tion by targeting or serving customers in a state through, for example, direct advertising, marketing through a local sales agent, or establishing channels for providing regular advice to local customers. Action, not expectation, is key.[905] In *Asahi*, the state was found to lack jurisdiction under both tests cited.

Doctrine in stream-of-commerce cases was refined further in *J. McIntyre Machinery, Ltd. v. Nicastro*.[906] Justice Kennedy, writing for a four-Justice plurality, asserted that it is a defendant's purposeful availment of the forum state that makes jurisdiction consistent with traditional notions of fair play and substantial justice. The question is not so much the fairness of a state reaching out to bring a foreign defendant before its courts as it is a matter of a foreign defendant having acted within a state so as to bring itself within the state's limited authority. Thus, a British machinery manufacturer who targeted the U.S. market generally through engaging a nationwide distributor and attending trade shows, among other means, could not be sued in New Jersey for an industrial accident that occurred in the state. Even though at least one of its machines (and perhaps as many as four) were sold to New Jersey concerns, the defendant had not purposefully targeted the New Jersey market through, for example, establishing an office, advertising, or sending employees.[907] Writing in dissent for herself and two other Justices, Justice Ginsburg concluded that it was reasonable and fair, and therefore consistent with due process requirements, for New Jersey to claim jurisdiction to adjudicate the case locally because the defendant manufacturer had promoted its products in the United States and established a national distribution system. "On what sensible view of the allocation of adjudicatory authority," the dissent rhetorically asked, "could the place of [the plaintiff's] injury within the United States be deemed off limits for his products liability claim against a foreign manufacturer who targeted the United States (including all the States that constitute the Nation) as the territory it sought to develop?" [908] Concurring with the plurality, Justice Breyer emphasized the outcome lay in stream-of-commerce precedents that held isolated or infrequent sales could not support jurisdiction. At the same time, Justice Breyer cautioned against adoption of the plurality's strict active availment of the forum rule, especially because

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[905] 480 U.S. at 109–113 (1987). Agreeing with Justice O'Connor on this test were Chief Justice Rehnquist and Justices Powell and Scalia.

[906] 564 U.S. ___, No. 09–1343, slip op. (2011).

[907] 564 U.S. ___, No. 09–1343, slip op. (2011) (Kennedy, Roberts, Scalia and Thomas).

[908] 564 U.S. ___, No. 09–1343, slip op. at 6–7 (2011) (Ginsburg, Sotomayor and Kagan dissenting).