

**PERSONAL JURISDICTION BASED ON INTERNET ACTIVITIES:  
OLDFIELD V. PUEBLO DE BAHIA LORA, S.A.—THE ELEVENTH  
CIRCUIT FINALLY DISCUSSES ZIPPO BUT LEAVES LOWER  
COURTS NEEDING MORE GUIDANCE**

*Judy A. Clausen\**

**I. INTRODUCTION**

More than a decade ago, the most widely embraced test for determining whether a nonresident defendant's Internet presence satisfied the minimum contacts requirement of due process emerged in *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*<sup>1</sup> After *Zippo*, the nation's courts have largely used the *Zippo sliding scale* to determine whether a nonresident defendant's Internet conduct subjects the defendant to personal jurisdiction in the forum where a plaintiff encounters the Internet activities.<sup>2</sup> Until *Oldfield v. Pueblo De Bahia Lora, S.A.* in 2009, the United States Court of Appeals for the Eleventh Circuit had not directly addressed Internet presence as a basis for minimum contacts and had never even cited *Zippo*.<sup>3</sup> Due to this vacuum of direction, Eleventh

---

\* Judy A. Clausen is Of Counsel to Murphy & Anderson, P.A., a law firm specializing in complex commercial litigation. She is a graduate of the University of Florida, College of Law and earned her Bachelor's Degree from Georgetown University.

<sup>1</sup> *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997); see *Oldfield v. Pueblo De Bahia Lora, S.A.*, 558 F.3d 1210, 1220 n.26 (11th Cir. 2009) (asserting many United States Courts of Appeal have based their analyses of whether a defendant's Internet presence subjects the defendant to personal jurisdiction in the forum on the *Zippo* framework); see generally *Roblor Mktg. Group, Inc. v. GPS Indus., Inc.*, No. 08-21496-CIV, 2009 WL 2003156, at \*6 (S.D. Fla. July 6, 2009) (asserting some federal circuit courts have embraced *Zippo* while others have adopted the test as just one factor amongst others to define the purposeful availment prong of minimum contacts analysis); Eric C. Hawkins, Note, *General Jurisdiction and Internet Contacts: What Role, if any, Should the Zippo Sliding Scale Test Play in the Analysis?*, 74 *FORDHAM L. REV.* 2371, 2385-412 (2006) (claiming *Zippo* is the most popular framework for analyzing Internet contacts and exploring the wide array of treatment of *Zippo* from various United States Courts of Appeal and District Courts).

<sup>2</sup> See *supra* note 1.

<sup>3</sup> *Oldfield*, 558 F.3d at 1220 n.26 ("We have not directly addressed the issue presented in *Zippo*, which is whether a non-resident defendant electronically

Circuit district courts have had a mixed, even contradictory reception of *Zippo*.<sup>4</sup> In *Oldfield*, the Eleventh Circuit squarely refused to express any opinion on the applicability of *Zippo* to the case at hand or *Zippo*'s applicability in the Eleventh Circuit generally.<sup>5</sup>

This Article explores two main issues that arise from *Oldfield*.<sup>6</sup> The first is *Oldfield*'s missed opportunity to define *Zippo*'s role in the Eleventh Circuit.<sup>7</sup> *Oldfield* should have clarified that *Zippo* has no place in general jurisdiction analysis.<sup>8</sup> Then, the Eleventh Circuit should have acknowledged that *Zippo* applied to the facts presented in *Oldfield* and arguably supported specific jurisdiction.<sup>9</sup> Next, the court should have clarified that when the traditional test does not authorize specific jurisdiction, but *Zippo* does, the traditional test prevails.<sup>10</sup> Finally, the Eleventh Circuit should have seized the opportunity in *Oldfield* to outline what role, if any, *Zippo* should play in specific jurisdiction analysis.<sup>11</sup>

The second main issue in *Oldfield* explored in this Article is the Eleventh Circuit's return to traditional personal jurisdiction analysis

---

transmitting, or enabling the transmission of, information via the Internet subjects himself to the personal jurisdiction of the forum where plaintiff encountered the electronic information.”); see also *Thomas v. Mitsubishi Motor N. Am., Inc.*, 436 F. Supp. 2d 1250, 1253 (M.D. Ala. 2006) (asserting the Eleventh Circuit had never adequately addressed whether a defendant's Internet presence creates minimum contacts sufficient for due process); *Roblor*, 2009 WL 2003156, at \*8 (stating while the Eleventh Circuit noted the criticism surrounding *Zippo* in *Oldfield*, “it declined to express any firm opinion to its applicability”).

<sup>4</sup> See Judy A. Clausen, *Beware—Florida's Long Arms Can Reach Through Cyberspace and Grab Unsuspecting Professionals: Personal Jurisdiction in Professional Malpractice Cases*, 10 FLA. COASTAL L. REV. 505, 526-33 (2009) (exploring Eleventh Circuit district court cases discussing *Zippo* and finding reception to *Zippo* “ranges from enthusiastic adoption to outright rejection”); see also *Roblor*, 2009 WL 2003156, at \*8 (demonstrating how Eleventh Circuit district courts are split on the persuasiveness of the *Zippo* precedent).

<sup>5</sup> *Oldfield*, 558 F.3d at n.26; see also *Roblor*, 2009 WL 2003156, at \*8 (stating *Oldfield* declined to express a firm opinion as to *Zippo*'s applicability).

<sup>6</sup> See *infra* Part IV.A-C.

<sup>7</sup> See *infra* Part IV.A-B.

<sup>8</sup> See *infra* Part IV.A.

<sup>9</sup> See *infra* Part IV.B.

<sup>10</sup> See *infra* Part IV.B.

<sup>11</sup> See *infra* Part IV.B.

with an apparent slight variation of the traditional framework.<sup>12</sup> The *Oldfield* court's refusal to analyze website interactivity and its focus on the traditional minimum contacts test are implicit instructions to lower courts to return to traditional personal jurisdiction analysis.<sup>13</sup> However, *Oldfield* articulated a slight variation of the traditional minimum contacts test for specific jurisdiction.<sup>14</sup> Traditionally, the test has three separate-but-related prongs.<sup>15</sup> *Oldfield* asserted the test contained only the first two of these three requirements.<sup>16</sup> Fulfillment of the first two requirements ensured specific jurisdiction also met the third requirement.<sup>17</sup> This variation unnecessarily confuses the analysis.<sup>18</sup> *Oldfield* could have avoided confusion by applying each of the three requirements of the traditional minimum contacts test for specific jurisdiction.<sup>19</sup>

## II. BACKGROUND

Personal jurisdiction entails a two-step analysis.<sup>20</sup> First, the relevant forum state's long-arm statute must provide a basis for personal jurisdiction.<sup>21</sup> Second, sufficient minimum contacts between the forum state and the nonresident defendant must satisfy constitutional due process so maintenance of the suit in the forum does not offend "traditional notions of fair play and substantial justice."<sup>22</sup>

---

<sup>12</sup> See *infra* Part IV.C.

