential Decision Conflicts With the Precedents of Other Circuits and State Courts of Last Resort

Certiorari should be granted first because the Ninth Circuit's precedential decision conflicts with decisions of eight other circuits and state courts of last resort.

1. First, although the dissent set forth the controlling rule that a defendant creates minimum contacts

with a forum by entering into a contract that creates continuing obligations toward forum residents, the majority never mentions that rule—not once. Nor did the majority dispute the fact that Cranfield's contract created continuing obligations vis-à-vis Tamarack that resulted in Cranfield taking actions in the forum. Instead, the majority brushed these obligations and relationships aside by focusing on other facts—including that most of Cranfield's work was done remotely.

That decision can't be reconciled with *Marcus Food Co. v. DiPanfilo*, 671 F.3d 1159 (10th Cir. 2011). There, a Kansas business hired a Canadian sales and purchasing agent to facilitate sales outside the United States. *See id*. at 1163-64. When the relationship soured, the company sued the agent in Kansas. The agent's contacts with Kansas were similar to Cranfield's contacts with Idaho: He worked as an independent contractor, communicated regularly with the business by mail, e-mail, and fax, visited the Kansas office twice over a ten-year period, and was paid by the business from Kansas. *See id*. The district court held these contacts sufficient, explaining that "[t]he parties' agreement created precisely the type of 'continuing relationship' on which the Supreme Court grounded personal jurisdiction in *Burger King*." *Id*. at 1167.

The facts here are either the same as or stronger than the facts of *Marcus Food*. Cranfield also worked as Tamarack's agent. It regularly communicated with Tamarack in Idaho. It visited twice. And it received payment from the Idaho business for its work. On top of those facts, Cranfield exercised actual control over Tamarack's in-forum activities—which the agent in *Marcus Food* did not. And it held a key regulatory approval in trust for Tamarack, thus enabling Tamarack

to install the ATLAS on aircraft in Idaho—a level of involvement with no analogue in *Marcus Food*. The only sense in which *Marcus Food* had even arguably stronger facts is that the relationship between the parties lasted ten years rather than six—but no court has ever held that such a difference could matter; indeed, even the Ninth Circuit did not suggest that six years was not long enough to constitute a continuing relationship. By necessity, this case would have come out the other way in the Tenth Circuit.

The decision below also conflicts with *Adelson v. Hananel*, 510 F.3d 43 (1st Cir. 2007). There, a resident of Israel took an offer of employment to run the Israeli office of a company headquartered in Massachusetts; his role was to identify investment opportunities in Israel. *See id.* at 46. The employee resided in Israel, but he joined the company during a visit to Massachusetts; he regularly spoke and corresponded with individuals in the Massachusetts office during his employment; and his budgets and expenses were submitted to and obtained from Massachusetts. *See id.* at 46-47, 50. The First Circuit deemed these contacts sufficient to hale the employee into federal court in Massachusetts after the employment relationship soured. *See id.* at 51.

Cranfield's contacts are, again, stronger. It also initiated its relationship with Tamarack during an in-person kick-off meeting; it corresponded regularly with Tamarack's employees; and it obtained funds from Tamarack in Idaho—and each of those contacts has a clear parallel with the contacts deemed sufficient in *Adelson*. In addition, Cranfield exercised control over some of Tamarack's operations in Idaho, which is a significant contact with no parallel in *Adelson*.

The Fifth Circuit's decision in *Central Freight Lines Inc. v. APA Transport Corp.*, 322 F.3d 376 (5th Cir. 2003), also conflicts with the decision below. There, the defendant was a New Jersey-based freight delivery company that affiliated with a different freight delivery company in Texas through a contract called an "Interline Agreement." *Id.* at 379. The record showed that "all of the formal negotiations [for the agreement] took place via telephone and written correspondence between the two parties from their respective headquarters." *Id*. at 382. The court held that by participating in these negotiations, the defendant "specifically and deliberately 'reached out' to a Texas corporation by telephone and mail with the deliberate aim of entering into a long-standing contractual relationship with a Texas corporation." *Id*. The defendant also "knew that it was affiliating itself with an enterprise based primarily in Texas," and "presumably knew that many of [the plaintiff's] customers would also come from that state." *Id*. These contacts constituted purposeful availment. The relationship lasted for less than a year. *See id.* at 379.

Cranfield similarly corresponded with Tamarack in Idaho, thus reaching out to that state like the defendant in *Central Freight Lines*. It contracted with Tamarack, knowing that Tamarack was in Idaho, and that Tamarack's customers were there, too. That is enough to place the contacts here on par with the ones in *Central Freight Lines*—but this case includes substantial additional contacts that make it even easier, including a longer relationship, more personal contact, and control and supervision over Idaho-based testing and then installations.

The decision below also conflicts with *Citadel Group Ltd. v. Washington Regional Medical Center*, 536 F.3d 757 (7th Cir. 2008). There, an Arkansas-based nonprofit solicited bids for a construction project in Arkansas. *Id.* at 758-59. An Illinois-based developer responded to the solicitation, and the non-profit sent various messages to the developer asking questions, followed by an authorization to engage in project development, which the developer executed. *Id.* at 759-60. The parties corresponded about the project for less than a year before the non-profit ultimately decided not to proceed. *Id.* Nobody from the non-profit ever traveled to Illinois. *Id.* at 759.

The developer sued the non-profit in Illinois, seeking to recover its costs. Based on "twenty-four 'contacts'—primarily consisting of correspondence by mail, fax, phone, and e-mail—"the Seventh Circuit held that jurisdiction existed. *Citadel*, 536 F.3d at 762. The court stressed that the contract required the developer "to provide a service," and that "the parties had continuing obligations and repeated contacts," which "cross[ed] the threshold from offending due process to sufficient minimum contacts." *Id*. at 763.

Cranfield's contacts with Idaho surpass the defendant's contacts with Illinois in *Citadel*. Here, as in *Citadel*, the contract was to perform services involving continuing obligations and repeated contacts. But unlike the relationship in *Citadel*, which was "truly preliminary," 536 F.3d at 762, Cranfield's relationship with Tamarack was mature: It completed multiple projects for the Idaho company. Thus, Cranfield worked with Tamarack to create a testing plan, which Tamarack implemented in Idaho, and then supervised the resulting testing through robust correspondence

and two in-person visits. This relationship lasted for six years. Under *Citadel*, this case would have come out differently.

2. The foregoing cases show that even if Cranfield had merely contracted to create a continuing relationship with Tamarack in Idaho, and then followed through on its agreement, that would have been enough to constitute purposeful availment in at least four circuits. But the scope and depth of Cranfield's contacts were far greater: Cranfield helped create the testing plan that Tamarack implemented in Idaho; oversaw the testing that occurred in Idaho (including through an in-person visit); reviewed and approved the relevant test data before applying for an STC from the FAA—and then held that STC for Tamarack, approving each of Tamarack's installations of the ATLAS on aircraft in Idaho, including the accident aircraft.

The Ninth Circuit deemed all of that insufficient. To be sure, the court of appeals acknowledged that as part of its contract, Cranfield "oversaw" Tamarack's testing activities in connection with the relevant certification applications. Pet. App. 3a. Those tests undisputedly occurred at Tamarack's facility in Idaho. But the court held that this was insufficient because the contract did "not specify whether Cranfield must 'witness' any tests in person." *Id*. at 12a. The court elaborated that "Cranfield's remote work on behalf of Tamarack's ATLAS project does not, without more, establish purposeful availment." *Id*. at 14a. And with respect to the in-person overseeing of the testing that did occur, the court held that "[w]hile observing testing of the ATLAS system is important, the record shows that approval of the testing could have occurred in the United Kingdom." *Id*. at 16a. Putting these

conclusions together, the rule in the Ninth Circuit is that an out-of-forum defendant's ongoing supervision of an in-forum entity does not constitute purposeful availment of the forum unless in-person supervision is contractually required. In the Ninth Circuit, neither continuous remote supervision nor even voluntary in-person supervision suffice.

That rule is an outlier. As the dissent explained, "no federal court—until today—has ever held that continuous supervision or management of forum-state activities is insufficient to establish personal jurisdiction." Pet. App. 30a (Baker, J., dissenting). The dissent thus cited cases from the First, Second, Fifth, and Sixth Circuits holding that "*controlling* ongoing activities in the forum state" constitutes purposeful availment. *Id*. (citing *Schwab Short-Term Bond Mkt. Fund v. Lloyds Banking Grp. PLC*, 22 F.4th 103, 125 (2d Cir. 2021) (holding that foreign defendant's control over in-forum company's behavior was sufficient, but not necessary, to impute domestic contacts to foreign defendant); *MAG IAS Holdings, Inc. v. Schmückle*, 854 F.3d 894, 901-02 (6th Cir. 2017) (holding that foreign executive was subject to personal jurisdiction when he exercised some control over Michigan subsidiary's operations); *Miss. Interstate Express, Inc. v. Transpo, Inc.*, 681 F.2d 1003, 1009 (5th Cir. 1982) (holding that foreign freight broker was subject to personal jurisdiction when it exercised control over certain details of shipments from the forum); *Whittaker Corp. v. United Aircraft Corp.*, 482 F.2d 1079, 1084 (1st Cir. 1973) (holding that foreign purchaser was subject to jurisdiction when it provided product specifications and instructions to domestic manufacturer/seller)). Other circuit decisions are to similar effect. *See, e.g.*, *Dakota Indus.,*

Inc. v. Ever Best Ltd., 28 F.3d 910, 915 (8th Cir. 1994) (holding that foreign shareholders of company had minimum contacts because they exercised control over company's in-forum conduct); *Sloss Indus. Corp. v. Eurisol*, 488 F.3d 922, 933 (11th Cir. 2007) (finding a foreign purchaser had minimum contacts in seller's forum when the purchaser sent personnel to the plant to discuss manufacturing processes).

The conflict is clear. It is most stark with respect to the Fifth Circuit's decision in *Mississippi Interstate Express*. There, a Mississippi trucking company and a California freight broker negotiated and then carried out an agreement entirely by phone, under which the California broker was meant to pay the Mississippi trucking company for various shipments the trucking company delivered. *See* 681 F.2d at 1005. When the broker didn't pay, the trucking company sued it in Mississippi, and the broker challenged jurisdiction, arguing that: (1) the contract discussions occurred in California; (2) the defendants "did no act inside Mississippi" other than placing telephone calls to the plaintiff there; (3) none of the shipments pursuant to the contract originated or terminated in Mississippi; (4) the defendants had no office in Mississippi, nor ever sent representatives there; (5) the defendants solicited no business in Mississippi and had no local advertising or bank accounts there; and (6) all of the alleged acts in furtherance of the alleged tort occurred outside Mississippi. *See id*.

The Fifth Circuit recognized that the defendant's "contact with the State of Mississippi was somewhat minimal, consisting primarily of entering into a contract with a Mississippi corporation and engaging that corporation to deliver certain shipments between

states other than Mississippi." *Miss. Interstate Exp.*, 681 F.2d at 1006. But the court nevertheless held that the due process clause permitted Mississippi courts to assert jurisdiction. It explained that the rule in the Fifth Circuit "is that when a nonresident defendant takes purposeful and affirmative action, the effect of which is to cause business activity, foreseeable by (the defendant), in the forum state, such action by the defendant is considered a minimum contact for jurisdictional purposes." *Id*. at 1007 (quotation marks omitted). The defendant was subject to jurisdiction because it had contracted with a Mississippi counterparty and because it was reasonably foreseeable that the counterparty would perform a material part of its contractual obligations in the forum. *Id*. at 1008. And that was especially clear because "the non-resident defendant was no mere passive customer." *Id.* at 1009. Instead, it initiated the shipments, "exercised a significant measure of control" over the details of the shipments, had a "sustained" relationship with the in-forum company, and knew that the in-forum company would perform its share of the work "at its sole place of business in Mississippi." *Id*.[2]

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[2] Although *Mississippi Interstate Express* is an older precedent, the Fifth Circuit has repeatedly reaffirmed the rule stated therein. *See, e.g.*, *Cent. Freight Lines*, 322 F.3d at 382 n.6 (reaffirming the rule "that a nonresident can establish contact with the forum by taking purposeful and affirmative action, the effect of which is to cause business activity (foreseeable by the defendant) in the forum state," and citing *Mississippi Interstate Express* as the relevant authority).

