APPENDIX

APPENDIX A

SUPREME COURT OF ALABAMA

October Term, 2019-2020

December 20, 2019

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

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)

Ex parte Oriental Weavers USA, Inc.

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.

> """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]

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

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

> (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).'
>
> "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 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

[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.

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 wastewater to Dalton Utilities. Centre Water asserts, however, that the affidavit "does not mention whether [Milliken's] facilities in Calhoun, Georgia purchased,

[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.

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, 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

[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.

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)

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

---

(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 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.

> chemicals, Indian Summer has never discharged chemicals containing PFOA or PFOS in wastewater."

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 re-

sponse 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

---

[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.

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 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 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

---

[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.

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,

---

[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.

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 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. Moreover, 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

---

[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

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 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.
>
> ". . . .
>
> "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

---

over a railway company that conducted business within the state.

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)].

"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.

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 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

---

[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.

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).
>
> "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

---

[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).

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 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,

---

[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 (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

taking 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, 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

---

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.

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

---

[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, 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.

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 non-resident 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.

---

[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.

APPENDIX B

IN THE CIRCUIT COURT OF CHEROKEE COUNTY, ALABAMA

THE WATER WORKS AND SEWER BOARD OF THE TOWN OF CEN,	)	
Plaintiff,	)	Case No.: CV-2017-900049.00
v.	)	
3M COMPANY, INC., ALADDIN MANUFACTURING CORPORATION, APRICOT INTERNATIONAL, INC., ARROWSTAR, LLC ET AL,	)	May 15, 2018
Defendants.	)	

ORDER ON MOTIONS TO DISMISS AND MOTIONS FOR PROTECTIVE ORDER

This case is before the Court on motions to dismiss and motions for a protective order filed by some, but not all, of the Defendants. The Court will address the motions by individual Defendant.

Facts

The Plaintiff provides drinking water to residential and commercial customers in Cherokee County, Alabama. It draws its raw water from Weiss Lake. It

alleges that the Defendants are either carpet manufacturers who use certain chemicals in their manufacturing process or are chemicals manufacturers who supply chemicals to the manufacturers of carpet. The Plaintiff alleges that the Defendants caused chemicals to enter Weiss Lake in Cherokee County, Alabama and that it must expend considerable resources to remove those chemicals from the water in order to make it safe for its customers to drink. The Plaintiff alleges that the chemicals were placed into the environment in Georgia near the Conasauga River, that that River is a tributary of the Coosa River, that Weiss Lake is in the Coosa River Basin and that through those connections the chemicals made their way into the raw water source of the Plaintiff.

While taking issue with those allegations, the Defendants addressed in this Order contest this Court's jurisdiction.

Defendant Textile Rubber and Chemical Company, Inc.

Motion to Dismiss

Textile Rubber and Chemical Company, Inc. ("TRCC") filed a Motion to Dismiss for Lack of Personal Jurisdiction and a Motion for Protective Oder to Stay Discovery. The Motion to Dismiss was filed pursuant to Ala. R. Civ. P. 12(b)(2) (the defense of "lack of jurisdiction over the person").

As recognized by all parties, there are two subsets of personal jurisdiction: (1) general and (2) specific. Daimler AG v. Bauman, 134 S. Ct. 746 (2014). The Plaintiff has made no supported claim of general jurisdiction relative to most of the Defendants, including TRCC, and the Court finds that general jurisdiction of TRCC does not exist in Alabama.

The general statement of the law regarding personal jurisdiction is that

> The Due Process Clause of the Fourteenth Amendment constrains a State's authority to bind a nonresident defendant to a judgment of its courts. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291, 100 S. Ct. 559, 62 L.Ed.2d 490 (1980). Although a nonresident's physical presence within the territorial jurisdiction of the court is not required, the nonresident generally must have "certain minimum contacts . . . 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, 90 L.Ed. 95 (1945) (quoting Milliken v. Meyer, 311 U.S. 457, 463, 61 S. Ct. 339, 85 L.Ed. 278 (1940)).

Walden v. Fiore, 134 S. Ct. 1115, 1121, 188 L. Ed. 2d 12 (2014).