<sup>13</sup> See *Oldfield v. Pueblo De Bahia Lora, S.A.*, 558 F.3d 1210, 1220-22 (11th Cir. 2009).

<sup>14</sup> See *id.* at 1220-21.

<sup>15</sup> See *infra* note 30 and accompanying text.

<sup>16</sup> *Oldfield*, 558 F.3d at 1220-21 (applying *dual* requirements); see also *infra* Part IV.C.

<sup>17</sup> *Oldfield*, 558 F.3d at 1220-21.

<sup>18</sup> See *infra* Part IV.C.

<sup>19</sup> See *infra* note 30 and accompanying text (explaining traditional three-prong test).

<sup>20</sup> See *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

<sup>21</sup> See *Sculptchair, Inc. v. Century Arts, Ltd.*, 94 F.3d 623, 626-27 (11th Cir. 1996); see also *Response Reward Sys., L.C. v. Meijer, Inc.*, 189 F. Supp. 2d 1332, 1335 (M.D. Fla. 2002); *Roblor Mktg. Group, Inc. v. GPS Indus., Inc.*, No. 08-21496-CIV, 2009 WL 2003156, at \*3 (S.D. Fla. July 6, 2009).

<sup>22</sup> *Int'l Shoe*, 326 U.S. at 316 (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)); *SEC v. Carrillo*, 115 F.3d 1540, 1542 (11th Cir. 1997); *Francosteel Corp. v. M/V Charm*, 19 F.3d 624, 627 (11th Cir. 1994); *Vermeulen v. Renault, U.S.A., Inc.*, 985 F.2d 1534, 1545 (11th Cir. 1993).

Personal jurisdiction analysis distinguishes between specific and general jurisdiction.<sup>23</sup> Specific jurisdiction concerns a nonresident defendant's forum contacts as they relate to the cause of action and authorizes jurisdiction for any cause of action arising from or relating to forum contacts.<sup>24</sup> General jurisdiction is based on a nonresident defendant's forum activity regardless of whether the cause of action arises from the forum activity.<sup>25</sup>

Due process requirements for general jurisdiction are more onerous than they are for specific jurisdiction.<sup>26</sup> To support general jurisdiction, courts require a showing of continuous, systematic,<sup>27</sup> and substantial<sup>28</sup> business contacts between the defendant and the forum. Specific jurisdiction analysis in the Eleventh Circuit traditionally involves a three-part test (three-prong minimum contacts test).<sup>29</sup> The nonresident defendant's forum contacts must (1) relate to or give rise to the cause of action (relatedness requirement), (2) involve some action by which the defendant purposefully availed itself of the privileges of doing business in the forum (purposeful availment requirement), and (3) be such that the defendant should reasonably anticipate being haled into court in the forum (reasonable anticipation requirement).<sup>30</sup>

---

<sup>23</sup> See *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 nn.8-9 (1984).

<sup>24</sup> See *McGow v. McCurry*, 412 F.3d 1207, 1214 n.3 (11th Cir. 2005).

<sup>25</sup> See *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 n.15 (1985); *Meier v. Sun Int'l Hotels, Ltd.*, 288 F.3d 1264, 1274 (11th Cir. 2002).

<sup>26</sup> See *Exhibit Icons, LLC v. XP Cos., LLC*, 609 F. Supp. 2d 1282, 1295 (S.D. Fla. 2009); *Miller v. Berman*, 289 F. Supp. 2d 1327, 1336 (M.D. Fla. 2003) (quoting *Consol. Dev. Corp. v. Sherritt, Inc.*, 216 F.3d 1286, 1292 (11th Cir. 2000)).

<sup>27</sup> See *Helicopteros*, 466 U.S. at 416; *Miller*, 289 F. Supp. 2d at 1336 (quoting *Consol. Dev.*, 216 F.3d at 1292).

<sup>28</sup> See *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 317-18 (1945); *Lakin v. Prudential Sec., Inc.*, 348 F.3d 704, 712 (8th Cir. 2003) (quoting *Revell v. Lidov*, 317 F.3d 467, 471 (5th Cir. 2002)); *Baker v. Carnival Corp.*, No. 06-21527-CIV-HUCK, 2006 WL 3360418, at \*4 (S.D. Fla. Nov. 20, 2006).

<sup>29</sup> See *infra* note 30 and accompanying text.

<sup>30</sup> See *Sloss Indus. Corp. v. Eurisol*, 488 F.3d 922, 925 (11th Cir. 2007) (requiring the exercise of specific jurisdiction to meet these three criteria); *McGow v. McCurry*, 412 F.3d 1207, 1214-15 (11th Cir. 2005) (thoroughly exploring each prong of the three-part minimum contacts test); *Associated Transp. Line, Inc. v. Productos Fitosanitarios Proficol El Carmen, S.A.*, 197 F.3d 1070, 1074 (11th Cir. 1999) (applying the three-part minimum contacts test, under FED. R. CIV. P. 4(k)(2), to the defendant's contacts

For many courts across the United States, the *Zippo* sliding scale framed the analysis for whether a defendant's Internet presence satisfies the minimum contacts requirement.<sup>31</sup> *Zippo* authorizes personal jurisdiction based on a defendant's Internet presence in a way that is directly proportionate, on a sliding scale, "to the nature and quality of commercial activity" the defendant conducts on the Internet.<sup>32</sup> According to *Zippo*, entering into contracts with forum residents over the Internet, or knowingly and repeatedly transmitting computer files over the Internet to forum residents, constitutes conducting business over the Internet.<sup>33</sup> Such conduct falls on the high end of the *Zippo* spectrum, where it is clear that courts can constitutionally exercise personal jurisdiction.<sup>34</sup>

When a defendant simply posts information on a website that is accessible to forum residents, the defendant merely uses the Internet as a bulletin board.<sup>35</sup> These Internet activities are on the low end of the sliding scale and do not support personal jurisdiction.<sup>36</sup> Cases in which defendants have interactive websites that allow visitors to "exchange information with the host computer" fall in the middle of the *Zippo* spectrum.<sup>37</sup> In these middle-ground cases, courts should evaluate the level of website interactivity and the commercial nature of the informational exchange over the Internet to determine whether to exercise personal jurisdiction.<sup>38</sup>

---

with the nation as a whole); *Posner v. Essex Ins. Co.*, 178 F.3d 1209, 1220 (11th Cir. 1999) (stating the Eleventh Circuit has adopted this three-part test for minimum contacts); *Carrillo*, 115 F.3d at 1544-47 (articulating the minimum contacts test for specific jurisdiction as having these three requirements); *Sculptchair, Inc. v. Century Arts, Ltd.*, 94 F.3d 623, 631 (11th Cir. 1996) (applying three criteria to determine specific jurisdiction); *Francosteel Corp. v. M/V Charm*, 19 F.3d 624, 627 (11th Cir. 1994) (applying these three prongs for minimum contacts analysis for specific jurisdiction); *Vermeulen v. Renault, U.S.A., Inc.* 985 F.2d 1534, 1546 (11th Cir. 1993) (explaining the specific jurisdiction minimum contacts test has these three criteria).

