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DIVISION III, COURT OF APPEALS
OF THE STATE OF WASHINGTON

SANDRA LYNNE DOWNING, individually and as Personal Representative of The Estate of Brian Downing, deceased, and on behalf of KRISTYL DOWNING and JAMES DOWNING, Death Beneficiaries of The Estate of Brian Downing,
Respondents,

v.

BLAIR LOSVAR, Personal Representative of THE ESTATE OF ALBERT E. LOSVAR, deceased,
Respondent,

LYCOMING, A DIVISION OF AVCO CORPORATION, a Delaware corporation and subsidiary of TEXTRON, INC., a foreign corporation,
Defendant,

TEXTRON AVIATION, INC., a Kansas corporation, formerly CESSNA AIRCRAFT COMPANY,
Appellant.

ON APPEAL FROM OKANOGAN COUNTY SUPERIOR COURT
No. 15-2-00516-4
(Hon. Christopher Culp)

**BRIEF OF RESPONDENTS SANDRA LYNNE DOWNING, THE
ESTATE OF BRIAN DOWNING, KRISTYL DOWNING and
JAMES DOWNING**

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I. INTRODUCTION

Defendant Textron Aviation, Inc. (“TAI”) designs, manufactures, markets, sells, and distributes aircraft to customers across the country. Over 3,000 of TAI’s aircraft are registered in the state of Washington. After manufacturing and selling its aircraft, TAI maintains contact with owners of its aircraft by providing after-sale support, including by sending owners notices regarding safety and maintenance issues concerning their aircraft.

TAI sends these notices to all owners of its aircraft even if they did not purchase the aircraft directly from TAI. If a person purchases a TAI aircraft from a third-party, TAI will nonetheless reach out and contact that person and send them the aforementioned notices. One of these TAI aircraft owners was Albert Losvar, a Washington resident. Like it did for other TAI aircraft owners, TAI sent Mr. Losvar several safety and maintenance notices. One of these notices even concerned a suspect fuel pump that may have been installed on Mr. Losvar’s aircraft.

Sometime after receiving these notices, Mr. Losvar’s aircraft crashed en route to Spokane from Oroville, Washington, killing Mr. Losvar and his passenger, Brian Downing. A post-crash inspection revealed that a defective fuel system may have caused the crash. Plaintiffs Sandra Lynne Downing, Kristyl Downing, and James Downing now bring

this product liability action against TAI for design and manufacturing defects and for failure to warn. Because their claims arise out of and relate to TAI's contacts with both Washington and Mr. Losvar, the trial court correctly denied TAI's motion to dismiss for lack of personal jurisdiction.

II. STATEMENT OF ISSUE

Whether Washington courts may exercise specific personal jurisdiction over TAI when (1) TAI affirmatively reached out and made contact with the Washington owner of the aircraft that crashed in this case by sending him safety and maintenance notices concerning his aircraft; (2) one of those notices concerned a suspect fuel pump that may have been installed on the aircraft; and (3) a post-crash investigation later revealed that a defective fuel system may have contributed to the crash and the plaintiffs' injuries.

III. STATEMENT OF THE CASE

A. Jurisdictional Background

TAI (formerly Cessna Aircraft Company) is in the business of designing, manufacturing, assembling, marketing, testing, selling, delivering, distributing, and maintaining aircraft. CP 141–42 (Second Amended Complaint (“SAC”) ¶¶ 6.2, 7.2). Washington—particularly Eastern Washington, due to its flat terrain, large size, and access to

landing areas—is a popular market for general aviation piston aircraft including those designed, manufactured, and sold by TAI. CP 726 (Decl. of Keyran Walsh ¶ 10). In fact, there are over 3,000 TAI aircraft registered in Washington. CP 56 (Decl. of Alisa Brodkowitz, Ex. 5). One of those TAI aircraft was a Cessna T182T model aircraft designed and manufactured by TAI and owned by Albert Losvar (FAA Registration No. N6289Z). CP 137 (SAC ¶ 2.2), 139 (SAC ¶ 4.2), 778 (Decl. of Sherry L. Fleming ¶ 4).

