Supreme Court No. 1036281

SUPREME COURT OF THE STATE OF WASHINGTON

No. 852027

COURT OF APPEALS, DIVISION ONE, OF THE STATE OF WASHINGTON

JONATHAN T. SORRENTINO, as Personal Representative of the Estate of THOMAS R. SORRENTINO,

Plaintiff/Respondent,

v.

VOLKSWAGEN GROUP OF AMERICA, INC.

Defendant

VOLKSWAGEN AKTIENGESELLSCHAFT,

Defendant/Petitioner.

ANSWER TO VOLKSWAGEN AKTIENGESELLSCHAFT'S PETTION FOR REVIEW

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I. INTRODUCTION

In December 2022, a unanimous jury awarded Thomas "Tony" Sorrentino's Estate a $5.75 million verdict against co-defendants Volkswagen Group of America ("VWoA") and Volkswagen Aktiengesellschaft ("VWAG") arising from the defendants' manufacture and sale of asbestos containing brakes to the dealership in Spokane where Tony worked from 1972-1975. The verdict was joint and several against the Volkswagen entities and VWoA does not seek review of the Court of Appeals decision affirming the trial court. Indeed, VWAG acknowledges that Sorrentino's judgment against VWoA will stand regardless of the outcome of its petition. Because Sorrentino is actively taking steps to enforce the judgment against VWAG's wholly owned subsidiary, it is doubtful that VWAG will maintain standing to conclude its appeal even if the Court accepts review.

VWAG manufactured the Volkswagen vehicles and asbestos-containing replacement parts that Tony installed on those vehicles. VWAG admits that it sought to sell as many

Volkswagen vehicles as possible in the United States – including in Washington State, where it knew twenty-six authorized Volkswagen dealerships were located. VWAG advertised, developed mandatory standards for vehicle maintenance in the United States, created service literature in Germany that service mechanics in Washington State dealerships used to achieve VWAG's customer service standards in this forum. Despite these and other facts, VWAG continues to resist jurisdiction in Washington.

The trial court repeatedly denied VWAG's efforts to dismiss the case on jurisdictional grounds under CR 12(b)(2), allowed Sorrentino to amend his Complaint, and permitted jurisdictional discovery of VWAG in Brussels, Belgium. VWAG's petition neglects to mention that VWAG also sought discretionary review in Division 1 of the Court of Appeals on personal jurisdiction shortly before trial in 2022, which was also denied. *See* COA No. 84589-6-1. After considering all of the

evidence submitted in pretrial proceedings and at trial, the trial court again denied VWAG's motions to dismiss.

Division 1 of the Court of Appeals affirmed the trial court's extensive findings of fact and conclusions of law under case law finding that a global manufacturer's own contacts with the forum are sufficient to confer personal jurisdiction on that entity and that actions of intermediaries are relevant to assessing contacts. *See FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.,* 175 Wn. App. 840, 309 P.3d 555 (2013); *Duell v. Alaska Airlines, Inc.,* 26 Wn. App. 2d 890, 530 P.3d 1015 (2023).

VWAG's petition ignores or distorts these cases and fails entirely to cite the United States Supreme Court's most recent decision governing personal jurisdiction, which happens to involve a multinational automotive manufacturer. *See Ford Motor Company v. Montana Eighth Judicial District Court*, 592 U.S. 592, 141 S. Ct. 1017, 209 L. Ed. 2d 225 (2021). Instead, VWAG misrepresents foreign and distinguishable case law to suggest that to impute contacts of the subsidiary to the parent, a

plaintiff must establish that the one is an alter ego of the other. This is neither the law nor the basis for jurisdiction over VWAG under these facts.

VWAG's final attempt to challenge jurisdiction in this case should be rejected. As the trial court and Division 1 found multiple times, the record is replete with evidence that VWAG reached out beyond its home to sell hundreds of thousands of its asbestos containing vehicles and replacement parts to the United States – including to Washington State, that it created service literature for those vehicles that were intended for dealerships in Washington State, and that it strictly controlled marketing, training, and advertising for its vehicles in Washington State.

II. ISSUES PRESENTED FOR REVIEW

1. Should this Court deny review because Division 1's Opinion doesn't raise any significant legal questions that were not previously addressed in *Ford, Duell, LG Electronics* or other jurisdictional cases?