<sup>31</sup> See *supra* note 1 and accompanying text.

<sup>32</sup> *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997).

<sup>33</sup> *Id.* (citing *CompuServe, Inc. v. Patterson*, 89 F.3d 1257, 1264 (6th Cir. 1996)).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* (citing *Bensusan Rest. Corp. v. King*, 937 F. Supp. 295, 300 (S.D.N.Y. 1996)).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* (citing *Maritz, Inc. v. Cybergold, Inc.*, 947 F. Supp. 1328, 1333-34 (E.D. Mo. 1996)).

*Zippo* was a specific jurisdiction case because the court found the cause of action arose out of the forum contacts.<sup>39</sup> The *Zippo* court determined the defendant news service conducted business over the Internet—an activity falling on the high end of the *Zippo* spectrum.<sup>40</sup> The defendant sold passwords to thousands of forum subscribers and entered contracts with forum Internet service providers.<sup>41</sup> Even though there was apparently no evidence that the defendant targeted forum residents over and above other people, the *Zippo* court exercised jurisdiction because the defendant used its website to sell services to forum residents.<sup>42</sup>

In the void of Eleventh Circuit guidance concerning *Zippo*, application of *Zippo* by district courts has varied.<sup>43</sup> One line of Eleventh Circuit district court cases found *Zippo* helpful in specific jurisdiction analysis, but poorly adapted to general jurisdiction cases.<sup>44</sup> Another line of Eleventh Circuit district court cases refined *Zippo* to require more than mere contacts linking the nonresident defendant equally to users of all states.<sup>45</sup> These cases required evidence that the defendant's

---

<sup>39</sup> *Id.* at 1122, 1127.

<sup>40</sup> *Id.* at 1125-26.

<sup>41</sup> *Id.* at 1126.

<sup>42</sup> *See id.* at 1121-27.

<sup>43</sup> *See infra* notes 44, 46, 48 and accompanying text.

<sup>44</sup> *See, e.g.*, Thomas v. Mitsubishi Motor N. Am., Inc., 436 F. Supp. 2d 1250, 1254-55 (M.D. Ala. 2006) (finding *Zippo* helpful in specific jurisdiction cases, but not determinative in general jurisdiction cases, and declining to exercise general jurisdiction over a nonresident manufacturer and dealership based on the dealership's interactive website). The transaction leading to the dispute occurred in person, not in the forum, and the dealership's website played no role in that transaction. *Id.* at 1252-53; *see* Foreign Imported Prods. & Publ'g, Inc. v. Grupo Indus. Hotelero, S.A., No. 07-22066-CIV, 2008 WL 4724495, at \*8 (S.D. Fla. Oct. 24, 2008) (applying *Zippo* and evaluating jurisdiction based on the nature of the defendant's website); Baker v. Carnival Corp., No. 06-21527-CIV-HUCK, 2006 WL 3360418, at \*4 (S.D. Fla. Nov. 20, 2006) (finding the *Zippo* analytical framework poorly adapted to general jurisdiction analysis). The court noted the possibility that an interactive website could have no quantity of contacts, rendering forum contacts continuous, yet not substantial. *Baker*, 2006 WL 3360418, at \*4 (citing Lakin v. Prudential Sec., Inc. 348 F.3d 704, 712 (8th Cir. 2003)). *Baker* declined general jurisdiction even though the defendant's websites were interactive and commercial. *Id.* The defendant's forum contacts did not meet the traditional general jurisdiction test. *Id.* at \*5.

<sup>45</sup> *See infra* note 49 and accompanying text.

Internet activities targeted forum residents<sup>46</sup> and revealed the district courts' need for guidance concerning application of the purposeful availment requirement to Internet contacts.<sup>47</sup> Yet another line of district court cases outright rejected the *Zippo* sliding scale, concluding that *Zippo* placed too much emphasis on website interactivity instead of a

---

<sup>46</sup> See, e.g., *JB Oxford Holdings, Inc. v. Net Trade, Inc.*, 76 F. Supp. 2d 1363, 1367 (S.D. Fla. 1999) (citation omitted) (claiming to follow *Zippo*, but emphasizing personal jurisdiction requires more than mere contacts “link[ing] with equal strength the defendant to all states”). The *JB Oxford Holdings* court declined specific jurisdiction because (1) the websites were directed to multiple states in which the defendant was registered to conduct business, but the forum was not one of the states; (2) even though the websites were interactive, the quality of contact between a forum viewer and the websites was poor; and (3) there was no evidence that any forum resident viewed or interacted with the websites. *Id.* at 1367-68; see *Alternate Energy Corp. v. Redstone*, 328 F. Supp. 2d 1379, 1383 (S.D. Fla. 2004) (declining jurisdiction even though the defendant sold subscriptions through its website to a few forum residents, because there was no evidence the defendant aimed its publication to forum residents); *Full Sail, Inc. v. Spevack*, No. 603CV887ORL31JGG, 2003 WL 25277185, at \*6 (M.D. Fla. Oct. 21, 2003) (finding the most persuasive cases applying *Zippo* to require more than mere contacts linking the nonresident to computer users of all states and deciding the websites did not constitute sufficient minimum contacts, in part, because they did not direct offers or content purposely at forum residents); *Butler v. Beer Across Am.*, 83 F. Supp. 2d 1261, 1263-64, 1268 (N.D. Ala. 2000) (claiming to follow *Zippo*, but limiting the *Zippo* holding). *Butler* declined personal jurisdiction over a nonresident beer vendor who sold beer to a minor based on the vendor's response to the minor's order. *Butler*, 83 F. Supp. 2d at 1266. *Butler* also found the vendor's website was tantamount to an electronic version of a postal reply card and did not support minimum contacts. *Id.* at 1268. The *Butler* court arguably limited *Zippo* by failing to recognize *Zippo* stated the defendant could only avoid jurisdiction by refraining from selling to forum residents. *Id.*; see *Roblor Mktg. Group, Inc. v. GPS Indus., Inc.*, No. 08-21496-CIV, 2009 WL 2003156, \*8-9 (S.D. Fla. July 6, 2009) (declining to exercise jurisdiction under the sliding scale analysis). The *Roblor* court noted there was no clear holding from the Federal Circuit on the issue of whether the *Zippo* sliding scale constituted a separate framework. *Roblor*, 2009 WL 2003156, at \*9. *Roblor* was bound by Federal Circuit precedent because the case involved a patent infringement claim. *Id.* at \*3. *Roblor* refused to find its determination under the *Zippo* sliding scale to be dispositive. *Id.* at \*9. The *Roblor* court found the *Zippo* court probably only meant the sliding scale to be used as a tool to assist in determining purposeful availment and not as a separate framework, exclusive from traditional personal jurisdiction analysis. *Id.* at \*8. *Roblor* claimed to use the sliding scale as a guidepost, “but also turn[ed] to analyze the purposeful availment requirement under a more traditional approach.” *Id.* at \*9. *Roblor* declined jurisdiction under the traditional approach as well. *Id.*