Even after manufacturing, marketing, selling, and delivering its aircraft to customers, TAI continues to provide after-sale customer support to owners of its aircraft. CP 725–26 (Walsh Decl.). Indeed, TAI sells itself as having excellent customer support. CP 726 (Walsh Decl. ¶ 6). TAI provides this support directly to Washington TAI aircraft owners in a number of ways. One is by providing a “Service Locator” on the TAI website for owners of TAI aircraft to find approved service locations in Washington. CP 62–66 (Brodkowitz Decl., Ex. 7). Another is by maintaining a “mobile response team” in Washington that travels throughout the state to address aircraft maintenance and other issues.¹ CP

¹ Mobile response teams are located only in states with a significant market for TAI aircraft. CP 725 (Walsh Decl. ¶ 4). The teams themselves are a form of advertising for TAI; the team’s vehicles and

725 (Walsh Decl. ¶ 4). Yet another is by sending notices—*e.g.*, Service Bulletins, Owner Advisories, Service Letters, and other post-sale documents—to owners of TAI aircraft in Washington advising them of safety and maintenance issues concerning their aircraft. CP 56–60 (Brodkowitz Decl., Ex. 6).

During Mr. Losvar’s ownership of his Cessna T182T aircraft, TAI sent Mr. Losvar at least six such notices of aircraft safety and maintenance issues. CP 58 (Brodkowitz Decl., Ex. 6). One of these notices was a Service Letter and Owner Advisory, SEL-73-02, sent in March 2014 concerning a suspect fuel pump that had been installed on certain Cessna T182T aircraft, including those with serial numbers T18208001 through T18209070. CP 618–22 (Decl. of Andrew T. Biggs, Ex. 14). Mr. Losvar’s T182T aircraft had a serial number within that range: T18208870. CP 58. TAI’s notice alerted recipients that TAI aircraft with the suspect fuel pump may have leakage, that owners of potentially affected aircraft should have their aircraft inspected for the suspect fuel pump, and if the suspect fuel pump were found, that it should be replaced. CP 618, 621.

uniforms are highly branded and operate as a “mobile billboard” for the company. *Id.* (Walsh Decl. ¶ 5).

On August 13, 2015, at approximately 8:30 a.m., Mr. Losvar's T182T aircraft departed from Dorothy Scott Airport in Oroville, Washington. CP 139 (SAC ¶ 4.2). The aircraft was headed to Spokane International Airport. *Id.* At approximately 8:45 a.m., the aircraft crashed and killed the occupants: Albert Losvar, the pilot, and Brian Downing, a passenger. *Id.* (SAC ¶ 4.5).

After the crash, the NTSB examined the fuel selector valve from the aircraft. CP 722 (Biggs Decl., Ex. 24). At that time, a black, rigid solid material was observed inside the inlet of the fuel selector valve. *Id.* This material nearly completely obstructed the fuel line that connected the right fuel tank to the fuel tank selector valve. CP 2 (Decl. of Mark A. Pottinger ¶ 8.a). The obstruction in the right tank fuel line would have prevented proper operation of the single engine on the aircraft when fuel was being drawn from the right fuel tank. CP 3 (Pottinger Decl. ¶ 8.h).

After the NTSB's examination, the obstructing material was examined by Mr. Mark Pottinger, an accident reconstruction expert retained to investigate the cause of the crash. CP 2 (Pottinger Decl. ¶¶ 2, 8). Mr. Pottinger concluded that the material contained glass fibers, like those used in glass fiber reinforced materials. *Id.* (Pottinger Decl. ¶ 8.b). Sometime before the crash, glass reinforced materials must have been introduced into the aircraft's fuel system by some means. CP 3 (Pottinger

Decl. ¶¶ 8.f–g). As these materials migrated through the fuel system, they started accumulating at the fuel tank selector valve until it reached the point of near complete obstruction. *Id.* (Pottinger Decl. ¶ 8.g). By hampering the proper operation of the aircraft, the accumulation of these materials could have contributed to the crash. *Id.* (Pottinger Decl. ¶ 8.h).

Because glass reinforced materials are used in and around the aircraft manufacturing process, Mr. Pottinger concluded that these glass reinforced materials may have been introduced into the fuel system during the manufacture of the aircraft. *Id.* ¶ (Pottinger Decl. ¶¶ 8.c, 8.f).

Although such materials are also used in certain maintenance and service operations, there were no records of any post-purchase maintenance or repair event on Mr. Losvar’s aircraft that would have involved glass reinforced materials. *Id.* (Pottinger Decl. ¶¶ 8.c, 8.e).