The decision below plainly conflicts with the Fifth Circuit's rule and holding. Here, Cranfield took purposeful and affirmative action by contracting with Tamarack to supervise (and then in fact supervising) Tamarack's testing of the ATLAS in Idaho. This action led to business activity in Idaho, *i.e.*, the testing of the ATLAS, and its subsequent sale and installation on aircraft in Idaho. The relationship was six years long and involved robust correspondence and collaboration, including two substantive in-person visits by Cranfield personnel to Idaho. These contacts far exceed the ones the Fifth Circuit would find sufficient.

The same is true vis-à-vis other circuits. In *Whittaker*, the First Circuit held that an out-of-forum defendant (with its principal place of business in Connecticut) had minimum contacts with Massachusetts when the defendant contracted with an in-forum company to supply metal alloy for use in jet engines. *See* 482 F.2d at 1081. The defendant requested materials from the Massachusetts company for testing purposes, and then conducted tests on those materials at its out-of-forum facility; it then executed a contract with the Massachusetts company that required the company to promise not to change its manufacturing process, and not to disclose details of the defendant's processes to third parties. Based on that agreement, the defendant notified its suppliers that they could use the Massachusetts company as a source of materials. During their five-year relationship, the defendant sent employees to visit the in-forum company's facility nine times, and also exchanged a few dozen messages by phone, mail, or teletype. *See id*. at 1081-82.

The First Circuit held that these contacts were sufficient to support personal jurisdiction, explaining

that from the contacts, "it seems a fair inference that [the defendant] either actively supervised or actually participated in [the in-forum company's] initial development of the alloy logs." 482 F.2d at 1084. Thereafter, "the contacts continued to be extensive," including substantial correspondence. *Id*. And "[g]iven the five year history of prior dealing between the parties, [the defendant] may not claim surprise at being expected to appear in this forum." *Id*.

The Eleventh Circuit reached the same result in a case involving even slimmer contacts in *Sloss Industries*. There, an Alabama insulation producer sued a European purchaser in federal court in Alabama, and the defendant challenged jurisdiction. The court recognized that the defendant did "not have any offices, officers, employees, or agents in Alabama," did "not own any real property in Alabama," was "not licensed or authorized to do business in Alabama, does not do business in Alabama, and does not have any customers in Alabama," sold "all of its goods in Europe," and did "not solicit business in Alabama." *Sloss Indus.*, 488 F.3d at 925-26. Indeed, other than the plaintiff in-forum company, the defendant did "not have any suppliers in Alabama." *Id*. at 926.

Nevertheless, the Eleventh Circuit held that jurisdiction was appropriate when the defendant had placed ten unsolicited orders for the Alabama company's product during a time period spanning several months, "thereby establishing a course of dealing"; when it had its agent send containers to the Alabama company on six occasions to pack the shipments for shipping; and when its executives had, on one occasion, visited the Alabama company's plant, during which "they discussed the manufacturing process and

proposed" that the Alabama company enter into an exclusive business arrangement with them. *Sloss Indus.*, 488 F.3d at 933.

The contacts here are more robust than the contacts that gave rise to jurisdiction in both *Whittaker* and *Sloss*. In those cases, the courts essentially held that it was enough that the defendant was "more than a mere passive purchaser." *Sloss*, 488 F.3d at 933; *see also Whittaker*, 482 F.2d at 1084 (explaining that the defendant's "participation in the economic life of Massachusetts seems clearly to rise above that of a purchaser who simply places an order and sits by until the goods are delivered"). Instead, the defendants in those cases took an active role in the forum company's business by offering input in the form of specifications and advice. Cranfield's contacts with Tamarack were even more robust because Cranfield was not even arguably a mere purchaser; it was hired by Tamarack to provide exactly that sort of input into Tamarack's Idaho business. Thus, Cranfield advised Tamarack about the creation of a testing plan that Tamarack would run in Idaho, and then oversaw Tamarack's testing before reviewing and approving the resulting test data. Just as in *Sloss* and *Whittaker*, some of that supervision was conducted remotely, and some was in-person. But there is no serious basis to dispute that Cranfield's role in the approval process for the ATLAS, which enabled the ATLAS to be sold in Idaho, was substantial.

The Sixth Circuit reached the same conclusion on slightly different facts in *MAG IAS Holdings.* There, a company sued its German former CEO in Michigan courts. *See* 854 F.3d at 896-97. The company alleged that the CEO oversaw aspects of the company's Michigan subsidiary, improperly used his power to steer

assets and work away from the Michigan business and toward the company's businesses in Germany, and visited the Michigan facility twice during his eight-month tenure as CEO—once to meet with the management team and learn about the facility, and once to meet with the company's largest client. *See id.* at 898.

The Sixth Circuit held that personal jurisdiction existed, explaining that the CEO "was directly involved in planning for future operations in the state," including through his two visits, and "in regular contact with Michigan-based executives by phone and email." 854 F.3d at 901-02. He also "held himself out both to . . . employees and to clients as being responsible for [the Michigan subsidiary's] operations," and "would have known that his conduct both targeted the state and impacted the Michigan economy more broadly." *Id*. at 902. Against the weight of those contacts, the Sixth Circuit held that it did not matter that the CEO's employment agreement had "German venue and choice-of-law clauses." *Id*.

3. Independently, the decision below conflicts with the Idaho Supreme Court's precedential decision in *Brockett Co. v. Crain*, 483 P.3d 432 (Idaho 2021). There, an Idaho company (Brockett) reached out to an Oklahoma resident (Crain) and offered to help sell Crain's storage tanks. *Id*. at 435. The parties allegedly formed a brokerage arrangement. *Id*. Aside from Brockett's work to line up buyers (which it found in Texas), nothing took place in Idaho: the storage tanks were not physically there, and Crain never visited. *See id*. at 435-36. After Brockett claimed to have found a buyer for the tanks in Texas, Crain allegedly cut Brockett out of the deal and sold to the buyer directly. *Id*. Brockett sued in Idaho, and the question whether

Idaho courts had jurisdiction over Crain reached the State's highest court.

The court held that the answer was "yes" under the *Burger King* continuing-relationship rule. *See Brockett*, 483 P.3d at 442. As the court explained, "the parties engaged in a fifteen-month brokerage relationship" that "was made possible by consistent back-and-forth communication . . . via electronic means," which constituted minimum contacts. *Id*. at 443. Even though Crain "did not set foot in Idaho," that was immaterial because had he "followed through with the brokerage relationship," he would have "continued to coordinate with Brockett Co. in Idaho until they found a suitable third-party buyer." *Id*. The court thus held that the defendants, "through their electronic communications directed at a forum resident, engaged in precisely the type of 'continuing relationship and obligations' contemplated in *Burger King*." *Id*.

The contacts here are far stronger than the ones that sufficed in *Brockett*. The relationship was longer (six years versus fifteen months). The amount of physical contact was greater (two important visits versus none). The amount of back-and-forth was greater (thousands of pages of documents versus some unspecified amount of e-mail). The amount of control was greater (including ability to reject test results). And a written contract anticipated all of this (versus a disputed agreement). Put simply, *Brockett* is irreconcilable with the Ninth Circuit's holding.

That creates an acute conflict of law because parties in the same jurisdiction (Idaho) now face entirely different legal rules depending on whether their suits land in state or in federal court. The issue is also not limited to Idaho. Almost every State in the Ninth

Circuit allows courts to assert personal jurisdiction to the extent permitted by due process. *See* Cal. Civ. Proc. Code § 410.10; Nev. Rev. Stat. § 14.065(1); Ariz. R. Civ. P. 4.2; Or. R. Civ. P. 4(L); *Yamashita v. LG Chem, Ltd.*, 518 P.3d 1169, 1171 (Haw. 2022); *Noll v. Am. Biltrite Inc.*, 395 P.3d 1021, 1026 (Wash. 2017) (en banc); *Polar Supply Co. v. Steelmaster Indus., Inc.*, 127 P.3d 52, 55 (Alaska 2005). The panel decision creates new uncertainty in all those jurisdictions.

In sum, the Ninth Circuit's precedential decision conflicts with other binding precedents interpreting the same federal constitutional provisions. This lack of uniformity is untenable, and this Court should grant certiorari to reverse.

II. The Decision Below Conflicts With This Court's Precedents

The Ninth Circuit's decision conflicts with this Court's seminal precedent in *Burger King*, which established that when a defendant contractually creates continuing obligations to a forum resident, the minimum contacts inquiry is satisfied—even if the defendant did not physically enter the forum. *See* 471 U.S. at 475-76. As early as 1985, *Burger King* presciently foreshadowed that technological advances would render travel unnecessary for purposeful availment. *See id.* at 476. That proposition was true then; it is glaringly obvious now that remote work has become the norm for millions around the world. Accordingly, today—no less than in 1985—Cranfield's continuous relationship with Tamarack, coupled with its remote activities directed toward Idaho and its in-person activities in Idaho, constitute sufficient minimum contacts to support personal jurisdiction over Cranfield in Idaho.

The Ninth Circuit's disregard for *Burger King* is evident: The majority opinion cites it only fleetingly, Pet. App. 11a-12a, never quotes from it, and flouts this Court's central guidance about remote work. Indeed, the Ninth Circuit's reasoning is directly contrary to *Burger King* in this respect. The court of appeals placed great weight on the fact that Cranfield may have been permitted to "witness" Tamarack's tests remotely (even though Cranfield actually witnessed them in person), Pet. App. 12a, 14a-15a, and treated Cranfield's "remote work on behalf of Tamarack's ATLAS project" as essentially irrelevant, *id*. at 14a, despite this Court's clear holding that physical presence in the State is not required *at all*, *Burger King*, 471 U.S. at 476.

The Ninth Circuit also erred in its determination that Cranfield's two in-person visits to Idaho were too "random, fortuitous, or attenuated" to constitute minimum contacts with the State. Recall that the first visit, in 2013, included Cranfield's head of design, who later testified that the purpose of the visit was to commence performance of the contract. This senior employee conceded that the visit was not "random" or "fortuitous"; it was part of Cranfield's standard engagement launch procedure and necessary to allow Cranfield to instruct Tamarack's team in Idaho about what tests to perform there. *See supra* pp.3-4. The second visit, in 2017, was by Cranfield's chief stress engineer, who was there to witness tests and decide whether the product passed or failed; this was considered a key step that was critical for safety. *See supra* p.4. The Ninth Circuit characterized these visits as "too attenuated to establish minimum contacts" because they occurred "at Tamarack's request and

expense, and the trips did not suggest a 'special place' in Cranfield's years-long performance of its contract." Pet. App. 16a. In the circuit court's opinion, even though "observing testing of the ATLAS system is important, the record shows that approval of the testing could have occurred in the United Kingdom." *Id*.

With all due respect to the court of appeals, it fundamentally misconstrued the "random, fortuitous, and attenuated" language in this Court's decisions. When this Court has used that phrase, it has typically referred to circumstances in which a small quantity of a manufacturer's product might make its way to a forum State. For example, in *Burger King*, the Court used that language and then cited *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 299 (1980), which held that jurisdiction in Oklahoma was lacking when an automobile sold in New York to New York residents later became involved in an accident in Oklahoma; and also *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984), where the Court reasoned that the regular sale of magazines within a forum was *not* "random, isolated, or fortuitous." 471 U.S. at 475. One could imagine the movement of people meeting this standard—for example, when a defendant passes through a forum State while in transit—and while there engages in some tangential suit-related conduct. But this Court has never described conduct like the visits here—which arose solely out of Cranfield's contractual obligations to a forum resident—as "random, fortuitous, or attenuated," and this Court's precedents provide no support for that proposition.

The only proposition the Ninth Circuit (correctly) took from *Burger King* is that merely contracting with a forum resident is not enough to establish purposeful

availment; instead, the inquiry looks to the parties' "prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing," when "determining whether the defendant purposefully established minimum contacts within the forum." 471 U.S. at 479. But, to be clear, nobody is arguing that merely contracting with a forum resident is enough. Moreover, the proposition the Ninth Circuit relied on merely describes *what sources* a court should consider when conducting the purposeful availment inquiry; it does not override this Court's clear statement that a defendant that has "created continuing obligations between himself and residents of the forum . . . manifestly has availed himself of the privilege of conducting business there," which describes the *focus* of the inquiry. *Id*. at 476 (quotation marks omitted). And it certainly does not cast doubt on the Court's holding that purposeful availment can be obtained "solely by mail and wire communications," if they "are purposefully directed toward residents of another State." *Id*. (quotation marks omitted).