2. Is review by this Court inappropriate where Sorrentino is seeking to enforce the joint and several judgment against

VWoA and any proceedings in this Court could have no practical effect in this case?

3. Should review be denied where the Court's application of a prima facie standard was not erroneous, prejudicial, or inconsistent with the holdings in *LG Electronics?*

III. STATEMENT OF THE CASE

A. VWAG Sold Asbestos Containing VWAG Vehicles and VWAG Asbestos Replacement parts in the United States Through VWoA.

VWAG is a German automotive manufacturing company that sells vehicles and replacement parts throughout the world. RP 1045-46. In 1955, VWoA was incorporated as VWAG's wholly owned subsidiary. RP 838, 842; Ex. 207. VWAG and VWoA entered into importer agreements, through which VWAG appointed VWoA as the exclusive importer for Volkswagen products in the United States and directed VWoA to create a national distributor and dealer network. RP 843, 851-52; Ex. 205. By the early 1970s, Volkswagen had over 200 dealers in the United States and 14 distributors, including Riviera Motors—an Oregon distributor responsible for supplying the 26

Washington dealerships with Volkswagen products. RP 864, 868-69; Ex. 204.

Between 1972 and 1975, VWAG sold hundreds of thousands of vehicles each year to VWoA with the expectation that VWoA would resell them through the United States distributor network. RP 1049; Ex. 205. VWoA also sold Volkswagen replacement brakes and clutches to its distributor network. RP 863, 878. Alfred Ströhlein, VWAG's designated CR 30(b)(6) representative, chief legal officer, and deputy general counsel testified it was "correct" to say that the "importer agreement included Washington State." In addition, Ströhlein agreed that VWAG's "business objective was to have customers purchases as many [VWAG] vehicles as possible throughout each of the U.S. States, *including Washington state." Decision* at 30 (emphasis in original).

B. VWAG Required its Dealers to Abide by Corporate Standards Developed in Germany and Developed Training to Ensure Consistent Service.

The importer agreement instructed VWoA to ensure that dealership mechanics were thoroughly trained in special Volkswagen courses. RP 856; Ex. 205. VWAG created Volkswagen training and printed materials in Germany, including classroom instruction put on by distributors and repair literature that was sent to all dealers. RP 857-58. Because VWAG engineered and built Volkswagen vehicles, it supplied the information that formed the basis for the trainings. RP 858-59. Dealership mechanics would take courses at the distributorship and convey information learned to other dealership mechanics. RP 858; Ex. 235.

VWAG also created and printed workshop manuals and supplemental service bulletins in Germany for dissemination to Volkswagen dealers. RP 859-60, 912-13; Ex. 216, 217, 230, 231. VWoA created service circulars for dealership mechanics. RP 896, 899. A full set of repair manuals for all vehicles and all

systems was sent to dealers annually. RP 912. These materials included instructions on brake maintenance. RP 914-15.

VWAG, through the importer agreement, required dealers, including United Volkswagen, to enter into standard dealership agreements. RP 869; Ex. 204, 222. These agreements directed United Volkswagen to sell genuine Volkswagen parts or parts expressly approved by Volkswagen and comply with Volkswagen's operating standards. Ex. 222. The agreements also required United Volkswagen to send personnel to Volkswagen's special training courses. Ex. 222. Henry Proctor, the shop foreman at United Volkswagen in the early-1970s attended such a training at Riviera Motors, the regional distributor for Washington, in 1968. Exs. 204, 235.

From 1972 to 1975, all Volkswagen brakes and clutches contained asbestos. RP 877-78. Yet, neither VWAG nor VWoA provided warnings to dealers or mechanics about asbestos hazards. RP 878-79, 915, 1083-84.

C. Tony Sorrentino Died From Cancer Caused By Exposure to Asbestos From VWAG Automotive Friction Products.

Tony Sorrentino died of mesothelioma in February 2021 caused by his occupational exposures to asbestos-containing friction products. Ex. 1; RP 1310-12, 1345-46. Tony worked at United Volkswagen in Spokane from 1972 to 1975. Ex. 2; RP 1345-46, 1709-10. When United Volkswagen first hired Tony, he performed oil changes, but it was only a few months before he was trained in brake replacements. RP 1701, 1712-13. From then on, Tony performed "at least four or five" brake jobs a week, amounting to hundreds of brake jobs during his years at United Volkswagen. RP 1780.