B. Procedural History

On December 8, 2015, Sandra Lynne Downing filed a complaint in the Okanogan County Superior Court on behalf of herself, Kristyl Downing, and James Downing, and as the personal representative of the Estate of Brian Downing. Sandra was Brian’s husband, and Kristyl and James are their children. CP 146 (SAC ¶¶ 11.2.a–b). The original complaint named as the defendant only Blair Losvar, the personal representative of the Estate of Albert E. Losvar.

After discovering that an obstructed fuel selector valve may have contributed to the crash, the Downings amended their complaint to include TAI, among others, as a defendant. CP 136–47. TAI then moved to dismiss itself from the suit for lack of personal jurisdiction. CP 77–89. After full briefing and oral argument, the court denied TAI’s motion. CP 122–27.

Following the denial of its motion, TAI moved to certify the court’s order for discretionary review. CP 26–29. The court granted TAI’s motion. CP 113–14. TAI then filed a notice of discretionary review with this Court, and this Court granted review on December 20, 2018. CP 115–19.

IV. ARGUMENT

A. Standard of Review

This Court reviews CR 12(b)(2) dismissals for lack of personal jurisdiction *de novo*. *State v. LG Electronics, Inc.*, 186 Wn. 2d 169, 176 (2016). “[A]n appellate court can sustain the trial court’s judgment upon any theory established by the pleadings and supported by the proof, even if the trial court did not consider it.” *LaMon v. Butler*, 112 Wn. 2d 193, 200–01 (1989). When considering a CR 12(b)(2) motion to dismiss for lack of personal jurisdiction, “[t]he allegations in [the plaintiff’s] complaint must be taken as correct for purposes of appeal.” *MBM*

Fisheries, Inc. v. Bollinger Mach. Shop and Shipyard, Inc., 60 Wn. App. 414, 418 (1991); accord *Precision Lab. Plastics, Inc. v. Micro Test, Inc.*, 96 Wn. App. 721, 725 (1999). Because “no evidentiary hearing took place as part of the motion,” CP 123, “the plaintiff’s burden is only that of a prima facie showing of jurisdiction,” *LG Electronics*, 186 Wn. 2d at 176.

B. For the Exercise of Specific Personal Jurisdiction, Federal Due Process Requires that the Plaintiff’s Causes of Action Against the Defendant “Arise Out Of or Relate To” the Defendant’s Contacts with the Forum.

Ever since the U.S. Supreme Court’s seminal opinion on personal jurisdiction in *International Shoe Co. v. State of Washington*, 326 U.S. 310 (1945), federal law has distinguished between “specific jurisdiction” on the one hand and “general jurisdiction” on the other. See *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014). “Adjudicatory authority is ‘specific’ when the suit ‘aris[es] out of or relate[s] to the defendant’s contacts with the forum.’” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 923–24 (2011).

The Supreme Court first used the exact phrase, “arise out of or relate to,” to describe the requirements for specific jurisdiction in *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (requiring “the litigation to result[] from alleged injuries that ‘arise out of or relate to’ [the

out-of-state defendant’s in-state] activities”).² Since then, the Court has repeatedly affirmed that a key requirement of specific jurisdiction is that the plaintiff’s claims against the defendant “arise out of or relate to” the defendant’s contacts with the forum. *See Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 137 S. Ct. 1773, 1786 (2017) (“[T]he plaintiff’s claim must ‘arise out of or relate to’ the defendant’s forum conduct.”); *Daimler*, 571 U.S. at 127 (“Adjudicatory authority . . . in which the suit ‘aris[es] out of or relate[s] to the defendant’s contacts with the forum’ . . . is today called ‘specific jurisdiction.’”); *Goodyear*, 564 U.S. at 923–24; *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 881 (2011) (plurality opinion) (“[S]ubmission through contact with and activity directed at a sovereign may justify specific jurisdiction ‘in a suit arising out of or related to the defendant’s contacts with the forum.’”).