Independent of the conflict with *Burger King*, this Court's decisions also strongly imply that when, as here, a foreign defendant takes deliberate actions in and toward a forum State that assist in the development and sale of a defective product in that State, jurisdiction is appropriate. For example, in *Ford Motor Co. v. Montana Eighth Judicial District Court*, 141 S. Ct. 1017, 1026 (2021), the *losing defendant* in a product liability action argued that jurisdiction could only attach in the State where the defective vehicle was sold, designed, or manufactured. This Court rejected the argument by adopting an even broader conception

of personal jurisdiction—but the Court never suggested that the defendant's examples were insufficient. Similarly, in *Bristol-Myers Squibb Co. v. Superior Court of California*, 582 U.S. 255, 259 (2017), the Court found jurisdiction lacking, in part, because the allegedly defective drug has not been developed or manufactured in California, and the defendant did not "work on the regulatory approval of the product in California," either. The Court at least strongly suggested that if the opposite were true, jurisdiction would attach.

Here, the ATLAS was designed, manufactured, *and* sold in Idaho—and Cranfield played an important role in each step of that process by helping Tamarack secure necessary U.S. governmental regulatory approvals (including by supervising testing conducted in Idaho), and then holding the FAA-issued STC for Tamarack's benefit and approving the installation of the part on aircraft in Idaho, including the accident aircraft. That is more than enough to satisfy the minimum contacts test under this Court's precedents.

III. The Question Presented Is Important

Certiorari should also be granted because the question presented is important. Businesses frequently collaborate across state lines, and consumers as well as industry need clear rules explaining when an out-of-forum party is subject to jurisdiction in a counterparty's forum. As this case and the cited cases show, this issue arises frequently, including in tort cases based on defective products, other consumer matters, as well as disputes involving contracts and quasi-contracts. The Ninth Circuit's opinion casts a cloud of uncertainty over settled understandings,

making it difficult for businesses to understand the implications of their conduct and for third parties to determine where to sue. That is true regardless of the Court's ultimate view on the merits.

Beyond the sheer number of cases implicated, the question presented is also qualitatively important because the existence of personal jurisdiction will often be outcome-determinative—especially in cases, like this one, involving foreign defendants. The upshot of the Ninth Circuit's ruling is that Cranfield likely cannot be sued *anywhere* in the United States—even though Cranfield made hundreds of thousands of dollars by helping an Idaho company gain FAA certification to install products on aircraft in Idaho. In other cases, too, plaintiffs' access to a U.S. forum (and therefore to counsel of their choice, and a convenient forum to litigate) will often hang in the balance.

CONCLUSION

The petition should be granted.

Respectfully submitted,

s/ Tejinder Singh

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APPENDIX

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-35099

ERICA DAVIS, as Personal Representative of the Estate of Andrew Dale Davis, deceased, and minor children, JC, minor child, SD, minor child; MICHAEL M. MASCHMEYER, as Personal Representative of the Estate of R. Wayne Estopinal, deceased; JAMES JOHNSON, individually and as Independent Co-Administrators of the Estate of Sandra Johnson, deceased; BRADLEY HERMAN, individually and as Independent Co-Administrators of the Estate of Sandra Johnson, deceased,

Plaintiffs-Appellants,

v.

CRANFIELD AEROSPACE SOLUTIONS, LIMITED,

Defendant-Appellee

Appeal from the United States District Court for the District of Idaho

B. Lynn Winmill, Chief District Judge, Presiding

Argued and Submitted November 9, 2022 Portland, Oregon

Filed June 23, 2023

Before: Patrick J. Bumatay and Gabriel P. Sanchez, Circuit Judges, and M. Miller Baker,[*] International Trade Judge.

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[*] The Honorable M. Miller Baker, Judge for the United States Court of International Trade, sitting by designation.

OPINION

BUMATAY, Circuit Judge:

This case asks whether a federal court in Idaho may exercise personal jurisdiction over an English corporation in an action brought by plaintiffs from Louisiana and Indiana for an accident that occurred in Indiana. Because this case involves an out-of-state accident, out-of-state plaintiffs, and an out-of-state defendant with no minimum contacts with the state, we say no.

I.

In November 2018, a Cessna Model 525 corporate jet tried to fly from Sellersburg, Indiana, to Chicago, Illinois. It never made it to Chicago. It crashed a few minutes after takeoff in Clark County, Indiana. The pilot of the plane, Andrew Davis, and the two passengers, R. Wayne Estopinal and Sandra Johnson, were killed instantly.

Representatives for the three decedents brought this wrongful death and product liability suit against Cranfield Aerospace Solutions, LLC, in the District of Idaho. These representatives include Erica Davis for her late husband's estate and for her minor children; Michael Maschmeyer for the Estopinal estate; and James Johnson and Bradley Herman for the Johnson estate (collectively, the "Appellants"). The representatives for Davis and Estopinal are residents of Indiana, while Johnson's representatives reside in Louisiana. Cranfield is incorporated in and has its principal place of business in England.

Appellants allege that a load alleviation system, the Tamarack Active Winglet Load System—trademarked as the ATLAS system—caused the plane crash. They believe that the ATLAS system's defective design caused the Cessna to deviate from its flight path and hit trees and the ground in Indiana. Tamarack Aerospace Group, Inc., a Washington State corporation with its principal place of business in Idaho, manufactured and installed the ATLAS system on the Cessna in May 2018.

But before being allowed to install the ATLAS system on planes within the United States, Tamarack needed a special certification from the Federal Aviation Administration ("FAA")—known as a supplemental type certification. This certification allows the holder to modify airplanes from their original design. This is where Cranfield comes into the picture. Cranfield helped Tamarack obtain the FAA supplemental type certification.

Tamarack and Cranfield had a preexisting relationship. After Tamarack designed the ATLAS system, it asked Cranfield for help in obtaining a supplemental type certification from the European equivalent of the FAA—the European Aviation Safety Agency ("EASA"). In 2013, Tamarack contracted Cranfield to provide services to attain an EASA certificate for the ATLAS system. Cranfield oversaw and provided technical assistance for the process to obtain the certification. Cranfield acted as the point of contact between the EASA and Tamarack. Cranfield successfully obtained the EASA certificate for Tamarack in 2015.

A year into the contract, Tamarack asked

Cranfield to expand its scope to include obtaining an FAA certificate for the ATLAS system. Once again, Cranfield acted as the primary interface with the agency. Cranfield was again successful—obtaining the FAA certificate on behalf of Tamarack in 2016. Tamarack then installed the ATLAS winglet system on the Cessna in 2018. At the time of the crash, Cranfield still held the FAA and EASA certificates for Tamarack. After the crash, in 2019, Cranfield transferred both certificates to Tamarack.

Appellants first sued Tamarack and Cranfield in the Eastern District of Washington, alleging both companies were liable for the crash under Washington's Product Liability Act. Cranfield moved to dismiss for lack of personal jurisdiction, and Appellants conceded that jurisdiction was lacking. Cranfield was dismissed from the action, but the litigation against Tamarack continued. That case is still pending.

In November 2020, Appellants brought this diversity action against Cranfield in the District of Idaho under 28 U.S.C. § 1332(a). Appellants' complaint alleges three causes of action under Idaho state law: (1) liability under Idaho's Product Liability Reform Act; (2) negligence; and (3) willful and reckless misconduct. Cranfield again moved to dismiss for lack of jurisdiction. After permitting jurisdictional discovery, the district court granted Cranfield's motion to dismiss for lack of personal jurisdiction. The court ruled that Appellants could not establish specific jurisdiction over Cranfield.

This appeal followed, which we review *de novo*. *Glob. Commodities Trading Grp., Inc. v. Beneficio de*

Arroz Choloma, S.A., 972 F.3d 1101, 1106 (9th Cir. 2020).

II.

A.

Personal Jurisdiction: General and Specific

The central question here is whether a federal court sitting in Idaho can exercise personal jurisdiction over Cranfield, an English corporation. To establish federal jurisdiction over a nonresident defendant in a diversity suit, we look to both state jurisdictional rules and the constitutional principles of due process. *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014). We first look to state law to see how far the state extends the bounds of its courts' jurisdiction. *Id*. We then make sure that the exercise of jurisdiction would "comport[] with the limits imposed by federal due process." *Id*.

In this case, Idaho's long-arm statute authorizes the exercise of "all the jurisdiction available to the State of Idaho under the due process clause of the United States Constitution." *Lake v. Lake*, 817 F.2d 1416, 1420 (9th Cir. 1987) (citing *Doggett v. Elecs. Corp. of Am.*, 93 Idaho 26, 30 (1969)); *see also* Idaho Code § 5-514. So, for our purposes, jurisdiction under state law and due process are coextensive.

Whether the exercise of jurisdiction satisfies due process turns on "the nature and extent of the defendant's relationship to the forum State." *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021) (simplified). "Since *International Shoe*, the rule has been that a state court can exercise personal jurisdiction over a

defendant if the defendant has 'minimum contacts' with the forum—which means that the contacts must be 'such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Id*. at 1032 (Alito, J., concurring) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). Given this focus on forum state contacts, jurisdiction comes in two forms: general jurisdiction and specific jurisdiction. *Id*. at 1024.

General jurisdiction—or "all-purpose" jurisdiction— comes into play when a defendant is "essentially at home" in the forum state. *Id*. For corporations, this type of extensive contact generally means the company's place of incorporation and its principal place of business. *Id*. Such jurisdiction extends over "any and all claims" against the defendant concerning "events and conduct anywhere in the world." *Id*.

Specific jurisdiction, on the other hand, permits jurisdiction over a defendant "less intimately connected" with a forum state. *Id.* To assert specific jurisdiction, the defendant must have "take[n] some act by which it purposefully avails itself of the privilege of conducting activities within the forum State." *Id*. (simplified). But given the more limited contacts with the forum state, this type of jurisdiction is "case-linked," only covering a "narrower class of claims." *Id*. To comply with due process, the plaintiff's claims "must arise out of or relate to the defendant's contacts with the forum." *Id*. at 1025 (simplified).

Our court uses a three-part test to determine whether specific jurisdiction exists:

> (1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;
>
> (2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and
>
> (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.

Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 802 (9th Cir. 2004) (quoting *Lake*, 817 F.2d at 1421). The plaintiff bears the burden of meeting the first two prongs while the defendant shoulders the burden on the final prong. *Id.* All three prongs must be met to exercise personal jurisdiction over the defendant. *Id*.

Only specific jurisdiction is at issue here.

B.

Purposeful Direction v. Purposeful Availment

Before turning to application of the specific-jurisdiction test, we start with a word about the first prong—the "purposeful availment" prong. In the past, we've suggested that we evaluate this prong "somewhat differently" depending on whether the

case involves tort or contract claims. *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199, 1205–06 (9th Cir. 2006) (en banc). As we've said, the prong incorporates two distinct concepts—"purposeful direction" and "purposeful availment." *Id*.; *see also Schwarzenegger*, 374 F.3d at 802. The "purposeful direction" test "typically" applies to tort claims while the "purposeful availment" test "typically" applies to contract cases. *See Yahoo! Inc.*, 433 F.3d at 1206; *see also Picot v. Weston*, 780 F.3d 1206, 1212 (9th Cir. 2015) (stating that we "generally" apply purposeful availment to claims sounding in contract). While our precedent mentions what "typically" happens, we have never held that this line is a hard-and-fast rule. Rather, "our cases do not impose a rigid dividing line between these two types of claims." *Glob. Commodities*, 972 F.3d at 1107. Indeed, the first prong "may be satisfied by purposeful availment," "by purposeful direction," or "by some combination thereof." *Yahoo! Inc.*, 433 F.3d at 1206.

After all, a "rigid dividing line" doesn't serve the purposes of due process. "[B]oth purposeful availment and purposeful direction ask whether defendants have voluntarily derived some benefit from their interstate activities such that they will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts." *Glob. Commodities*, 972 F.3d at 1107 (simplified). So there's no need to adhere to an iron-clad doctrinal dichotomy to analyze specific jurisdiction. Rather, when considering specific jurisdiction, courts should comprehensively evaluate the extent of the defendant's contacts with the forum state and those

contacts' relationship to the plaintiffs' claims—which may mean looking at both purposeful availment and purposeful direction.

Thus, to the extent Cranfield argues that we should only review Appellants' tort claims under the purposeful direction test, we disagree. We think it appropriate to look at both approaches in determining jurisdiction over Cranfield. But under either approach, jurisdiction over Cranfield in Idaho is lacking.

