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COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

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.

Appeal from Okanogan County Superior Court
No. 15-2-00516-4
(Hon. Christopher Culp)

BRIEF OF RESPONDENT BLAIR LOSVAR

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I. STATEMENT OF THE CASE

A. FACTS OF ACCIDENT

On August 13, 2015, N6289Z, which was owned by Albert Losvar, crashed soon after takeoff near Oroville, Washington. (CP 139 ¶¶ 4.2. 4.5). Aboard were Albert Losvar and Brian Downing, both of whom died in the accident. (*Id.*)

After the accident, the fuel line from the right fuel tank was found to be nearly completely obstructed with material in the area where the fuel line connects to the fuel tank selector valve. (CP 2 ¶ 8.a). Laboratory examination of the material revealed that the obstruction contained glass fibers, like those used in glass fiber reinforced materials. (*Id.* ¶ 8.b). Glass reinforced materials are used in and around the aircraft manufacturing process, as well as in certain maintenance and service operations. (*Id.* ¶ 8.c).

The aircraft entered service in 2008. (CP 3 ¶ 8.d). At the time of the last annual inspection approximately 1 year before the accident, the aircraft had less than 300 total hours on the airframe. (*Id.*) There are no records of any post-purchase maintenance or repair event that would involve glass reinforced materials. (*Id.* ¶ 8.e).

It is the claim of the Respondents that the glass reinforced material found in the accident aircraft's fuel system was introduced into the fuel system when Textron manufactured the accident aircraft. (*Id.* ¶ 8.f). Then, sometime between manufacturing until the accident in 2015, the glass fibers and other materials from the glass reinforced material became liberated and began migrating through the fuel system with the fuel flow from normal operation of the accident aircraft. (*Id.* ¶ 8.g). As the glass fibers and other material moved through fuel system, they started accumulating at the fuel tank selector valve. (*Id.*) This accumulation progressed to the point of a near complete obstruction of the right fuel tank line. (*Id.*) 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, which, the Respondents contend, was the cause of the subject accident. (*Id.* ¶ 8.h).

B. TEXTRON CONTACTS WITH WASHINGTON

The parent/holding company, Textron Inc., describes itself as a company with \$14.2 billion in annual revenue. (CP 278-293). Textron Inc. does business through five segments: Textron Aviation, Industrial, Bell, Textron Systems, and Finance. (*Id.*) Textron Aviation accounts for 33%

of Textron's revenues, and Bell (helicopter) accounts for 23% of its revenue. (CP 295-296). The helicopter and aircraft segments together account for more than one half of Textron's total revenue, and 62% of total revenue is generated within the United States. (*Id.*) In other words, Textron's US revenues are \$8.8 billion each year, and the revenues from aircraft and helicopters is \$8 billion each year.

The Aviation segment is:

"... a leader in general aviation. Textron Aviation manufactures, sells and services Beechcraft and Cessna aircraft, and services the Hawker brand of business jets. The segment has two principal product lines: aircraft and aftermarket. Aircraft includes sales of business jets, turboprop aircraft, piston engine aircraft, and military trainer and defense aircraft. Aftermarket includes commercial parts sales, and maintenance, inspection and repair services. Revenues in the Textron Aviation segment accounted for 33%, 36% and 36% of our total revenues in 2017, 2016 and 2015, respectively."

(CP 298-389).

Textron describes its service for Cessna owners:

In support of its family of aircraft, Textron Aviation operates a global network of 18 service centers, two of which are co-located with Bell Helicopter, along with more than 350 authorized independent service centers located throughout the world. Textron Aviation-owned service centers provide customers with 24-hour service and maintenance. Textron Aviation also provides its customers with around-the-clock parts support and offers a mobile support program with over 60 mobile service units and several dedicated support aircraft. In addition, Able Aerospace Services, Inc., a subsidiary of Textron Aviation, also provides component

and maintenance, repair and overhaul services in support of commercial and military fixed- and rotor-wing aircraft.