<sup>47</sup> See *supra* note 46 and accompanying text.

defendant's actual forum contacts.<sup>48</sup> In these cases rejecting *Zippo*, courts instead applied the traditional three-prong minimum contacts test in specific jurisdiction cases.<sup>49</sup>

Aside from the inconsistent treatment of *Zippo*, Eleventh Circuit district courts have issued piecemeal, sometimes confusing, and inconsistent guidance in instances where a court based personal jurisdiction on a defendant's Internet presence.<sup>50</sup> For example, one district court held that links between commercial websites and a nonresident defendant's website do not support minimum contacts.<sup>51</sup> Another district court held that hyperlinks to commercial sites on a defendant's website support minimum contacts.<sup>52</sup>

---

<sup>48</sup> See, e.g., *Goforit Entm't LLC v. Digimedia.com L.P.*, 513 F. Supp. 2d 1325, 1329 (M.D. Fla. 2007) (finding Internet involvement does not justify failure to conduct traditional jurisdictional analysis); *Dynetech Corp. v. Leonard Fitness, Inc.*, 523 F. Supp. 2d 1344, 1346-47 (M.D. Fla. 2007) (holding "the Internet does not provide cause to abandon traditional principles guiding the personal jurisdictional analysis" and applying the Eleventh Circuit's traditional three-prong minimum contacts test for specific jurisdiction) (quoting *Goforit*, 513 F. Supp. 2d at 1329); *Instabook Corp. v. Instantpublisher.com*, 469 F. Supp. 2d 1120, 1125-26 (M.D. Fla. 2006). The *Instabook* court followed Federal Circuit precedent because *Instabook* was a patent infringement case. *Instabook*, 469 F. Supp. 2d at 1122. *Instabook* suggested that *Zippo* placed too much emphasis on website interactivity. *Id.* at 1125-26. Instead, *Instabook* applied the Federal Circuit's three-part due process test, which is essentially the same as the Eleventh Circuit's traditional three-prong minimum contacts test for specific jurisdiction. *Id.* at 1124.

<sup>49</sup> See *supra* note 46 and accompanying text.

<sup>50</sup> See Clausen, *supra* note 4 at 531-33.

<sup>51</sup> See *Dynetech*, 523 F. Supp. 2d at 1347; see also *Nat'l Numismatic Certification, LLC v. Ebay, Inc.*, No. 6:08-cv-42-Orl-19GJK, 2008 WL 2704404, at \*11 (M.D. Fla. July 8, 2008) (declining general jurisdiction over defendant in part because plaintiffs did not illustrate how links between defendant's passive website and interactive websites supported minimum contacts). But see *Roblor*, 2009 WL 2003156, at \*6 (finding an e-mail address displayed on a website in the form of a hyperlink to arguably make the website more interactive on the *Zippo* sliding scale but still finding jurisdiction to be unwarranted).

<sup>52</sup> See *Full Sail, Inc. v. Spevack*, No. 603CV887ORL31JGG, 2003 WL 25277185, at \*5 (M.D. Fla. Oct. 21, 2003).

### III. THE INSTANT CASE

For years after the 1997 landmark decision in *Zippo*, the Eleventh Circuit never even mentioned the case.<sup>53</sup> Then, in the midst of all of the lower court confusion concerning whether and how to apply *Zippo*, the Eleventh Circuit finally addressed *Zippo* in *Oldfield*.<sup>54</sup>

*Oldfield* involved a negligence claim brought by a Florida citizen against a fishing resort located in Costa Rica, operated by a Costa Rican corporation, and owned by two United States citizens.<sup>55</sup> Mr. Oldfield happened upon the resort's website when surfing the Internet from his Florida home.<sup>56</sup> The resort website was entirely in English, listed the resort's mailing address in New Jersey, and offered a toll-free number potential guests could use to call from within the United States.<sup>57</sup> It also instructed users on how to configure cell phones bought and used in the United States.<sup>58</sup> The resort initiated virtually all of its reservations through the website.<sup>59</sup> Mr. Oldfield submitted an online reservation request through the website, which he later confirmed via e-mail.<sup>60</sup> Mr. Oldfield then submitted a credit card authorization form to reserve a room and made arrangements through the resort for a one-day fishing trip.<sup>61</sup> On the fishing trip, he was injured; thereafter, he filed a complaint against the resort in the United States District Court for the Southern District of Florida.<sup>62</sup> Mr. Oldfield claimed "the boat captain's negligence caused his injur[ies]," and the resort was responsible for the captain's neglect.<sup>63</sup>

---

<sup>53</sup> See *supra* note 3 and accompanying text.

<sup>54</sup> See *Oldfield v. Pueblo De Bahia Lora, S.A.*, 558 F.3d 1210, 1220 n.26 (11th Cir. 2009).

<sup>55</sup> *Id.* at 1214.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 1214 n.5.