Tony testified that 99.9 percent of his work was on Volkswagen vehicles, and he primarily used Volkswagen replacement parts, including brake shoes and pads. RP 1710, 1723.

Shop foreman, Henry Proctor, taught Tony how to replace brakes. RP 1713-14. Tony relied on this training, as well as a

binder of reference materials created by Volkswagen. RP 1819. Tony detailed the procedure for replacing brakes, explaining that he used compressed air to remove dust, which would "throw a plume of brake dust cloud into the air." RP 1716-18.

IV. ARGUMENT WHY THE COURT SHOULD DENY REVIEW

A. The Court of Appeals Decision Does not Raise any Constitutional Issues or Issues of Substantial Public Interest that the United States Supreme Court and This Court Have Not Already Addressed.

This Court should deny review because the Court of Appeals opinion does not raise any significant questions of law under the Constitution nor does it address issues of significant public interest. *See* RAP 13.4(b)(3)-(4). Instead, the decision simply assessed the voluminous factual record on jurisdiction in the trial court proceedings below and applied those facts to existing case law. *See, e.g. Ford Motor Co.,* 592 U.S. 351; *State v. LG Electronics, Inc.,* 186 Wn.2d 169, 176, 375 P.3d 1035 (2016); *FutureSelect.,* 175 Wn. App. at 885-86.

The Court of Appeals' opinion affirmed the principle that: "[m]odern commerce demands personal jurisdiction throughout the United States of large manufacturers." *Downing v. Losvar*, 21 Wn. App. 2d 635, 665, 507 P.3d 894 (2022). As the Court's opinion explained, a court's exercise of jurisdiction over a nonresident like VWAG must comport with the state's long-arm statute and the Fourteenth Amendment's due process clause. *Duell,* 26 Wn. App. 2d at 896.

Jurisdiction can be general or specific. *Sandhu Farm Inc. v. A&P Fruit Growers Ltd.*, 25 Wn. App. 2d 577, 583, 524 P.3d 209 (2023). Because VWAG is not "essentially at home" in Washington—or anywhere in the United States—general jurisdiction does not apply. *See id.* For specific jurisdiction, "[a]n out-of-state defendant must have some minimum contacts with the forum so that personal jurisdiction will not offend 'traditional notions of fair play and substantial justice." *Id.* at 582 (quoting *Int'l Shoe Co. v. State of Wash.*, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945)). The United States Supreme

Court recently affirmed the test for specific jurisdiction in *Ford Motor, Co.,* 592 U.S. 592. "Under *Ford*, for specific jurisdiction, the defendant must (1) purposely avail itself of the privilege of conducting activities within the forum state, and (2) the plaintiff's claims must arise out of or relate to the defendant's contacts with the forum." *Duell*, 26 Wn. App. 2d at 899. When considering these prongs, "a strong showing on one axis will permit a lesser showing on the other." *Downing*, 21 Wn. App. 2d at 659. VWAG rightly does not challenge the second prong as Tony's mesothelioma is the direct result of its sales of asbestos containing friction products without adequate warnings.

1. VWAG Purposefully Availed Itself of the Privilege of Doing Business in Washington.

VWAG's contention that the Court of Appeals decision based its decision "solely on its subsidiary's Washington contacts" and its "general interest in its subsidiary's doing business in the forum" is belied by the appellate opinion and the extensive evidentiary record. *See* VWAG's petition at 2. The Court of Appeals specifically addressed *Ford*'s requirement that

"the contacts between the non-resident defendant and the forum state must show that the defendant deliberately reached out beyond its home." *Duell,* 26 Wn. App. 2d at 901 (quoting *Ford* 592 U.S. at 358); *Decision* at 28. Furthermore, the Court of Appeals considered the United States Supreme Court's holding "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." *Noll v. Am. Biltrite, Inc.,* 188 Wn.2d 402, 414, 497 P.2d 1311 (2017) (emphasis added) (citing *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 888-89, 131 S. Ct. 2780, 180 L. Ed. 2d 765 (2011)).