(*Id.*) Textron has an extensive presence in Washington. The following companies are or were recently registered in Washington:

	Name	Date of Registration	Status	Stated Nature of Business
1.	Textron Aviation, Inc.	12-1-2015	Active	Wholly-owned subsidiary of Textron Inc. (CP 391-404).
2.	Textron, Inc.	12-19-1967	Active	\$14.2 billion holding company of aircraft, defense, industrial and finance companies, including Cessna, Bell Helicopter, Beechcraft, Hawker and Lycoming. (CP 406-467).
3.	Textron Ground Support Equipment, Inc.	9-9-2013	Active	Has principal place of business in Seattle, Washington. Motor vehicle, aerospace and other transportation products. (CP 469-474).
4.	Textron Business Services	12-10-1997	Active	Portfolio services for leasing companies, banks

				and portfolio managers. (CP 476-482).
5.	Textron Financial Corporation	4-17-1989	Active	Wholly-owned subsidiary of Textron Inc.; financing company, other services. (CP 484-487).
6.	Bell Helicopter Textron, Inc.	5-17-1982	Active	Wholly-owned subsidiary of Textron Inc.; motor vehicle, aerospace and other transportation products. (CP 489-493).
7.	Cessna Aircraft Company	12-14-2012	Terminated April, 2017	Aircraft manufacturer. (CP 495-521).
8.	Cessna Service Direct, LLC	10-11-2012	Terminated July, 2017	Has principal place of business in Seattle, WA (Boeing Field). Provides aircraft parts, repairs, maintenance and inspection services for Cessna aircraft. Operates as a subsidiary of Cessna Aircraft Company. (CP 523-545).

With more than 3,000 Cessna aircraft registered to Washington owners, it is clear that Textron Aviation is a major player in the Washington aircraft arena. In order to provide service and parts to its 3,000 Washington owners, Textron Aviation provides an extensive array of services to those owners:

1. Cessna maintains an “aircraft package” for all Cessna aircraft registered in Washington. That package includes original build documents, the sales history and ownership history for the aircraft, including the names and addresses of all Washington owners, and all registration information for the aircraft. (CP 547).
2. Cessna’s files contain (then) current information about Mr. Losvar, including his Washington address and the FAA registration of the aircraft in Washington. (*Id.*)
3. FAA records reveal that there are more than 3,000 Cessna airplanes registered in Washington. (CP 55).
4. Cessna forwards Service Bulletins (both Mandatory and non-mandatory), Owner Advisories, Service Letters, and other post-sale documents to all Washington Cessna owners, guiding and advising those owners about safety and maintenance issues. (CP 551-677).
 - a. As many as eleven such notices were issued regarding the subject aircraft in a single year. (*Id.*)
 - b. In the time that Mr. Losvar owned the aircraft and resided in Washington, Cessna provided him with seven such notices. (*Id.*)
5. Cessna advises the owners of its aircraft that it offers “global” support, including “general aviation’s farthest reaching network,

which includes company-owned facilities throughout the world ... and parts that ship the day you order them.” (CP 681).

6. Mr. Losvar, the Washington owner of the subject aircraft, availed himself of the Cessna support. On July 18, 2012, Mr. Losvar’s maintenance provider, XN Air, LLC, in Spokane, Washington, communicated with Cessna customer service about updating the software in the Garmin navigation system. (CP 547).
7. Through its web portal for owners of aircraft, Cessna directs owners to “Support Contacts” for owners to access, including “Service Centers, Authorized Facilities, and MSUs...” (CP 682).
8. Cessna operates “an expansive fleet of Mobile Service Units. Every MSU is equipped to deliver factory-direct support in the field, wherever you may need us. That includes service for engines, tires, brakes and more. Don’t wait. With more than 60 MSUs worldwide, we get there. Fast.” Cessna boasts: “Textron Aviation set the standard in the mobile service industry.” (CP 685; 689).
9. Cessna maintains its MSU in Seattle at Boeing Field. (CP 679-696; 698).
10. Cessna also provides aircraft owners with “Textron Aviation Parts and Distribution” regional support teams and “Aftermarket Account Management.” A specific 10-person team covers the Northwest US and Canada. (CP 686-688).
11. Cessna describes itself as a “maintenance director to watch over your aircraft...” whereby “maintenance management if transformed into a fast, easy-to-manage process you can oversee – and control – from anywhere.” The process can be “accessed from any mobile device or computer – operators can monitor a maintenance visit from start to finish, further simplifying the communications with a service center. The Cessna web portal allows aircraft owners to schedule and direct the maintenance process at the authorized service centers, to monitor progress, to

approve the purchase of parts, to receive progress notices, and to submit payments for maintenance and parts. (CP 689-690).