“Under Washington’s long arm jurisdiction statute, RCW 4.28.185, personal jurisdiction exists in Washington over nonresident defendants and foreign corporations as long as it complies with federal

² Some variation of this phrase can be found in the Supreme Court’s opinions going all the way back to *International Shoe*. *See, e.g., Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984) (indicating that specific jurisdiction requires that the “controversy [be] related to or ‘arise[] out of’ a defendant’s contacts with the forum”); *Int’l Shoe*, 326 U.S. at 319 (declaring that requiring a defendant to respond to a suit that “arise[s] out of or [is] connected with” its activities within a state can “hardly be said to be undue”).

due process.”³ *Noll v. Am. Biltrite Inc.*, 188 Wn. 2d 402, 411 (2017). To satisfy federal due process, three elements must be met:

- (1) The nonresident defendant or foreign corporation must purposefully do some act or consummate some transaction in the forum state;
- (2) the cause of action must arise from, or be connected with, such act or transaction; and
- (3) the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice

Shute v. Carnival Cruise Lines, 113 Wn. 2d 763, 767 (1989); accord *FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.*, 180 Wn. 2d 954, 963–64 (2014). The second element—that the cause of action must “arise from, or be connected with” the defendant’s actions in the state—echoes the U.S. Supreme Court’s rule that specific jurisdiction requires the plaintiff’s claims to “arise out of or relate to” the defendant’s contacts with the forum. *Bristol-Myers*, 137 S. Ct. at 1786 (quoting *Helicopteros*, 466 U.S. 408 at 414).

As it was before the trial court, this second element is the central issue on appeal: whether the Downings’ causes of action against TAI arise

³ RCW 4.28.185(1) permits the exercise of personal jurisdiction over an out-of-state defendant when that defendant transacts “any business within [Washington]” or commits “a tortious act within [Washington].” There is no dispute on appeal that TAI’s actions fall within the scope of the statutory requirements for the exercise of personal jurisdiction in Washington.

out of or relate to TAI's contacts with Washington state.⁴ TAI frames this issue as whether its contacts with Washington are a "but for" cause of the Downings' causes of action. Washington has indeed adopted such a test for determining whether there is a sufficient connection between a plaintiff's causes of action and a defendant's forum contacts for the exercise of personal jurisdiction. *Shute*, 113 Wn. 2d at 772. However, the U.S. Supreme Court has never adopted or otherwise endorsed a "but for" causation requirement between the plaintiff's causes of action and the defendant's contacts as a prerequisite to the exercise of personal jurisdiction over an out-of-state defendant. Rather, as noted *supra*, the standard has always been whether the plaintiff's causes of action "arise out of or relate to" the defendant's forum contacts.

To the extent there is a conflict between the outcomes dictated between these two standards, the Supreme Court's standard must prevail. Indeed, the Washington Supreme Court never intended to restrict the "arising out of or related to" standard articulated by the U.S. Supreme Court. *See id.* at 771 ("We conclude that Washington's long-arm statute extends jurisdiction to the limit of federal due process."); *see also Noll*,

⁴ Before the trial court, TAI stated that it "has never claimed that either of [the other elements of specific personal jurisdiction] are lacking." CP 268 (TAI Reply ISO Mot. to Dismiss). On appeal, TAI makes no such claim in its opening brief either.

188 Wn. 2d at 411 (“[P]ersonal jurisdiction exists in Washington over nonresident defendants and foreign corporations as long as it complies with federal due process.”). Nor could it, given that the U.S. Supreme Court is the final arbiter on matters of federal constitutional law.

C. The Downings’ Causes of Action Against TAI “Arise Out Of or Relate To” TAI’s Contacts with Washington State.

1. TAI affirmatively made and kept in contact with Mr. Losvar by sending him notices regarding maintenance and other issues with his aircraft.

Notwithstanding the chain of events in between TAI’s design and manufacture of Mr. Losvar’s Cessna T182T aircraft and Mr. Losvar’s eventual purchase of it, once Mr. Losvar obtained ownership of the aircraft, TAI reached out and made contact with him. As it did with the owners of the other 3000+ TAI aircraft registered in Washington, TAI sent Mr. Losvar notices regarding safety and maintenance issues concerning his aircraft. CP 58 (Brodkowitz Decl., Ex. 6). These notices addressed a broad array of issues including: mandatory replacement of an alternator contactor, CP 554–59; recommended inspection of brake lines for possible chafing against the landing gear, CP 566–75; availability of an improved nose gear strut tube assembly, CP 576–79; mandatory replacement of a suspect fuel pump, CP 618–22; mandatory replacement of certain magnetos or point assemblies, CP 632–33, 659–60; and information regarding a potentially compromised shaft-to-wheel head weld that could

lead to separation between the turbocharger turbine head and the shaft, CP 663, 677.