C.

No Purposeful Direction in Idaho

Start with the purposeful direction test. We evaluate purposeful direction under the three-part "effects" test from *Calder v. Jones*, 465 U.S. 783, 789–90 (1984): the defendant must have allegedly "(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state." *Yahoo!*, 433 F.3d at 1206 (quoting *Schwarzenegger*, 374 F.3d at 803). An action may be directed at a forum state even if it occurred elsewhere. *Morrill v. Scott Fin. Corp.*, 873 F.3d 1136, 1142 (9th Cir. 2017). This analysis is driven by the defendant's contacts with the forum state—not the plaintiff's or other parties' forum connections. *Walden v. Fiore*, 571 U.S. 277, 289 (2014); *Bristol-Myers Squibb Co. v. Superior Ct. of Cal., S.F. Cnty.*, 582 U.S. 255, 265 (2017).

The purposeful direction test cannot support jurisdiction here because Appellants fail to allege that Cranfield injured them in Idaho. "Harm suffered in the forum state is a necessary element in

establishing purposeful direction." *Morrill*, 873 F.3d at 1144. As alleged, the harms to Appellants occurred in Indiana, where the plane crash killed their loved ones, or in Indiana and Louisiana, where they resided when the crash occurred. Under the purposeful direction test, haling Cranfield into court in Idaho for a harm that was suffered elsewhere does not satisfy due process. Because this lack of forum-state harm is dispositive, we need not address the other elements of the purposeful direction test.

D.

No Purposeful Availment in Idaho

While closer, purposeful availment leads to the same result. To establish purposeful availment, we look at a defendant's "entire course of dealing" with the forum state— "not solely the particular contract or tortious conduct giving rise to [a plaintiff's] claim." *Glob. Commodities*, 972 F.3d at 1108. It exists when a defendant's dealings with a state establishes a "quid pro quo"—where the defendant "purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws," and in return "submit[s] to the burdens of litigation" in the State. *Schwarzenegger*, 374 F.3d at 802 (simplified). In other words, we examine whether the defendant "deliberately reached out beyond [its] home—by, for example, exploiting a market in the forum State or entering a contractual relationship centered there." *Yamashita v. LG Chem, Ltd*., 62 F.4th 496, 503 (9th Cir. 2023) (simplified). The "unilateral activity" of another party does not meet this standard. *Id*. Purposeful availment can be established by a

contract's negotiations, its terms, its contemplated future consequences, and the parties' actual course of dealing. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 479 (1985).

Looking at these factors, we agree with the district court that Appellants failed to establish that Cranfield purposefully availed itself of the benefits and protections of Idaho. While Tamarack is an Idaho resident, there's no evidence that Cranfield sought out Tamarack in Idaho or benefitted from Tamarack's residence in Idaho. Neither the contract's negotiations, terms, nor contemplated consequences establish that Cranfield formed a substantial connection with Idaho. And while the course of dealings show that Cranfield employees entered Idaho several times, those transitory trips into the forum state do not sufficiently reflect purposeful availment.

Contract Negotiations. At the time that Tamarack contacted Cranfield about the ATLAS Winglet project in early 2012, Cranfield had no offices, facilities, employees, or agents in the United States. It never advertised or marketed services in Idaho. Appellants do not allege that Cranfield had any Idaho contacts before its contract with Tamarack. And Cranfield did not solicit the business with Tamarack. Instead, Tamarack initiated contact with Cranfield by phone and email. Negotiations between the two parties continued remotely, although there was one in-person meeting in England, Cranfield's headquarters. During negotiations, Cranfield let Tamarack know that all Cranfield staff working on the project would be based in the United Kingdom. So nothing in the contract negotiation

reflects Cranfield's intent to avail itself of Idaho's laws. *See Sher v. Johnson*, 911 F.2d 1357, 1363 (9th Cir. 1990) (finding no purposeful availment in the course of negotiations when defendant "is solicited in its home state and takes no affirmative action to promote business within the forum state").

Contract Terms. None of the contract terms invoke the laws of Idaho. Instead, by its terms, New York law governs the contract's enforcement and interpretation. The agreement also selects New York as its choice of forum. The closest the contract gets to referring to Idaho is that Cranfield may "witness" any tests associated with the project and Cranfield will have access to Tamarack's facility "as and when necessary." This suggests some contact with Idaho given that Tamarack's facility is in Idaho, but the contract is permissive—not mandatory—and does not specify whether Cranfield must "witness" any tests in person. Given that the overall purpose of the contract terms was to obtain a certification from European aviation authorities and the FAA, which is headquartered in Washington, D.C., we think the contract terms count against finding purposeful availment in Idaho. *See Burger King*, 471 U.S. at 478 (entering a contract with a forum state resident is not enough in itself to establish minimum contacts).

Contemplated Consequences. The contemplated consequences of the contract do not change the analysis. Nothing in the contract's contemplated consequences suggests that Cranfield sought to benefit from Idaho's laws. Once again, the contract contemplated that Cranfield would provide technical assistance in obtaining certifications from the EASA and the FAA and serve as Tamarack's

main representative to those agencies. Even while delegating those functions to Cranfield, Tamarack remained responsible for developing and coordinating all engineering and certification testing. The strongest fact for Appellants is that the contract contemplated that Cranfield would hold the EASA and FAA supplemental type certification on behalf of Tamarack. Indeed, Cranfield held the certifications on behalf of Tamarack at the time of the crash. But we do not think such a legal obligation in itself establishes purposeful availment in Idaho. *Cf. Sher*, 911 F.2d at 1362 ("normal incidents of [legal] representation" of an in-forum client do not by themselves establish minimum contacts). This is especially true when Tamarack remained responsible for any modifications to the FAA certification and any testing or analysis necessary for the modifications.

Actual Course of Dealings. This leaves Cranfield's actual course of dealing with Tamarack in Idaho, which presents a somewhat closer question. Appellants allege that Cranfield employees engaged in several telephone calls, emails, and other correspondence with individuals in Idaho related to the design and safety aspects of Tamarack's ATLAS system. While remaining in England, Cranfield employees provided Tamarack technical advice and assistance and helped them develop procedures and analysis to obtain the EASA and FAA certifications. Throughout each of these activities, Cranfield and its employees worked in the United Kingdom. In return, Tamarack compensated Cranfield from Idaho.

We have explained that "the fact that a contract envisions one party discharging his obligations in the forum state cannot, standing alone, justify the

exercise of jurisdiction over another party to the contract." *Picot*, 780 F.3d at 1213. And remote actions taken to service a contract in the forum state seldom lead to purposeful availment by themselves. *See Sher*, 911 F.2d at 1362 (explaining that, without more, out-of-state contacts by mail and phone and payments sent from forum state did not establish "the deliberate creation of a 'substantial connection'" with the forum state). Thus, Cranfield's remote work on behalf of Tamarack's ATLAS project does not, without more, establish purposeful availment.

But Appellants don't rely solely on Cranfield's remote work. Besides Cranfield's remote activities, Appellants point to two trips by Cranfield employees to Tamarack's Idaho facility as part of the contract. First, after the contract was executed, Cranfield's head of design traveled to Idaho in 2013. During this three-day trip, he met with Tamarack's developers of the ATLAS winglet system, observed a working prototype, and held several meetings with Tamarack engineers to learn more about the system. He also spent time going through the regulations necessary for obtaining a European certificate for the ATLAS system and worked with Tamarack to plan the certification process.

Appellants also highlight a 2017 trip by Cranfield's chief stress engineer to observe a "critical stage" of testing of the ATLAS system. The purpose of the week-long Idaho visit was to determine whether Tamarack's test protocols and test results complied with the EASA and FAA regulations. The Cranfield engineer's role was to later validate the test reports while in the United Kingdom or in Idaho, but he also had the authority to request a retest while in

Idaho if something had gone wrong.

"While physical entry into the State is certainly a relevant contact, a defendant's transitory presence will support jurisdiction only if it was meaningful enough to create a substantial connection with the forum State." *Picot*, 780 F.3d at 1213 (simplified). In *Picot*, we examined whether an out-of-state defendant's forays into the forum state established purposeful availment. There, the defendant made two trips to California to assist with presentations given to potential clients at the plaintiffs' request and expense. *Id.* Both trips lasted about two weeks, but the defendant's role in the presentations was "relatively small." *Id*. We declined to find a substantial connection with California under those facts. We determined that the two trips had "no special place" in the performance of the plaintiffs' contract "as a whole." *Id*. They were not part of the initial agreement between the parties. *Id*. And the defendant had performed the "bulk of his efforts" out-of-state and met with clients and plaintiffs outside of California. *Id*. At most, we held, the trips were "random, fortuitous, or attenuated" contacts with the forum state. *Id*. And we reached the same conclusion in other cases. *See Sher*, 911 F.2d at 1363; *Omeluk v. Langsten Slip & Batbyggeri A/S*, 52 F.3d 267, 271 (9th Cir. 1995).

Our recent decision in *Silk v. Bond*, 65 F.4th 445 (9th Cir. 2023), does not change our analysis. While *Silk* shows that physical travel to the forum state may not be necessary to establish purposeful availment, it illustrates the level of substantial connections under a contractual relationship that may suffice. *Id.* at 456–57. There, the defendant

sought out a contractual relationship in the forum state that would require all related work to take place in that state. *Id.* at 457. The contract referenced the forum state and the defendant paid into forum-state bank accounts, mailed paper copies of relevant documents to the forum state each month for two decades, and at times sent family members to the forum state for contract-related meetings on his behalf. *Id.* at 456. In comparison, Cranfield's interactions with Idaho are far more random, fortuitous, and attenuated, making this case more like *Picot* than *Silk*.

Given this precedent, we conclude that the two trips by Cranfield employees to Idaho were too attenuated to establish minimum contacts with the State. As in *Picot*, the employees traveled at Tamarack's request and expense, and the trips did not suggest a "special place" in Cranfield's years-long performance of its contract with Tamarack. *Picot*, 780 F.3d at 1213. While observing testing of the ATLAS system is important, the record shows that approval of the testing could have occurred in the United Kingdom. And it is undisputed that the bulk of Cranfield's work under the contract took place in that country.

So none of Cranfield's actual course of dealings in Idaho was so substantial or widespread that it reflects Cranfield's attempt to gain the "benefits and protections" of the forum state.

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Because Appellants' allegations fail to establish that Cranfield had sufficient minimum contacts with Idaho, we decline to proceed to the remaining two

prongs of the specific jurisdiction test.

In one last try, Appellants ask us to find specific jurisdiction based on public policy concerns. They argue that the United States' interest in regulating and promoting safety in the aviation industry favors asserting jurisdiction over Cranfield here. Without Cranfield's actions to obtain the FAA certificate here, Appellants contend that the plane crash would not have happened. While we are mindful that this appeal stems from tragic circumstances, that does not give us license to dispense with constitutional requirements.

III.

Because this case involves out-of-state conduct by an out-of-state defendant and an out-of-state harm, the district court properly declined to exercise jurisdiction over Cranfield.

AFFIRMED.

BAKER, Judge, dissenting in part:

I join Parts I, II.A., II.B. except for its final sentence, and II.C. of the panel's opinion. I part company, however, with the majority's conclusion that Plaintiffs did not demonstrate that the U.K.-based Cranfield Aerospace Solutions, Ltd., purposefully availed itself of the forum state, Idaho. In my view, they lopsidedly carried that burden by showing that Cranfield undertook continuing obligations entailing substantial activity directed toward Tamarack Aerospace Group, Inc., in Idaho for over six years.

I

To constitute "purposeful availment," the defendant's contacts with the forum state must "proximately result from actions by the defendant himself that create a substantial connection with" that state. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (cleaned up). The question is whether "the defendant's *conduct* . . . form[s] the necessary connection with the forum State." *Walden v. Fiore*, 571 U.S. 277, 285 (2014) (emphasis added). Because "an individual's contract with an out-of-state party alone" cannot subject the individual to the jurisdiction of the other party's home state, *Burger King*, 471 U.S. at 478 (emphasis removed), when the defendant has a contractual relationship with a forum resident, a court must look to "prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing." *Id.* at 479. Essential to this inquiry is whether the contract creates "continuing obligations between [the defendant] and residents of the forum." *Id*. at 476 (cleaned up).

