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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

1170864

Ex parte Aladdin Manufacturing Corporation et al.

PETITION FOR WRIT OF MANDAMUS

(In re: The Water Works and Sewer Board of the Town of Centre

v.

3M Company et al.)

(Cherokee Circuit Court, CV-17-900049)

1170887

Ex parte Milliken & Company

PETITION FOR WRIT OF MANDAMUS

(In re: The Water Works and Sewer Board of the Town of Centre

v.

3M Company et al.)

(Cherokee Circuit Court, CV-17-900049)

1170894

Ex parte Textile Rubber and Chemical Company, Inc.

PETITION FOR WRIT OF MANDAMUS

(In re: The Water Works and Sewer Board of the Town of Centre

v.

3M Company et al.)

(Cherokee Circuit Court, CV-17-900049)

1171182

Ex parte Mohawk Industries, Inc., et al.

PETITION FOR WRIT OF MANDAMUS

(In re: The Water Works and Sewer Board of the City of Gadsden

v.

3M Company et al.)

(Etowah Circuit Court, CV-16-900676)

1171196

Ex parte Dorsett Industries, Inc.

PETITION FOR WRIT OF MANDAMUS

(In re: The Water Works and Sewer Board of the City of Gadsden

v.

3M Company et al.)

(Etowah Circuit Court, CV-16-900676)

1171197

Ex parte Indian Summer Carpet Mills, Inc.

PETITION FOR WRIT OF MANDAMUS

(In re: The Water Works and Sewer Board of the City of Gadsden

v.

3M Company et al.)

(Etowah Circuit Court, CV-16-900676)

1171198

Ex parte Oriental Weavers USA, Inc.

PETITION FOR WRIT OF MANDAMUS

(In re: The Water Works and Sewer Board of the City of Gadsden

v.

3M Company et al.)

(Etowah Circuit Court, CV-16-900676)

1171199

Ex parte Kaleen Rugs, Inc.

PETITION FOR WRIT OF MANDAMUS

(In re: The Water Works and Sewer Board of the City of Gadsden

v.

3M Company et al.)

(Etowah Circuit Court, CV-16-900676)

STEWART, Justice.

These mandamus petitions present the question whether the Cherokee Circuit Court and the Etowah Circuit Court (hereinafter referred to collectively as "the trial courts") can properly exercise personal jurisdiction over the petitioners, out-of-state companies (hereinafter referred to

collectively as "the defendants"), in actions filed against them by the Water Works and Sewer Board of the Town of Centre ("Centre Water") and the Water Works and Sewer Board of the City of Gadsden ("Gadsden Water"). Centre Water and Gadsden Water allege that the defendants discharged toxic chemicals into industrial wastewater from their plants in Georgia, which subsequently contaminated Centre Water's and Gadsden Water's downstream water sources in Alabama. After moving unsuccessfully in the trial courts to have the actions against them dismissed, the defendants have filed petitions for writs of mandamus seeking orders from this Court directing the trial courts to dismiss the actions against them based on a lack of personal jurisdiction. We have consolidated all the petitions for the purpose of issuing one opinion.

I. Facts and Procedural History

A. The Cherokee County Case

On May 15, 2017, Centre Water filed an action in the Cherokee Circuit Court seeking injunctive relief and damages and asserting claims of negligence, wantonness, nuisance, and trespass against the following companies, among others, located in Dalton, Georgia: Aladdin Manufacturing Corporation,

Mohawk Industries, Inc., Mohawk Carpet, LLC, Shaw Industries, Inc., Arrowstar, LLC, Engineered Floors, LLC, J&J Industries, Inc., MFG Chemical, Inc., The Dixie Group, Inc., Milliken & Company, and Textile Rubber and Chemical Company, Inc. ("the Cherokee County defendants"). In the complaint, Centre Water alleged that the Cherokee County defendants, who are carpet manufacturers or chemical manufacturers, had released "toxic chemicals, including perfluorinated compounds ('PFCs'), including, but not limited to perfluorooctanoic acid ('PFOA'), perfluorooctane sulfonate ('PFOS'), precursors to PFOA and PFOS, and related chemicals" (hereinafter referred to collectively as "PFC-containing chemicals") from their manufacturing facilities and that those chemicals had contaminated Centre Water's water-intake site. The Cherokee County defendants moved to dismiss the action against them, asserting lack of personal jurisdiction, and Centre Water filed responses in opposition.

On May 15, 2018, the Cherokee Circuit Court entered a detailed order denying the Cherokee County defendants' motions to dismiss, stating, in pertinent part:

> "The most illustrative cases cited by the parties relative to this issue are: (1) Horne v.

Mobile Area Water & Sewer Sys., 897 So. 2d 972 (Miss. 2004), and (2) Pakootas v. Teck Cominco Metals, Ltd., [905 F.3d 565] (E.D. Wash. 2004).

"In both of these cases, there was a question of whether the plaintiffs satisfied the issue of whether the out-of-state defendants had engaged in 'express aiming' or 'purposefully directing' activities toward the forum state. In both cases, the court held that the plaintiffs had satisfied their burdens on this issue.

"In Horne, property owners in Mississippi sued various defendants, including the Water and Sewer System of Mobile, Alabama ('the System'), in state court in Mississippi. The System had, in Alabama, released a significant amount of water in anticipation of an oncoming hurricane. The water that had been released damaged and/or destroyed real and personal property downstream in Mississippi. The Supreme Court of Mississippi held that '[t]here is no question that [the defendants] knew the water would flow into Mississippi ....' [897 So. 2d] at 979. This act and this knowledge was sufficient for the court to find that the System in Alabama had 'minimum contacts' with Mississippi such that the exercise of personal jurisdiction was appropriate.

"In Pakootas, the plaintiffs were citizens of the State of Washington that filed a suit under the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) against a Canadian corporation that operated a shelter ten miles north of the US-Canada border. The allegation was that the defendants discharged harmful substances into the waters that flowed downstream to the plaintiffs and caused damage. The court held the facts as set out above and as alleged by the plaintiffs did satisfy the legal tests for personal jurisdiction.

> "In drawing a distinction between those cases and the present case, TRCC [Textile Rubber and Chemical Company] points out that it did not dispose of anything directly into any water source and that the distance from the defendants in those two cases and the forum jurisdiction was not as great as the distance in this case.
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> > "'"In considering a Rule 12(b)(2), Ala. R. Civ. P., motion to dismiss for want of personal jurisdiction, a court must consider as true the allegations of the plaintiff's complaint not controverted by the defendant's affidavits, Robinson v. Giarmarco & Bill, P.C., 74 F.3d 253 (11th Cir. 1996), and Cable/Home Communication Corp. v. Network Productions, Inc., 902 F.2d 829 (11th Cir. 1990), and 'where the plaintiff's complaint and the defendant's affidavits conflict, the ... court must construe all reasonable inferences in favor of the plaintiff.' Robinson, 74 F.3d at 255 (quoting Madara v. Hall, 916 F.2d 1510, 1514 (11th Cir. 1990)). 'For purposes of this appeal [on the issue of in personam jurisdiction] the facts as alleged by the ... plaintiff will be considered in a light most favorable to him [or her].' Duke v. Young, 496 So. 2d 37, 38 (Ala. 1986)."'
>
> "Corp. Waste Alternatives, Inc. v. McLane Cumberland, Inc., 896 So. 2d 410, 413 (Ala. 2004).
>
> "The Plaintiff's complaint alleges that the 'chemicals [complained of by the Plaintiff and allegedly used/manufactured by the Defendants] resist degradation during processing at Dalton Utilities' wastewater treatment center and contaminate the Conasauga River.' Complaint, ¶ 3, ¶ 50. The Plaintiff's complaint alleges that studies have been conducted and that regulations from the Environmental Protection Agency ('EPA') have been

published relative to the health risks of the chemicals at issue. Complaint, ¶¶ 51-59. Those studies and regulations allegedly gave notice to the Defendants of the adverse health risks of the chemicals. The Plaintiff's complaint alleges that the Defendants are responsible for these chemicals being present in the Plaintiff's raw water source through the disbursement of the Defendants' wastewater into the Conasauga River and eventually into the Coosa River. Complaint, ¶¶ 2-5, 49-50, 64.

"In considering the facts in the light most favorable to the Plaintiff and in construing all reasonable inferences in favor of the Plaintiff where the complaint and the Defendants' evidentiary submissions conflict, the Court finds that the Plaintiff has demonstrated that the Defendants have conducted activity directed at Alabama and that that activity is not 'random,' 'fortuitous,' or 'attenuated,' or the 'unilateral activity of another party or a third person.'

"As shown in the Horne and Pakootas cases, the actions of an entity that result in harmful substances being placed into a water source can result in harm downstream in a foreign jurisdiction and it is reasonable for the entity causing those substances to be placed into the water to expect that their downstream harm could cause them to be hauled into court in that foreign jurisdiction. Thus, an entity causing chemicals to enter the Conasauga River should expect that since [the Conasauga] River is a tributary of the Coosa River then the chemicals can enter the Coosa River. Once those chemicals enter the Coosa River, the entity should expect that those chemicals will reach downstream to Alabama once the Coosa River crosses the state line. Therefore, the act of causing the chemicals to enter the Conasauga River is an act directed at Alabama.