These notices were part of the “excellent” customer support TAI marketed itself as providing to owners of its aircraft. *See* CP 726 (Walsh Decl. ¶ 6). Given that Mr. Losvar received these notices, TAI clearly did not limit its support to those who purchased their aircraft directly from TAI or a TAI distributor. Rather, TAI affirmatively made the effort to identify and keep in touch with TAI aircraft owners and inform them about maintenance and other issues regarding their aircraft. As noted, these notices addressed serious issues that bore on the safe and proper functioning of the aircraft. The notices TAI sent Mr. Losvar alerted him to issues that could lead to engine misfires, CP 633, fuel leakage, CP 621, and “complete loss of engine power” in the aircraft, CP 663. In short, TAI undertook to warn owners of its aircraft of potential safety and maintenance issues as part of its continuing relationship with them.

2. One of the notices TAI sent to Mr. Losvar concerned a potentially suspect fuel pump that may have been installed on his aircraft.

In March 2014, TAI sent to Mr. Losvar a Service Letter and Owner Advisory (SEL-73-02) that concerned a suspect fuel pump that had been installed on certain Cessna T182T aircraft, including those with serial numbers T18208001 through T18209070. CP 618–22 (Biggs Decl., Ex.

14). Mr. Losvar's aircraft had a serial number within that range: T18208870. CP 58 (Brodkowitz Decl., Ex. 6). TAI's notice alerted recipients that TAI aircraft with the suspect fuel pump may have leakage, that owners of potentially affected aircraft should have their aircraft inspected for the suspect fuel pump, and if the suspect fuel pump were found, that it should be replaced. CP 618, 621.

3. Post-crash inspection of Mr. Losvar's TAI aircraft revealed that an obstructed fuel selector valve may have contributed to the crash.

On August 13, 2015, Mr. Losvar's aircraft crashed and killed both Mr. Losvar and his passenger, Mr. Downing. CP 139 (SAC ¶ 4.5). A post-crash inspection of the aircraft revealed that a fuel selector valve was obstructed by a black, rigid solid material. CP 2 (Pottinger Decl. ¶ 8.a), 722 (Biggs Decl., Ex. 24). This obstruction would have prevented proper operation of the aircraft when fuel was being drawn from the right fuel tank. CP 3 (Pottinger Decl. ¶ 8.h). The material itself contained glass fibers like those used in glass fiber reinforced materials. CP 2 (Pottinger Decl. ¶ 8.b). This means that glass reinforced materials must have been introduced into the aircraft's fuel system sometime before the crash. CP 3 (Pottinger Decl. ¶¶ 8.f–g). As these materials migrated through the fuel system, they could have accumulated at the fuel tank selector valve until it reached the point of near complete obstruction. *Id.* (Pottinger Decl. ¶ 8.g).

The Downings' causes of action against TAI include products liability claims, including for design and manufacturing defects and failure to warn, on theories of both negligence and strict liability. CP 141–44 (SAC ¶¶ 5.1–8.4). These claims arise out of or relate to the notices TAI sent to Mr. Losvar and other Washington owners of TAI aircraft. TAI plainly intended to keep owners of its aircraft up-to-date on issues relating to their aircraft, and these owners, including Mr. Losvar, may have relied on these notices to ensure their aircraft were in safe and proper working condition. Indeed, these notices concerned a range of issues relating to the safe and proper performance of the aircraft and its component parts. *See* CP 554–59, 566–79, 618–22, 632–33, 659–60, 663, 677. As noted, one notice even raised issues regarding a potentially suspect fuel pump and fuel leakage. CP 618–22.

The content of these notices plainly relate to whether TAI adequately warned Mr. Losvar of the defective fuel system in his aircraft that contributed to the crash that injured the Downings, and the Downings' claims of failure to warn plainly arise out of these notices. But for TAI's failure to adequately warn Mr. Losvar of the defective fuel system, the crash may not have occurred and the Downings would not have been injured. In other words, the Downings' injuries arise out of or relate to TAI's contacts with Washington state.

D. TAI's Purposeful Contacts with Washington State and Mr. Losvar Distinguish this Case from the Failure-to-Warn Personal Jurisdiction Cases Cited by TAI.