A foreign manufacturer like VWAG purposefully avails itself of a forum when the sale of its products there is not "random, isolated, or fortuitous." *Ford*, 592 U.S. at 359. "The continuing conduct of a nonresident defendant intended to preserve and enlarge an active market in the forum state

constitutes purposeful activity in the forum state and indicates that the presence of the defendant's products in the forum state is not fortuitous, but the result of deliberate sales efforts." *Downing*, 21 Wn. App. 2d at 665. Where a foreign manufacture 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." *LG Elecs.*, 186 Wn.2d at 177 (*citing to J. McIntyre Mack., Ltd. v. Nicastro*, 564 U.S. 874, 881-82, 131 S. Ct. 2780, 180 L. Ed. 2d 765 (2011)). In other words, "when a corporation delivers a product to the stream of commerce with the expectation that consumers will purchase the goods in the forum state, the state gains personal jurisdiction over the corporation." *Downing*, 21 Wn. App. 2d at 659. "Designing the product for the market in the forum state, advertising in the forum state, establishing channels for providing regular advice to customers in the forum state, or marketing the product through a distributor who has agreed to serve as a sales agent in the forum

state entail purposeful availment." *Id*. at 664 (citing *Asahi Metal Indus. Co. v. Super. Ct.*, 480 U.S. 102, 112, 107 S. Ct. 1026, 94 L. Ed. 2d 92 (1987)).

VWAG's corporate representative, Alfred Ströhlein confirmed that it was correct to say that the importer agreement included Washington state. *Decision* at 30. Ströhlein also agreed that it was VWAG's business objective to have customers purchase as many [VWAG] vehicles as possible throughout each of the United States, including Washington State. *Compare LG Elecs.*, 186 Wn.2d at 177 ("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."). Ströhlein further testified that VWAG's importer agreement *required* VWoA to market VWAG's automobiles in Washington. *See Downing,* 21 Wn. App. 2d at 664 (holding that marketing a product through a distributor who has agreed to serve as a sales agent in the forum state entails purposeful availment). These acts demonstrate that VWAG reached out

beyond its home and directed acts specifically to the forum in this case – Washington State. *Duell,* 26 Wn. App. 2d at 901 (quoting *Ford* 592 U.S. at 358)

In addition to Ströhlein's testimony, the Court of Appeals found that specific provisions of the importer agreement also indicated purposeful availment. *Decision at* 31-32. For example, the importer agreement states that the "importer shall maintain a place of business in a manner reasonable satisfactory to VW AG." *Id.* It includes specific requirements for the layouts of dealerships such as a requirement for a salesroom, repair shop, and an inventory of VWAG parts. *Id.* In addition, the agreement indicated sweeping control of VWoA's operations by requiring that the importer (VWoA) "safeguard an in every possible way promote the interests of VW and the favorable reputation of VW products" and that VWoA "will give due consideration to all reasonable directives and suggestions of VW relating thereto." *Id.* The importer agreement required that technical personnel be thoroughly trained in special Volkswagen [VWAG] courses and

thoroughly instructed about all new suggestions of VW for the servicing and repair of VW products. *Id.* VWoA was required to provide at least one complete set of Volkswagen [VWAG] customer service literature per repair shop. *Id.* According to Ströhlein, these bulletins were made "to ensure that the standard of quality was passed down from VWAG to VWoA and, ultimately to distributors and dealers." *Decision* at 32.

VWAG's efforts to create uniform standards of customer service in Washington likewise demonstrate purposeful availment. Compare *Downing*, where Division Three found that a foreign corporation had "extensive contacts" with Washington. 21 Wn. App. 2d at 642. There, defendant Textron did not own real estate in Washington; nor did it publish advertisements specifically targeting Washington residents. *Id*. at 649-50. But its predecessor, Cessna, sent notices and bulletins to customers in Washington, offered service for the planes in Washington, and advertised on its "mobile response truck." *Id*. at 643-50. In assessing Textron/Cessna's contacts, the Court also noted that

Washington was home to 3,040 Cessna aircraft, and that Cessna encourages those customers to fly, maintain, service, and resell the planes in Washington. *Downing,* 21 Wn. App. at 669. These contacts parallel VWAG's own efforts to facilitate the sale and service of Volkswagen vehicles in Washington and maintain corporate identity standards of sales and service in Washington's 26 dealerships. VWAG required its Washington dealerships to follow VWAG directives about service, sales, and promotion. Further, VWAG drafted, printed, and supplied its Washington dealers and mechanics with manuals and service bulletins on automotive maintenance, including brake and clutch repair, and required its Washington dealers to hire service managers trained by VWAG. In fact, communication went both ways. VWoA surveyed dealers about mechanical performance such as brake squeaking and would send the surveys to VWAG "so Germany could try to resolve [the] issue to better serve customers." Ex. 215; RP 905-08.

