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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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PENAIR'S ANSWER TO AACA  
*AMICUS* BRIEF

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## A. INTRODUCTION

The *amicus curiae* brief of the Alaska Air Carriers Association (“AACA”) does an excellent job of highlighting the practical effect of Division I’s outlier published decision on out-of-state businesses. That opinion exceeds the outer boundaries of due process in permitting Washington courts’ specific personal jurisdiction over Peninsula Aviation (“PenAir”), a company operating only in Alaska, with respect to a crash in Alaska arising out of the performance of PenAir’s staff and aircraft in that State.

Division I’s published decision creates uncertainty as to whether AACA’s members, (or companies in any other state), will be haled into court in Washington merely because they have a contract with a Washington company. Such an extreme conception of specific personal jurisdiction under RCW 4.28.185 offends principles of due process articulated by the United States Supreme Court.

Review by this Court is merited to provide a definitive

understanding of specific personal jurisdiction, particularly after the ferment on this question in the United States Supreme Court, and to give necessary guidance to out-of-state entities like AACA. RAP 13.4(b).

## B. STATEMENT OF THE CASE

Like the air carrier members of AACA, PenAir has no real contact with Washington. Looking to PenAir's contacts with Washington, the controlling perspective for the due process analysis, AACA br. at 6-7, not only was PenAir a Delaware corporation headquartered in Alaska, what connections it had with Washington were tenuous at best.<sup>1</sup> PenAir operated no flights to and from, or over, Washington, operating only in Alaska, it did not advertise in Washington or solicit business in this state, did not have a UBI number with the Department of Revenue and paid no Washington taxes, it had no bank accounts

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<sup>1</sup> As will be noted *infra*, to be subject to specific personal jurisdiction in Washington, PenAir had to direct its activities toward this State, or purposefully avail itself of the privileges of conducting activities in Washington. It did neither.

or other personal property in Washington, it owned no buildings, leases, or other real property in Washington, and it employed no Washington residents.

The principal basis for Division I's opinion was the limited capacity purchase agreement ("CPA") that gave Seattle-based Alaska Air the right to price, market, brand, and sell tickets for PenAir's in-Alaska flights, which PenAir in turn agreed to operate for Alaska. As will be noted *infra*, that contractual provision was not enough to establish that PenAir purposefully availed itself of Washington's jurisdiction. Division I also believed that a choice of law provision in the CPA was important. Op. at 3, 11-13. What is more consequential for this case is that there is *no choice of venue* provision in the CPA. If the parties thought that Washington courts should be the forum for any issue arising out of the CPA, they would have said so. They didn't.

Critically, Alaska Air had no rights under the CPA regarding the maintenance or operation of PenAir's aircraft in this Dutch Harbor flight; rather, those were *exclusively* PenAir's



obligation.<sup>2</sup>

C. ARGUMENT WHY REVIEW SHOULD BE GRANTED

- (1) Division I's Opinion Contravenes United States Supreme Court, Washington Supreme Court, and Court of Appeals Precedent, Meriting Review under RAP 13.4(b)(1)-(3)

This Court has chosen to apply the federal courts' due process analysis for long-arm jurisdiction. *Noll v. American Biltrite, Inc.*, 188 Wn.2d 402, 411, 395 P.3d 1021 (2017).<sup>3</sup> Under that precedent, three general factors must be met before specific personal jurisdiction over a non-resident defendant is proper:

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<sup>2</sup> As will be noted *infra*, Oltman's claim against PenAir had to arise out of, or relate, to PenAir's Washington-related activities. It didn't.

<sup>3</sup> Our long-arm statute permits Washington courts to exercise personal jurisdiction over defendants to the extent permitted by the Due Process Clause of the Fourteenth Amendment. *Noll*, 188 Wn.2d at 411. Consequently, any analysis of federal precedents on personal jurisdiction implicate constitutional due process. Review in this case is merited as well under RAP 13.4(b)(3). Oltman's assertion that PenAir somehow "conceded" no constitutional issue is at play, answer at 6, is belied by AACA's argument at 10-11 and PenAir's entire petition.

(1) the defendant must either purposefully direct his activities toward the forum or purposefully avail himself of the privileges of conducting activities in the forum; (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.

*Axion Foods, Inc. v. Acerchem Int'l, Inc.*, 874 F.3d 1064, 1068-69 (9th Cir. 2017).

It is undisputed that *Noll* and *State v. L.G. Electronics*, 186 Wn.2d 169, 375 P.3d 1035 (2016), this Court's two most recent cases on due process/long-arm jurisdiction under RCW 4.28.185, did not have the benefit of the United States Supreme Court's analysis in its most recent specific personal jurisdiction cases – *Bristol-Myers Squib Co. v. Superior Ct. of Calif., San Francisco County*, 582 U.S. 255, 137 S. Ct. 1773, 198 L. Ed. 2d 395 (2017) and *Ford Motor Co. v. Montana Eighth Jud. Dist.*, \_\_\_ U.S. \_\_\_, 141 S. Ct. 1017, 209 L. Ed. 2d 225 (2021). And for the reasons PenAir articulated in its petition at 8-11, those decisions are contrary to Division I's published opinion. RAP 13.4(b)(1).

