

LAW OFFICES OF
JAMES P. STONEMAN II
100 WEST FOOTHILL BOULEVARD
CLAREMONT, CALIFORNIA 91711
TELEPHONE (909) 621-4987
FACSIMILE (909) 624-1427

SUPREME COURT COPY

May 3, 2010

SUPREME COURT
FILED

MAY - 5 2010

Frederick A. Oberhelman, Clerk

Honorable Ronald M. George, Chief Justice
and Honorable Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Re: Kevin Murray v. Alaska Airline, Inc., Case No. S162570
Reply Brief in Reponse to Supplemental Letter Brief of
Alaska Airlines

To the Honorable Chief Justice and Associate Justices of the
Supreme Court of California:

Kevin Murray respectfully submits this brief in response to the
Supplemental Letter Brief submitted by Alaska Airlines on April
26, 2010.

First, it appears that Alaska Airlines agrees with Murray that
McDonald has little bearing on the outcome of the Murray case, at
least insofar as the question of administrative exhaustion is
concerned.

The crux of the parties' disagreement remains whether the
opportunity to participate in the administrative process, where a
party does not take it to the decision stage, constitutes
sufficient "litigation" to apply the principles of collateral
estoppel under the doctrine of judicial estoppel. Alaska
Airlines contends that, once the process is initiated, one who
does not utilize it does so at his peril. However, the basic
requirement for judicial estoppel to apply, as explained in
McDonald includes taking the matter to the decision stage. This
was not done here. Where the administrative process is not taken
to final decision under circumstances allowing the doctrine of
judicial estoppel to apply, it should not matter whether the
process is the type used in *McDonald* or a more formal process set

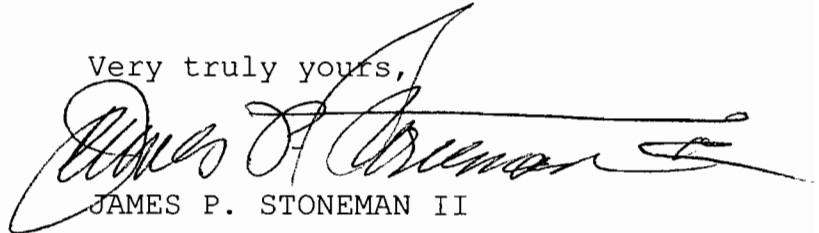
Honorable Ronald M. George, Chief Justice
and Honorable Associate Justices
May 3, 2010
Page Two

forth by statute.

The fact that administrative process under AIR21 allows further review should not matter when the process which produced the final judgment did not include the opportunity to meaningfully participate in litigation by cross-examining witnesses, etc. A subsequent right to appeal is of little meaning if the underlying decision was made on the basis of investigatory reports in which the plaintiff did not, or could not, participate.

Finally, Alaska Airlines contends that the strong federal policies of finality and efficiency support its position. However, we maintain that our state's strong public policy favoring public safety and discouraging retaliatory conduct against employees who engage in protective action trumps any vague federal interest in the finality of federal remedies to the preclusion of state common law claims.

Very truly yours,



JAMES P. STONEMAN II

JPS/keb
Enclosure

cc: David J. Reis (Proof of Service attached)

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am a citizen of the United States and a resident of Los Angeles County. I am over the age of eighteen years and not a party to the within entitled action; my business address is: 100 West Foothill Boulevard, Claremont, California, 91711.


On May 3, 2010 I served the within REPLY BRIEF IN RESPONSE TO SUPPLEMENTAL LETTER BRIEF OF ALASKA AIRLINES on the interested parties in said action, by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

David J. Reis, Esq.
Jason M. Habermeyer, Esq.
HOWARD RICE NEMEROVSKI CANADY FAKL & RABKIN
Three Embarcadero Center, 7th Floor
San Francisco, CA 94111-4024

(BY MAIL) I deposited such envelope with postage thereon fully prepaid, in the United States mail at Claremont, California.

I declare that I am employed in the office of a member of the bar of this court, at whose direction this service was made.

Executed on May 3, 2010 at Claremont, California.



KATHERINE E. KARAIOSOS