<sup>60</sup> *Id.* at 1214.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

The resort and related defendants (collectively referred to as the resort or *Oldfield* defendants) failed to enter an appearance.<sup>64</sup> Mr. Oldfield then obtained a default judgment against the *Oldfield* defendants.<sup>65</sup> The *Oldfield* defendants moved to vacate the default judgment as void for lack of personal jurisdiction.<sup>66</sup> The district court did not hold an evidentiary hearing on the personal jurisdiction issue because the operative facts were not in dispute.<sup>67</sup> Although the Southern District of Florida held there were insufficient contacts with any individual state to support personal jurisdiction under any one state's long-arm statute, specific jurisdiction existed under Federal Rule of Civil Procedure 4(k)(2).<sup>68</sup> This rule authorizes personal jurisdiction over a foreign defendant when the claim arises under federal law, and the defendant purposely established minimum contacts with the United States.<sup>69</sup>

#### IV. ANALYSIS

In an appeal to the Eleventh Circuit, the resort argued that its contacts with the United States were insufficient to satisfy minimum contacts for either specific or general jurisdiction.<sup>70</sup> The Eleventh Circuit applied a de novo standard of review to the district court's ruling because the issue of whether personal jurisdiction is present is a question of law.<sup>71</sup> In its order, the district court discussed the *Zippo* sliding scale at length<sup>72</sup> and determined that the resort website fell in the middle of the spectrum due to its moderate level of interactivity and commercial nature.<sup>73</sup> The Eleventh Circuit acknowledged it had never directly addressed the issue presented in *Zippo*, but that sister circuits largely

---

<sup>64</sup> Appellee's Brief at 2, *Pueblo De Bahia Lora, S.A. v. Oldfield*, 558 F.3d 1210 (11th Cir. 2007) (No. 07-11958-C) [hereinafter Appellee's Brief].

<sup>65</sup> *Oldfield*, 558 F.3d at 1215.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 1216.

<sup>68</sup> *Id.* at 1217.

<sup>69</sup> *Id.* at 1216-17.

<sup>70</sup> Appellant's Brief at 12-15, 18-22, *Pueblo De Bahia Lora, S.A. v. Oldfield*, 558 F.3d 1210 (11th Cir. 2007) (No. 07-11958-C) [hereinafter Appellant's Brief].

<sup>71</sup> *Oldfield*, 558 F.3d at 1218 n.20.

<sup>72</sup> *Id.* at 1220 n.26.

<sup>73</sup> Order on Motion to Vacate Default Final Judgment and to Dismiss at 6, *Oldfield v. Pueblo De Bahia Lora, S.A.* (S.D. Fla. 2007) (No. 05-22954-CIV) [hereinafter Order].

adopted the *Zippo* sliding scale.<sup>74</sup> Next, the *Oldfield* court discussed scholars' criticism of *Zippo*'s unpredictability and lack of utility, because interactivity is not particularly relevant to whether a defendant directed a website toward a forum.<sup>75</sup> The court briefly explored recommended, modified approaches to the *Zippo* framework,<sup>76</sup> but then, discussion of *Zippo* ended abruptly.<sup>77</sup> The *Oldfield* court explicitly declined to express any opinion on the applicability of *Zippo* to the case at hand.<sup>78</sup> Moreover, *Oldfield* failed to acknowledge that Eleventh Circuit district courts applied *Zippo* in varied, potentially inconsistent ways.<sup>79</sup> *Oldfield* also neglected to provide any guidance on the applicability of *Zippo* in the Eleventh Circuit.<sup>80</sup>

---

<sup>74</sup> *Oldfield*, 558 F.3d at 1220 n.26 (“[M]any of our sister circuits have considered the issue and have largely based their analysis on the ‘sliding scale’ model set out in *Zippo*.”) (citing *Best Van Lines, Inc. v. Walker*, 490 F.3d 239, 251-52 (2d Cir. 2007); *Toys “R” Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 452 (3d Cir. 2003); *ALS Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 713 (4th Cir. 2002); *Soma Med. Int’l v. Standard Chartered Bank*, 196 F.3d 1292, 1296 (10th Cir. 1999); *Mink v. AAAA Dev. LLC*, 190 F.3d 333, 336 (5th Cir. 1999); *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 418-19 (9th Cir. 1997); Amanda Reid, Article, *Operationalizing the Law of Jurisdiction: Where in the World Can I be Sued for Operating a World Wide Web Page?*, 8 COMM. L. & POL’Y 227, 237-48 (2003) (exploring the *Zippo* framework and cases applying its analysis)).

<sup>75</sup> See *id.* (citing A. Benjamin Spencer, *Jurisdiction and the Internet: Returning to Traditional Principles to Analyze Network-Mediated Contacts*, 2006 U. ILL. L. REV. 71, 86-103 (2006), for the proposition that “*Zippo*’s interactivity litmus test is inconsistent with traditional due process analysis because it excludes all ‘passive’ websites from supporting personal jurisdiction when the level of interactivity is of minimal significance with respect to whether a defendant has directed the website towards the forum,” and citing Reid, *supra* note 74, at 259-62 for the proposition the *Zippo* model is “somewhat unpredictable and should be modified to preserve the constitutionally required ‘foreseeability’ and ‘fairness’ principles”).

<sup>76</sup> See *id.* (“[C]ourts should simply apply traditional analysis-looking to whether (1) the defendant directed the internet activity into the state, (2) the internet contact gave rise to the cause of action, and (3) the exercise of jurisdiction is constitutionally reasonable.” (citing Spencer, *supra* note 75, at 109-11)). The court noted a second proposed modified approach in which finding a website to be interactive “would only give rise to a presumption of purposeful availment, allowing a defendant to proffer evidence that it was not purposefully targeting the forum.” *Id.* (citing Reid, *supra* note 74, at 259-62).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> See *supra* notes 44, 46, 48 and accompanying text.

<sup>80</sup> *Oldfield*, 558 F.3d at 1219-20.

After refusing to render any opinion as to the applicability of *Zippo*, *Oldfield*'s analysis revealed the Eleventh Circuit's practical rejection of the *Zippo* framework.<sup>81</sup> *Oldfield* returned to traditional personal jurisdiction analysis,<sup>82</sup> just as *Zippo* critics urged.<sup>83</sup> Instead of exploring the nature and level of interactivity of the website, as *Zippo* suggested, *Oldfield* claimed to apply the traditional minimum contacts test for specific jurisdiction to the resort's forum contacts, particularly over the Internet.<sup>84</sup>

Whereas the Southern District of Florida applied the traditional three-prong minimum contacts test,<sup>85</sup> the Eleventh Circuit articulated the minimum contacts test as having only two requirements.<sup>86</sup> *Oldfield* held that the minimum contacts requirement of specific jurisdiction requires "some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum . . . , thus invoking the benefits and protections of its laws" (purposeful availment requirement).<sup>87</sup> Second, "the defendant's contacts with the forum must relate to the plaintiff's cause of action or have given rise to it" (relatedness requirement).<sup>88</sup> These dual requirements are merely the first two prongs of the traditional three-prong minimum contacts test for specific juris-

---

<sup>81</sup> See *id.* at 1220-22 (declining to analyze the interactivity or commercial nature of the website and conducting traditional personal jurisdiction analysis).

<sup>82</sup> See *id.*

<sup>83</sup> See *supra* notes 48, 75, 76 and accompanying text; *infra* notes 106, 110 and accompanying text.