Moreover, Ninth Circuit precedent also fully supports PenAir's position on jurisdiction as well. Pet. at 15-16. In addition to the cases PenAir cited in its petition, other Ninth Circuit cases support PenAir's argument. *Devas Multimedia Private Ltd. v. Antrix Corp. Ltd.*, 2023 WL 4884882 (9th Cir. 2023) (rejecting jurisdiction over a foreign corporation, Antrix, that was involved in India's space program because its personnel visited the United States in 2003 and 2009 with Indian government officials; the contract between Devas and Antrix was executed in India in 2005 and required no activities or obligations in America so Antrix did not purposefully avail itself of doing business in the United States); *Davis v. Cranfield Aerospace Solutions, Ltd.*, 71 F.4th 1154 (9th Cir. 2023) (no specific personal jurisdiction in Idaho over English consulting firm for air crash that occurred in Indiana; firm did not purposefully direct its activities to Idaho because crash didn't occur there; nor did it purposefully avail itself of Idaho's jurisdiction because, apart from a contract with an Idaho-based firm, the consulting firm's

entire course of dealing was not with Idaho); *CZ Services Inc. v. Anthem Ins. Cos., Inc.*, 2023 WL 5624273 (9th Cir. 2023) (no close connection of health insurers who terminated class of pharmacies terminated from health provider network to California).

In particular, as AACA notes in its brief at 7-9, after *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985); *Bristol-Myers*, and *Montgomery v. Air Serv. Corp., Inc.*, 9 Wn. App. 2d 532, 446 P.3d 659 (2019), a contract with a party in Washington could not be the basis for personal jurisdiction in Washington for injuries occurring in other states, particularly where the contract had nothing to do with the gravamen of the personal injuries action.

In sum, based on PenAir's entire course of dealings, it did not purposefully avail itself of Washington's jurisdiction. Critically for review by this Court, the upshot of the ferment in federal courts' decisions on due process is that there is no definitive guidance for Washington persons and businesses on

specific personal jurisdiction; only this Court can provide such guidance. The consequence of this lack of guidance is that Division I filed its published opinion in this case that is at odds with its own published opinion in *Montgomery* issued only a few years before, among others. Pet. at 18-23. In a situation where United States Supreme Court cases have not been analyzed in this Court's jurisdictional precedents and decisions of our Court of Appeals are at odds, review is merited. RAP 13.4(b)(1)-(2).

(2) AACA's Brief Makes Clear That This Case Involves an Issue of Substantial Public Importance This Court Should Decide under RAP 13.4(b)(4)

AACA's *amicus* brief only reinforces PenAir's argument, pet. at 23-25, that review is also merited in this case under RAP 13.4(b)(4). Division I's published opinion sows unneeded confusion as to what will subject foreign defendants, businesses and individuals, to the jurisdiction of Washington's courts. The exercise of specific personal jurisdiction by Washington over PenAir does not comport with fair play or substantial justice, as federal precedent requires. Specific jurisdiction over PenAir is

unreasonable.

AACA's members, like other out-of-state entities, may have some service contracts with entities in Washington. AACA br. at 3-5. But where the entirety of the out-of-state business's or individual's activities take place out of state and the contracts have nothing to do with the gravamen of personal injuries litigation, as here, minimal contractual contracts with Washington, to provide services in Alaska, do not make Washington's courts the proper locale for any litigation.

In this case, the fact that Seattle-based Alaska Air marketed and sold PenAir tickets literally had *nothing* to do with personal injuries claims arising out of an air crash in Dutch Harbor, Alaska in a flight originating from Anchorage, Alaska. This is particularly true where the basis for Oltman's lawsuit against PenAir is the operation of PenAir's air staff and the performance of PenAir's aircraft, CP 24, 28, matters *exclusively* entrusted by the CPA to *PenAir*, not Alaska Air.

As AACA notes, AACA br. at 7, the focus for this

jurisdictional analysis under controlling federal law is on PenAir's contacts with Washington, not Oltman's. AACA br. at 7.<sup>4</sup> When that focus is properly applied as in *Montgomery*, PenAir's contacts with Washington were simply too thin to sustain the notion that it "availed itself" of the jurisdiction of Washington's courts. It simply conducted no operations in Washington. Oltman's proper forum is Alaska where the crash occurred and where PenAir's staff and equipment are headquartered. Pet. at 25 n.7.

As AACA has legitimately requested, AACA br. at 9-11, this Court's guidance is necessary. RAP 13.4(b)(4).

#### D. CONCLUSION

For the reasons enumerated in PenAir's petition and herein, this Court should reverse the trial court's order denying PenAir's motion to dismiss and remand the case with directions to enter a judgment dismissing Duell and Oltman's actions.

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<sup>4</sup> Thus, when Oltman speaks of his contacts with Washington, answer at 12-13, that is irrelevant.

Costs on appeal, including reasonable attorney fees under RCW 4.28.185(5), should be awarded to PenAir.

This document contains 1,714 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 17th day of October, 2023.

Respectfully submitted,

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On said day below I electronically served a true and accurate copy of the *Answer to AACA Amicus Brief* in Supreme Court Cause No. 102224-7 to the following parties:

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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: October 17, 2023, at Seattle, Washington.

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