As TAI notes, there are some cases in which courts in other jurisdictions declined to exercise personal jurisdiction over an out-of-state defendant when the plaintiff sought to hold the defendant liable for failure to warn. Opening Br. at 16. However, in each of those cases, there was a complete absence of any purposeful action by the defendant that was directed towards the forum.

In *Chlebda v. H.E. Fortna and Brother, Inc.*, exercising personal jurisdiction was improper because “[t]he whole thrust of plaintiff’s claim [was] that there was no contact at all.” 609 F.2d 1022, 1024 (1st Cir. 1979). Likewise, in *Sulak v. American Eurocopter Corp.*, the plaintiff rested on the theory that jurisdiction was appropriate because the defendant had wholly failed to act. No. 09-00135 DAE-KSC, 2009 WL 2849136, at *7 (D. Hawaii Aug. 26, 2009) (“Instead of arguing that AEC purposefully availed itself of the forum, Plaintiff is arguing that AEC did nothing regarding this particular helicopter.”). And in *Carty v. Beech Aircraft Corp.*, the plaintiff did nothing more than allege that the defendant failed to warn of its defective product. 679 F.2d 1051, 1061 (3d Cir. 1982) (“[W]e conclude that the mere allegation of a failure to warn does not, without more, show an ‘act or omission in this territory.’”).

Refusing to exercise personal jurisdiction in these cases is unsurprising given that the very nature of specific personal jurisdiction requires the defendant to “purposefully avail itself of the privilege of conducting activities within the forum State.” *Burger King*, 471 U.S. at 475. Tellingly, the Third Circuit in *Carty* expressly stated that it was not deciding “whether jurisdiction would be proper under a different fact pattern showing a series of communications and bulletins, including warnings and service alerts, which was purposefully initiated by the manufacturer.” 679 F.2d at 1061 n.12. That is exactly the fact pattern here. Unlike the defendants in *Chlebda*, *Sulak*, and *Carty*, TAI purposefully initiated contact with TAI aircraft owners in Washington, including Mr. Losvar, by sending communications in the form of service letters, owner advisories, and other post-sale documents. The purpose of these letters and advisories was to inform aircraft owners of safety and maintenance issues concerning their aircraft. In other words, TAI assumed the duty of warning owners of its aircraft, including Mr. Losvar, of any defects in its products.

Accordingly, here there are ample contacts between TAI and Washington that are connected to the Downings’ claims to permit the exercise of personal jurisdiction over TAI.

E. All the Remaining Cases TAI Cites Involve a Complete Absence of Any Connection Between the Defendants' Forum Contacts and the Plaintiffs' Causes of Action.

In the remaining cases cited by TAI, the out-of-state defendants had some contacts with the forum, but those contacts were completely unrelated to the plaintiffs' claims. In other words, personal jurisdiction plainly did not exist over the out-of-state defendants because the plaintiffs' claims did not "arise out of or relate to" the defendants' forum contacts.

In *Bristol-Myers Squibb Co. v. Superior Court of California*, non-resident plaintiffs attempted to file suit against the defendant in California even though they "were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured by Plavix in California." 137 S. Ct. at 1781. Moreover, Bristol-Myers "did not develop Plavix in California, did not create a marketing strategy for Plavix in California, and did not manufacture, label, package, or work on the regulatory approval of the product in California." *Id.* at 1778. What was missing in *Bristol-Myers* was "a connection between the forum and the specific claims at issue." *Id.*

In *Folweiler Chiropractic, PS v. Fair Health, Inc.*, 4 Wn. App. 2d 1001, 2018 WL 2684374 (2018) (unpublished), the plaintiff brought a class action lawsuit against an out-of-state nonprofit, FAIR Health, for violating Washington's Consumer Protection Act. The court found no

personal jurisdiction over FAIR Health because it “had no direct contact” with the named plaintiff or any of the class members. *Id.* at *3. FAIR Health did not collect data from the class members, and the class claims did not arise out of FAIR Health’s contacts with its customers in Washington. *Id.* Rather, the class claims were based on FAIR Health’s contacts with a California company that had a contract with an insurance company that had a contract with the named plaintiff’s patient. *Id.* Unsurprisingly, the court found these contacts too attenuated to make the exercise of personal jurisdiction over FAIR Health proper. *Id.*