12. Cessna's web page directs owners to six authorized service centers in Washington, all of which are authorized to work on piston engine aircraft like Mr. Losvar's Cessna:
 - a. Crown Aviation LLC
 - b. Kenmore Air Harbor, Inc.
 - c. Ace Aviation, Inc.
 - d. Inter-State Aviation, Inc.
 - e. Aero Maintenance, Inc.
 - f. PAVCO Inc.

(CP 700-702).

13. A review of Cessna documents reveals that Cessna *requires* its owners to use Cessna Authorized Service Facilities in order to avail themselves of some of the financial benefits. (CP 551-677).
 - a. In order to receive credit for warranty work, an Owner Advisory states that the claim must be submitted by a Cessna Authorized Service Facility. (CP 579).
 - b. In some instances, the cost of parts is covered whether the part came from a Cessna authorized service facility, "or *other maintenance facilities ...*," but the labor must be performed by an authorized service facility. (CP 586).

14. Cessna's web page promises to "be there for you when you need us. ... Additionally... our technical experts can provide immediate aircraft support and also assist you with any requests regarding maintenance, inspections, parts, repairs, avionics upgrades, equipment installations, paint services and much more." (CP 694).

It is quite notable that Cessna declined to respond to discovery requesting specific information about any Washington personnel. Instead,

they supplied a corporation declaration saying that “only four” Cessna employees work in Washington. (CP 778 ¶ 3). Two of those are apparently in sales, and two are in maintenance. (*Id.*) It is presumed that the two maintenance workers handle the Mobile Service Unit maintenance and repairs described above, and there is a significant amount of revenue generated by that work. Of course, we are left to speculate, because Cessna did not provide the number of service events per year, or the amount of revenue generated by those service events and the parts sales generated in connection with them.

Likewise, Cessna has not advised the court of the specific nature of the work of the other two employees in Washington, saying only that they are in “sales.” (*Id.*) Obviously, if those people deal with aircraft sales, they likely generate millions of dollars of revenue each year. We are left to assume that Cessna wishes to hide the number and extent of its sales, maintenance and other activities in Washington, and that those contacts are significant.

Cessna is also in the business of training Washington pilots through its “Pilot Centers.” As their corporate materials reveal:

The Cessna Flight Training System has always provided industry-leading technologies to support the next generation of pilots, from ground to sky.

...

More pilots come to Cessna Pilot Centers to get their wings than any other flight school. The network has been in place for 46 years and includes more than 150 flight schools worldwide. The network continues to expand and find new partnerships and opportunities to better support the network and the flight training community. Cessna Pilot Centers use the Cessna Flight Training System, a comprehensive, proven flight-training program that produces competent, prepared and confident new pilots about 30 percent faster than the national average.

(CP 704).

Any Washington resident who is interested in learning to fly private aircraft – whether Cessna models or otherwise – are directed by Cessna’s web site to Washington Pilot Centers for instruction. (CP 707). Those Pilot Centers are located in three different Washington cities: Everett, Snohomish, and Gig Harbor, Washington. (*Id.*) It is important to note also that Cessna is expanding access to the Cessna Flight Training System (used at the Cessna Pilot Centers). Cessna now sells its Flight Training System to flight schools that are not in the Cessna Pilot Center network, so non-CPC training facilities will use the Cessna product. (CP 709).

It is also important to note that, although in the past Cessna sold its aircraft through approved dealers, Cessna shifted to a direct-to-consumer model for selling its airplanes. As of March, 2016, Cessna had only one dealer remaining in the lower 48 states. (CP 711). Cessna now embraces a model in which potential customers go directly to Cessna's web page, and the purchase transaction is handled directly with Cessna. (CP 714). The major distinction, therefore, is that a Washington resident (for example) does not do a transaction with an authorized dealer but, rather, Cessna itself deals directly with Washington residents. Cessna, in effect, has placed itself directly into the purchases of new aircraft, by eliminating the middle-man.