> "The Defendant[s] cannot, at this stage in the litigation, avail themselves of the defense that Dalton Utilities is the entity responsible and that its actions constitute the 'unilateral activity of another party or a third person.' As alleged by the Plaintiff, and, again, considering the facts in the light most favorable to the Plaintiff and resolving factual disputes in its favor, the chemicals at issue 'resist degradation during the treatment process utilized by Dalton Utilities and increase in concentration as waste accumulates in the [Land Application System].' Complaint, ¶ 50. In other words, the chemicals sent to Dalton Utilities by the Defendants cannot be treated and removed from the environment by Dalton Utilities. Therefore, the Plaintiff alleges, the Defendants have not properly disposed of the chemicals by sending them to Dalton Utilities; thus, the actions complained of are not the 'unilateral activity of another party or a third person.'
>
> "Given this finding, the Court also finds that: (1) there is 'a "relationship among the defendant, the forum, and the litigation."' That is, as set out by TRCC, '[t]he defendant's activities [are] related to the "operative facts of the controversy"' and (2) that the exercise of personal jurisdiction would 'comport[] with fair play and substantial justice.'"

The Cherokee County defendants timely filed their petitions for a writ of mandamus, which this Court consolidated ex mero motu.

B. The Etowah County Case

On September 22, 2016, Gadsden Water filed an action in the Etowah Circuit Court seeking injunctive relief and damages based on claims of negligence, wantonness, nuisance, and

trespass on the same factual basis as that contained in the complaint in the Cherokee County case. Gadsden Water named the following companies located in Dalton, Georgia, among others, as defendants: Mohawk Industries, Inc., Mohawk Carpet, LLC, Shaw Industries, Inc., J&J Industries, Inc., MFG Chemical, Inc., Lexmark Carpet Mills, Inc., The Dixie Group, Inc., Dorsett Industries, Inc., Indian Summer Carpet Mills, Inc., Oriental Weavers USA, Inc., and Kaleen Rugs, Inc. ("the Etowah County defendants"). The Etowah County defendants each moved to dismiss the action against them, asserting, among other grounds, a lack of personal jurisdiction. Gadsden Water filed a response in opposition to each Etowah County defendant's motion to dismiss.

On August 13, 2018, the Etowah Circuit Court entered an order substantially similar to the one entered by the Cherokee Circuit Court, employing the same reasoning. The Etowah County defendants timely filed their petitions for a writ of mandamus, which this Court consolidated ex mero motu.[1]

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[1]With a few exceptions noted herein, the defendants raise the same arguments and rely upon the same authorities.

II. Standard of Review

> "A writ of mandamus is an extraordinary remedy which requires a showing of (a) a clear legal right in the petitioner to the order sought, (b) an imperative duty on the respondent to perform, accompanied by a refusal to do so, (c) the lack of another adequate remedy, and (d) the properly invoked jurisdiction of the court. Ex parte Bruner, 749 So. 2d 437, 439 (Ala. 1999)."

Ex parte McInnis, 820 So. 2d 795, 798 (Ala. 2001).

> > "'[A] petition for a writ of mandamus is the proper device by which to challenge the denial of a motion to dismiss for lack of in personam jurisdiction. See Ex parte McInnis, 820 So. 2d 795 (Ala. 2001); Ex parte Paul Maclean Land Servs., Inc., 613 So. 2d 1284, 1286 (Ala. 1993). "'An appellate court considers de novo a trial court's judgment on a party's motion to dismiss for lack of personal jurisdiction.'" Ex parte Lagrone, 839 So. 2d 620, 623 (Ala. 2002) (quoting Elliott v. Van Kleef, 830 So. 2d 726, 729 (Ala. 2002)). Moreover, "[t]he plaintiff bears the burden of proving the court's personal jurisdiction over the defendant." Daynard v. Ness, Motley, Loadholt, Richardson & Poole, P.A., 290 F.3d 42, 50 (1st Cir. 2002).'
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> "Ex parte Dill, Dill, Carr, Stonbraker & Hutchings, P.C., 866 So. 2d 519, 525 (Ala. 2003)."

Ex parte Covington Pike Dodge, Inc., 904 So. 2d 226, 229 (Ala. 2004).

III. Discussion

The defendants have sought review of the trial courts' denial of their motions to dismiss. Alabama courts use the following established procedure for treatment of motions to dismiss based on a lack of personal jurisdiction under Rule 12(b)(2), Ala. R. Civ. P.

> "'"In considering a Rule 12(b)(2), Ala. R. Civ. P., motion to dismiss for want of personal jurisdiction, a court must consider as true the allegations of the plaintiff's complaint not controverted by the defendant's affidavits, Robinson v. Giarmarco & Bill, P.C., 74 F.3d 253 (11th Cir. 1996), and Cable/Home Communication Corp. v. Network Productions, Inc., 902 F.2d 829 (11th Cir. 1990), and 'where the plaintiff's complaint and the defendant's affidavits conflict, the ... court must construe all reasonable inferences in favor of the plaintiff.' Robinson, 74 F.3d at 255 (quoting Madara v. Hall, 916 F.2d 1510, 1514 (11th Cir. 1990))."'

"Wenger Tree Serv. v. Royal Truck & Equip., Inc., 853 So. 2d 888, 894 (Ala. 2002) (quoting Ex parte McInnis, 820 So. 2d 795, 798 (Ala. 2001)). However, if the defendant makes a prima facie evidentiary showing that the Court has no personal jurisdiction, 'the plaintiff is then required to substantiate the jurisdictional allegations in the complaint by affidavits or other competent proof, and he may not merely reiterate the factual allegations in the complaint.' Mercantile Capital, LP v. Federal Transtel, Inc., 193 F.Supp.2d 1243, 1247 (N.D. Ala. 2002)(citing Future Tech. Today, Inc. v. OSF Healthcare Sys., 218 F.3d 1247, 1249 (11th Cir.

> 2000)). See also Hansen v. Neumueller GmbH, 163 F.R.D. 471, 474–75 (D. Del. 1995)('When a defendant files a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(2), and supports that motion with affidavits, plaintiff is required to controvert those affidavits with his own affidavits or other competent evidence in order to survive the motion.') (citing Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 63 (3d Cir. 1984))."

Covington Pike Dodge, 904 So. 2d at 229-30.

A. Evidentiary Burdens

At the outset, before we address the merits of the mandamus petitions, we must determine whether the defendants made prima facie evidentiary showings in support of their motions to dismiss that required Centre Water and Gadsden Water to substantiate the jurisdictional allegations in their complaints. See Ex parte Güdel AG, 183 So. 3d 147, 156 (Ala. 2015).

In the Cherokee County action, Aladdin Manufacturing Corporation, Mohawk Industries, Inc., Mohawk Carpet, LLC, and The Dixie Group, Inc., did not support their motions with any evidentiary submissions.[2] Shaw Industries, Inc., Engineered Floors, LLC, and J&J Industries, Inc., each filed a separate

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[2]The defendants who were parties in both the Cherokee County action and the Etowah County action filed substantially the same motions to dismiss in both actions.

motion to dismiss supported with an affidavit from an executive of each company in which each executive testified, among other things, that his or her company was organized under the laws of Georgia and was located in Georgia. ArrowStar, LLC, and MFG Chemical, Inc., each attached to their motions to dismiss affidavits of their respective chief executive officers that indicated that each company was organized under Georgia laws and was located exclusively in Georgia and, in addition, that all the wastewater discharges from each company were transferred to Dalton Utilities, rather than directly into the Conasauga River. In support of its motion, Textile Rubber and Chemical Company, Inc., submitted an affidavit from its chief financial officer in which he testified, among other things, that Textile Rubber and Chemical was a Georgia corporation, that it was not licensed or registered to do business in Alabama, that it owned no property in Alabama, and that it had no employees in Alabama. None of the aforementioned defendants supported their motions to dismiss filed in the Cherokee County action with any evidentiary submissions to controvert the basis for the jurisdictional allegations in Centre Water's complaint;

therefore, the Cherokee Circuit Court was required to consider the allegations in Centre Water's complaint to be true. Covington Pike Dodge, 904 So. 2d at 229.