In our cases applying *Burger King* over the last 38 years, a clear principle emerges: A nonresident purposefully avails itself of the forum state when it undertakes (1) continuing obligations (2) entailing some meaningful activity directed toward or producing effects in the forum. *See, e.g.*, *Silk v. Bond*, 65 F.4th 445, 457 (9th Cir. 2023) (holding that a nonresident who engaged a California financial planner in "a multi-year business relationship" purposefully availed himself of that state by "creat[ing] 'continuing [payment] obligations' " to the planner) (citing *Hirsch v. Blue Cross, Blue Shield of*

Kan. City, 800 F.2d 1474, 1478 (9th Cir. 1986)), *pet. for cert. filed*, No. 22-1167 (U.S. June 2, 2023); *Glob. Commodities Trading Grp., Inc. v. Beneficio de Arroz Choloma, S.A.*, 972 F.3d 1101, 1108 (9th Cir. 2020) (Honduras importer purposefully availed itself of the California forum by " 'creat[ing] continuing relationships and obligations with citizens of' " that state "over several years" through "payments on . . . contracts" for sales of grain) (quoting *Burger King*, 471 U.S. at 473); *Columbia Pictures Television v. Krypton Broad. of Birmingham, Inc.*, 106 F.3d 284, 289 (9th Cir. 1997) (nonresident licensee of California television producer purposefully availed itself of that state by creating "continuing obligations" to pay producer) (quoting *Burger King*, 471 U.S. at 476), *rev'd on other grounds sub nom. Feltner v. Columbia Pictures Television, Inc.*, 523 U.S. 340 (1998); *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995) (Austrian bank merely holding accounts of American citizens satisfied purposeful availment by its "continuing obligations to forum residents"); *Roth v. Garcia Marquez*, 942 F.2d 617, 621–22 (9th Cir. 1991) (Mexican author's sale of film rights to a California movie producer satisfied purposeful availment by creating "continuing relationships and obligations" that "would have continuing and extensive involvement with the forum," even though the producer solicited the author, whose visits to the forum were minor); *Sher v. Johnson*, 911 F.2d 1357, 1362–64 (9th Cir. 1990) (Florida law firm representing California clients in Florida litigation purposefully availed itself of California through its partners' travel to the forum, communications with those clients, and encumbrance of the clients' forum property); *Hirsch*, 800 F.2d at 1479–80 (nonresident

insurer purposefully availed itself of California forum by accepting "a continuing obligation" to cover insureds in that state, even though the insurer did not solicit the business and never visited the forum); *Haisten v. Grass Valley Med. Reimbursement Fund, Ltd.*, 784 F.2d 1392, 1397–1400 (9th Cir. 1986) (same, with the added fact that the policies were governed by Cayman Islands law).

On the other hand, if a nonresident's contract with a forum resident does "not create any *ongoing* obligations," purposeful availment does not exist. *Boschetto v. Hansing*, 539 F.3d 1011, 1017 (9th Cir. 2008) (emphasis added); *cf. Glob. Commodities*, 972 F.3d at 1108 (observing that a "fleeting" business relationship cannot support purposeful availment).

And even if a nonresident's contract with a forum resident does involve continuing obligations, purposeful availment is not satisfied if the nonresident's obligations do not entail any significant activity toward, or create effects within, that forum. For example, in *Picot v. Weston*, 780 F.3d 1206 (9th Cir. 2015), we held that a nonresident defendant did not purposefully avail himself of the California forum, despite his continuing obligations under an alleged contract with forum residents, because he did not "perform[ ] some type of affirmative conduct *which allows or promotes the transaction of business within the forum state*." *Id.* at 1212 (emphasis added) (quoting *Sher*, 911 F.2d at 1362). His work under the agreement was performed in Michigan, that work was not directed toward California in any significant way, and his two visits to California were not "envisioned in the initial oral agreement" and "h[e]ld no special place in his performance under the

agreement as a whole." *Id*. at 1213.

II

The majority concludes that neither the contract's negotiations, terms, and contemplated consequences nor the parties' actual course of dealing created a substantial connection with Idaho. I disagree because the 2013 contract created, and the parties' course of dealing reflected, continuing and meaningful Idaho-facing obligations by Cranfield until 2019 when the British company transferred the ATLAS certification to Tamarack.

Contract Negotiations. The majority observes that Tamarack solicited Cranfield's services. Opinion at 15. That fact carries little weight, however, when measured against the latter's significant activity directed toward Idaho. In several cases we have found that a defendant purposefully availed itself of the forum by undertaking continuing obligations entailing some activity directed at that jurisdiction, even though the forum resident initiated the business relationship. *See, e.g.*, *Sher*, 911 F.2d at 1362;[1] *Roth*, 942 F.2d at 621–22; *Hirsch*, 800 F.2d at 1479–80; and *Haisten*, 784 F.2d at 1397–98.

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[1] The majority cites *Sher* as an example of no purposeful availment when a forum resident solicits a business relationship with the defendant. Opinion at 15. But we found purposeful availment in that case, even though forum residents solicited the defendant law firm, because the "entire course of dealing" there created a "significant contact" with the forum through partner visits, communications with the forum residents, and an encumbrance of the clients' forum property to secure payment. *Sher*, 911 F.2d at 1363–64 (cleaned up). As explained below, Cranfield's contacts with the Idaho forum are qualitatively stronger than what sufficed for purposeful availment in *Sher*.

Contract Terms. My colleagues conclude that the contract's terms don't support Cranfield's purposeful availment of Idaho. They first point to the contract's choice-of-law and forum-selection clauses, neither of which invokes Idaho. Opinion at 15.

"While [a choice-of-law] provision should not be ignored in determining purposeful availment, it alone will not suffice to block jurisdiction in the [forum state] where other facts indicate that the [defendant] has purposefully directed its activities toward [forum residents]." *Haisten*, 784 F.2d at 1400. Thus, in *Haisten* we held that an insurer purposefully availed itself of the forum when it "directed its activities toward California residents" by covering them, even though the insurance contracts were governed by Cayman Islands law. *Id.*

So if Cranfield continuously directed meaningful activities toward Tamarack in Idaho, that the contract was governed by New York law counts for little. "The issue is personal jurisdiction, not choice of law. It is resolved . . . by considering the acts of the [defendant]" aimed at the forum, *Hanson v. Denckla*, 357 U.S. 235, 254 (1958), and whether those acts "allow[ed] or promote[d] the transaction of business within the forum state," *Picot*, 780 F.3d at 1212.[2]

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[2] In my view, a forum-selection clause has no probative value in determining whether a defendant's contract performance constitutes purposeful availment of the forum for purposes of a third party's claim arising out of that performance. Although parties "can, through forum selection clauses and the like, easily contract around" personal jurisdiction rules, *RAR, Inc. v. Turner Diesel, Ltd.*, 107 F.3d 1272, 1280 (7th Cir. 1997), such actions do not bind nonparties.

The majority then brushes past the contract's substantive terms: "The closest the contract gets to referring to Idaho is that Cranfield may 'witness' any tests" and "have access to Tamarack's facility 'as and when necessary.' " Opinion at 15. According to the majority, this "suggests some contact with Idaho . . . , but the contract is permissive—not mandatory—and does not specify whether Cranfield must 'witness' any tests in person." *Id*. at 15–16.

By only considering contractual terms referring to physical contacts by Cranfield with Idaho, the majority implies that those are the only contacts relevant to purposeful availment. "Jurisdiction," however, "may not be avoided merely because the defendant did not *physically* enter the forum State." *Burger King*, 471 U.S. at 476 (emphasis in original). Instead, remote "entry" into a state through "goods, mail, or some other means . . . is certainly a relevant contact." *Walden*, 571 U.S. at 285;[3] *see also Boschetto*, 539 F.3d at 1019 (recognizing that a defendant that never actually enters the state but employs technological "means for establishing regular business with a remote forum" may be subject to personal jurisdiction).

My colleagues do not acknowledge the contract's

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[3] In 1985, a decade before the advent of the modern internet, which exponentially expanded the technological means for remote entry into a jurisdiction, the *Burger King* Court observed that "it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State in which business is conducted." 471 U.S. at 476.

terms mandating continuing contacts with Idaho that Cranfield could perform either in-person or remotely, much less the strong "quality and nature" of those contacts. *Burger King*, 471 U.S. at 480 (quoting *Hanson*, 357 U.S. at 253).

Cranfield's obligations under the first phase of the parties' contract were entirely Idaho-facing. They required it to "*oversee*" Tamarack in their "work together to draft and finalize" two "deliverables," beginning with "a mutually agreeable Certification Plan" for the Idaho company's ATLAS system, followed later by a "mutually agreeable application" for that system, "including all supporting data and documentation" necessary in "Cranfield's professional opinion."[4] In short, the two companies partnered—with Cranfield acting as the senior partner because it would "oversee" the junior partner's work in Idaho—to produce the two "deliverables" necessary to apply for certification of the ATLAS system.

In supervising Tamarack's Idaho work on these deliverables, the contract's terms required Cranfield to "*approv[e]* . . . test schedules and reports provided by Tamarack" (emphasis added), "*define and outline* certification requirements to Tamarack personnel" in Idaho (emphasis added), provide input to Tamarack's preparation of "draft Flight Test Plans and Test Plans" in Idaho and then "*review, check and submit*" those plans (emphasis added), and "ensure" Tamarack's "compliance with all applicable laws and regulations relating to the . . . certification process." Because the contract's terms gave the British

[4] The Certification Plan was to be included in the supporting data and documentation submitted with the application.

company "access to Tamarack's facility as and when necessary," Cranfield could supervise Tamarack remotely and/or in person.

And after the contract's "deliverables" were ready to submit, the contract's second phase required Cranfield to "apply" for certification in its name because Tamarack was not "qualified" to do so. Following aviation officials' approval of the application, the contract's third phase required Cranfield to "hold[ ] and/or maintain[ ]" the certification—a valuable right—"for Tamarack's benefit."

As the certification holder, Cranfield's approval was necessary for Tamarack to install the ATLAS system on any aircraft. *See* 14 C.F.R. § 21.120 (providing that a "supplemental type certificate holder who allows a person to use the supplemental type certificate to alter an aircraft, aircraft engine, or propeller must provide that person with written permission acceptable to the FAA"). The former's remote holding of this certification and approval of the latter's installation of the ATLAS system on the accident aircraft was Idaho-facing much as the remote provision of insurance coverage to forum residents in *Hirsch* and *Haisten* was forum-facing.

In sum, the contract's terms "created a multi-year business relationship 'that envisioned continuing and wide- reaching contacts' " by Cranfield with Tamarack in Idaho. *Silk*, 65 F.4th at 457 (quoting *Burger King*, 471 U.S. at 480); *see also Roth*, 942 F.2d at 622 (purposeful availment satisfied when a contract requires the defendant to have "continuing and extensive involvement with the

forum"). Thus, Cranfield "not only could foresee that its actions would have an effect in [Idaho], but also that the effect was 'contemplated and bargained for.' " *Hirsch*, 800 F.2d at 1479 (quoting *Haisten*, 784 F.2d at 1398).

The majority's second reason for dismissing the contract's terms—that their "overall purpose" was to *obtain* certification for Tamarack's ATLAS system from aviation regulatory authorities in Europe and America, Opinion at 16—doesn't tell the full story. Obtaining certification alone was useless to Tamarack because it was not qualified to hold that status; it needed Cranfield not only to apply for certification, but also to then hold it so that the Idaho company could then sell and install the ATLAS system on third-party aircraft in Idaho under the British company's tutelage.

In any event, the contract's "overall purpose" is irrelevant to personal jurisdiction. What matters, instead, is whether the contract required "acts of the [defendant]" directed toward the forum. *Hanson*, 357 U.S. at 254. As explained above, the contract's terms did exactly that, in spades.

Finally, *Sher* would have come out the other way if we had applied the reasoning that the majority employs here. In that case, the "overall purpose" of the business relationship between the defendant law firm and the California clients was to represent the latter in Florida litigation. Even so, we held that the law firm purposefully availed itself of California through its actions directed toward that state—partner visits for meetings, communications with its clients, and its encumbrance of its client's forum

property. *See* 911 F.2d at 1362–64.

Contemplated Consequences. My colleagues contend that "[n]othing in the contract's contemplated consequences suggests that Cranfield sought to benefit from Idaho's laws," because the contract merely "contemplated that Cranfield would provide technical assistance in obtaining [regulatory] certifications . . . and serve as Tamarack's main representative" to the relevant agencies, while "Tamarack remained responsible for developing and coordinating all engineering and certification testing." Opinion at 16.