In *D’Jamoos ex rel. Estate of Weingeroff v. Pilatus Aircraft Ltd.*, 566 F.3d 94, 97–98, 100 (3d Cir. 2009), the plaintiffs filed suit in Pennsylvania against a Swiss aircraft manufacturer after one of its aircraft crashed in Pennsylvania. The only purposeful contacts the Swiss defendant had to Pennsylvania was that (1) it sent two employees there to view displays at a potential supplier, and (2) it purchased \$1 million worth of goods and services from suppliers in the state over a five-year period preceding the lawsuit. *Id.* at 104. However, there was no showing that these contacts connected in any way to the crash that injured the plaintiffs. *Id.*

In *Montgomery v. Airbus Helicopters, Inc.*, 414 P.3d 824 (Okla. 2018), the plaintiffs filed suit in Oklahoma for injuries caused when a

helicopter crashed in that state. Two of the defendants were out-of-state defendants: one, Airbus Helicopters, Inc., sold and delivered the helicopter to an out-of-state plaintiff; the other, Soloy, LLC, sold and shipped an “engine conversion kit” to that same out-of-state plaintiff. *Id.* at 826. The entire sale and delivery of both the helicopter and the “engine conversion kit” took place outside Oklahoma. *Id.* In other words, there “was no direct contact” between the out-of-state defendants and any of the harms that actually occurred in Oklahoma—Airbus’ and Soloy’s purposeful actions were directed towards Texas and Kansas only. *Id.* at 826, 832.

In *In re Crash of Aircraft N93PC*, No. 3:15-cv-0112-HRH, 2018 WL 4905006, at *3 (D. Alaska Oct. 9, 2018), there was ample evidence that the Canadian defendant’s (“Stolairus”) product (a “STOL Kit”) was “pervasive” in Alaska, the forum state. However, there was insufficient evidence that Stolairus actually intended to serve the Alaskan market or that it sold the specific STOL Kit at issue to a customer in Alaska. *See id.* Although there was an apparent contract between Stolairus and an Alaskan customer for the sale and delivery of the STOL Kit at issue, closer examination by the court revealed that the contract was never consummated. *Id.* at *4–6. Rather, the actual sale took place between Stolairus and Recon Air, a Canadian customer. *Id.* Thus, there was no connection between Stolairus’s Alaska contacts and the plaintiffs’ claims.

Specter v. Texas Turbine Conversions, Inc., No. 3:17-cv-00194-TMB, 2019 WL 1396426 (D. Alaska Mar. 23, 2019), concerned the same Canadian defendant and a different defective STOL Kit. The absence of a connection between the defendant's forum contacts and the plaintiffs' claims was even starker here. As in *In re Crash of Aircraft N93PC*, Stolairus sold and shipped its STOL Kit to a Canadian customer in Ontario, Canada (in fact, the same Canadian customer as in *Aircraft N93PC*). *Id.* at *2. Unlike in the *Aircraft N93PC* case, there was not even the appearance of a contract with an Alaskan customer to draw a connection between Stolairus's Alaska contacts and the plaintiffs' claims.

In *Hinkle v. Continental Motors, Inc.*, No. 9:16-3707-RMG, 2017 WL 4574794 (D.S.C. Oct. 12, 2017), the plaintiffs sued defendant Cirrus Industries, Inc. for injuries arising out of a plane crash in South Carolina. However, Cirrus had designed, manufactured, tested, sold, and delivered the aircraft at issue in Minnesota. *Id.* at *2. Its contacts in South Carolina consisted merely of Cirrus-authorized service centers and pilot instructors in the state and owners of other, unrelated Cirrus aircraft. *Id.* at *2-3. The aircraft at issue had never been serviced in any of those South Carolina-based service centers, and the pilot flying the aircraft had not been trained by any South Carolina-based instructors. *Id.* at *3.

Finally, in *Carpenter v. Sikorsky Aircraft Corp.*, 101 F. Supp. 3d 911 (C.D. Cal. 2015), the plaintiffs sued in California for injuries suffered when a helicopter traveling from Florida to Georgia crashed in Georgia. Several out-of-state defendants moved to dismiss for lack of personal jurisdiction. *See id.* at 922–23. The court granted their motions because there was no link between the plaintiffs’ claims and the defendants’ contacts with California. There were “no allegations that any part of the Helicopter was manufactured, designed or maintained in California.” *Id.* at 923. Rather, the Helicopter and its component parts were manufactured in Arizona and Connecticut. *Id.* at 918, 920.