Milliken & Company ("Milliken") submitted an affidavit of Philip Bridges, its global vice president of manufacturing, in support of its motion to dismiss. In his affidavit, Bridges testified, in pertinent part, that Milliken does not and had never manufactured, produced, supplied, or sold PFCs or chemicals containing PFCs to manufacturing or other facilities in Dalton and that it does not and had never discharged industrial wastewater to Dalton Utilities. Centre Water attached only literature regarding PFCs to its response in opposition to Milliken's motion to dismiss. That literature did not specifically address Milliken or in any way rebut Milliken's evidence indicating that it had no involvement with PFC-containing chemicals.[3] Centre Water acknowledges that Bridges's affidavit stated that Milliken's Dalton facilities had not manufactured carpet using PFCs and had not discharged

[3]We note that, at the hearing on the motion to dismiss, Centre Water indicated that it would provide a response to Milliken's reply and affidavit; however, there is nothing in the record showing Centre Water provided that response.

wastewater to Dalton Utilities. Centre Water asserts, however, that the affidavit "does not mention whether [Milliken's] facilities in Calhoun, Georgia purchased, applied, and discharged wastewater into the Conasauga River" and that, accordingly, "[u]ncertainty over these operations means [Milliken] has not conclusively shown it is not responsible for polluting [Centre Water's] water supply." As Milliken points out in its reply brief, however, Centre Water did not plead those factual allegations in its complaint or raise that assertion in the trial-court proceedings. We will not consider it for the first time now. See Landers v. O'Neal Steel, Inc., 564 So. 2d 925, 926 (Ala. 1990)(explaining that this Court will not consider an issue raised for the first time in the appellate court).

In the Etowah County action, Mohawk Industries, Inc., and Mohawk Carpet, LLC, J&J Industries, Inc., and The Dixie Group, Inc., each filed a motion to dismiss but did not support their motions with any evidentiary submissions.[4] Shaw Industries,

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[4]Mohawk Industries, Inc., and Mohawk Carpet, LLC, actually filed a motion for a judgment on the pleadings based on a lack of personal jurisdiction.

Inc., submitted an affidavit from one of its executives demonstrating that it was a Georgia Corporation, but it did not dispute the assertions in Gadsden Water's complaint regarding its alleged use of PFCs in its carpet-manufacturing process. MFG Chemical, Inc., submitted an affidavit demonstrating that it was incorporated under the laws of Georgia, that it was located exclusively in Georgia, and, in addition, that all of its wastewater discharges were transferred to Dalton Utilities, rather than directly into the Conasauga River. Gadsden Water filed a response in opposition to each of those Etowah County defendants' motions to dismiss to which it attached myriad information regarding PFCs, and, to some responses, it attached documents related to that particular defendant. Because the above Etowah County defendants did not present evidence to controvert the jurisdictional allegations in Gadsden Water's complaint, the Etowah Circuit Court was required to consider the allegations in Gadsden Water's complaint to be true. Covington Pike Dodge, 904 So. 2d at 229.

Lexmark Carpet Mills, Inc. ("Lexmark"), submitted an affidavit of James E. Butler, its chief financial officer, in

which he testified that Lexmark "does not currently use and has never in the past used" PFCs "in its Dalton, Georgia manufacturing facility." Butler further testified that "Lexmark has never manufactured, produced, marketed, distributed or supplied PFC, PFOA, or PFOS to any manufacturing facilities located in or near Dalton, Georgia." Finally, Butler testified that "Lexmark does not currently discharge and has never in the past discharged PFC, PFOA, or PFOS into its industrial wastewater or into tributaries of the Coosa River." In opposition to Lexmark's motion to dismiss, Gadsden Water submitted documentary evidence indicating that Scotchgard® stain-resistant fabric treatment contains PFCs and documentation entitled "Lexmark Carpet Limited Warranties and Care" in which Lexmark informed customers of its use of Scotchgard®. Accordingly, as to Lexmark, the Etowah Circuit Court was faced with conflicting evidence and was required to "'"'construe all reasonable inferences in favor of the plaintiff.' Robinson[v. Giarmarco & Bill, P.C.,] 74 F.3d [253] at 255 [(11th Cir. 1996)] (quoting Madara v. Hall, 916 F.2d 1510, 1514 (11th Cir. 1990))."'" Covington Pike Dodge,

904 So. 2d at 229 (quoting Wenger Tree Serv. v. Royal Truck & Equip., Inc., 853 So. 2d 888, 894 (Ala. 2002)).

Oriental Weavers USA, Inc. ("Oriental Weavers"), submitted in support of its motion to dismiss an affidavit from David Flood, its "masterbatch manager," in which Flood testified that Oriental Weavers manufactures only area rugs at its Dalton facility and that he was familiar with all stages of the area-rug production. Flood testified that, "[t]o the extent the Complaint states the [Environmental Protection Agency] 'published provisional drinking water health advisories for PFOA and PFOS' in 2009, Oriental Weavers does not use, and did not use, any perfluorinated stain-resistant, grease-resistant, or water-resistant chemicals after January 1, 2009," and that Oriental Weavers "does not apply any stain-resistant, grease-resistant, or water-resistant chemicals to its area rugs at any point during the manufacturing process." Flood elaborated that Oriental Weavers uses a separate company, Phoenix Chemical, for the application of stain resistance and that Phoenix Chemical did not use PFC-containing chemicals. Oriental Weavers also submitted an affidavit from Todd Mull, the vice president of Phoenix

Chemical, who testified that Phoenix Chemical does not "use, consume, emit, produce, or sell" any chemicals containing PFCs.

Similarly, Dorsett Industries, Inc. ("Dorsett"), presented an affidavit of its president who testified, among other things, that Dorsett designs and manufactures automotive and marine carpets. Dorsett also submitted an affidavit of its director of manufacturing, Bob Goodroe, who testified that Dorsett "does not apply any stain-resistant, grease-resistant, or water-resistant chemicals to its products at any point during the manufacturing process because Dorsett's automotive and marine customers do not request or pay for this treatment." Goodroe further testified, however: "The Complaint states that the [Environmental Protection Agency] 'published provisional drinking water health advisories for PFOA and PFOS in 2009. Dorsett did not use any perfl[uo]rinated stain-resistant, grease-resistant, or water-resistant chemicals after January 1, 2009."

As it did with its response to other Etowah County defendants' motions to dismiss, Gadsden Water attacked the affidavits submitted by Oriental Weavers and Dorsett, but it

did not provide any evidence to refute the testimony contained in those affidavits. The affidavits submitted by Oriental Weavers and Dorsett, however, do not conclusively rebut the jurisdictional allegations in Gadsden Water's complaint that the Etowah County defendants had used and discharged, at least before January 1, 2009, "chemical compounds that contain or degrade into PFCs, including, but not limited to PFOA and PFOS" and that the toxic chemicals had contaminated the water at Gadsden Water's water-intake site. Therefore, the Etowah Circuit Court was required to construe all reasonable inferences in favor of Gadsden Water. Covington Pike Dodge, 904 So. 2d at 229.[5]

[5]Oriental Weavers' motion to dismiss was also based on Rule 12(b)(3), Ala. R. Civ. P., and, in its petition, Oriental Weavers additionally argues that Etowah County is an improper venue based on § 6-3-7, Ala. Code 1975. In support of its argument, Oriental Weavers cites only § 6-3-7(a), Ala. Code 1975, and argues, without analysis or citation to other legal authority, that venue is improper in Etowah County under all four subsections of § 6-3-7(a). "We have unequivocally stated that it is not the function of this Court to do a party's legal research or to make and address legal arguments for a party based on undelineated general propositions not supported by sufficient authority or argument." Dykes v. Lane Trucking, Inc., 652 So. 2d 248, 251 (Ala. 1994)(citing Spradlin v. Spradlin, 601 So. 2d 76 (Ala. 1992)). Furthermore, in mandamus proceedings, "[t]he burden of establishing a clear legal right to the relief sought rests with the petitioner." Ex parte

Indian Summer Carpet Mills, Inc. ("Indian Summer"), submitted an affidavit of its president, Randall Hatch, who testified:

> "Indian Summer has never used chemicals containing PFOA or PFOS in its manufacturing process. Until 2004, Indian Summer only manufactured polypropylene carpet, which is not treated for stain-resistance. Since then, Indian Summer has also sold some carpets treated with topical stain resistant chemicals, but those stain-resistant chemicals were applied by mills Indian Summer hired to perform the finishing process on its carpets. The mills were not owned or operated by, or affiliated with, Indian Summer, and the chemicals applied are of 'C6 chemistry,' which do not contain or degrade into PFOS or PFOA.
>
> "... Indian Summer does not create wastewater. Moreover, because Indian Summer does not and has not used stain-resistant chemicals, Indian Summer has never discharged chemicals containing PFOA or PFOS in wastewater."

Metropolitan Prop. & Cas. Ins. Co., 974 So. 2d 967, 972 (Ala. 2007). Oriental Weavers has not demonstrated a clear legal right to have the action against it dismissed based on improper venue.

Likewise, in support of its argument that venue is improper based on the doctrine of forum non conveniens under § 6-5-430, Ala. Code 1975, Oriental Weavers asserts only that none of the underlying acts occurred in Alabama and that its witnesses and documents are located near Dalton, Georgia. Oriental Weavers has not demonstrated that the Etowah Circuit Court is an inconvenient forum or that the trial court was required to dismiss the action based on the doctrine of forum non conveniens.

In response to Indian Summer's motion, Gadsden Water asserted that Hatch's affidavit did not establish that Indian Summer had always used its current manufacturing process and that it had never discharged wastewater. To the contrary, however, Hatch testified that Indian Summer had "never used chemicals containing PFOA or PFOS in its manufacturing process" and that it had "never discharged chemicals containing PFOA or PFOS in wastewater." Gadsden Water attached various literature and studies regarding PFCs, but none specific to Indian Summer, and it presented no evidence to rebut the evidence contained in Hatch's affidavit.

