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SUPREME COURT OF THE STATE OF WASHINGTON

No. 83424-0-I

COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

MARCUS DUELL, an individual,

Respondent,

v.

PENINSULA AVIATION SERVICES, INC.,
doing business as PenAir, a Delaware corporation,

Petitioner,

and

ALASKA AIRLINES, INC., a Delaware
corporation,

Defendants.

ERIN OLTMAN, individually and as Personal
Representative of the Estate of David Oltman, and
on behalf of REECE OLTMAN and EVAN
OLTMAN, minors,

Respondents,

v.

PENINSULA AVIATION SERVICES, INC.,
doing business as PenAir, a Delaware corporation,
Petitioner,

and
ALASKA AIRLINES GROUP, INC. and
ALASKA AIRLINES, INC.,
Defendants.

**AMICUS CURIAE BRIEF OF THE ALASKA AIR
CARRIERS ASSOCIATION IN SUPPORT OF
PENINSULA AVIATION SERVICES' PETITION FOR
REVIEW**

Sidney C. Tribe, WSBA 33160
CARNEY BADLEY
SPELLMAN, P.S.
701 Fifth Avenue, Suite 3600
Seattle, Washington 98104
Telephone: (206) 622-8020

Attorneys for Amicus Curiae

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I. INTRODUCTION

The Alaska Air Carriers Association (AACA) is an industry organization that has advocated for commercial aviation carriers in the State of Alaska for nearly 60 years. It represents over 40 air carriers that provide services in Alaska. It files this amicus brief in support of the position taken by Petitioner Peninsula Aviation Services, Inc.

The Washington Court of Appeals published opinion holds that Washington courts can exert personal jurisdiction over Peninsula Aviation, a company that operated solely in the State of Alaska and based on facts arising solely in Alaska. It is a troubling extension of personal jurisdiction. Moreover, the decision creates uncertainty for AACA's members, by creating unclear rules for subjecting them to the jurisdiction of the Washington courts, even if they have no presence in Washington.

II. RELEVANT FACTS AND PROCEDURAL BACKGROUND

Peninsula Aviation, like almost all AACA members, operated solely in the State of Alaska. It was a Delaware

corporation headquartered in Anchorage Alaska and had no presence in Washington State. All its employees worked in Alaska and it flew solely between Alaska destinations. It owned no property and maintained no bank accounts in Washington.

Peninsula Aviation was involved in an accident in Dutch Harbor Alaska in 2009, while flying between Anchorage and Dutch Harbor, leading to one death and multiple injuries. Plaintiffs in this action brought parallel claims against Peninsula Aviation in the Alaska and Washington courts. Peninsula Aviation asserted that was only subject to the jurisdiction of the Alaska courts.

The Court of Appeals held that there was personal jurisdiction over Peninsula Aviation because Peninsula Aviation had contracted with a Washington company, Alaska Airlines. Peninsula Aviation had entered a Capacity Purchase Agreement with Alaska Airlines to operate aircraft between Anchorage and Dutch Harbor for a fixed fee. Alaska Airlines scheduled the route as an Alaska Airlines route and had sole

authority to market and sell seats on the aircraft. All passengers purchased tickets from Alaska Airlines as Alaska Airlines seats. Alaska Airlines retained all profit above the fixed fee. Peninsula Aviation's sole responsibility was the operation of the aircraft.

The Court of Appeals held that although Peninsula Airways provided services solely in Alaska, because it had contracted with Alaska Airlines to provide those services, it was subject to the jurisdiction of the Washington courts.

III. ARGUMENT FOR WHY THIS COURT SHOULD ACCEPT REVIEW

AACA is deeply concerned that its members (and other companies operating in Alaska) can be forced to defend cases in Washington, arising out of Alaska operations, for accidents in Alaska, solely on the basis that they contracted with a Washington company to provide that company services in Alaska. Washington companies commonly conduct operations in or provide services to customers in Alaska. Such companies routinely contract with Alaska companies to provide goods or

services in connection with those operations. For example, Alaska aviation companies contract with out-of-state companies to ferry their workers to and from job sites. In the mining and oil industry, it is common for a company to use Alaska helicopter services to ferry its employees during field work or exploration activities, or to access remote work sites. Offshore rigs can only be accessed by boat or helicopter. Field work with respect to mining operations requires helicopter transportation to survey remote sites. This is a common practice in Alaska, given the lack of road infrastructure.