The Downings’ claims differ from all the preceding cases because they arise out of and directly relate to TAI’s purposeful contacts with Washington state. Namely, their claims relate to the notices on safety and maintenance TAI sent to Mr. Losvar and other Washington owners of TAI aircraft.

F. It Is Undisputed that TAI Has Minimum Contacts with Washington and that the Exercise of Jurisdiction Would Comport with Fair Play and Substantial Justice.

There is no dispute that TAI has minimum contacts with Washington state. A defendant has “minimum contacts” with a forum state if “there [is] some act by which the defendant purposefully avail[ed] itself of the privilege of conducting activities within the forum State, thus

invoking the benefits and protections of its laws.” *Burger King*, 471 U.S. at 475 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). Here, there are over 3,000 TAI aircraft registered in Washington. CP 56 (Brodkowitz Decl., Ex. 5). Not only does TAI market, advertise, sell, and deliver its aircraft in Washington state, it keeps in contact with and provides continuing support to owners of its aircraft. For example, TAI maintains a “mobile response team” in Washington that travels throughout the state to address aircraft maintenance and other issues. CP 725 (Walsh Decl. ¶ 4). As already noted, TAI sends notices to TAI aircraft owners in Washington advising them of safety and maintenance issues concerning their aircraft. CP 56–60 (Brodkowitz Decl., Ex. 6). TAI also maintains employees in the state of Washington for both sales and product support, CP 778 (Fleming Decl. ¶ 3), and its website identifies several approved service centers located in Washington to support Washington aircraft owners, CP 62–66 (Brodkowitz Decl., Ex. 7), 700–02 (Biggs Decl, Ex. 17).

Nor is there any dispute that exercise of jurisdiction would comport with fair play and substantial justice.⁵ Fundamentally, this inquiry is intended to ensure that it is “reasonable . . . to require the

⁵ The burden is on the defendant to show that exercising jurisdiction would not comport with fair play and substantial justice. *LG Electronics*, 186 Wn. 2d at 184.

corporation to defend the particular suit which is brought [in the forum].” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980) (citation omitted). “[T]he burden on the defendant” is “always a primary concern,” but in an “appropriate case” the court may also consider that burden in light of “the forum State’s interest in adjudicating the dispute,” “the plaintiff’s interest in obtaining convenient and effective relief,” “the interstate judicial system’s interest in obtaining the most efficient resolution of controversies,” and the “shared interest of the several States in furthering fundamental substantive social policies.”⁶ *Id.*

Here, all relevant considerations weigh in favor of exercising jurisdiction. The burden on TAI to defend in Washington as opposed to Kansas is minimal. As noted, TAI advertises, markets, sells, and distributes its products in Washington state, and it provides after-sale support to owners of its aircraft in Washington state through a variety of means. In other words, TAI is familiar with this forum. Notably, TAI has litigated suits in Washington many times before. CP 716–20 (Biggs Decl., Ex. 23).

⁶ Washington has articulated the relevant factors for consideration as “the quality, nature, and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded the respective parties, and the basic equities of the situation.” *Freestone Capital Partners L.P. v. MKA Real Estate Opportunity Fund I, LLC*, 155 Wn. App. 643, 653 (2010).

Moreover, most of the relevant witnesses and evidence are located in Washington. The crash occurred here, and the aircraft was maintained here during the time immediately preceding the crash. Decedent Albert Losvar and Defendant Blair Losvar were at all relevant times residents of Washington state. CP 138 (SAC ¶ 3.1). Washington has an interest in adjudicating cases in which one of its residents died from a plane crash within its borders. Additionally, personal jurisdiction over Defendant Losvar for this suit would not exist in any other state. It would therefore favor judicial economy to maintain jurisdiction over all parties in Washington.

In sum, the elements of specific personal jurisdiction are satisfied here, and the trial court properly denied TAI's motion to dismiss this case.

V. CONCLUSION

The trial court's order denying TAI's motion to dismiss for lack of personal jurisdiction should be affirmed.

Respectfully submitted this 17th day of June, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2019, I electronically filed the foregoing **BRIEF OF RESPONDENTS SANDRA LYNNE DOWNING, THE ESTATE OF BRIAN DOWNING, KRISTYL DOWNING and JAMES DOWNING** with the Clerk of the Court using the E-Filing system and served the foregoing via E-Service and Email upon:

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

DATED this 17th day of June, 2019, at Seattle, Washington.

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