Kaleen Rugs, Inc. ("Kaleen"), submitted an affidavit of its senior vice president, Blake Dennard. Dennard testified that Kaleen does not manufacture rugs, carpets, or any other product but that Kaleen imports finished products and distributes those products. Dennard also testified that Kaleen does not use or supply any chemicals related to the rug or carpet-manufacturing process, including those alleged in Gadsden Water's complaint, and that Kaleen does not discharge any chemicals related to the rug- or carpet-manufacturing process into any water supply. Gadsden Water filed a response

to Kaleen's motion to dismiss in which it argued that Dennard's affidavit did not state that Kaleen had "never" engaged in the activities alleged in the complaint. Gadsden Water attached literature and documents regarding PFCs but presented nothing to refute the testimony in Dennard's affidavit. After Gadsden Water filed its response to Kaleen's motion, Kaleen filed a supplemental reply with an affidavit from Monty Rathi that stated, among other things, that Kaleen had never directed PFC-containing chemicals be applied to any of the products that it received or sold.

The factual basis proffered by Centre Water and Gadsden Water to support their specific-personal-jurisdiction assertion is that the defendants discharged wastewater containing PFCs that contaminated Centre Water's and Gadsden Water's water sources and that those acts were purposefully directed at Alabama. In addition to identifying each defendant, noting that each was a foreign corporation, and asserting that each company was "causing injury" in Alabama, Centre Water and Gadsden Water alleged in their complaints that the defendants had used and discharged "chemical

compounds that contain or degrade into PFCs, including, but not limited to PFOA and PFOS" and that the toxic chemicals had contaminated the water at Centre Water's and Gadsden Water's water-intake sites. Centre Water and Gadsden Water also alleged in their complaints that the United States Environmental Protection Agency ("the EPA") had identified industrial wastewater from the defendants' manufacturing facilities as the source of PFCs entering the Conasauga River. Centre Water and Gadsden Water further alleged that the EPA had taken regulatory action in 2002 by publishing rules under the Toxic Substances Control Act to limit the future manufacture and use of PFC-containing chemicals.

By presenting affidavits controverting the factual allegations in Centre Water's and Gadsden Water's complaints that would establish specific personal jurisdiction (i.e., evidence demonstrating that they did not and had never manufactured or used PFCs and that they did not discharge wastewater containing PFCs in Dalton), Indian Summer, Kaleen, and Milliken made a prima facie showing that no specific personal jurisdiction existed as to them. Thereafter, it was

incumbent upon Centre Water and Gadsden Water to "substantiate [their] jurisdictional allegations with affidavits or other competent evidence." Covington Pike Dodge, 904 So. 2d at 232. See also Ex parte Excelsior Fin., Inc., 42 So. 3d 96, 104 (Ala. 2010), and Ex parte Güdel AG, 183 So. 3d at 156 (granting mandamus relief where the defendant's evidence in support of its motion to dismiss "disproved the factual allegations asserted in the [plaintiffs'] complaint that would establish specific jurisdiction and constituted a prima facie showing that no specific jurisdiction existed" because the plaintiffs failed to meet their burden of substantiating "their jurisdictional allegations with affidavits or other competent evidence -- which they indisputably failed to do").

Centre Water, in one sentence in its response brief, asserts that additional discovery is needed before Milliken should be dismissed from the Cherokee County action. As we have previously explained, however, "'"[a] plaintiff does not enjoy an automatic right to discovery pertaining to personal jurisdiction in every case."' Ex parte Troncalli Chrysler Plymouth Dodge, Inc., 876 So. 2d 459, 468 (Ala. 2003) (quoting

Andersen v. Sportmart, Inc., 179 F.R.D. 236, 241 (N.D. Ind. 1998))." Covington Pike Dodge, 904 So. 2d at 232. Furthermore, a plaintiff's request for discovery to obtain evidence demonstrating personal jurisdiction will "'"be denied if it is only based upon 'bare,' 'attenuated,' or 'unsupported' assertions of personal jurisdiction, or when a plaintiff's claim appears to be 'clearly frivolous.'"' Troncalli, 876 So. 2d at 468 (quoting Andersen[v. Sportmart, Inc.], 179 F.R.D. [236] at 242 [(N.D. Ind. 1998)])." Covington Pike Dodge, 904 So. 2d at 233. See also Ex parte Güdel AG, 183 So. 3d at 157 (citing Covington Pike Dodge, 904 So. 2d at 233) (holding that the plaintiffs' "'bare allegations' that additional discovery could possibly reveal evidence establishing personal jurisdiction are insufficient to entitle [them] to further discovery on the jurisdictional issue"). Gadsden Water does not raise a similar argument with respect to Indian Summer or Kaleen.

Because Indian Summer, Kaleen, and Milliken made a prima facie showing that the trial courts lacked specific personal jurisdiction and Centre Water and Gadsden Water failed to

produce any evidence to contradict that showing, the trial courts should have granted their motions to dismiss. Indian Summer, Kaleen, and Milliken have, therefore, demonstrated a clear legal right to the relief sought -- dismissal of Gadsden Water's and Centre Water's complaints against them -- and the petitions for a writ of mandamus in case nos. 1170887, 1171197, and 1171199 are granted.

We must next determine whether, taking the Centre Water's and Gadsden Water's allegations as true and construing all reasonable inferences in their favor, the jurisdictional allegations support an exercise of personal jurisdiction over the remaining defendants.

B. Specific Personal Jurisdiction

Personal-jurisdiction analysis has its underpinnings in the fundamental concept that a court may exercise personal jurisdiction over a defendant only when the defendant has sufficient "minimum contacts with [the forum state] such that the maintenance of the suit does not 'offend traditional notions of fair play and substantial justice.'" International Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S. Ct. 154, 158,

90 L. Ed. 95 (1945)(quoting Milliken v. Meyer, 311 U.S. 457, 463, 61 S.Ct. 339, 343, 85 L.Ed. 278 (1940)). Embodied within that test is the controlling principle that due process requires that a defendant have "'fair warning that a particular activity may subject [it] to the jurisdiction of a foreign sovereign.'" Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472, 105 S.Ct. 2174, 2182, 85 L.Ed.2d 528 (1985)(quoting Shaffer v. Heitner, 433 U.S. 186, 218, 97 S.Ct. 2569, 2587, 53 L.Ed.2d 683 (1977)(Stevens, J., concurring in judgment)).

Centre Water and Gadsden Water brought claims sounding in both negligence and intentional tort. To exercise specific personal jurisdiction in the context of an unintentional-tort claim, (1) the defendant must have "purposefully availed" itself of the benefits and privileges of the forum state or "purposefully directed" activity toward the forum state, see Hinrichs v. General Motors of Canada, Ltd., 222 So. 3d 1114, 1122 (Ala. 2016), and (2) there must be "'a relationship among the defendant, the forum, and the litigation.'" Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414, 104

S.Ct. 1868, 1872, 80 L.Ed.2d 404 (1984) (quoting Shaffer v. Heitner, 433 U.S. at 204, 97 S.Ct. at 2579).

As to the intentional-tort claims, the proper analysis is the "effects test" to determine whether the defendant has the requisite contacts with the forum state. See, e.g., Ex parte Gregory, 947 So. 2d 385, 394 (Ala. 2006)(explaining that the "effects test" that originated in Calder v. Jones, 465 U.S. 783, 104 S.Ct. 1482, 79 L.Ed.2d 804 (1984) "has been limited to intentional-tort cases"). The "effects test" requires a plaintiff to show "that the defendant (1) committed an intentional tort (2) that was directly aimed at the forum, (3) causing an injury within the forum that the defendant should have reasonably anticipated." Oldfield v. Pueblo De Bahia Lora, S.A., 558 F.3d 1210, 1220 n.28 (11th Cir. 2009). Regardless of the type of claim involved, the United States Supreme Court has explained that physical presence in the forum state is not necessary for jurisdiction because a physical entry into the forum state through "some other means" is a relevant contact. Walden v. Fiore, 571 U.S. 277, 285, 134 S.Ct. 1115, 1122, 188 L.Ed.2d 12 (2014) (citing Keeton v.

Hustler Magazine, Inc., 465 U.S. 770, 773-74, 104 S.Ct. 1473, 79 L.Ed.2d 790 (1984)).