Cessna has also been involved in previous legal proceedings in Washington. For the counties for which there is an ability to search cases online, Cessna has been involved in lawsuits in Pierce, Clark, Spokane and King Counties on many occasions for decades. (CP 716-720). It is also notable that Cessna (including Cessna finance) has availed itself of Washington courts as a plaintiff, in at least 11 different cases. (*Id.*) It is not known how many more cases would be found by searching the remaining 35 counties.

II. ARGUMENT

A. STANDARD OF REVIEW

“[A] trial court's assertion of personal jurisdiction is a question of law” that an appellate court reviews *de novo*. *Failla v. FixtureOne Corp.*, 181 Wn.2d 642, 649, 336 P.3d 1112, 1116 (2014), *as amended* (Nov. 25, 2014). “If the trial court's ruling is based on affidavits and discovery, ‘only a prima facie showing of jurisdiction is required.’” *Precision Lab. Plastics, Inc. v. Micro Test, Inc.*, 96 Wn. App. 721, 725, 981 P.2d 454, 456 (1999) (*quoting MBM Fisheries, Inc. v. Bollinger Mach. Shop & Shipyard, Inc.*, 60 Wn. App. 414, 804 P.2d 627 (1991)). Further, an appellate court may uphold a trial court’s ruling on any theory established in the pleadings and supported by evidence. *Gross v. City of Lynnwood*, 90 Wn.2d 395, 401, 583 P.2d 1197, 1201 (1978) (“We are committed to the rule that we will sustain the trial court's judgment upon any theory established by the pleadings and supported by the proof.”)

B. PERSONAL JURISDICTION OVER TAI/CESSNA EXISTS UNDER THE FACTS OF THE DOWNING/LOSVAR CASE

1. TAI/Cessna has purposeful minimum contacts with Washington

The Washington Supreme Court’s recent decisions in *Noll v. American Biltrite, Inc.*, 188 Wn.2d 402, 395 P.3d 1021 (2017) and *State v.*

LG Electronics, 186 Wn.2d 169, 375 P.3d 1035 (2016) set forth the law in Washington with regard to the facts and circumstances that give rise to personal jurisdiction over non-resident defendants, such as TAI. These opinions provide as follows.

“The Due Process Clause of the Fourteenth Amendment sets the outer boundaries of a state tribunal’s authority to proceed against a defendant.” *Goodyear Dunlop Tires Operations, SA v. Brown*, 564 U.S. 915, 923, 131 S.Ct. 2846, 180 L.Ed.2d 796 (2011); U.S. CONST. amend. XIV. 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 due process. *Shute v. Carnival Cruise Lines*, 113 Wash.2d 763, 766-67, 783 P.2d 78 (1989) (quoting *Deutsch v. W. Coast Mach. Co.*, 80 Wash.2d 707, 711, 497 P.2d 1311, cert. denied, 409 U.S. 1009, 93 S.Ct. 443, 34 L.Ed.2d 302 (1972)).

Noll, 188 Wn.2d at 411.

The due process clause “requir[es] that individuals have ‘fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign.’” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 105 S. Ct. 2174, 85 L. Ed.2d 528 (1985) (second alteration in original) (quoting *Shaffer v. Heitner*, 433 U.S. 186, 218, 97 S. Ct. 2569, 53 L. Ed.2d 683 (1977)). Thus, a state may authorize its courts to exercise personal jurisdiction over an out-of-state defendant only if the defendant has certain minimum contacts with the state, such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice, *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945).

LG Electronics, 186 Wn.2d at 176.

Due process requires three elements be met for a court to extend personal jurisdiction: “(1) that purposeful ‘minimum contacts’ exist between the defendant and the forum state; (2) that the plaintiff’s injuries ‘arise out of or relate to’ those minimum contacts; and (3) that the exercise of jurisdiction be reasonable, that is, that jurisdiction be consistent with notions of ‘fair play and substantial justice.’” *Grange Ins. Ass’n v. State*, 110 Wn.2d 752, 758, 757 P.2d 933 (1988) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-78, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985)). The central concern of the federal inquiry is the relationship between the defendant, the forum, and the litigation. See *J. McIntyre*, 564 U.S. at 881, 131 S.Ct. 2780; *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 319, 66 S.Ct. 154, 90 L.Ed. 95 (1945).