<sup>84</sup> See *Oldfield*, 558 F.3d at 1220-24.

<sup>85</sup> Order, *supra* note 73, at 9 (identifying the minimum contacts test for specific jurisdiction to be as follows: "the defendant's contacts with the applicable forum must satisfy three criteria. First, the contacts must be related to the plaintiff's cause of action or have given rise to it. Second, the contacts must involve some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum . . . , thus invoking the benefits and protections of its laws. Third, the defendant's contacts with the forum must be such that [the defendant] should reasonably anticipate being haled into court there" (citing *SEC v. Carillo*, 115 F.3d 1540, 1542 (11th Cir. 1997))).

<sup>86</sup> *Oldfield*, 558 F.3d at 1220-21.

<sup>87</sup> *Id.* at 1220 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).

<sup>88</sup> *Id.* (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985); *Carillo*, 115 F.3d at 1542).

diction.<sup>89</sup> *Oldfield* asserted that fulfillment of these dual requirements ensures that litigation only burdens a defendant in a foreign jurisdiction if his forum contacts are such that “he should reasonably anticipate being haled into court there.”<sup>90</sup> One could interpret *Oldfield* as holding that fulfillment of the relatedness and purposeful availment requirements guarantees sufficient minimum contacts to support specific jurisdiction.<sup>91</sup>

It is difficult to determine whether *Oldfield* intentionally modified the traditional three-prong minimum contacts test to effectively eliminate the reasonable anticipation requirement as a separate prong because *Oldfield* only explored the relatedness requirement.<sup>92</sup> The Eleventh Circuit declined to analyze whether the facts met any other specific jurisdiction requirement.<sup>93</sup> *Oldfield* asserted that the Supreme Court had “not yet fully delineated the contours of the relatedness requirement,” leaving lower courts free to build their own constructs.<sup>94</sup> After recognizing that United States courts have adopted divergent interpretations of relatedness, *Oldfield* acknowledged that the Eleventh Circuit had not yet developed its own approach to relatedness.<sup>95</sup> Instead, the Eleventh Circuit adhered to the Supreme Court’s warning against mechanical tests in this gray area.<sup>96</sup> After rejecting a mechanistic *but for* test for relatedness, *Oldfield* focused the inquiry on the causal relationship among “the defendant, the forum, and the litigation.”<sup>97</sup> Not only must the forum contact be a *but for* cause of the tort, the causal connection between the tort and the forum contact must be

---

<sup>89</sup> See *id.* at 1220-21; see also *supra* note 30 for a list of cases citing the traditional three-prong test.

<sup>90</sup> *Oldfield*, 558 F.3d at 1221 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)).

<sup>91</sup> See *id.* at 1220-21.

<sup>92</sup> *Id.* at 1222 (“Although Pueblo argues that none of the specific jurisdiction requirements have been satisfied, we need only consider one: the requirement that Oldfield’s claim must have arisen out of or relate to Parrot Bay Village’s contacts with the United States.”).

<sup>93</sup> See *id.* at 1222-24 (focusing solely on the relatedness requirement).

<sup>94</sup> *Id.* at 1222 (citing *Miller Yacht Sales, Inc. v. Smith*, 384 F.3d 93, 102 (3d Cir. 2004); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416 (1984)).

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* (citing *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)).

<sup>97</sup> *Id.* (quoting *Helicopteros*, 466 U.S. at 414).

such to provide defendants fair warning that their forum conduct would subject them to jurisdiction in the forum.<sup>98</sup>

*Oldfield* concluded the injury the plaintiff suffered in Costa Rica aboard a boat the resort neither owned nor operated was not a foreseeable consequence of the plaintiff viewing the resort's website.<sup>99</sup> Even though *but for* the plaintiff viewing the website he would not have suffered injuries, the court could not exercise specific jurisdiction over the *Oldfield* defendants.<sup>100</sup> The connection between the injury and the Internet contact was not direct enough to fulfill the relatedness requirement.<sup>101</sup>

## V. COMMENT

### A. *Oldfield Should Have Analyzed General Jurisdiction and Clarified that the Zippo Framework Has No Place in the General Jurisdiction Inquiry*

Although the district court noted the distinction between general and specific jurisdiction, it neglected to analyze general jurisdiction.<sup>102</sup> Both parties launched general jurisdiction arguments in their briefs.<sup>103</sup> Like the district court, the Eleventh Circuit briefly explained the difference between general and specific jurisdiction, but only answered the specific jurisdiction question.<sup>104</sup> Considering that the Eleventh Circuit found the *Oldfield* defendants' forum contacts did not meet the less stringent requirements for specific jurisdiction,<sup>105</sup> presumably, forum contacts did not meet general jurisdiction requirements. However, *Oldfield* should have either analyzed general jurisdiction or explained its failure to analyze general jurisdiction.

---

<sup>98</sup> *Id.* at 1222-23 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)).

<sup>99</sup> *Id.* at 1223-24.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 1223.

<sup>102</sup> Order, *supra* note 73, at 9 n.1.

<sup>103</sup> Compare Appellee's Brief, *supra* note 64, at 35-45 (contending that along with specific jurisdiction, the district court would also be able to exercise general jurisdiction), with Appellant's Brief, *supra* note 70, at 18-22 (arguing the district court does not have general jurisdiction over the defendants based on the defendants' United States contacts).

<sup>104</sup> *Oldfield*, 558 F.3d at 1220-21 & n.27.

<sup>105</sup> *Id.* at 1224.

Moreover, when it addressed general jurisdiction, the Eleventh Circuit should have held the *Zippo* sliding scale was not useful in the general jurisdiction inquiry in order to provide guidance to lower courts.<sup>106</sup> *Zippo* was a specific jurisdiction case.<sup>107</sup> General jurisdiction requirements are more stringent than specific jurisdiction requirements.<sup>108</sup> Emphasis on website interactivity in the general jurisdiction context confuses the analysis and could result in the unconstitutional exercise of general jurisdiction over defendants who have no continuous, systematic, and substantial forum contacts.<sup>109</sup> The *Zippo* framework improperly focuses on the potential for a defendant to have forum contacts through its website, instead of whether the actual contacts are sufficiently substantial.<sup>110</sup>

In his brief, Mr. Oldfield argued the Eleventh Circuit should exercise general jurisdiction over the resort, based at least in part, on the fact that the district court found the resort's website fell in the middle of the *Zippo* spectrum.<sup>111</sup> Clearly, Mr. Oldfield did not believe the line of Eleventh Circuit district court cases holding *Zippo* largely inapplicable in the general jurisdiction context was binding.<sup>112</sup> Because *Oldfield* neglected to address whether the *Zippo* framework has a role in general jurisdiction analysis, lower courts and litigants, like Mr. Oldfield, will continue to be led astray by *Zippo*'s misplaced focus on website interactivity in the general jurisdiction inquiry.