"The issue of personal jurisdiction '"stands or falls on the unique facts of [each] case."'" Ex parte Phil Owens Used Cars, Inc., 4 So. 3d 418, 423 (Ala. 2008)(quoting Ex parte I.M.C., Inc., 485 So. 2d 724, 725 (Ala. 1986), quoting in turn and adopting trial court's order). When the allegations in the complaints are taken as true,[6] they reveal the following. The remaining Cherokee County defendants and the remaining Etowah County defendants (hereinafter referred to collectively as "the remaining defendants") own and/or operate carpet-manufacturing facilities that use PFC-containing chemicals or supply PFC-containing chemicals to those facilities. The remaining defendants eventually discharge the toxic chemicals into their industrial wastewater. That wastewater is then

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[6]The trial courts were required to consider the allegations in Centre Water's and Gadsden Water's complaints to be true because, as noted above, the remaining defendants did not submit evidentiary materials disputing Centre Water's and Gadsden Water's assertions in their complaints that the remaining defendants knowingly either used or supplied PFC-containing chemicals and discharged those chemicals into their industrial wastewater. See Covington Pike Dodge, 904 So. 2d at 229.

treated by Dalton Utilities as its wastewater-treatment plant in Georgia. The PFC-containing water is sprayed by Dalton Utilities over a 9,800-acre Land Application System ("the LAS"), and the runoff from the LAS enters the Conasauga River, a tributary of the Coosa River. The PFC-containing chemicals then travel in the Conasauga River to the Coosa River, which crosses into Alabama, and, finally, contaminates the water at Centre Water's and Gadsden Water's water-intake sites. Centre Water and Gadsden Water further substantiated the jurisdictional allegations in their complaints by presenting documentary evidence in opposition to the motions to dismiss demonstrating that the remaining defendants had been placed on notice from publicly available reports published by the EPA that the PFCs were entering the Conasauga River.[7] Additionally, Centre Water and Gadsden Water submitted documentary evidence of studies determining that PFC pollution had been introduced into the Coosa River watershed through

[7]The remaining defendants assert in their reply briefs that they dispute whether they knew of the EPA reports or when they did but concede that factual disputes are inapplicable for purposes of the personal-jurisdiction issue before the trial courts.

carpet manufacturers' industrial-wastewater discharges. See Peter J. Lasier et al., Perfluorinated Chemicals in Surface Waters and Sediments from Northwest Georgia, USA, and Their Bioaccumulation in Lumbriculus Variegatus, 30 Environmental Toxicology and Chemistry 2194 (2011). Therefore, taking Centre Water's and Gadsden Water's allegations as true, the remaining defendants knew or should have known from publicly available reports of the EPA and from published studies that the PFC-containing chemicals used during the manufacturing process and discharged into their wastewater were polluting the Conasauga River, which flows downstream via the Coosa River into Alabama.

The remaining defendants argue that Centre Water and Gadsden Water have not alleged any conduct that actually occurred in Alabama and that, because they sent their industrial wastewater to Dalton Utilities in Georgia, the remaining defendants cannot be considered to have purposefully availed themselves of the privilege of conducting activities within Alabama or to have undertaken any purposeful conduct

aimed at Alabama.[8] See, e.g., Hinrichs, 222 So. 3d at 1137 (quoting Goodyear Dunlop Tires Operations, S.A., v. Brown, 564 U.S. 915, 923, 131 S.Ct. 2846, 2853, 180 L.Ed.2d 796 (2011)) (holding that the defendants must have engaged in some "in-state activity" that "'[gives] rise to the episode-in-suit'"). The remaining defendants, citing Covington Pike Dodge, supra, argue that a third party's unilateral actions that cause injury cannot serve as minimum contacts sufficient for specific personal jurisdiction. Covington Pike Dodge, however, is factually inapplicable because it involved the exercise of personal jurisdiction over a Tennessee automobile dealership in an action stemming from an automobile accident that occurred in Alabama. In that case, there was no evidence indicating that the dealership had any control over

[8]The remaining defendants, citing Ex parte Dill, Dill, Carr, Stonbraker & Hutchings, P.C., 866 So. 2d 519 (Ala. 2003), also argue that they did not direct any action toward any particular, identifiable Alabama citizens. The United States Supreme Court has explained, however, that the acts must be directed at the forum rather than the individual residents of the forum. "[O]ur 'minimum contacts' analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there." Walden, 571 U.S. at 285, 134 S.Ct. at 1122.

the driver or that it knew of any of the driver's actions that could have caused the accident. 904 So. 2d at 228-29.

The remaining defendants also argue that Dalton Utilities' treatment of the remaining defendants' wastewater, or its alleged failure to do so, is an intervening cause that breaks the chain of causation. It is axiomatic, however, that this defense fails if the intervening cause was foreseeable, which is Centre Water's and Gadsden Water's contention here. Alabama Power Co. v. Taylor, 306 So. 2d 236, 249 (1975). The cases relied upon by the remaining defendants regarding a third-party "intervening cause" are inapplicable here and merely serve to unnecessarily confuse the issue. Morever, the remaining defendants' defense that the wastewater was transferred to and treated by Dalton Utilities is inapplicable at this stage of the litigation because, as the remaining defendants concede in their reply briefs, we must take Centre Water's and Gadsden Water's allegations as true, and, therefore, the remaining defendants allegedly knew or should have known that the treatment process could not and did not remove the PFC-containing chemicals from the wastewater.

The remaining defendants argue that, even if it had been foreseeable that their wastewater discharge to Dalton Utilities would result in the chemicals entering the Coosa River and subsequently Alabama, it would still not satisfy the purposeful-availment requirement. In support, the remaining defendants cite Hinrichs, supra, in which a plurality of this Court reaffirmed that "'"'foreseeability' alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause."'" 222 So. 3d at 1138 (quoting D'Jamoos v. Pilatus Aircraft Ltd., 566 F.3d 94, 105 (3d Cir. 2009), quoting in turn World-Wide Volkswagen v. Woodson, 444 U.S. 286, 295, 100 S. Ct. 559, 566, 62 L.Ed.2d 490 (1980)).

Centre Water and Gadsden Water assert that the rationale underpinning the current "purposeful availment" and "effects-test" line of cases is factually distinguishable from the situation involved in this case, and they appear to argue that foreseeability alone is enough under this particular water-pollution scenario. Adopting such an approach, however, would start us on a slippery slope.

This Court has not been presented with a factual scenario in which out-of-state defendants are alleged to have caused environmental pollution in another state but where the consequences of those acts have caused harm in Alabama. As a result, this Court has no established precedent or an approach for evaluating this unique situation.

The remaining defendants rely heavily on Hinrichs to support their position.[9] Hinrichs, however, is factually distinguishable from the present situation. In Hinrichs, Daniel Vinson purchased a vehicle in Pennsylvania that had been manufactured by General Motors of Canada ("GM Canada"). GM Canada manufactured vehicles for General Motors Corporation, its parent company, to distribute to all 50 states in the United States. Hinrichs suffered serious

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[9]The remaining defendants also rely on Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty., 582 U.S. ___, 137 S.Ct. 1773, 198 L.Ed.2d 395 (2017), and BNSF Ry. v. Tyrrell, 581 U.S. ___, 137 S.Ct. 1549, 198 L.Ed.2d 36 (2017), neither of which is applicable. Bristol-Myers involved a California court's exercise of specific personal jurisdiction over a company sued by nonresident plaintiffs; none of the actions giving rise to the suit arose in California. BNSF involved a discussion of a Montana state court's exercise of general personal jurisdiction over a railway company that conducted business within the state.

injuries in an automobile accident in Alabama while he was a passenger in the vehicle driven by Vinson. Hinrichs brought a products-liability action against GM Canada in the Geneva Circuit Court. In considering whether Alabama could exercise personal jurisdiction over GM Canada, this Court considered

> "whether a stream-of-commerce analysis consistent with existing precedent can be applied to uphold specific jurisdiction over GM Canada under the facts of this case. The starting point of the stream of commerce in this case is GM Canada's anticipation of the presence of its vehicles in all 50 states, necessarily including Alabama. But it is undisputed that the stream of commerce for the [GMC] Sierra [pickup truck] ended at its sale in Pennsylvania, approximately 1,000 miles from Alabama.
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> "....
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> "Although existing Supreme Court precedent on stream of commerce as a basis for specific jurisdiction is not a model of clarity, it is clear that a majority of the United States Supreme Court has yet to hold that foreseeability alone is sufficient to subject a nonresident defendant to specific jurisdiction in the forum state. This conclusion is consistent with a law-review article quoted with approval in Daimler[AG v. Bauman, 571 U.S. 117, 134 S.Ct. 746, 187 L.Ed.2d 624 (2014),] describing International Shoe as clearly not saying that 'dispute-blind' jurisdiction is appropriate in cases involving specific jurisdiction. 571 U.S. at [138], 134 S.Ct. at 761 [(Ala. 2014)].
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> "In Walden v. Fiore, [571 U.S. 277, 134 S.Ct. 1115, 188 L.Ed.2d 12 (2014),] the United States

> Supreme Court's most recent pronouncement on specific jurisdiction and the first case in many years to garner a unanimous Court on the subject, the Supreme Court emphatically underscored the requirement that the claim against the defendant have a suit-related nexus with the forum state before specific jurisdiction can attach. The Walden Court left no room for any exceptions. 'For a State to exercise [specific] jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection with the forum State.' 571 U.S. at [284], 134 S.Ct. at 1121 (emphasis added). Vinson, the owner of the vehicle in which Hinrichs was injured, brought the Sierra to Alabama. However, Vinson's '"unilateral activity of [bringing the Sierra to Alabama, in which GM Canada did not participate,] is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction."' 571 U.S. at [284], 134 S.Ct. at 1122 (quoting Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 417, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984))."