The majority again turns a blind eye toward Cranfield's duty to supervise all of Tamarack's work under the contract, which had foreseeable consequences in Idaho. And although "Tamarack remained responsible for any modifications to the FAA certification and any testing or analysis necessary for the modifications," *id.*, Cranfield in turn was responsible for overseeing and approving that work because the certification was in its name. *See* 14 C.F.R. § 21.120.

And quite apart from its supervision of Tamarack's work, Cranfield's holding of the certification also had foreseeable consequences in Idaho: Tamarack's installation of the ATLAS system on the accident aircraft. The majority, though, minimizes the significance of Cranfield so holding the certification at the time of the installation and later accident, comparing it to the out-of-state legal representation in *Sher*. Opinion at 16.

This analogy is unpersuasive. Cranfield's holding the certification once granted—a valuable property

right—is more properly analogized to the Austrian bank's holding of deposit accounts in *Ballard*, which we held satisfied purposeful availment. *See* 65 F.3d at 1498;[5] *cf. Haisten*, 784 F.2d at 1398 ("A defendant who enters into an obligation which she knows will have effect in the forum state purposely avails herself of the privilege of acting in the forum state.").

Actual Course of Dealing. The majority concludes that the parties' course of dealing does not support purposeful availment because "remote actions taken to service a contract in the forum state seldom lead to purposeful availment by themselves." Opinion at 17 (citing *Sher*, 911 F.2d at 1362). Thus, they reason, "Cranfield's remote work on behalf of Tamarack's ATLAS project does not, without more, establish purposeful availment." *Id*.

This sweeping generalization ignores the Supreme Court's "reject[ion of] the notion that an absence of physical contacts can defeat personal jurisdiction," *Burger King*, 471 U.S. at 476, to say nothing of circuit precedent stating that what matters is not whether a defendant's contacts with the forum under a contract with continuing obligations were remote or physical, *see, e.g.*, *Haisten*, 784 F.2d at 1399 (holding that the defendant

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[5] Indeed, consider a counterfactual where Cranfield breached its obligation to transfer the certification to Tamarack when the latter was finally eligible to hold it. Given that forum-selection clauses are unenforceable against Idaho residents as matter of public policy, *see* Idaho Code § 29-110, in such circumstances a court in that state could surely exercise personal jurisdiction over Cranfield for the same reasons that we held a California court could permissibly exercise jurisdiction over the Austrian bank in *Ballard*.

purposefully availed itself of the forum state despite "*no* physical contacts between the forum state and the defendant") (emphasis in original); *Hirsch*, 800 F.2d at 1480 (same), but instead the " 'quality and nature' of the relationship created by the contract." *Haisten*, 784 F.2d at 1399 (quoting *Burger King*, 471 U.S. at 480).

Moreover, the majority misapprehends *Sher*. The Florida law firm's communications with its California clients, even when coupled with partner visits to the forum, were relatively weak contacts not because they were *remote* as the majority implies, but rather because they involved no "affirmative conduct which allows or promotes the transaction of business within the forum state," which is the relevant inquiry. *Sher*, 911 F.2d at 1362 (quoting *Sinatra v. Nat'l Enquirer, Inc.*, 854 F.2d 1191, 1195 (9th Cir. 1988)). But when conjoined with the law firm's remote encumbrance of the clients' forum property, those contacts collectively created a "substantial [enough] connection with California for jurisdictional purposes." *Id*. at 1363 (cleaned up).

In comparison to *Sher*, the quality of Cranfield's contacts with the Idaho forum is much stronger because the British company "direct[ly] supervis[ed] and control[led]" Tamarack's on-the-ground Idaho activities in their joint production of the deliverables necessary for the certification application. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 313 (1945). To that end, Plaintiffs allege in uncontroverted allegations that we must accept as true, *see Lang Van, Inc. v. VNG Corp.*, 40 F.4th 1034, 1038 (9th Cir. 2022), *cert. denied*, No. 22-937, 2023 WL 3696150, at *1 (U.S. May 30, 2023), that Cranfield gave "substantial

and frequent engineering advice and opinions . . . relating to the design, function, and safety aspects" of the ATLAS system and "worked jointly with [Tamarack] to develop materials, procedures, and data to be used in support of" the certification applications. And even after aviation authorities granted certification, Cranfield remained on the Idaho scene to supervise and approve modifications to the certification and Tamarack's installations of the ATLAS system. Following its installation on the accident aircraft in May 2018, Cranfield continued to provide "customer support and engineering services related to" that system until the fatal crash in November 2018.

To my knowledge, no federal court—until today—has ever held that continuous supervision or management of forum-state activities is insufficient to establish personal jurisdiction. To the contrary, and as *Sher* illustrates, we have repeatedly held that continuing remote contacts of much lower quality are enough to sustain such jurisdiction. *See also Silk*, 65 F.4th at 457 (payments for services, coupled with occasional visits and shipments of records); *Glob. Commodities*, 972 F.3d at 1108 (payments for goods); *Columbia Pictures*, 106 F.3d at 289 (payments for television programing licensing rights); *Roth*, 942 F.2d at 621–22 (licensing film rights).

If merely making payments or licensing film rights to a forum state resident in connection with a contract's continuing obligations is purposeful availment, then surely *controlling* ongoing activities in the forum state is as well, as both the Supreme Court and our sister circuits have recognized. *See, e.g.*, *Daimler AG v. Bauman*, 571 U.S. 117, 135 n.13

(2014) ("[A] corporation can purposefully avail itself of a forum by directing its agents or distributors to take action there."); *Int'l Shoe*, 326 U.S. at 313, 320 (by "direct[ly] supervis[ing] and control[ling]" sales personnel in the forum state, the defendant "received the benefits and protection of the laws of the state" for purposes of specific jurisdiction); *Schwab Short-Term Bond Mkt. Fund v. Lloyds Banking Grp. PLC*, 22 F.4th 103, 125 (2d Cir. 2021) ("[A] relationship of control, direction, or supervision . . . serves the purposeful availment requirement.") (emphasis removed), *cert. denied*, 142 S. Ct. 2852 (2022); *MAG IAS Holdings, Inc. v. Schmückle*, 854 F.3d 894, 901–02 (6th Cir. 2017) (defendant's "directing and controlling" activities in the forum state through "phone and email" and two meetings satisfied purposeful availment); *Miss. Interstate Express, Inc. v. Transpo, Inc.*, 681 F.2d 1003, 1009 (5th Cir. 1982) (defendant's "exercise[] [of] a significant measure of control" over activities in the forum state satisfied purposeful availment); *Whittaker Corp. v. United Aircraft Corp.*, 482 F.2d 1079, 1084 (1st Cir. 1973) (defendant purposefully availed itself of the forum by "actively supervis[ing] or actually participat[ing] in" activities in that state); *cf. Reynolds v. Int'l Amateur Athletic Fed'n*, 23 F.3d 1110, 1119 (6th Cir. 1994) (defendant did not purposefully avail itself of the forum state, in part because it did "not supervise" any activities there).

After dismissing Cranfield's remote supervision of Tamarack's work, the majority then characterizes the two Idaho visits made by the former's personnel as "random, fortuitous, and attenuated, making this case more like *Picot* than *Silk*." Opinion at 19.

The visits in *Picot*, however, were not "envisioned in the initial . . . agreement," 780 F.3d at 1213, which means they were not foreseeable.[6] Here, the contractual terms expressly contemplated the visits, so they can hardly be characterized as "random" or "fortuitous." Nor can they be characterized as "attenuated," because they were to further Cranfield's contractually mandated supervision of Tamarack's work in the forum.[7] This case is more like *Silk* that *Picot*, except that Cranfield's contacts with the forum here are far stronger than the contacts that sufficed for purposeful availment in *Silk*.

Finally, in its discussion of the parties' course of dealing, the majority disregards the significance of Cranfield's holding the ATLAS certification. By so holding it on Tamarack's behalf, and by affirmatively approving Tamarack's installation of the ATLAS system on the accident aircraft in Idaho, the British company "performed some type of affirmative conduct *which allow[ed] or promot[ed] the transaction of business within the forum state*." *Picot*, 780 F.3d at 1212 (emphasis added) (quoting *Sher*, 911 F.2d at 1362).

* * *

Sometimes we decide close cases, where only a

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[6] Foreseeability rests at the center of purposeful availment, as it speaks to whether the defendant "reasonably anticipat[ed] being haled into court" in the forum state. *Burger King*, 471 U.S. at 474.

[7] The other key fact distinguishing *Picot* is that unlike here, where Cranfield's performance under the first and third phases of the contract was directed at the forum, in that case the defendant's performance was unrelated to the forum.

slight breeze might tip the balance. This is not one of them. Plaintiffs have established that in over six years of continuing obligations, Cranfield remotely supervised Tamarack's work in Idaho, physically supervised that work in two visits expressly contemplated by their contract, held a regulatory certification on Tamarack's behalf that allowed the transaction of business within the forum, and specifically approved Tamarack's installation of the ATLAS system on the accident aircraft in Idaho. That's much, much, more than enough to establish purposeful availment under our published cases. I respectfully dissent from today's aberrational decision.

APPENDIX B

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF IDAHO

Case No. 2.20-cv-00536-BLW

ERICA DAVIS, as Personal Representative of the Estate of ANDREW DALE DAVIS, deceased, and minor children, JC, minor child, SD, minor child;

MICHAEL M. MASCHMEYER, as Personal Representative of the Estate of R. WAYNE ESTOPINAL, deceased; and

JAMES JOHNSON and BRADLEY HERMAN, individually and as Independent Co-Administrators of the Estate of SANDRA JOHNSON, deceased,

Plaintiffs,

v.

CRANFIELD AEROSPACE SOLUTIONS LIMITED,

Defendant.

INTRODUCTION

Before the Court is Defendant Cranfield Aeropsace Solution Limited's Motion to Dismiss Plaintiffs' Complaint for lack of personal jurisdiction. (Dkt. 13). Having fully reviewed the record, the Court finds that the facts and legal arguments are

adequately presented in the briefs and record. Accordingly, in the interest of avoiding further delay, and because the Court conclusively finds that the decisional process would not be significantly aided by oral argument, this matter shall be decided on the record before this Court without oral argument. Dist. Idaho Loc. Civ. R. 7.1(d)(1)(B). For the reasons explained below, the Court finds it does not have personal jurisdiction over Cranfield to entertain Plaintiffs' claims.

BACKGROUND

1. Procedural Background

This case concerns a fatal crash of a Cessna Model 525 corporate jet airplane that occurred on November 30, 2018, causing the deaths of its pilot and two passengers, R. Wayne Estopinal, Sandra Johnson, and Andrew Davis. The aircraft, piloted by Mr. Davis, took off from a small airport in Clark County, Indiana, bound for Chicago, Illinois. A few minutes after takeoff, the aircraft crashed in Clark County, Indiana. Everyone on board was killed.

Plaintiffs bring this action on behalf of the three decedents, along with Andrew Davis's two minor children. Plaintiffs allege that the crash was caused by the Tamarack Active Winglet aircraft load alleviation system, trademarked as "ATLAS," which was manufactured and installed on the aircraft on May 28, 2018, by Tamarack Aerospace Group, Inc. Tamarack installed the ATLAS system on the aircraft pursuant to a Supplemental Type Certificate ("STC"), issued by the Federal Aviation Administration. These certificates allow an applicant to modify an aeronautical product from its original

design. Defendant Cranfield Aerospace Solutions Limited applied for and held the STC on behalf of Tamarack until it transferred the STC to Tamarack in 2019 – after the fatal crash.

Plaintiffs, as personal representatives for the decedents, initially filed suit in the Eastern District of Washington, naming both Tamarack and Cranfield as defendants and alleging both were liable as "manufacturers" under the Washington Product Liability Act ("WLPA") and that Tamarack was also liable as a "seller." After Cranfield moved to dismiss the complaint for failure to state a claim and lack of jurisdiction, Plaintiffs conceded that personal jurisdiction over Cranfield was lacking in Washington.

About two months later, they filed this lawsuit against Cranfield in this Court, alleging claims under Idaho's Product Liability Reform act, common-law negligence, and a willful-and-reckless misconduct theory. Plaintiffs, who are residents of Indiana and Louisiana, do not identify any tortious conduct by Cranfield that occurred in Idaho but instead allege that Cranfield's contractual relationship with Tamarack justifies exercising personal jurisdiction over Cranfield in Idaho. Tamarack is not a party to this lawsuit.

