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SUPREME COURT NO. 102224-7

COURT OF APPEALS No. 834240-1

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SUPREME COURT  
OF THE STATE OF WASHINGTON

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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; and  
DOES 1-20,

Defendants.

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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.

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

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## IDENTITY OF ANSWERING PARTY, RELIEF REQUESTED & INTRODUCTION

*Amicus Curiae* Brief filed by the Alaska Air Carriers Association (AACA) asserts that **Duell** “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.” *Amicus* at 1. Respondent Erin Oltman, individually and as Personal Representative of the Estate of David Oltman, and on behalf of Reece Oltman and Evan Oltman, minors, answers that this assertion is incorrect and that this Court should deny PenAir’s Petition for Review.

### RELEVANT FACTS

Respondents refer the Court to the extensive discussion of the relevant facts in the appellate decision and briefing and in their Answer to the Petition for Review.

## ARGUMENT

### A. AACA fails to notice *Ford*, the controlling law in every jurisdiction.

AACA expresses concern about being on “notice” as to when its members might be subject to Washington’s jurisdiction. But it does not seem to notice the most recent pronouncement on personal jurisdiction from the United States Supreme Court: *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, \_\_ U.S. \_\_, 141 S. Ct. 1017, 209 L. Ed. 2d 225 (2021). Both that decision and post-*Ford* Washington law (including *Duell*; *Sandhu Farm Inc. v. A&P Fruit Growers Ltd.*, 25 Wn. App. 2d 577, 524 P.3d 209 (2023); and *Downing v. Losvar*, 21 Wn. App. 2d 635, 507 P.3d 894, *rev. denied*, 200 Wn.2d 1004 (2022)) provide ample clear and consistent guidance regarding Washington law. Specifically, these decisions are controlling and sufficiently inform AACA regarding the current state of Washington long-arm jurisdiction. As in *Downing*, review is unnecessary here.



**B. Personal jurisdiction has not changed in any legally relevant way since this Court decided *Shute*.**

AACA also should not be surprised that its members may be haled into a Washington court when they cause a Washington resident injury in Alaska, arising from or relating to its members' dealings with Washington businesses: the "arise from or relate" to standard applied in *Duell* and *Ford* is nothing new. As the U.S. Supreme Court itself indicated in *Ford*, this has been the standard for more than 70 years, at least since *Int'l Shoe Co. v. Wa.*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. (1945). See *Ford*, 141 S. Ct. 1017, 1025 (2021) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985); *Helicopteros Nacionales de Colombia, S. A. v. Hall*, 466 U.S. 408, 414, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984); *Int'l Shoe*, 326 U.S. at 319; *Daimler AG v. Bauman*, 571 U.S. 117, 127, 134 S. Ct. 746, 187 L. Ed. 2d 624 (2014); *Bristol-Myers Squibb Co.*

*v. Superior Ct. of Calif., San Fran. Cnty.*, 582 U.S. 255, 262, 137 S. Ct. 1773, 198 L. Ed. 2d 375 (2017)).

And this Court provided the same guidance over 30 years ago in *Shute v. Carnival Cruise Lines*, 113 Wn.2d 763, 783 P.2d 78 (1989). As in *Duell*, *Shute* involved the provision of services outside of Washington under a ticket-sale contract made in Washington. *Shute* held that were it not for Carnival's transaction of business in Washington, the plaintiff would not have been on Carnival's cruise ship in international waters, where she had a slip and fall injury. As such, the plaintiff's claims arose from Carnival's Washington contacts within the meaning of the long-arm statute. *Shute*, 113 Wn.2d at 772. The same is true here.

While AACA repeatedly focuses on the fact that David Oltman was killed in Alaska, this Court has made plain (at least since *Shute*) that for purposes of the due-process analysis, "from the standpoint of fairness it should make no difference where the cause of action

matured.” **Shute**, 113 Wn.2d at 769 (quoting Note, *Jurisdiction Over Nonresident Corporations Based on A Single Act: A New Sole for International Shoe*, 47 GEO.L.J. 342, 355 (1958)). Rather, both Washington and Federal courts have applied and continue to apply the “arising from or relating to” test. **State v. LG Elec., Inc.**, 186 Wn.2d 169, 176-77, 375 P.3d 1035 (2016).