Hinrichs, 222 So. 3d at 1138-40. In upholding the trial court's conclusion that it did not have specific personal jurisdiction over GM Canada, a plurality of this Court stated that "there simply is no 'suit-related conduct' that creates a substantial connection between GM Canada and Alabama if the vehicle was not sold in Alabama, even though Hinrichs was injured in Alabama. Walden, 571 U.S. at [284], 134 S.Ct. at 1121." 222 So. 3d at 1141.

1170864, 1170887, 1170894, 1171182, 1171196, 1171197, 1171198, and 1171199

A significant factor that distinguishes the present cases from Hinrichs is that the present cases do not involve the sale of a product that is placed into the stream of commerce. Rather, they involve the deposit of toxic chemicals into a stream of water. As a recent decision of the Ohio Court of Appeals for the Seventh District noted:

> "The case before us does not involve a sale of an item or distribution into the stream of commerce. Nor does it deal with others (such as a consumer or distributor) moving the item into the forum, thus resulting in contact. Rather, the defendants are alleged to have physically injected their solution into Ohio."

Triad Hunter, LLC v. Eagle Natrium, LLC, 132 N.E.3d 1272, 1285 (Ohio Ct. App. 2019).

Centre Water and Gadsden Water urge this Court to apply the rationale from water-pollution cases in other jurisdictions. In particular, Centre Water and Gadsden Water cite Illinois v. City of Milwaukee, 599 F.2d 151 (7th. Cir. 1979), and International Paper Co. v. Ouellette, 479 U.S. 481, 107 S.Ct. 805, 93 L.Ed.2d 883 (1987).

In Illinois v. City of Milwaukee, the evidence indicated that the City of Milwaukee had dumped millions of gallons of

pathogen-containing sewage into Lake Michigan, which sometimes traveled into Illinois waters. 599 F.2d at 156. The United States Court of Appeals for the Seventh Circuit applied Illinois's long-arm statute that provided that a tort is deemed committed in the place where the injury occurs and found that it was fair to require Milwaukee to litigate in a federal court in Illinois. In Ouellette, the Supreme Court held that "nothing in the [Clean Water] Act bars aggrieved individuals from bringing a nuisance claim pursuant to the law of the source State" and declined to hold that "all state-law suits ... must be brought in the source-state courts." 479 U.S. at 497, 499, 107 S.Ct. at 814, 815.

Centre Water and Gadsden Water also rely on Pakootas v. Teck Cominco Metals, Ltd., 905 F.3d 565, 577–78 (9th Cir. 2018), cert. denied, 139 S.Ct. 2693 (2019),[10] and a preceding case, Pakootas v. Teck Cominco Metals, Ltd., No. CV-04-256-AAM, Nov. 8, 2004 (E.D. Wash.)(not selected for publication in F. Supp.), and Horne v. Mobile Area Water & Sewer System, 897

[10]Although Pakootas was decided after the petitions were submitted to this Court, the parties were afforded an opportunity to address the application of Pakootas to this case by letter brief and in oral argument.

So. 2d 972 (Miss. 2004). Those cases were, likewise, relied upon by the trial courts in finding the existence of specific personal jurisdiction in this case.

In Horne, the Mississippi Supreme Court held that Mississippi courts could exercise personal jurisdiction over the Mobile Area Water & Sewer System, the Board of Water & Sewer Commissioners of the City of Mobile ("BWSC"), and the City of Mobile for their actions occurring in Alabama that resulted in damage to property in Mississippi. More particularly, in 1998, in response to heavy rains from Hurricane Georges, the BWSC "released a significant amount of water" from the Big Creek Lake Reservoir in Alabama, which is located approximately 12 miles from the Mississippi state line, and the water flowed into the Escatawpa River, which flowed through Jackson County, Mississippi, and caused property damage in Mississippi. 897 So. 2d at 974. The court applied Mississippi's long-arm statute, which permits Mississippi courts to exercise personal jurisdiction over nonresident defendants who "'commit a tort in whole or in part'" in Mississippi. 897 So. 2d at 977 (quoting Miss. Code

Ann. § 13-3-57 (Rev. 2002)). The court also explained that "a tort is committed in Mississippi when the injury results in th[at] State." Id. (citing Sorrells v. R & R Custom Coach Works, Inc., 636 So. 2d 668, 672 (Miss. 1994)). The Horne court went on to consider whether the defendants had minimum contacts to support the exercise of personal jurisdiction, explaining:

> "A defendant has 'minimum contacts' with a state if 'the defendant has "purposefully directed" his activities at residents of the forum and the litigation results from alleged injuries that "arise out of or relate to" those activities.' Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985)."

Horne, 897 So. 2d at 979. The court found from the evidence in that case that "the City and the [BWSC] 'purposefully directed' their activities toward Mississippi property owners, by opening the spillway to its maximum capacity." Horne, 897 So. 2d at 979.

The recent decision of the United States Court of Appeals for the Ninth Circuit in Pakootas provides further insight as to a possible analysis to be applied in a water-pollution

case. Like Alabama courts, the Ninth Circuit requires more than "foreseeability."

> "Express aiming is an ill-defined concept that we have taken to mean 'something more' than 'a foreign act with foreseeable effects in the forum state.' Bancroft & Masters, Inc. v. Augusta Nat. Inc., 223 F.3d 1082, 1087 (9th Cir. 2000).
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> "Calder[v. Jones, 465 U.S. 783, 104 S.Ct. 1482, 79 L.Ed.2d 804 (1984),] illustrates this point. In that case, a California actress sued two National Enquirer employees for an allegedly defamatory article published in the magazine. The article had been written and edited in Florida but the magazine was distributed nationally, with its largest market in California. The Supreme Court upheld the exercise of personal jurisdiction in California because the allegations of libel did not concern 'mere untargeted negligence' with foreseeable effects there; rather, the defendants' 'intentional, and allegedly tortious, actions were expressly aimed' at the state. 465 U.S. at 789, 104 S.Ct. 1482. Those actions simply involved writing and editing an article about a person in California, an article that the defendants knew would be circulated and cause reputational injury in that forum. Id. at 789–90, 104 S.Ct. 1482. Under those circumstances, the defendants should 'reasonably anticipate being haled into court there' to answer for their tortious behavior. Id. at 790, 104 S.Ct. 1482 (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980)). That was true even though the defendants were not personally responsible for the circulation of their article in California. Id. at 789–90, 104 S.Ct. 1482."

Pakootas, 905 F.3d at 577-78.

Pakootas involved a factual scenario similar to the one currently before us. The plaintiff in that case sued the defendant in the State of Washington for damages related to discharge and sludge from a defendant located upstream in Canada. Like the allegations taken as true in our case, in Pakootas there was ample evidence indicating that the defendant knew the Columbia River carried waste away from the smelter and that much of that waste traveled downstream into Washington. Despite that knowledge, the defendant in Pakootas continued to discharge hundreds of tons of waste into the river every day. In finding specific personal jurisdiction to exist, the Ninth Circuit held: "[W]e have no difficulty concluding that [the defendant] expressly aimed its waste at the State of Washington." 905 F.3d at 577-78. The court found that it was "inconceivable that [the defendant] did not know that its waste was aimed at the State of Washington when [it] deposited [waste] into the powerful Columbia River just miles upstream of the border." 905 F.3d at 578. Further, the court found that, without the discharge into the river, the defendant would have soon been inundated by the massive

quantities of waste it produced. The Ninth Circuit concluded that, saddled with the knowledge of the effects of its discharge, the defendant purposely directed its activities toward the downstream state.

The rationales from Pakootas and Horne were more recently cited with approval in an analysis by the Ohio Court of Appeals in Triad Hunter, LLC v. Eagle Natrium, LLC, supra, in which the plaintiffs alleged that the defendants had conducted mining activities and released polluting substances that caused damage in the neighboring state. That court reasoned:

> "Continuing to release a substance while knowing it travels to a jurisdiction is considered purposeful direction of efforts toward that jurisdiction. See, e.g., Pakootas v. Teck Cominco Metals, Ltd., 905 F.3d 565, 577-78 (9th Cir. 2018) ('We have no difficulty concluding that Teck expressly aimed its waste at the State of Washington. The district court found ample evidence that Teck's leadership knew the Columbia River carried waste away from the smelter, and that much of this waste travelled downstream into Washington, yet Teck continued to discharge hundreds of tons of waste into the river every day.'); Horne v. Mobile Area Water & Sewer Sys., 897 So. 2d 972, 979 (Miss. 2004) (where the Supreme Court found the City of Mobile, Alabama and its local board of water commissioners 'purposefully directed' their activities toward Mississippi property owners by opening the spillway to its maximum capacity). The aim can involve a forum resident or the forum state

> in general. See Walden, 571 U.S. at 285, 134 S.Ct. 1115."

Triad Hunter, LLC, 132 N.E.3d at 1285.