Noll, 188 Wn.2d at 411-412; *LG Electronics*, 186 Wn.2d at 176-177.

To establish purposeful minimum contacts, the defendant must do some act that “ ‘purposefully avails 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, 105 S.Ct. 2174 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958)). A foreign distributor does not purposefully avail itself when a sale in the forum state is an isolated occurrence or when the unilateral act of a third party brings the product into the forum state. *LG Elecs.*, 186 Wash.2d at 177, 375 P.3d 1035 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980)). The stream of commerce theory also does not allow jurisdiction based on the mere foreseeability that a product may end up in the forum state. *Id.* “Instead, the defendant’s conduct and connection with the state must be such that it should reasonably anticipate being haled into court there.” *Id.* at 178, 375 P.3d 1035.

Noll, 188 Wn.2d at 413.

As discussed in both *Noll* and *LG Electronics*, “the stream of commerce cases from the United States Supreme Court in recent years

have been deeply fragmented and have produced no clear majorities. *See, e.g., J. McIntyre*, 564 U.S. 873, 131 S. Ct. 2780, 180 L. Ed. 2d 765; *Asahi*, 480 U.S. 102, 107 S. Ct. 1026.” *Noll*, 188 Wn.2d at 414. The Court in *Noll* stated that

“when a Supreme Court case is fragmented, the holding of the Court is the position that is taken by the concurring opinion decided on the narrowest grounds. 186 Wash.2d at 180-81, 375 P.3d 1035 (quoting *Marks v. United States*, 430 U.S. 188, 193, 97 S.Ct. 990, 51 L.Ed.2d 260 (1977)). Thus, we concluded that Justice Breyer’s concurring opinion in *J. McIntyre* represents the Supreme Court’s most recent holding. *Id.* at 181, 375 P.3d 1035.

Noll, 188 Wn.2d at 414. The Court in *Noll* further explained:

In *J. McIntyre*, Justice Breyer held that a foreign manufacturer’s sale of products through an independent, nationwide distribution system is not sufficient, **without something more**, for a state to assert personal jurisdiction over the manufacturer when only one product enters the forum state and causes injury. *Id.* (citing *J. McIntyre*, 564 U.S. at 888-89, 131 S.Ct. 2780 (Breyer, J., concurring)). Our court found that *J. McIntyre* thus “did not foreclose an exercise of personal jurisdiction over a foreign defendant where a substantial volume of sales took place in a state as part of the regular flow of commerce.” [citing *State v. LG Electronics*, 186 Wash.2d at 181]. And the allegations in *LG Electronics*—that the defendants dominated the global market for their product, sold their product into international streams of commerce with the intent that the product would come into Washington, and intended their price fixing to elevate prices in Washington—were sufficient to survive the motion to dismiss. [citing *State v. LG Electronics*, 186 Wash.2d at 182].

Noll, 188 Wn.2d at 414 (emphasis supplied.)

Thus, the law in Washington as set forth in *Noll* and *LG Electronics*, based upon the stream of commerce decisions by the United States Supreme Court, is as follows: An out of state defendant is not subject to personal jurisdiction were it to place its products into the stream of commerce and only one of its product enters Washington and causes injury. On the other hand, an out-of-state defendant is subject to personal jurisdiction in Washington where its products are placed into the stream of commerce with the intent that their products would come into Washington while also intending that in doing so their price fixing would elevate consumer prices in Washington.

In addition, it should be noted that the *LG Electronics* decision extensively discussed the legal principles pertinent to the stream of commerce theory of personal jurisdiction. However, the *Noll* Court declined to reconsider its analysis in *LG Electronics* because the plaintiff in *Noll* failed to allege any action by the out of state defendant “to purposefully avail itself of Washington’s laws.” *Noll*, 188 Wn.2d at 414.