Comparison to *Ford*, too, is instructive. Ford is incorporated in Delaware and headquartered in Michigan, "[b]ut its business is everywhere." 592 U.S. at 355. It advertised, sold, and serviced its vehicles in the forum. *Id.* Under this "paradigm example" of specific jurisdiction, Ford's contacts with the forum were so clear that it agreed that the purposeful availment prong was met. *Id.* at 356, 361. Volkswagen's contacts are almost identical to Ford's, yet VWAG resists jurisdiction on the sole basis that it relied on its United States' subsidiary to act on its behalf in this forum. VWAG's argument is misguided.

2. VWAG Misconstrues the Relevance of Indirect contacts and Actions of Subsidiaries in the Court's Jurisdictional Analysis.

Direct contacts are not required for specific jurisdiction. *World-Wide Volkswagen v. Woodson*, 444 U.S. 286, 297, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980) (jurisdiction is reasonable when the sale of a product arises from the efforts of the manufacturer or distributor to directly or indirectly serve the market); *Downing*, 21 Wn. App. 2d at 664-65 ("The fact that the

manufacturer deals with the residents of the state indirectly rather than directly is not determinative"). For instance, in *LG Electronics*, the Washington Attorney General contended that foreign electronics manufacturers conspired to fix prices for sales of large volumes of cathode ray tube ("CRT") products, which they intended to be incorporated into products sold in large quantities in Washington state. 186 Wn.2d at 173. The defendants argued that they did not sell products directly to Washington and did not conduct business in Washington. *Id*. at 174. Unconvinced, the Court found sufficient facts to establish a prima facie case of purposeful minimum contacts because the defendants (1) "dominated the global market for CRTs" and (2) sold CRTs into the international streams of commerce with the intent that the CRTs would be incorporated into millions of CRT products sold across the United States and in large quantities in Washington." *Id*. at 182. This case is more compelling than *LG Electronics*, VWAG did much more than simply place its automobiles into the stream of commerce.

VWAG directed its subsidiary to make sure it happened, establishing dealers throughout Washington for that purpose. VWAG's contacts continued post-sale through its training programs and imposition on authorized dealerships of customer service standards.

This Court recently denied review of a Division 1 decision applying the same reasoning and rejected the contention VWAG makes here – that actions through an intermediary cannot confer jurisdiction. *See Duell*, 26 Wn. App. 2d at 900-01. There, the Washington resident plaintiff was injured when the plane on the third leg of a trip from Washington to Alaska crashed. *Id.* at 895. PenAir, a Delaware company headquartered in Alaska, operated the flight between two Alaska cities. *Id.* at 894. PenAir contested purposeful availment, asserting that it did not own property or conduct any operations in Washington, or solicit business or direct any actions toward Washington residents. *Id.* at 900. The Court of Appeals disagreed, observing that PenAir contracted with Alaska Airlines to market and sell its Alaska flights on

PenAir's behalf. *Id.* at 894, 902. The Court of Appeals found no material distinction between PenAir contracting with Alaska Airlines to market in Washington on PenAir's behalf and PenAir marketing in Washington on its own behalf. *Id.* at 902. Like in *Duell*, VWAG used contracts with VWoA to intentionally reach beyond its home and exploit the market in Washington and establish Volkswagen's presence here. *See id.*

VWAG once again contends that the Court of Appeals erred when analyzing it subsidiaries acts in the forum. Washington's long-arm statute expressly allows courts to assert personal jurisdiction over a principle for an agent's acts. RCW 4.28.185(1). And case law confirms that actions of a subsidiary taken on behalf of and for the benefit of a principle may be considered in assessing personal jurisdiction. *FutureSelect,* 175 Wn. App. at 885-94. *FutureSelect* acknowledged that the test for imputing contacts to a parent is far from clear. *Id*. at 888-90. But the Court focused on the activities of the parent company and ultimately found allegations that the

parent controlled and managed the acts of its subsidiary that gave rise to the plaintiff's injury and benefited from those acts sufficient to establish purposeful availment. *Id*. at 892-93. This record establishes VWAG's control over the specific activities that injured Tony and demonstrates that VWAG benefited from the acts of its subsidiary, creating the United States market for Volkswagen products and maintaining Volkswagen's favorable reputation. RP 4220-21, 4262. Contrary to VWAG's arguments and misleading citations to *FutureSelect*, the Court may consider VWoA's acts taken at the direction of and for the benefit of VWAG in analyzing minimum contacts.