We find the above analyses persuasive and particularly applicable to the present case. "Alabama's long-arm 'statute,' which is actually Rule 4.2, Ala. R. Civ. P., extends to the limits of due process." Leithead v. Banyan Corp., 926 So. 2d 1025, 1030 (Ala. 2005) (citing Ex parte McInnis, 820 So. 2d 795, 802 (Ala. 2001), and Duke v. Young, 496 So. 2d 37, 39 (Ala. 1986)). Unlike Mississippi's long-arm statute at issue in Horne, Rule 4.2 does not contain a specifically enumerated list; however, before Rule 4.2 was amended in 2004, it "included a 'laundry list' of types of conduct that would subject an out-of-state defendant to personal jurisdiction in Alabama." Committee Comments to Amendment to Rule 4.2 Effective August 1, 2004. Former Rule 4.2(a)(2)(D) permitted Alabama courts to exercise jurisdiction over a person who had caused "tortious injury or damage in this state by an act or omission outside this state if the person regularly does or solicits business, or engages in any other persistent course of conduct or derives substantial revenue from goods used or

consumed or services rendered in this state." Committee Comments to the 2004 amendment to Rule 4.2 state that, "[b]ecause the 'catchall' clause has consistently been interpreted to go to the full extent of federal due process, see, for example, Martin v. Robbins, 628 So. 2d 614, 617 (Ala. 1993), it is no longer necessary to retain the 'laundry list' in the text of the Rule." Accordingly, considering the history and committee comments,[11] we construe Rule 4.2 to include out-of-state torts, and we deem a tort to be committed in the place where the injury occurs. See, e.g., Ex parte Holladay, 466 So. 2d 956, 960 (Ala. 1985) (explaining that, when "this Court is called upon to construe a statute, the fundamental rule is that the court has a duty to ascertain and effectuate legislative intent expressed in the statute, which may be gleaned from the language used, the reason and necessity for the act, and the purpose sought to be obtained"); see also Ex parte State ex rel. Daw, 786 So. 2d 1134, 1137 (Ala. 2000) ("In construing rules of court, this Court has applied the

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[11]"Although the committee comments are not binding, they may be highly persuasive. See Thomas v. Liberty National Life Ins. Co., 368 So. 2d 254 (Ala. 1979)." Iverson v. Xpert Tune, Inc., 553 So. 2d 82, 88 (Ala. 1989).

rules of construction applicable to statutes. See Ex parte Oswalt, 686 So. 2d 368 (Ala. 1996)."). The injury in this case indisputably occurred in Alabama; therefore, the tort occurred in Alabama for purposes of Rule 4.2.

We must next conduct a minimum-contacts analysis, which requires us to determine whether the remaining defendants have "purposefully avail[ed] [themselves] of the privilege of conducting activities within" Alabama, Hinrichs, 222 So. 3d at 1122, which can be satisfied by showing that the remaining defendants purposefully directed their actions at Alabama. Horne, 897 So. 2d at 979. We must also determine whether Centre Water's and Gadsden Water's causes of action against the remaining defendants "arise out of or relate to" the remaining defendants' activities in Alabama or, in other words, whether there is a relationship among the remaining defendants, Alabama, and the action. Hinrichs, 222 So. 3d at 1137 (citing Walden, supra).[12] As explained above, taking

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[12]We note that the United States Court of Appeals for the Eleventh Circuit has "held that a tort 'arise[s] out of or relate[s] to' the defendant's activity in a state only if the activity is a 'but-for' cause of the tort." Waite v. All Acquisition Corp., 901 F.3d 1307, 1314 (11th Cir. 2018)(citing Oldfield v. Pueblo De Bahia Lora, S.A., 558 F.3d 1210, 1222-23

Centre Water's and Gadsden Water's jurisdictional allegations as true, we must conclude that the remaining defendants knowingly discharged PFC-containing chemicals into their industrial wastewater, which traveled to Dalton Utilities' facility, where the defendants knew it was bing ineffectively treated and where the wastewater was sprayed over the LAS. The remaining defendants further knew that the PFC-containing chemicals entered the Conasauga River, a tributary of the Coosa River, and traveled through the Coosa River into Alabama. The publicly available EPA reports and the published studies demonstrate that the remaining defendants had been placed on notice that the PFC-containing chemicals were polluting the Coosa River upstream from the sites in Alabama where the injuries occurred. Based on the remaining defendants' alleged activities, Centre Water and Gadsden Water filed their causes of action against the defendants. Here,

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(11th Cir. 2009)). In Waite, the Eleventh Circuit also explained that the Supreme Court, in Walden, had not expressly rejected or adopted the "but-for" test. If we were to apply that approach, i.e., but for the remaining defendants' discharge of PFC-containing wastewater, those PFCs would not have caused harm in Alabama, we would conclude that the actions arise out of or relate to the remaining defendants' contacts with Alabama, the forum state.

similarly as in Horne, Pakootas, and Triad Hunter, by virtue of knowingly discharging PFC-containing chemicals in their industrial wastewater, knowing they were ineffectively treated by Dalton Utilities, and knowing that the PFCs would end up in the Coosa River, which flows into Alabama, the remaining defendants, according to Centre Water's and Gadsden Water's allegations, purposefully directed their actions at Alabama. Such alleged conduct on the part of the remaining defendants in relation to Alabama is not random, fortuitous, or attenuated, Burger King, 471 U.S. at 486, 105 S.Ct. at 2189, regardless of the distance the chemicals traveled to reach the sites in Alabama where the injuries occurred. Furthermore, as noted above, physical entry into the forum through "goods, mail, or some other means" is relevant to the specific-personal-jurisdiction analysis. Walden, 571 U.S. at 285, 134 S.Ct. at 1122. Under this factual scenario, the physical entry of the pollution into Alabama's water source creates the relationship among the remaining defendants, Alabama, and the actions.

We reiterate that foreseeability alone is insufficient to confer specific personal jurisdiction. In this situation, however, Centre Water's and Gadsden Water's allegations, which we are required to take as true, demonstrate that the remaining defendants continued to discharge PFC-containing chemicals in their industrial wastewater, despite allegedly knowing that the chemicals would enter the Coosa River. The remaining defendants are alleged to have expressly and directly aimed the polluted water not only at Dalton Utilities or the LAS in Georgia but also at Alabama through the continuing flow of the polluted wastewater from the remaining defendants' plants, into the Coosa River and its tributaries, and ultimately to the sites in Alabama where the injuries occurred. Thus, we conclude that, pursuant to the allegations in Centre Water's and Gadsden Water's complaints, the remaining defendants in these cases knowingly and directly aimed tortious actions at Alabama.

Finally, in concluding our personal-jurisdiction analysis, we must determine whether the exercise of jurisdiction over the remaining defendants "complies with

traditional notions of fair play and substantial justice." Ex parte DBI, Inc., 23 So. 3d 635, 656 (Ala. 2009). In determining whether jurisdiction comports with traditional notions of fair play and substantial justice, a court should consider, among other factors, "'the burden on the defendant,' 'the forum State's interest in adjudicating the dispute,' [and] 'the plaintiff's interest in obtaining convenient and effective relief.'" Ex parte DBI, 23 So. 3d at 656 (quoting World-Wide Volkswagen, 444 U.S. at 292, 100 S.Ct. at 564; and Burger King, 471 U.S. at 477, 105 S.Ct. at 2184). The remaining defendants assert that their minimum contacts with Alabama alone illustrate why the exercise of jurisdiction by the trial courts does not comport with notions of fair play and substantial justice.

The materials submitted by the parties, however, indicate that the remaining defendants are located in Dalton, Georgia, which is approximately 70 miles from Centre and 90 miles from Gadsden. "[B]ecause 'modern transportation and communications have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity,' it

usually will not be unfair to subject him to the burdens of litigating in another forum for disputes relating to such activity." Burger King, 471 U.S. at 474, 105 S.Ct. at 2183 (quoting McGee v. International Life Ins. Co., 355 U.S. 220, 223, 78 S.Ct. 199, 201, 2 L.Ed.2d 223 (1957)). In addition, Centre Water's and Gadsden Water's allegations in these cases pertain to an alleged injury occurring in Alabama, i.e., the pollution of the water supply of Alabama residents. Alabama has a significant and "'"manifest interest" in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors.'" Ex parte DBI, 23 So. 3d at 656 (quoting Burger King, 471 U.S. at 473, 105 S.Ct. at 2182). "Moreover, where individuals 'purposefully derive benefit' from their interstate activities, it may well be unfair to allow them to escape having to account in other States for consequences that arise proximately from such activities." Burger King, 471 U.S. at 474, 105 S.Ct. at 2183 (quoting Kulko v. California Superior Ct., 436 U.S. 84, 96, 98 S.Ct. 1690, 1699, 56 L.Ed.2d 132 (1978)).

There is no demonstrable burden in having the remaining defendants litigate in Cherokee and Etowah Counties, and, considering all the factors this Court is required to consider, we cannot say that it violates the "'traditional notions of fair play and substantial justice.'" International Shoe Co. v. Washington, 326 U.S. at 316, 66 S.Ct. at 158 (quoting Milliken v. Meyer, 311 U.S. 457, 463, 61 S.Ct. 339, 85 L.Ed. 278 (1940)). As the Pakootas court concluded, "[t]o the contrary, there would be no fair play and no substantial justice if [the remaining defendants] could avoid suit in the place where [they are alleged to have] deliberately sent [their] toxic waste." 905 F.3d at 578.