**Duell** plows no new ground: the activities described by AACA already potentially subject them to jurisdiction in Washington courts if the already well-established standards are met. There is no need for this Court to grant the Petition to go over the same ground again.

**C. Ford supersedes Montgomery.**

This Court also need not weigh-in regarding the import of the Court of Appeals’ prior decision in **Montgomery v. Air Serv. Corp., Inc.**, 9 Wn. App. 2d 532, 446 P.3d 659 (2019), which AACA repeatedly references. See *Amicus* at 6, 8, 9. In **Duell**, the Court of Appeals

explained at length that **Montgomery** is no longer applicable to the specific issue of concern to AACA because **Montgomery** was decided before **Ford** based on a premise from “a plurality decision” in **J. McIntyre Machinery, Ltd. v. Nicastro**, 564 U.S. 873, 131 S. Ct. 2786, 180 L. Ed. 2d 760 (2011), a case this Court described as involving “fractured opinions on the stream of commerce theory.” **Duell**, 530 P.3d at 1020 (quoting **LG Elec.**, 186 Wn.2d at 178). And as the Court of Appeals noted, “neither **McIntyre** nor the ‘stream of commerce theory’ is mentioned in **Ford**,” and “because we look to federal law to determine personal jurisdiction, we review this case in light of **Ford**.” **Duell**, 530 P.3d at 1020. In sum, the law established in **Ford** – not a pre-**Ford** decision called **Montgomery** – provides the guidance for which AACA seems to be searching. This Court need not further elaborate on these well-established principles.

**D. *Burger King* is not to the contrary.**

Finally, AACA proffers the same misinterpretation of ***Burger King*** as PenAir does, claiming that ***Burger King*** stands for the proposition 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.” *Amicus* at 7-8; PFR at 12. On the contrary, ***Burger King*** makes it clear that “so long as it creates a ‘substantial connection’ with the forum, *even a single act can support jurisdiction.*” *Id.* at 475 n.18. ***Burger King*** goes on to explain that when an out-of-state actor enters a contract with an entity in the forum state, courts should use a “highly realistic approach that recognizes that a contract is ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction.” ***Burger King***, 471 U.S. at 479. That is what this Court did in ***Shute***, which resolves this matter.

An Alaskan entity entering a contract with a Washington entity – the performance of which is governed by Washington law – plainly has “fair warning” that it may find itself subject to personal jurisdiction in Washington due to its purposeful availment of Washington’s law and markets, where injury to Washington citizens in Alaska arise out of or relate to that contract. **LG Elec.**, 186 Wn.2d at 176 (quoting **Burger King**, 471 U.S. at 472); **Shute**, 113 Wn.2d at 772. This Court need not reiterate this sound principle yet again.

David Oltman would still be alive but for PenAir’s contract with Alaska Airlines, which was the sole way that David could buy a ticket on the fatal flight.

Review is unnecessary here.

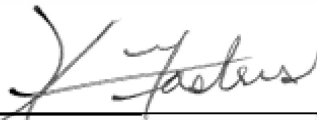
### **CONCLUSION**

For the reasons stated above and in the trial and appellate court decisions, this Court should deny discretionary review.

Under RAP 18.1(2)(c)(9), the undersigned certifies that this document contains **1237** words.

RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of October 2023.

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I certify that I caused to be filed and served a copy of the foregoing **ANSWER TO AMICUS CURIAE BRIEF OF THE ALASKA AIR CARRIERS ASSOCIATION IN SUPPORT OF PENINSULA AVIATION SERVICES' PETITION FOR REVIEW** on the 17<sup>th</sup> day of October 2023 as follows:

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