VWAG's contends that Sorrentino must establish an alter ego or some other special relationship as a threshold test to impute a subsidiary's contacts to the parent.[1] This is a blatant

[1] VWAG raised this argument only in passing to the Court of Appeals. VWAG's failure to fully present its theory to the Court of Appeals makes this an inappropriate case to consider the issue. *See Pappas v. Hershberger*, 85 Wn.2d 152, 530 P.2d 642 (1975) (declining review issues that were abandoned in the Court of Appeals).

misrepresentation of law. For example, VWAG relies on *Daimler AG v. Bauman*, 517 U.S. 117, 134 S. Ct. 746, 187 L. Ed. 2d 624 (2014), for the proposition that an alter ego relationship is required to impute contacts. VWAG neglects to mention that *Daimler* analyzed general, not specific, jurisdiction. *Daimler* clarified that the actions of an agent may be relevant to specific jurisdiction, and "a corporation can purposefully avail itself of a forum by directing its agents or distributors to take action there. *Id*. at 135 n.13 (emphasis added). After all, "'a corporation is a distinct legal entity that can only act through its agents.'" *Id.* quoting 1 W. Fletcher, Cyclopedia of the Law of Corporations § 30 (Supp. 2012-2013)).

This is not a close case. VWAG's contacts with Washington were "not random, fortuitous or attenuated." Instead, they were part of VWAG's systematic effort to market and sell its vehicles in Washington, guide Volkswagen service people in Washington, and dictate the means and manner that Volkswagen dealerships in Washington represented the

Volkswagen brand. The Court of Appeals reached the only rational result. Indeed, several other jurisdictions have found personal jurisdiction over VWAG under similar facts. For example, in a recent decision involving emissions tampering, the Texas Supreme Court relied heavily on the importer agreements between VWAG and VWoA to find that VWAG had established contacts with Texas through their direct contractual control over VWoA and indirect control over the dealerships. *Volkswagen Aktiengesellschaft*, 669 S.W.3d 399, 415 (Tex. 2023). *See also Mich. Motor Techs. LLC v. Volkswagen Aktiengesellschaft*, No. 19-10485, 2020 WL 2893038, at *1 (E.D. Mich. July 10, 2020) ("the idea that an American federal court cannot enforce the patent laws against a German company that manufacturers thousands of cars intended for distribution in this country is not supported by the governing law or, coincidentally, by common sense"). *See also Opheim v. Volkswagen Aktiengesellschaft*, No. 20-02483, 2021 WL 2621689, *2-*3 (NJ. June 25, 2021) (finding a prima facie case of personal jurisdiction over Audi

AG, who VWoA acts as importer to subject to an importer agreement with Audi). VWAG also fails to cite, let alone distinguish, these cases, which confirm – contrary to VWAG's assertions – that this case is no outlier.

B. This Case is the Wrong Vehicle to Address VWAG's Jurisdictional Arguments Because the Joint and Several Verdict Can Be Enforced Against VWoA.

There are also practical reasons for the Court to deny review in this case. The verdict against VWoA and VWAG was joint and several. VWoA does not contest the Court of Appeals decision affirming the verdict and acknowledges that the judgment against VWoA stands. *See* VWAG's Petition at 2 Because the verdict is joint and several, Sorrentino can and will seek enforcement of the *full* judgment against VWoA. *Sofie v. Fibreboard Corp.*, 112 Wn. 2d 636, 668-69, 771 P.2d 111 (1989) (holding that defendants are jointly and severally responsible for the entire amount of plaintiff's damages in an asbestos case).

Sorrentino has filed a motion for a partial mandate as to VWoA only. *See* Appendix A; *In re Estate of Foster,* 55 Wn.