We conclude that the trial courts may exercise specific personal jurisdiction over the remaining defendants and that the remaining defendants have not demonstrated a clear legal right to relief at this stage. See Ex parte McInnis, 820 So. 2d at 798 (explaining that mandamus relief requires a showing of, among other factors, "a clear legal right in the petitioner to the order sought"). As a result, the petitions

1170864, 1170887, 1170894, 1171182, 1171196, 1171197, 1171198, and 1171199

for a writ of mandamus filed in case nos. 1170864, 1170894, 1171182, 1171196, and 1171198 are denied.[13]

1170864, 1170894, 1171182, 1171196, and 1171198 -- PETITIONS DENIED.

Parker, C.J., and Wise, J., concur.

Bryan, J., concurs in the result.

Bolin, Sellers, and Mendheim, JJ., dissent.

Shaw and Mitchell, JJ., recuse themselves.

1170887, 1171197, and 1171199 -- PETITIONS GRANTED; WRITS ISSUED.

Parker, C.J., and Bolin, Wise, Sellers, and Mendheim, JJ., concur.

Bryan, J., concurs in the result.

Shaw and Mitchell, JJ., recuse themselves.

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[13]With regard to Shaw Industries, Inc., because we find that the trial courts properly exercised specific personal jurisdiction over it, we need not address the contention that the Etowah Circuit Court erred in finding the existence of general jurisdiction.

1170864, 1170887, 1170894, 1171182, 1171196, 1171197, 1171198, and 1171199

SELLERS, Justice (concurring in case nos. 1170887, 1171197, and 1171199 and dissenting in case nos. 1170864, 1170894, 1171182, 1171196, and 1171198).

I concur in the main opinion insofar as it grants the mandamus petitions filed by defendants Indian Summer Carpet Mills, Inc.; Kaleen Rugs, Inc.; and Milliken & Company. I dissent from the denial of the petitions filed by the remaining defendants because I do not agree that those defendants' suit-related conduct creates a "substantial connection" with the State of Alabama sufficient to support specific jurisdiction.

The Water Works and Sewer Board of the Town of Centre and the Water Works and Sewer Board of the City of Gadsden (hereinafter referred to collectively as "the plaintiffs") allege in their complaints that the defendant carpet manufacturers and/or chemical suppliers send their chemically tainted industrial wastewater to Dalton Utilities' facility for treatment, knowing that the chemicals in the wastewater resist degradation. The plaintiffs allege that Dalton Utilities then treats the wastewater at its treatment plant and sprays the treated wastewater onto a 9,800 acre Land

Application System ("LAS") bordering the Conasauga River. The plaintiffs claim that runoff from the LAS enters the Conasauga River, flows downstream into the Coosa River, and ultimately contaminates drinking water provided by the plaintiffs to their customers. The plaintiffs allege that the defendants knew or should have known that their wastewater contained certain chemicals resistant to treatment, that those chemicals were polluting the Conasauga River, and that it was foreseeable that the pollution would flow downstream into Alabama and cause injury. The Due Process Clause of the Fourteenth Amendment permits a forum state to subject a nonresident defendant to its courts only when that defendant has sufficient minimum contacts with the forum state. Walden v. Fiore, 571 U.S. 277, 283, 134 S.Ct. 1115, 1121 (2014). "In judging minimum contacts, a court properly focuses on 'the relationship among the defendant, the forum, and the litigation.'" Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 775, 104 S.Ct. 1473, 1478 (1984) (quoting Shaffer v. Heitner, 433 U.S. 186, 204, 97 S.Ct. 2569, 2579 (1977)). "For a State to exercise [specific personal] jurisdiction consistent with

due process, the defendant's suit-related conduct must create a substantial connection with the forum State." Walden 571 U.S. at 284, 134 S.Ct. at 1121. A defendant's contacts with a forum State that are merely "'random,' 'fortuitous' or 'attenuated'" are not sufficient. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475, 105 S.Ct. 2174, 2183 (1985), quoting Keeton, 465 U.S. at 774, 104 S.Ct. at 1748).

The Supreme Court in Walden considered the "effects test" first enunciated in Calder v. Jones, 465 U.S. 783, 104 S.Ct. 1482 (1984). That test is applicable in cases alleging intentional torts. Oldfield v. Pueblo De Bahia Lora, S.A., 558 F.3d 1210, 1220 n.28 (11th Cir. 2009). Under the effects test, a plaintiff must demonstrate "that the defendant (1) committed an intentional tort (2) that was directly aimed at the forum, (3) causing an injury within the forum that the defendant should have reasonably anticipated." Id. In applying the effects test, the United States Supreme Court noted that "[t]he proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way."

Walden, 571 U.S. at 290, 134 S.Ct. at 1125. The Court in Walden ultimately held that Nevada did not have specific personal jurisdiction over the defendant because all the actions complained of had occurred in Georgia and the defendant had not directly aimed the allegedly tortious actions at Nevada.

"The issue of personal jurisdiction '"stands or falls on the unique facts of [each] case."'" Ex parte Citizens Prop. Ins. Corp., 15 So. 3d 511, 515 (Ala. 2009) (quoting Ex parte I.M.C., Inc., 485 So. 2d 724, 725 (Ala. 1986)). All the underlying actions giving rise to the plaintiffs' claims in the present case occurred in Georgia. The defendants directed their wastewater to Dalton Utilities, a public utility, regulated by the Georgia Department of Natural Resources, for treatment. Dalton Utilities, in turn, treated the wastewater and sprayed it onto its LAS, which Dalton Utilities is specifically authorized and permitted to do under Georgia law. The fact that some runoff allegedly ended up in the Conasauga River in Georgia and eventually in the Coosa River in Alabama

does not establish that the defendants' actions were intentionally and directly aimed at Alabama.

The plaintiffs put much emphasis on an allegation that the defendants knew or should have known that their chemicals would reach Alabama. However, "'foreseeability' alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 295, 100 S.Ct. 559, 566 (1980).

Finally, I believe the three cases from other jurisdictions upon which the main opinion primarily relies are distinguishable. In Triad Hunter, LLC v. Eagle Natrium, LLC, 132 N.E.3d 1272 (Ohio Ct. App. 2019), the plaintiff alleged that the defendant, located in West Virginia and engaged in mining operations on the West Virginia side of the Ohio River, had created "caverns" that extended under the river and into the plaintiff's property in Ohio. According to the Ohio Court of Appeals, the case involved

> "not only ... entry of the defendants' instrumentality into [Ohio] but also ... allegations of retrieval of the item which made contact with Ohio and retrieval of minerals which were dissolved into the item (which was injected with the purpose of dissolving minerals in order to profit). The item

> making the contact with Ohio still essentially belonged to the defendants, at least for purposes of personal jurisdiction, and it was purposefully retrieved by them in order to extract the dissolved minerals."

132 N.E.3d at 1285.

In Horne v. Mobile Area Water & Sewer System, 897 So. 2d 972, 979 (Miss. 2004), the defendants, in anticipation of heavy rains, purposefully released a significant amount of water from a reservoir 12 miles from the Mississippi border, which flowed into Mississippi and caused damage. In Pakootas v. Teck Cominco Metals, Ltd., 905 F.3d 565 (9th Cir. 2018), the defendant, a Canadian company, intentionally dumped waste directly into a river that flowed into the State of Washington. The United States Court of Appeals for the Ninth Circuit described the defendant's actions as using the river as a "conveyor belt" to dispose of waste into Washington.

Those cases involved defendants intentionally and purposefully reaching across state lines or discharging material directly into a water source that flowed into the forum jurisdiction a short distance away. In contrast, in the present case, the allegedly offending material was discharged

into Dalton Utilities' facility, which in turn sprayed it on land in Georgia, which then trickled into a tributary river in Georgia approximately 70 miles from the Coosa River site of the injuries in Alabama.

There is no evidence indicating that the defendants in the present cases directly aimed the allegedly tainted wastewater at Alabama. Thus, I do not believe their actions sufficiently created the necessary minimum contacts with this State to create specific personal jurisdiction. Accordingly, I would grant all the petitions for the writ of mandamus.[14]

Mendheim, J., concurs.

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[14]In a negligence case, in order to establish specific personal jurisdiction, the plaintiff must show that the defendant committed "'some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum ..., thus invoking the benefits and protections of its laws.'" Oldfield v. Pueblo De Bahia Lora, S.A., 558 F.3d 1210, 1220 (11th Cir. 2009) (quoting Hanson v. Denckla, 357 U.S. 235, 253, 78 S.Ct. 1228, 1240 (1958)). For the same reasons I conclude that the plaintiffs have not shown that the defendants directly aimed their allegedly tortious conduct at Alabama, I do not believe it has been established that they purposefully availed themselves of the privilege of conducting business here, which is the standard to obtain personal jurisdiction.