On April 28, 2021, Cranfield filed a motion to dismiss for lack of personal jurisdiction to Rule 12(b)(2) of the Federal Rules of Civil Procedure (Dkt. 13). On May 17, 20, the Court approved the parties' stipulation to conduct jurisdictional discovery. After conducting discovery, Plaintiffs filed their opposition to the motion to dismiss, arguing that this Court may

exercise specific jurisdiction over Cranfield.

2. Factual Background

A. Defendant Cranfield and its Contractual Relationship with Tamarack

Cranfield is an English company that performs its work in England. *Howarth Decl.*, ¶ 3, Dkt. 13-2. All its employees, including its executive leadership, are based in England. *Id.* ¶ 5. Cranfield has never had offices or facilities in Idaho, nor have any of its employees been based in Idaho while working for Cranfield. *Id.* ¶ 6. Cranfield has never advertised or otherwise cultivated a market for its services in Idaho. *Id.* ¶ 11.

In 2013, Tamarack approached Cranfield, seeking assistance in obtaining an STC from the European Union Aviation Safety Agency ("EASA"), which would authorize the installation of the ATLAS system on certain variants of the Cessna Model 525 jet. *Id.* ¶ 8. Tamarack's initial contact with Cranfield led the parties to enter a contract titled, "Testing and Certification Agreement." *Id.* ¶ 12, Ex. A. The parties negotiated the contract primarily through phone and email communications—although one negotiation meeting occurred in person at Cranfield's offices in England. *Id.* ¶ 12(a). During the negotiations, Cranfield informed Tamarack that all Cranfield staff working pursuant to the contract would be based in the United Kingdom. *Id.* Tamarack and Cranfield also agreed that New York law would govern their agreement, and the parties "IRREVOCABLY" submitted to the venue and jurisdiction of the federal courts located in New York and waived any objection to venue and jurisdiction in New York. *Howarth*

Decl., Ex A at Sec. 13.6, Dkt. 13-3. The parties' agreement makes no mention of Idaho other than to say that Tamarack is a Washington corporation with its principal place of business in Sandpoint, Idaho. *Id.*, p. 1.

The parties' contract required Cranfield to assist in preparing the documentation for the EASA application, submitting the application to EASA, acting as a direct liaison with EASA, and serving as the official holder of the STC once it was issued. *Id.* ¶¶ 15-16, 18-20. Pursuant to the parties' contract, Cranfield served as the main point of contact with EASA during the process of obtaining the STC and also provided consulting services to Tamarack to help develop a "Certification Plan" for the ATLAS system to submit to EASA, as well as the application for the STC from EASA. *Id.* ¶¶ 13, 15.

After EASA issued the STC, Cranfield then played the same role in securing and maintaining an STC from the FAA. *Id.* ¶¶ 24-30. In 2019, Cranfield transferred both STCs to Tamarack. *Id.* ¶¶ 21, 31. The transfer was done pursuant to Section 4.3 of their Agreement, as the parties had contemplated and anticipated that the STCs would ultimately be transferred to Tamarack. *Id.* ¶¶ 12.c, 21, 31.

Cranfield maintains it performed no work related to the ATLAS system beyond the services outlined in its agreement with Tamarack: it helped develop the Certification Plans and applications sent to EASA and the FAA, *id.* ¶¶ 15-16, 26- 27, but never suggested or made any design changes to the winglets system, *id.* ¶¶ 19, 20.b, 29, 30.b, never physically produced, repaired, or refurbished any

winglets, *id.* ¶ 32, nor sold, distributed, or delivered any winglets, *id.* ¶ 33. Cranfield further maintains that it did not disseminate to any customers in the United States any materials related to the winglets system, such as bulletins or manuals. *Id.* ¶ 30.c.

Moreover, according to Cranfield, its employees did not perform any substantive work in Idaho related to the winglets system. *Id.* ¶¶ 14.c, 17.b. Cranfield employees worked on the EASA and FAA Certification Plans and applications in England, communicating with Tamarack employees in Idaho. *Id.* ¶¶ 1C5.a, 20.a, 26.b, 30.a. Cranfield employees did not make any contact with Idaho when interfacing with European and U.S. regulators. The STC applications were sent to the EASA office in Germany and the FAA office in New York. d. ¶ 15.b. And none of the FAA officials they interacted with were based in Idaho. *Id.* ¶ 26.c.

As explained in more detail below, Cranfield employees took just two trips to Idaho during the duration of Cranfield's work with Tamarack. *Id*. ¶¶ 14.b, 17.c. Both visits were proposed by Tamarack, and neither resulted in substantive work being performed by Cranfield employees in Idaho. *Id.* ¶¶ 14, 17. By contrast, Tamarack employees travelled to England approximately twelve times to meet with Cranfield employees and to prepare the applications to EASA and the FAA.

B. Cranfield's Trips to Idaho

Cranfield employees travelled to Idaho twice between executing the agreement with Tamarack and the fatal plane crash at issue in the case: once in 2013 and a second time in 2017.

1) 2013 Trip

Following the execution of the contract between Tamarack and Cranfield in June 2013, Cranfield sent its employees, Peter Howarth, a senior engineer and Cranfield's head of design, and Graham Campion, a member of Cranfield's business-development team who negotiated the contract, to Tamarack's facility in Sandpoint, Idaho. *Howarth Dep.* 8:20; 36:18-40:2. Cranfield's employees traveled to Idaho to get to know the people at Tamarack, to "launch the [contract] activities," and to transition Tamarack from Cranfield's business-development team to its engineering team. *Howarth Dep.* 39:20-43:21.

During the three days of meetings in Idaho between Cranfield employees and Tamarack, Mr. Howarth met Tamarack's engineers working on the development of the ATLAS system's design and observed a working protype of the ATLAS system installed on an aircraft at the Tamarack facility. *Howarth Dep.* 43:13-47:25. These in-person meetings between Cranfield and Tamarack allowed Mr. Howarth to speak directly to the Tamarack engineers and familiarize himself with the ATLAS system, so Cranfield could develop an overall approach for certification planning. In addition, Mr. Howarth reviewed with the Tamarack engineering team the regulations necessary to obtain the EASA certification for the ATLAS system and to determine what testing and data gathering Cranfield would need from Tamarack for inclusion in the EASA certification application. *Howarth Dep.* 54:15-24; 58:10-60:14.

2) 2017 Trip

In April 2017, Cranfield sent its Chief Stress Engineer, Alan Missenden, to Tamarack's facility in Idaho. *Howarth Dep.* 71:14-72:5; 77:6-24. Mr. Missenden traveled to Idaho to oversee testing EASA and the FAA required as part of certification process to show the integrity and safety of the aircraft or aircraft design for which certification was sought. *Howarth Dep.* 82:14-83:1. In this capacity, Mr. Missenden observed testing of the ATLAS to determine whether the test protocols and test results satisfied the relevant certifying agency's regulation. *Howarth Dep.* 3:2-84:22. Mr. Missenden oversaw this testing over the course of a "Sunday to Saturday," with a day on either end spent traveling to and from the United Kingdom. *Howarth Dep*. 85:1-5. Cranfield maintains that Mr. Missenden did not provide any substantive input on the design or construction of the winglet system, and no changes were made to its design or construction as a result of the trip. *Howarth Decl.* ¶ 17b.

Cranfield employees took no other trips to Idaho. As noted, Plaintiffs allege these two trips to Idaho, along with Cranfield's contractual relationship with Tamarack, justifies a finding of personal jurisdiction over Cranfield in Idaho.

LEGAL STANDARD

In the context of Cranfield's motion to dismiss under Fed.R.Civ.P. 12(b)(2), Plaintiffs bear the burden of proving that jurisdiction is appropriate. *See Boschetto v. Hansing*, 539 F.3d 1011. 1015 (9th Cir. 2008); *see also Schwarzenegger v. Fred Martin Motor*

Co., 374 F.3d 797, 800 (9th Cir.1990). Where, as here, the motion is based on written materials rather than an evidentiary hearing, Plaintiffs need only establish a prima facie showing of jurisdictional facts to withstand the motion to dismiss. *See Ballard v. Savage*, 65 F.3d 1495 (9th Cir. 1995). The Court must take Plaintiffs' uncontroverted allegations in the complaint as true and resolve factual disputes in affidavits in its favor. *See Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1108 (9th Cir. 2002). But if Cranfield offers evidence in support of its motion, Plaintiff may not simply rest on the bare allegations of their complaint. *See Amba Mktg. Sys., Inc. v. Jobar Int'l*, Inc., 551 F.2d 784, 787 (9th Cir. 1977). Instead, Plaintiffs must come forward with facts, by affidavit or otherwise, in response to Cranfield's version of the facts. *See id.*

Where there is no applicable federal statute governing personal jurisdiction, as in this case, the law of the state in which the district court sits applies. *See Schwarzenegger*, 374 F.3d at 800. Because Idaho's long-arm statute, codified in Idaho Code § 5–514, allows a broader application of personal jurisdiction than the Due Process Clause, the Court need look only to the Due Process Clause to determine personal jurisdiction. Thus, under Idaho law, the jurisdictional analysis and federal due process analysis are one and the same.

ANALYSIS

The Fourteenth Amendment's Due Process Clause limits a state court's power to exercise jurisdiction over a defendant. *Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty*., 137

S.Ct. 1773, 1779 (2021). "Because a state court's assertion of jurisdiction exposes defendants to the State's coercive power, it is subject to review for compatibility with the Fourteenth Amendment's Due Process Clause, which limits the power of a state court to render a valid personal judgment against a nonresident defendant." *Id.* (internal quotation marks and citations omitted). A nonresident defendant must have "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotation marks omitted). The primary focus of the personal jurisdiction inquiry is the defendant's relationship to the forum state. *Bristol-Meyers*, 137 S.,Ct. at 1779.

This focus has led courts to recognize two types of personal jurisdiction: general and specific. A court may exercise general jurisdiction only when a defendant is "essentially at home" in the State. *Goodyear Dunlop Tires Operations, S. A v. Brown*, 564 U.S 915, 919 (2011). "A court with general jurisdiction may hear *any* claim against that defendant, even if all the incidents underlying the claim occurred in a different State." *Bristol-Myers*, 137 S. Ct. at 1780. "But only a limited set of affiliations with a forum will render a defendant amenable to general jurisdiction in that State." *Id.* (internal quotation marks omitted).

"Specific jurisdiction is different: It covers defendants less intimately connected with a State, but only as to a narrower class of claims." *Ford Motor*, 141 S. Ct. at 1024. "The inquiry whether a forum State may assert specific jurisdiction over a

nonresident defendant focuses on the relationship among the defendant, the forum, and the litigation." *Walden v. Fiore*, 571 U.S. 277, 285 (2014). Specifically, "the defendant's suit-related conduct must create a substantial connection with the forum State." *Id.* "For this reason, specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction." *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1780 (2017) (internal quotation marks omitted). "When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Id.*

Plaintiffs here concede the Court cannot exercise general jurisdiction over Cranfield. Instead, they argue that Cranfield's contacts with Idaho give rise to specific jurisdiction. The Ninth Circuit analyzes specific jurisdiction under a three-prong test. This test examines whether (1) the defendant has either purposefully (a) directed its activities towards the forum or initiated a transaction with the forum or one of its residents or (b) availed itself of the privileges and benefits of the forum permitting it to benefit from the protections of the forum's laws; (2) the cause of action arises out of or relates to the defendant's forum- related activities; and (3) the assertion of jurisdiction is reasonable and comports with "fair play and substantial justice." *Glob. Commodities Trading Grp., Inc. v. Beneficio de Arroz Choloma, S.A.*, 972 F.3d 1101, 1107 (9th Cir. 2020).

Plaintiffs bears the burden of satisfying the first two prongs of the test. *Wells Cargo, Inc. v. Transp. Ins. Co.*, 676 F. Supp. 2d 1114, 1119–20 (D. Idaho

2009) (citing *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199, 1205 (9th Cir. 2006) (en banc)). If Plaintiffs succeed in meeting the first two prongs, the burden then shifts to Cranfield "to present a compelling case that the exercise of jurisdiction would not be reasonable." *Id.* (internal quotation marks and citation omitted).