App. 545, 554, fn.1, 779 P.2d 272, 277 (1989) (directing the Clerk of Court to issue a partial mandate as to all defendants except Raymark in a mesothelioma case). Thus, it is likely that the judgment against VWAG is satisfied prior to hearing even if the Court accepts review, leaving no adverse party with an interest in VWAG's appeal. *Sofie,* 112 Wn.2d at 668-69. Even if remaining issues of indemnity or contribution between VWAG and its wholly owned subsidiary VWoA could maintain standing (doubtful), those potential controversies have not been litigated. Sorrentino's lack of financial interest in this petition undermines the actual controversy requirement for standing. This is simply the wrong vehicle for the Court to revisit the settled rules surrounding personal jurisdiction.

C. The Court of Appeals' Articulation of a Prima Facie Standard, Even if Erroneous, Does Not Change the Outcome of This Case and Has No Implications in Other Cases.

VWAG fails to create an issue of substantial interest from the Court of Appeal's application of a prima facie standard of review, rather than a preponderance standard. The Court of

Appeals correctly noted that VWAG never requested an evidentiary hearing or special jury interrogatories. *Decision* at 27 n.12. Thus, its application of the prima facie standard is not clearly erroneous. Moreover, although the Court of Appeals articulated a lower standard of review, in effect it applied the preponderance standard. In reaching its decision, the Court of Appeals examined the extensive factual record was developed through a deposition of VWAG's legal officer in Europe, multiple pretrial motions with scores of exhibits, a Div. 1 discretionary review hearing and decision, and Sorrentino's case-in-chief with testimony of VWAG witnesses. The trial court considered all of this evidence and issued detailed findings of fact and conclusions of law which were upheld on appeal. CP 11703–09; RP 1938–53. The fact remains that VWAG was afforded its due process.

Whether the Court of Appeals applied a prima facie standard, substantial evidence standard, or preponderance of evidence standard, the result would be exactly the same –

VWAG's extensive contacts with Washington and those of its American distributor VWoA- were more than enough to establish purposeful availment. VWAG does not identify any evidence that the Court of Appeals failed to consider or explain how the prima facie standard led to the wrong result.

Significantly, VWAG does not claim that it was denied the opportunity to submit any evidence to the trial court. After Sorrentino rested his case, RP 1920, VWAG renewed its CR 12(b)(2) motion, RP 1931. The trial court—and the Court of Appeals—considered all evidence presented. VWAG's petition cites to no rebuttal evidence because it submitted none, declining the trial court's invitation to supplement the record and renew its motion. RP 1957. To the extent the Court of Appeals erred in applying the prima facie standard, it was harmless. *See State v. Evans,* 96 Wn.2d 1, 4-5 633 P.2d 83 (1981) (affirming the Court of Appeals' harmless error result while acknowledging the Court of Appeals applied a less rigorous standard of review than mandated by the United States Supreme Court).

Finally, the Court of Appeals' statements of law are consistent with past jurisdictional opinions. For example, the Court correctly held that allegations in the Complaint can satisfy the prima facie standard. *Id. LG Electronics,* 186 Wn.2d at 176. The opinion also does nothing to alter the prior holding in *LG Electronics* that once an evidentiary hearing is held, the standard of review is a preponderance of evidence. More importantly, the Court of Appeals never suggested that allegations in the complaint alone can meet a preponderance standard in any case. Rather, the Court simply reviewed the factual record under the lens of substantial evidence and prima facie standards because it reasoned no evidentiary record had been requested. This Court need not weigh in on this issue because the Court of Appeal's decision does not create new standards or conflict with any existing precedent and there is no risk that this unpublished decision will be cited for new principles of law. *Cf.* RAP 13.4(b)(1)(2).

V. CONCLUSION

For all of the foregoing reasons, the plaintiff respectfully asks this Court to deny review.

I certify that this brief contains 4,969 words in compliance with RAP 18.17(c).

Signed in Seattle, Washington on the 20th day of December 2024.

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Appendix A

No. 85202-7-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

JONATHAN T. SORRENTINO, as Personal Representative of the Estate of THOMAS R. SORRENTINO,

Plaintiff/Respondent,

v.

VOLKSWAGEN GROUP OF AMERICA, INC.,

Defendant/Appellant.