Similarly, many aviation and other companies contract with cruise companies, some of whom are headquartered in Seattle, to allow cruise companies to sell their flight services or other tour services to their customers. But the mere fact that an Alaskan company contracts with an out-of-state company to provide services in Alaska should not make the Alaska company subject to foreign jurisdiction in for suits where services provided in Alaska lead to accidents and injuries in

Alaska. Rather, Alaska companies should be allowed to contract to provide goods or services in Alaska without subjecting themselves to suit in foreign jurisdictions.

Moreover, if an Alaska company chooses not to conduct business or be present in another state, there should be some certainty that they will not be haled into a Washington or other foreign court, to answer for services they provided solely in Alaska. If they are subject to foreign jurisdiction, AACA members and other companies are entitled to know that. It is important that they have certainty so they can structure their affairs.

Subjecting Alaska companies to the jurisdiction of the Washington courts, as apparently allowed by the Court of Appeals, creates a hardship of Alaska companies because they are required to appear in court in a location that is not their home, and because they are required to incur the costs of litigating in another state. Many such service providers, particularly in the aviation industry, are small companies. Forcing them to litigate

in another state, and potentially be subject to foreign laws on liability and damages, creates real uncertainty as to their legal exposure. This, in turn, makes managing risk a far more difficult proposition. AACA believes subjecting its members to such suits violates due process. This Court should review the Court of Appeals' ruling that contracting with Washington companies to provide services in Alaska can lead to personal jurisdiction over those persons and companies in Washington. It is important to have certainty so their affairs can be structured in light of that potential liability.

In Washington, a company may only be subject to the state's jurisdictional authority if there is a requisite nexus with the forum state. "This minimum contacts analysis looks to the defendant's contacts with the forum state itself, not the defendant's contacts with persons who reside in the forum state." *Montgomery v. Air Serv Corporation, Inc.*, 9 Wn. App. 2d 532, 540, 446 P.3d 659 (2019). *Accord Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cnty.*, 582

U.S. 255, 264 (2017)(there must be an “affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State”)(quoting *Goodyear*, 564 U.S. at 919). Moreover, the relationship must arise from contacts the defendant has created with the forum state. *Walden v. Fiore*, 571 U.S. 277, 286 (2014). “A defendant’s relationship with a ... third party, standing alone, is an insufficient basis for jurisdiction.” *Id.* at 286.

A contract between a defendant and a third party in the forum state, without more, has never been sufficient to sustain an exercise of specific personal jurisdiction. The United States Supreme Court made clear in *Burger King Corporation v. Rudzewicz*, 471 U.S. 462, 478 (1985) that an individual’s contract with an out-of-state party, by itself, has never been sufficient to support the exercise of specific personal jurisdiction. That Court stated, “If the question is whether an individual’s contract with an out-of-state party alone can automatically establish sufficient minimum contacts in the other

party's home forum, we believe the answer clearly is that it cannot.” *Burger King*, 471 U.S. at 478 (1985). And in *Bristol-Myers*, the Court addressed whether a company could be subject to jurisdiction in California because it had entered into a contract with a California company to market and distribute its products nationally. The Court rejected that such a contract could be the basis for personal jurisdiction in California in matters involving injuries that occurred in other states. *Bristol-Myers*, 582 U.S. at 268.

The Washington Court of Appeals in *Montgomery* addressed whether a contract to provide services in another state confers jurisdiction over an out-of-state company. The Court of Appeals in *Montgomery* held that a contract with Alaska Airlines to provide wheelchair services in another state, which was the site of the accident, was not a sufficient basis for the Washington courts to exert jurisdiction over the company, and that entering into a contract with a Washington company, by itself, did not

create sufficient contacts to allow for the assertion of personal jurisdiction. The Court held:

The Estate asserts that ABM purposefully availed itself of the privilege of doing business in Washington by entering into contracts with airlines to provide wheelchair services to Washington residents in Texas. This is not sufficient to establish case-linked personal jurisdiction. Providing services in Texas does not manifest an intention to submit to the jurisdiction of Washington courts.