---

<sup>106</sup> See *supra* note 44 and accompanying text; see generally Clausen, *supra* note 4, at 533-35; Hawkins, *supra* note 1, at 2416-19 (contending courts should abandon *Zippo* in general jurisdiction cases).

<sup>107</sup> See *supra* note 39 and accompanying text.

<sup>108</sup> See *supra* notes 26-28 and accompanying text.

<sup>109</sup> See *infra* note 110 and accompanying text.

<sup>110</sup> See Clausen, *supra* note 4, at 534-35 & n.219 (citing Carlos J.R. Salvado, *An Effective Personal Jurisdiction Doctrine for the Internet*, 12 U. BALT. INTELL. PROP. L.J. 75, 103-04 (2003); Hawkins, *supra* note 1, at 2388-89) (contending courts misapplied *Zippo* to consider potential contacts instead of actual forum contacts); see also *Roblor Mktg. Group, Inc. v. GPS Indus., Inc.*, No. 08-21496-CIV, 2009 WL 2003156, at \*6 (S.D. Fla. July 6, 2009) (citing *Revell v. Lidov*, 317 F.3d 467, 471 (5th Cir. 2002)); *supra* note 44.

<sup>111</sup> See Appellee's Brief, *supra* note 64, at 23, 38-43.

<sup>112</sup> See *supra* note 44 and accompanying text.

**B. Oldfield Should Have: Recognized that Zippo Applied and Arguably Supported Specific Jurisdiction, Held The Traditional Test Prevails Over Zippo, and Outlined What Role Zippo Should Play in Specific Jurisdiction Analysis**

The district court found the resort's website fell in the middle of the *Zippo* spectrum.<sup>113</sup> The website allowed visitors to reserve rooms and book excursions.<sup>114</sup> Mr. Oldfield contacted the resort via the website and via e-mail obtained a reservation and communicated with the resort to confirm the room reservation.<sup>115</sup> The district court found no support for the defendants' position that the website was passive.<sup>116</sup> The Eleventh Circuit should have recognized that the *Zippo* framework applied to the facts in *Oldfield*. Moreover, *Oldfield* should have acknowledged that *Zippo* arguably authorized specific jurisdiction over the defendants. The *Zippo* court exercised specific jurisdiction over the defendant news service because it used its interactive website to sell services to forum residents when it sold passwords to thousands of subscribers.<sup>117</sup> *Zippo* stated that if the defendant did not want to be subject to forum jurisdiction, it should have refrained from selling services to forum residents.<sup>118</sup> Similarly, in *Oldfield*, the resort accepted almost all reservations on an interactive, commercial website—most of which came from United States residents.<sup>119</sup> Therefore, the *Oldfield* court should have either explained why application of the *Zippo* sliding scale did not justify specific jurisdiction, or alternatively, articulated its rationale for rejecting the *Zippo* framework.

*Oldfield* also should have recognized that lower courts throughout the Eleventh Circuit applied *Zippo* in varying ways.<sup>120</sup> This Eleventh Circuit acknowledgment should have noted that even the line of district court cases limiting the *Zippo* holding to require more than mere

---

<sup>113</sup> See Order, *supra* note 73, at 6.

<sup>114</sup> See *Oldfield v. Pueblo De Bahia Lora, S.A.*, 558 F.3d 1210, 1214 (11th Cir. 2009).

<sup>115</sup> *Id.*

<sup>116</sup> See Order, *supra* note 73, at 5-6.

<sup>117</sup> *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1125-26 (W.D. Pa. 1997).

<sup>118</sup> *Id.* at 1126-27.

<sup>119</sup> See *supra* note 59 and accompanying text.

<sup>120</sup> See *supra* notes 44, 46, 48 and accompanying text.

contacts linking the nonresident equally to users of all forums<sup>121</sup> would arguably support specific jurisdiction in *Oldfield*. This is because the district court found the English-language website specifically targeted forum residents.<sup>122</sup> The website listed (1) a toll-free number from the United States, (2) a United States mailing address, and (3) instructions on the use of United States cell phones.<sup>123</sup> Moreover, the website described the resort as meeting high United States standards of quality and having United States licensed captains.<sup>124</sup>

Instead of engaging in a *Zippo* analysis, the Eleventh Circuit merely discussed the decision and the surrounding debate.<sup>125</sup> Then the court declined to express any opinion as to *Zippo*'s applicability to the case or in the Eleventh Circuit generally.<sup>126</sup> The *Oldfield* court must have analyzed the record and determined that the traditional test for specific jurisdiction did not authorize jurisdiction, even if *Zippo* did. A different analysis in *Oldfield* could have resolved the debate over *Zippo* in the Eleventh Circuit. *Oldfield* should have directed lower courts to conduct the traditional specific jurisdiction analysis even when a defendant's Internet presence is the basis for personal jurisdiction. Next, the Eleventh Circuit should have clarified that the traditional test for specific jurisdiction reigns over the *Zippo* framework. Where *Zippo* authorizes jurisdiction, but the traditional three-prong minimum contacts test does not, courts should apply the traditional test. Finally, *Oldfield* should have outlined what role, if any, the *Zippo* framework should play when specific jurisdiction is based, at least in part, on a defendant's Internet presence.

***C. Analysis of Each Requirement of the Traditional Three-Prong Minimum Contacts Test Would Have Reached the Same Result and Prevented Unnecessary Confusion***

Traditionally, the Eleventh Circuit has articulated the minimum contacts test for specific jurisdiction as containing three prongs: (1)

---

<sup>121</sup> See *supra* note 46 and accompanying text.

<sup>122</sup> See Order, *supra* note 73, at 14.

<sup>123</sup> *Oldfield v. Pueblo De Bahia Lora, S.A.*, 558 F.3d 1210, 1214 (11th Cir. 2009).

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 1220 n.26.

<sup>126</sup> *Id.*

relatedness, (2) purposeful availment, and (3) reasonable anticipation.<sup>127</sup> However, *Oldfield* slightly altered the test.<sup>128</sup> It characterized the traditional minimum contacts test as containing *dual requirements*: (1) purposeful availment and (2) relatedness.<sup>129</sup> One can interpret *Oldfield* to hold that sufficient minimum contacts support specific jurisdiction if both the purposeful availment and relatedness requirements are met.<sup>130</sup> *Oldfield* may have inadvertently eliminated the third prong of the traditional minimum contacts test.<sup>131</sup> Because *Oldfield* only analyzed the

---

<sup>127</sup> See *supra* note 30 and accompanying text.