With respect to the stream of commerce theory, the Court in *LG Electronics* set forth the following legal principles applicable thereto:

A foreign manufacturer or distributor does not purposefully avail itself of a forum when the sale of its products there is an “isolated

occurrence” or when the unilateral act of a consumer or other third party brings the product into the forum state. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980); *Williams v. Romarm, SA*, 410 U.S.App.D.C. 405, 756 F.3d 777 (2014). **But where a foreign manufacturer seeks to serve the forum state’s market, the act of placing goods into the stream of commerce with the intent that they will be purchased by consumers in the forum state can indicate purposeful availment.** *J. McIntyre Mack., Ltd. v. Nicaastro*, 564 U.S. 873, 881–82, 131 S.Ct. 2780, 180 L.Ed.2d 765 (2011) (Kennedy, J., plurality opinion); *id.* at 888–89, 131 S.Ct. 2780 (Breyer, J., concurring); *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 109–13, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987) (lead opinion of O’Connor, J.); *id.* at 117–21, 107 S.Ct. 1026 (Brennan, J., concurring); *id.* at 122, 107 S.Ct. 1026 (Stevens, J., concurring); *178 *World-Wide Volkswagen*, 444 U.S. at 295–97, 100 S.Ct. 559; *Grange Ins. Ass’n*, 110 Wash.2d at 761–62, 757 P.2d 933. The stream of commerce theory does not allow jurisdiction based on the mere foreseeability that a product may end up in a forum state. *See, e.g., World-Wide Volkswagen*, 444 U.S. at 295–97, 100 S.Ct. 559. Instead, **the defendant’s conduct and connection with the state must be such that it should reasonably anticipate being haled into court there.** *Id.*

LG Electronics, 186 Wn.2d at 177-178 (emphasis supplied.) The Court in

LG Electronics further elaborated as follows:

Under *J. McIntyre*, a foreign manufacturer’s sale of products through an independent nationwide distribution system is not sufficient, absent something more, for a State to assert personal jurisdiction over a manufacturer when only one product enters a state and causes injury. *Id.* at 888–89, 131 S.Ct. 2780 (Breyer, J., concurring). *J. McIntyre* did not foreclose an exercise of personal jurisdiction over a foreign defendant where a substantial volume of sales took place in a state as part of the regular flow of commerce.

(*Id.* at 181).

Based upon these legal principles and the stream of commerce holdings in *Noll* and *LG Electronics*, TAI's activities in Washington clearly meet the purposeful availment element of the due process test. As set forth herein, 3,000 Cessna aircraft that were placed in the stream of commerce by TAI/Cessna are registered in Washington, one of which was Mr. Losvar's Cessna. In addition, TAI/Cessna has targeted Washington by establishing an extensive business service model that addresses the needs of all the Cessna aircraft owners whose aircraft were put into the stream of commerce by TAI/Cessna and ended up in Washington. The particular business service model established in Washington by TAI/Cessna, by its very existence and the extensive nature thereof, necessarily encourages Washington residents to purchase both new and used Cessna aircraft and bring them to and have them registered in Washington. This extensive business service model does not distinguish between whether the aircraft was originally purchased by a Washington resident or was later purchased in the after-market from an out-of-state seller and brought to and registered in Washington, as was the case with Mr. Losvar's Cessna. Either way, once the Cessna aircraft is in

Washington, the owners thereof can, as did Mr. Losvar, take advantage of the array of services established by TAI/Cessna for that purpose.

Thus, consistent with the stream of commerce principles set forth in *Noll* and *LG Electronics*, purposeful availment for due process purposes exists with respect to TAI/Cessna in this case. TAI/Cessna has targeted Washington by way of an extensive business service model. This business model by its very nature is intended to encourage Washington residents to purchase the TAI/Cessna aircraft that it places into the stream of commerce. Under these circumstance, TAI/Cessna's conduct and connection with Washington is such that it should (and undoubtedly does) reasonably anticipate being haled into court in Washington when one of its Cessna aircraft crashes in Washington, as did Mr. Losvar's.