1. Purposeful Availment

Either purposeful availment of the forum or the purposeful direction of activities toward the forum can satisfy the first prong. *See, e.g., Albertson's LLC v. Kleen-Sweep Janitorial Co.*, No. CIV. 09-263-S-BLW, 2009 WL 3786290, at *3 (D. Idaho Nov. 9, 2009) (citing *Yahoo! Inc. v. La Ligue Contre Le Racisme*, 433 F.3d 1199, 1206 (9th Cir. 2006). "Purposeful direction generally applies to tort cases, in which a court applies an effects test focusing on the forum where the defendant's actions were felt, whether or not the actions themselves occurred within that forum." *Id.* When a case involves tort claims, a single act creating a substantial connection with the state can support personal jurisdiction. *Roth v. Garcia Marquez*, 942 F.2d 617, 621 (9th Cir. 1991). In contrast, purposeful availment applies to contract claims, and requires the Court to examine whether the defendant "purposefully avails itself of the privilege of conducting activities' or consummates a transaction' in the forum, focusing on activities such as delivering goods or executing a contract." *Id.* (quoting *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004) (internal quotation marks and brackets omitted).

This case sounds in tort; thus, the Court would

typically employ a "purposeful direction" analysis. *See, e.g., Axiom Foods, Inc. v. Acerchem Int'l, Inc.*, 874 F.3d 1064, 1069 (9th Cir. 2017) ("Where, as here, a case sounds in tort, courts typically employ the "purposeful direction test."). But Plaintiffs cannot show they suffered any harm in Idaho – a critical element of the purposeful direction or "effects test." *See, e.g., Dole Food Co. v. Watts*, 303 F.3d 1104, 1112-13 (9th Cir. 2002) (noting a "harm in the forum" is "necessary" to satisfy the purposeful direction test). They therefore argue that the Court should instead apply the "purposeful availment" standard typically employed in cases sounding in contract. In support of this assertion, Plaintiffs rely heavily on the court's reasoning in *Costa v. Keppel Singmarine Dockyard PTE, Ltd.*, No. CV 01-11015MMM, 2003 WL 24242419, at *15 (C.D. Cal. Apr. 24, 2003).

In *Costa*, the plaintiff's decedent, a crew member working on a ship as it sailed in the Western Pacific Ocean, sustained fatal injuries resulting from an ammonia discharge valve explosively separating. *Id.* The plaintiff alleged that a Wisconsin corporation improperly designed the valve, and the Singaporean defendant (KSD) improperly installed the valve at its shipyard in Singapore pursuant to a contract with the California-based shipowner. Although plaintiff alleged strict liability and negligence claims and was not a party to the contract, the court applied a purposeful availment analysis; it reasoned that the claims against KSD arose "out of its performance of contractual obligations, as the company undertook to repair the [ship] only as a consequence of its entry into a contract with [the shipowner]." *Id.* at *15.

Based on *Costa*, Plaintiffs argue that the Court

should apply the purposeful availment analysis in this case because their negligence and product liability claims against Cranfield arise from Cranfield's performance of its contractual obligations with Tamarack. But even applying the purposeful availment analysis, Plaintiffs cannot show Cranfield had sufficient minimum contacts with Idaho to subject it to specific personal jurisdiction here.

The purposeful availment analysis examines whether the defendant purposefully availed itself of the privilege of doing business in a forum state by engaging in some type of affirmative conduct that allows or promotes the transaction of business within the forum state. *Sher v. Johnson*, 911 F.2d 1357, 1362 (9th Cir.1990). In this way, a defendant "purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004) (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). "In return for these benefits and protections, a defendant must—as a quid pro quo—submit to the burdens of litigation in that forum." *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985) (internal quotation marks omitted). This analysis is designed to ensure that the defendant will not be haled into a jurisdiction solely based on random, fortuitous, or attenuated contacts. *Id.* at 475.

"A showing that a defendant purposefully availed himself of the privilege of doing business in a forum state typically consists of evidence of the defendant's actions in the forum, such as executing or performing a contract there." *Schwarzenegger*, 374 F.3d at 802.

But Cranfield's contracting with Tamarack, an Idaho-based corporation, does not by itself establish minimum contacts with Idaho. *Burger King*, 471 U.S. at 478. Rather, the Court must assess "prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing" to determine whether it is appropriate to exercise specific jurisdiction over Cranfield. *Id.* at 479.

Considering these factors, none of the facts here show that Cranfield, itself, engaged in any affirmative conduct that allowed or promoted the transaction of business in Idaho. First, it is undisputed that Cranfield did not initiate the contract discussions with Tamarack or otherwise directly solicit business in Idaho, and none of Cranfield's contract negotiations occurred in Idaho. As noted by this Court, "if the defendant directly solicits business in the forum state, the resulting transactions will probably constitute the deliberate transaction of business invoking the benefits of the forum state's laws." *Clearwater Rei, LLC v. Focus Consulting Advisors*, LLC, No. CIV. 1:10-448 WBS, 2011 WL 3022071, at *4 (D. Idaho July 22, 2011) (quoting *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 840 (9th Cir. 1986)). "Similarly, conducting contract negotiations in the forum state will probably qualify as an invocation of the forum law's benefits and protections." *Id.* By contrast, "when a plaintiff solicits a defendant to enter into a contract, the defendant is not normally considered to have availed itself of the laws of the [forum's] state." *Id.* (citing *Sher v. Johnson*, 911 F.2d 1357, 1362 (9th Cir. 1990).

Here, there is no evidence that Cranfield sought out any Tamarack services in Idaho or benefitted from the fact that Tamarack happens to reside in Idaho. Indeed, the Tamarack and Cranfield expressly agreed New York – not Idaho law – would govern the parties' agreement, which indicates "rather forcefully" that Cranfield "did not purposefully direct its activities toward" Idaho. *Id.* at *6 (citing, e.g., *Jones v. Petty–Ray Geophysical Geosource, Inc.*, 954 F.2d 1061, 1069 (5th Cir.1992) (noting that choice of law provision designating non-forum state's laws "indicate[d] rather forcefully" that the defendant "did not purposely direct its activities toward" the forum). And during the contract negotiations, Tamarack representatives traveled to England, but Cranfield's representatives never traveled to Idaho.

Moreover, the parties understood Cranfield would perform most of its work, and where Cranfield did indeed perform most, if not all, its substantive work pursuant to the contract. Cranfield has never played a role in manufacturing, assembling, or refurbishing Tamarack's ATLAS winglets system, and Cranfield has never sold, distributed, or delivered the Tamarack winglet system in the United States. Tamarack wired all of its payments to Cranfield in England, and Cranfield made no payments to Tamarack in Idaho. These facts indicate Cranfield's contacts with Idaho were merely "random, fortuitous, or attenuated" and thus cannot establish jurisdiction over Cranfield in Idaho. *Burger King*, 471 U.S. at 475.

Nor did Cranfield employees' two short trips to Idaho create the requisite contacts with Idaho to support a finding of jurisdiction. "While physical

entry into the State ... is certainly a relevant contact, a defendant's transitory presence will support jurisdiction only if it was meaningful enough to create a 'substantial connection' with the forum State." *Picot v. Weston*, 780 F.3d 1206, 1213 (9th Cir. 2015) (internal citations and quotation marks omitted).

Here, this substantial connection is lacking. In both instances, Cranfield traveled to Idaho at Tamarack's request and expense. The first visit – which lasted a mere three days – amounted to essentially a "meet and greet" between the parties, and little, if any, substantive work was performed. During the second visit, Cranfield oversaw some testing performed by Tamarack over the course of a week, with a day on either end spent traveling to and from the United Kingdom, and, again, Cranfield performed little substantive work while in Idaho. By contrast, over the course of the parties' contract, Tamarack employees traveled to England approximately twelve times to meet with Cranfield employees and to prepare the applications to EASA and the FAA.

In short, the two trips by Cranfield employees to Idaho over the course of five years "hold no special place in [Cranfield's] performance under the agreement as a whole." *Picot*, 780 F.3d at 1213. As contemplated by the parties, the overwhelming bulk of Cranfield's work for Tamarack occurred in England. Cranfield employees worked on the EASA and FAA Certification Plans and applications in England, communicating with Tamarack employees in Idaho. Cranfield sent the STC applications the EASA office in Germany and the FAA office in New

York. And none of the FAA officials they interacted with were based in Idaho.

Despite Cranfield's lack of ties to Idaho, Plaintiffs contend that "courts have found that the 'purposeful availment' standard was satisfied in cases involving far lesser contacts with the forum state." *Pls' Resp. Br.*, p. 14, Dkt. 32. Once again relying on *Costa*, Plaintiffs note the court there found purposeful availment "despite the fact that the contract contemplated that KSD's work would be performed outside the forum state, and despite the fact that KSD negotiated the contract from Singapore and provided for the application of Singapore law." *Id.* (quoting *Costa*, 2003 WL 24242419, at *17).

But the court in *Costa* exercised jurisdiction based *solely* on the fact the Singaporean defendant solicited the contract that gave rise to the plaintiff's claims in California. *Costa*, 2003 WL 24242419, at *20. Had the defendant in *Costa* "not purposefully injected itself into California to solicit the repair contract on the [ship]," the Court would have found jurisdiction lacking. *Costa*, 2003 WL 24242419, at *20. Because Plaintiffs present no evidence that Cranfield purposefully injected itself into Idaho to solicit the contract with Tamarack, Plaintiffs cannot rely on *Costa* to support a finding of jurisdiction in this case. Indeed, if anything, *Costa* supports a finding of *no* jurisdiction in this case.

Plaintiffs' reliance on *McHugh v. Vertical Partners West*, LLC, 2021 WL 1554065 (D. Idaho Apr. 19, 2021) is also misplaced. Plaintiffs argue *McHugh* supports jurisdiction here on the grounds that both cases involve an indemnification agreement. But this

case differs from *McHugh* in significant ways.

In *McHugh*, this Court found the following facts supported a finding that the defendant, a Chinese manufacturer, purposefully availed itself of the privilege of doing business in Idaho: the defendant had "routinely conducted business in Idaho" by selling its products to the third-party plaintiff and shipping them to the plaintiff's Idaho headquarters; the defendant entered into an "exclusive" supply agreement with the plaintiff, which stated the plaintiff was based out of Idaho and made the plaintiff the exclusive purchaser of the defendant's products; the agreement was "of great pecuniary significant" for the defendant. *Id.* at *4. In addition, the parties' exclusive supply agreement referenced Idaho several times, specifically making Idaho the governing law of the contract in the choice-of-law and arbitration provisions. *Id.* And, importantly, the third-party plaintiff had sued the Chinese defendant under the indemnity provision in the parties' agreement, alleging harm suffered in Idaho. *Id.*

This case, by contrast, is a tort case involving all out-of-state plaintiffs, an out-of-state accident, and an out-of-state defendant. No party alleges any harm suffered in Idaho, and Cranfield, unlike the defendant in *McHugh*, did not "routinely conduct business in Idaho" by regularly shipping products to, or providing services, in Idaho. Cranfield's only tie to Idaho is through the non-party, Tamarack. This singular tie, without more, does not establish the minimum contacts necessary for to subject Cranfield to personal jurisdiction in Idaho.

2. Conclusion

Given that plaintiff cannot establish the first prong of the test for specific personal jurisdiction, the court need not proceed to the remaining inquiries under the Ninth Circuit's test. *See Boschetto*, 539 F.3d at1016 ("[I]f the plaintiff fails at the first step, the jurisdictional inquiry ends and the case must be dismissed.").

Plaintiffs have thus failed to demonstrate that the Court has specific personal jurisdiction over defendant.

ORDER

IT IS ORDERED that Defendant Cranfield Aerospace Solutions Limited's Motion to Dismiss the Complaint (Dkt. 13) is **GRANTED**.

DATED January 4, 2022

B. Lynn Winmill

U.S. District Court Judge

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ERICA DAVIS, as Personal Representative of the Estate of Andrew Dale Davis, deceased, and minor children, JC, minor child, SD, et al.,

Plaintiffs-Appellants,

v.

CRANFIELD AEROSPACE SOLUTIONS, LIMITED,

Defendant-Appellee.

ORDER

Before: BUMATAY and SANCHEZ, Circuit Judges, and BAKER,[*] International Trade Judge.

Judges Bumatay and Sanchez have voted to deny the petition for rehearing en banc. Judge Baker recommended granting the petition. Fed. R. App. P. 40. The full court has been advised of the petition, and no judge has requested to vote on whether to rehear the matter en banc. Fed. R. App. 35. The petition for rehearing en banc (Dkt. No. 41), is therefore **DENIED**.

[*] The Honorable M. Miller Baker, International Trade Judge for the United States Court of International Trade, sitting by designation.