RESPONDENT'S MOTION FOR PARTIAL MANDATE

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I. INTRODUCTION

Jonathan T. Sorrentino, as Personal Representative of the Estate of Thomas R. Sorrentino, Respondent, asks for the relief designated in part two.

II. STATEMENT OF RELIEF SOUGHT

Pursuant to RAP 12.5, plaintiff/respondent Jonathan T. Sorrentino asks the Court to issue a partial mandate as to Volkswagen Group of America because this Court's opinion terminated review as to it.

III. FACTS RELEVANT TO MOTION

In December 2022, a unanimous jury awarded Thomas "Tony" Sorrentino's Estate a $5.75 million verdict against co-defendants Volkswagen Aktiengsellsheft ("VWAG"), the German parent company, and Volkswagen Group of America ("VWoA"), the United States subsidiary. The jury found that these Volkswagen entities' manufacture and sale of asbestos containing brakes to the dealership in Spokane where Mr. Sorrentino worked from 1972-1975 was the cause of his

mesothelioma cancer and death. The verdict was joint and several against the Volkswagen entities. *See Sofie v. Fibreboard Corp.*, 112 Wn. 2d 636, 668-69, 771 P.2d 111 (1989) (holding that defendants are jointly and severally responsible for the entire amount of plaintiff's damages in an asbestos case).

VWAG and VWoA appealed the jury's verdict against them, challenging the sufficiency of evidence to support the verdict and the trial court's instructions to the jury. VWAG, individually, also challenged the trial court's exercise of personal jurisdiction over it. This Court affirmed the verdict against both Defendants and subsequently denied their joint motion for reconsideration. VWAG alone petitioned the Washington State Supreme Court for review. The sole issue raised in the petition is personal jurisdiction over VWAG.

VWoA does not seek review of the Court's decision affirming verdict. Indeed, VWAG acknowledges that Sorrentino's judgment against VWoA will stand regardless of

the outcome of its petition. VWAG Petition at 2 ("Sorrentino's judgment against Volkswagen America will thus stand, regardless of this Court's ruling."). Thus, because liability is joint and several, VWoA is responsible for satisfying the total judgment.

IV. GROUNDS FOR RELIEF AND ARGUMENT

RAP 12.5 governs the clerk of the appellate court's authority to issue a mandate. The rule provides in pertinent part, "The Clerk of the Court of Appeals will issue the mandate for a Court of Appeals decision terminating review upon stipulation of the parties that no motion for reconsideration or petition for review will be filed." RAP 12.5(b). Now that the Court has denied VWoA's motion for reconsideration and VWoA has declined to seek review in our State Supreme Court, this Court's decision terminated review as to it. Accordingly, the Court should issue a partial mandate as to VWoA. *See, e.g.*, *In re Estate of Foster*, 55 Wn. App. 545, 546 n.1, 779 P.2d 272, 277 (1989)(directing the Clerk of Court to issue a partial

mandate as to all defendants except Raymark in a mesothelioma case); *Marriage of Williams*, 39 Wn. App. 224, 228, 692 P.2d 885 (1984) (the Clerk of the Court issued a partial mandate as to one dismissed assignment of error).

Foster provides analogous facts. Like here, *Foster* involved product liability claims brought against multiple defendants for asbestos-caused mesothelioma. 55 Wn. App. at 546. The action was stayed against one defendant, Raymark Industries, due to bankruptcy proceedings. *Id.* at 546 n.1. The Court affirmed the jury's verdict for the plaintiff, and Division 1 issued a partial mandate and resolved the appeal as to all defendants save for Raymark. *Id*. In *Foster*, it would have been unjust to require the plaintiff to wait for resolution of the bankruptcy proceeding. Likewise, here it would be unjust to require Mr. Sorrentino's family to await resolution of the petition for review.

Because the judgment is final as to VWoA and liability is joint and several. The Court should issue a partial mandate as to VWoA.

V. CONCLUSION

For the foregoing reasons the Court should issue a partial mandate as to Volkswagen Group of America.

The undersigned certifies that this motion contains 632 words in accordance with RAP 18.17.

RESPECTFULLY SUBMITTED this 19th day of December 2024.

BERGMAN OSLUND UDO LITTLE

/s/ Erica Bergmann

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Dated at Seattle, Washington this 19th day of December 2024.

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