Montgomery, 9 Wn. App. 2d at 545.

While AACCA believes the Court of Appeals wrongly decided this case, this Court at a minimum should accept review because AACCA members and other Alaska companies that provide goods and services to Washington companies need clear guidance and legal certainty from this Court as to the ground rules for subjecting themselves to the jurisdiction of the Washington courts. Such guidance would allow them to protect themselves from being subject to out-of-state lawsuits for their actions in Alaska. The critical issue of whether a court has personal jurisdiction should be based on the application of sound

principles and should be consistently adjudicated. Particularly given the differences in law between Alaska and Washington, Alaskans with no contacts in Washington State are entitled to know whether they are subjecting themselves to Washington jurisdiction when they are asked by a Washington company to provide services in Alaska, despite the absence of any other contacts with this state.

As observed by the United States Supreme Court,

The Due Process Clause, by ensuring the “orderly administration of the laws,” *International Shoe Co. v. Washington*, 326 U.S., at 319, 66 S.Ct., at 159, gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.

When a corporation “purposefully avails itself of the privilege of conducting activities within the forum State,” *Hanson v. Denckla*, 357 U.S., at 253, 78 S.Ct., at 1240, it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State.

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980). *Accord Asahi Metal Industry Co., Ltd. v. Superior Court of California, Solano Cnty.*, 480 U.S. 102, 110 (1987)(same).

Accordingly, for the reasons stated above, AACA, as amicus, requests the Washington Supreme Court accept review of the current matter.

This document contains 1717 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 25th day of September, 2023.

CARNEY BADLEY SPELLMAN, P.S.

By /s/ Sidney C. Tribe
Sidney C. Tribe, WSBA No. 33160
Attorneys for Amicus Curiae

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

Via Appellate Portal to the following:

E. Pennock Green Evelyn E. Winters Bullivant Houser Bailey PC 925 Fourth Avenue, Suite 3800 Seattle, WA 98104	Philip A. Talmadge Talmadge/Fitzpatrick 2775 Harbor Avenue SW Third Floor, Suite C Seattle, WA 98126
Caryn G. Jorgensen John Fetters Rachael R. Wallace Stokes Lawrence, P.S. 1420 Fifth Avenue, Suite 3000 Seattle, WA 98101-2393	Lawrence R. Lassiter Charles C. Miller Joshua R. Birmingham Miller Weisbrod LLP 11551 Forest Central Drive, Suite 300 Dallas, TX 75243
Patrick H. LePley LePley Law Firm 3633 136th Place SE, Suite 120 Bellevue, WA 98006	Kenneth W. Masters Shelby R. Frost Lemmel Masters Law Group PLLC 321 High School Road NE D3-#362 Bainbridge Island, WA 98110-2648
Matthew R. Johnson	James N. Bingham

Paul Hamilton Beattie Jr. Gravis Law, PLLC 503 Knight Street, Suite A P.O. Box 840 Richland, WA 99352	James T. Anderson III Krutch Lindell Bingham Jones, P.S. 3316 Fuhrman Avenue E. Suite 250 Seattle, WA 98102-3800
Sean Philip Airut Murphy Kilpatrick Townsend & Stockton LLP 1420 Fifth Avenue Suite 3700 Seattle, WA 98101-4089	E. Pennock Green Evelyn E. Winters Bullivant Houser Bailey PC 925 Fourth Avenue Suite 3800 Seattle, WA 98104

DATED this 25th day of September, 2023.

/s/ Patti Saiden

Patti Saiden, Legal Assistant

CARNEY BADLEY SPELLMAN

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- sally.gannett@bullivant.com
- shelby@appeal-law.com

Comments:

Sender Name: Patti Saiden - Email: saiden@carneylaw.com

Filing on Behalf of: Sidney Charlotte Tribe - Email: tribe@carneylaw.com (Alternate Email:)

Address:
701 5th Ave, Suite 3600

Seattle, WA, 98104

Phone: (206) 622-8020 EXT 149

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