<sup>128</sup> See *Oldfield*, 558 F.3d at 1220-21.

<sup>129</sup> *Id.*

<sup>130</sup> See *id.*

<sup>131</sup> See *id.* *Oldfield*'s assertion that fulfillment of the dual requirements of relatedness and purposeful availment ensures a defendant's "conduct and connection with the forum . . . are such that he should reasonably anticipate being haled into court there" follows Supreme Court precedent. *Id.* (citations omitted); see *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-73 (1985) (asserting the reasonable anticipation requirement of specific jurisdiction is fulfilled if the defendant has purposefully directed activities at forum residents and the litigation results from alleged injuries arising out of or related to that conduct); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) (asserting the foreseeability critical to due process analysis is that "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there," and "when a corporation 'purposely avails itself of the privilege of conducting activities within the forum State,' it has clear notice that it may be subject to suit there") (citations omitted) (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). Moreover, *Oldfield* may not be the only case in which the Eleventh Circuit seemed to imply the minimum contacts test for specific jurisdiction only included the purposeful availment and relatedness requirements, which if met, result in fulfillment of the reasonable anticipation requirement. See, e.g., *Ruiz de Molina v. Merritt & Furman Ins. Agency, Inc.*, 207 F.3d 1351, 1356 (11th Cir. 2000) (stating defendant has fair warning that his activities subject him to jurisdiction in the forum if he purposefully directs activities at the forum and claims an injury resulted from these activities). In such instance, the defendant's conduct in connection with the forum is such that he should reasonably anticipate being haled into court in the forum. *Id.* Like *Oldfield*, *Ruiz* seems to imply fulfillment of the purposeful availment and relatedness prongs necessarily results in fulfillment of the reasonable anticipation requirement. See *id.*; see also *Republic of Panama v. BCCI Holdings (Luxembourg) S.A.*, 119 F.3d 935, 945 (11th Cir. 1997) (asserting defendants have fair warning their activities will subject them to suit in the forum if the defendants purposely direct activities to forum residents); *Licciardello v. Lovelady*, 544 F.3d 1280, 1284 (11th Cir. 2008) (asserting the reasonable anticipation requirement is satisfied if the defendant has purposefully directed his activities at forum residents and the injuries arise out of or relate to the forum activities).

relatedness requirement,<sup>132</sup> it is unclear whether the Eleventh Circuit's minimum contacts test for specific jurisdiction still has three separate-but-related prongs.

Instead, *Oldfield* should have applied and analyzed each prong of the traditional three-prong minimum contacts test.<sup>133</sup> Collapsing the three-prong test into a dual requirement test that, if met, ensures a defendant should reasonably anticipate being haled into court in the forum,<sup>134</sup> confuses the analysis. The Eleventh Circuit could have reached the same specific jurisdiction conclusion by applying the traditional three-prong minimum contacts test that the lower court cited in its order and both parties cited in their briefs.<sup>135</sup>

The Eleventh Circuit missed an opportunity to provide much-needed guidance as to how the purposeful availment requirement applies to Internet contacts.<sup>136</sup> Eleventh Circuit district courts have strug-

---

*Lovelady* states that “[i]n this way, the defendant could have reasonably anticipated being sued in the forum’s courts in connection with his activities there.” *Id.* at 1284 (citing *Burger King*, 471 U.S. at 472). *Lovelady* also seems to imply that the fulfillment of the purposeful availment and relatedness requirements satisfies the reasonable anticipation requirement. *See id.* (citing *Burger King*, 471 U.S. at 472); *see also* *Consol. Dev. Corp. v. Sherritt, Inc.* 216 F.3d 1286, 1291 (11th Cir. 2000) (asserting specific jurisdiction arises out of a defendant’s forum activities related to the cause of action (relatedness requirement)). *Consolidated* also asserted there are sufficient minimum contacts to support specific jurisdiction if there is purposeful availment, and the minimum contacts requirement assures a defendant’s forum conduct is such that he should reasonably anticipate being haled into court in the forum. *Consol. Dev.*, 216 F.3d at 1291. *Consolidated* seems to imply the minimum contacts test for specific jurisdiction entails the relatedness and purposeful availment prongs, which if met, result in fulfillment of the reasonable anticipation requirement. *See id.* The fact that *Oldfield* is not the only case in which the Eleventh Circuit has implied the minimum contacts test for specific jurisdiction only includes the purposeful availment and relatedness requirements, which if met, fulfill the reasonable anticipation requirement underscores the need for guidance concerning whether the traditional test has two or three requirements.

<sup>132</sup> *Oldfield*, 558 F.3d at 1222.

<sup>133</sup> *See supra* note 30 and accompanying text.

<sup>134</sup> *Oldfield*, 558 F.3d at 1220-21.

<sup>135</sup> *See* Appellant’s Brief, *supra* note 70, at 12-13; Appellee’s Brief, *supra* note 64, at 19; Order, *supra* note 73, at 9.

<sup>136</sup> *See Oldfield*, 558 F.3d at 1222 (declaring the court need only consider the relatedness requirement); *supra* note 49 and accompanying text (illustrating the

gled with this issue.<sup>137</sup> The Southern District of Florida found ample evidence supporting that the content and use of the English-language website illustrated that the defendants purposefully availed themselves of the privileges of conducting business in the United States.<sup>138</sup> The Eleventh Circuit also should have analyzed the *Oldfield* facts to determine whether the website supported purposeful availment.<sup>139</sup> A thorough exploration of each of the three prongs of the traditional minimum contacts test for specific jurisdiction<sup>140</sup> would have benefited lower courts and litigants. Such an approach would have avoided confusion concerning whether the Eleventh Circuit effectively eliminated as a separate requirement the third prong of the traditional minimum contacts test.<sup>141</sup>

---

district courts' efforts to limit *Zippo* to require more than mere contacts linking the defendant equally to all states and showing district courts are inconsistently attempting to apply the purposeful availment requirement to Internet contacts and need guidance from the Eleventh Circuit).

<sup>137</sup> See *supra* note 46 and accompanying text.

<sup>138</sup> See Order, *supra* note 73, at 14 ("In this case, it is clear that Defendants target United States citizens (as opposed to Florida residents) in their website." (citing Graduate Mgmt. Admission Council v. Raju, 241 F. Supp. 2d 589, 598 (E.D. Va. 2003))).

<sup>139</sup> See *Oldfield*, 558 F.3d at 1222 (analyzing only the relatedness requirement).

<sup>140</sup> See *supra* note 30 and accompanying text.

<sup>141</sup> *Oldfield*, 558 F.3d at 1220-21.