2. The crash of N6289Z arises out of, relates to, and is a direct and inherent consequence of TAI/Cessna's purposeful contacts with Washington

As set forth in detail herein, TAI/Cessna has purposefully availed itself of the privilege of doing business in Washington. It has done so by establishing a business model in Washington which includes providing a multitude of services, including maintenance services, to all of the 3,000 Cessna aircraft that were placed into the stream of commerce by

TAI/Cessna and made their way to Washington. This purposefully established business model necessarily is designed to encourage Washington residents to buy Cessna aircraft, whether directly from Cessna or out-of-state in the aftermarket, and be conveniently serviced and maintained in Washington thereafter.

Inherent in the activity of aviation and in TAI/Cessna's business aviation model focused upon Washington is that aircraft can and do crash. In fact, in years past, flying was considered an abnormally dangerous activity for legal liability purposes because of the number of accidents that were associated with flying. Although the number of crashes has diminished significantly due to numerous regulations and safety practices, the fact is that aircraft can and still do crash. As such, inherent in the activity of aviation and in TAI/Cessna's business aviation model focused upon Washington is the fact that there will be the occasional crash in Washington of a Cessna aircraft owned by Washington resident. As such, the crash of N6289Z in Washington, which took the lives of Mr. Losvar and Mr. Downing, arises from, relates to, and is a direct consequence of the purposeful and extensive business model that TAI/Cessna has established in Washington.

3. Personal jurisdiction over TAI does not offend notions of fair play and substantial justice

The final prong of the personal jurisdiction analysis requires that jurisdiction not offend notions of fair play and substantial justice. *Shute v. Carnival Cruise Lines*, 113 Wn.2d at 763, 767, 783 P.2d 78 (1989). This prong involves a balancing test where the court considers the quality, nature and extent of the defendant's activities in the 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. (*Id.*) Here, TAI/Cessna's contacts in Washington are so extensive that it should and undoubtedly does expect to be haled into court in this forum. TAI/Cessna's contacts are sufficient enough that it does not even contend in its brief that the third prong of the due process test is not met. Further, TAI/Cessna has clearly benefited from the laws and protections of Washington as it has been a plaintiff at least eleven times in the Washington courts. (CP 716-720).

C. ARGUMENT IN RESPONSE TO ISSUES RAISED BY TAI/CESSNA

1. The holdings of out of state cases are immaterial

TAI/Cessna has cited a number of out of state cases in support of its appeal. However, none of the holdings of these other cases, which are based upon the facts thereof and the personal jurisdiction law of these other states, are material to the factual and legal issues in this case. Here, the Respondent has met its burden of proving personal jurisdiction over TAI/Cessna under Washington personal jurisdiction law by establishing that (1) the tort that killed Mr. Losvar and Mr. Downing occurred in Washington, (2) TAI/Cessna has a purposeful, extensive, and well-established business model targeting Washington pursuant to which TAI/Cessna encourages and intends that Cessna aircraft placed into the stream of commerce end up in Washington either by way of direct purchase or by after-market purchase, (3) the accident in Washington arises out of, relates to, and is a direct and inherent consequence of the business model TAI/Cessna established in Washington to service the Cessna aircraft its business model encourages and intends will end up in Washington, and (4) personal jurisdiction over TAI/Cessna does not offend notions of fair play and substantial justice, which TAI/Cessna concedes.

2. Any applicable causation test has been met

TAI/Cessna devotes extensive argument in its brief related to the “but for” test applicable to jurisdictional solicitation and transaction cases. However, the Downing case is not a solicitation or transaction case; it is a jurisdictional tort case.

With respect to the other causation arguments advanced by TAI/Cessna, the Respondent has met any causation burden it has under the due process test, as discussed herein. It has done so by proving that TAI/Cessna has an extensive business model that purposefully targets the state of Washington and that the crash of N6289Z in Washington arises out of, relates to, and is a direct and inherent consequence thereof.

III. CONCLUSION

The trial court, in accord with Washington case law and due process considerations, properly determined that it has personal jurisdiction over TAI/Cessna with respect to the claims and cross-claims in this matter. The Respondent requests that this Court affirm the holding of the trial court and remand the case for further proceedings.

RESPECTFULLY SUBMITTED this 17th day of June, 2019.

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CERTIFICATE OF SERVICE

I, Lilly B. Tang, hereby certify under penalty of perjury under the laws of the State of Washington, that on June 17, 2019, I served a copy of the foregoing document via Washington State Appellate Courts’

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