Alabama Courts have addressed the question of specific jurisdiction with the following statement

> "The analytical framework for determining whether specific jurisdiction exists consists of three inquiries. See [State ex rel.] Circus Circus [Reno, Inc. v. Pope], 317 Or. [151,] 159–60, 854 P.2d 461[, 465 (1993) (en banc)] (laying out analytical framework).
>
> First, the defendant must have 'purposefully avail[ed] itself of the privilege of conducting activities within the forum State.' Hanson v. Denckla, 357 U.S. 235, 253, 78 S. Ct. 1228, 2 L.Ed.2d 1283 (1958). The requirement that a defendant purposefully direct activity to the

forum state precludes the exercise of jurisdiction over a defendant whose affiliation with the forum state is 'random,' 'fortuitous,' or 'attenuated,' or the 'unilateral activity of another party or a third person.' Burger King, 471 U.S. at 475, 105 S. Ct. 2174 (internal citation marks omitted); see also State ex rel. Jones v. Crookham, 296 Or. 735, 741–42, 681 P.2d 103[, 107] (1984) (requirements of due process not met when defendant's contacts with Oregon are 'minimal and fortuitous').

"Second, the action must 'arise out of or relate to' the foreign defendant's 'activities in the forum State.' Helicopteros Nacionales de Colombia, S.A., v. Hall, 466 U.S. 408, 414, 104 S. Ct. 1868, 80 L.Ed.2d 404 (1984); Burger King, 471 U.S. at 472, 105 S. Ct. 2174. Stated differently, for an exercise of specific jurisdiction to be valid, there must be 'a "relationship among the defendant, the forum, and the litigation."' Helicopteros, 466 U.S. at 414, 104 S. Ct. 1868 (quoting Shaffer v. Heitner, 433 U.S. 186, 204, 97 S. Ct. 2569, 53 L.Ed.2d 683 (1977)). In further explaining that relationship, the Supreme Court recently highlighted two means by which specific jurisdiction attaches: Jurisdiction may attach if a party engages in 'activity [that] is continuous and systematic and that activity gave rise to the episode-in-suit.' Goodyear, [564] U.S. at [923], 131 S. Ct. at 2853 (internal quotation marks omitted; emphasis in original). Jurisdiction may also attach if a party's 'certain single or occasional acts in a State [are] sufficient to render [him or her] answerable in that State

> with respect to those acts, though not with respect to matters unrelated to the forum connections.' Id. (internal quotation marks omitted). Thus, as articulated by the Court, an exercise of specific jurisdiction is appropriate in cases where the controversy at issue 'derive[s] from, or connect[s] with' a defendant's forum-related contacts. Id. at [919], 131 S. Ct. at 2851.
>
> "Finally, a court must examine whether the exercise of jurisdiction over a foreign defendant comports with fair play and substantial justice, taking into account various factors deemed relevant, including an evaluation of the burden on a defendant, the forum state's interest in obtaining convenient and effective relief, the interstate judicial system's interest in efficient resolution of controversies, and furthering fundamental social policies. Asahi Metal Industry Co. v. Superior Court, 480 U.S. 102, 113, 107 S. Ct. 1026, 94 L.Ed.2d 92 (1987); Burger King, 471 U.S. at 476–77, 105 S. Ct. 2174; see Circus Circus, 317 Or. at 159–60, 854 P.2d 461."
>
> 354 Or. at 577–80, 316 P.3d at 291–92 (third emphasis original; other emphases added; footnote omitted).

Hinrichs v. Gen. Motors of Canada, Ltd., 222 So. 3d 1114, 1121–22 (Ala. 2016), cert. denied, 137 S. Ct. 2291, 198 L. Ed. 2d 724 (2017) (emphasis in original).

To summarize, for an out-of-state defendant to be subject to specific jurisdiction in Alabama, a plaintiff must show:

(1) That the defendant purposefully availed itself of the privilege of conducting activities in Alabama; this requires a showing:

   a. That the subject activity of the Defendant is directed at Alabama

   b. That the subject activity is not "random," "fortuitous," or "attenuated," or the "unilateral activity of another party or a third person."

(2) That there is "a 'relationship among the defendant, the forum, and the litigation.'" That is, as set out by TRCC, "[t]he defendant's activities must be related to the 'operative facts of the controversy.'" And

(3) That the exercise of personal jurisdiction would "comport[] with fair play and substantial justice"

The argument of TRCC is that its principal place of business is in Georgia and that the allegations made by the Plaintiff involve conduct alleged to have occurred in Georgia. It states that "Plaintiff has alleged *no* conduct or 'activities' by TRCC in the State of Alabama that relate to the causes of action in Plaintiff's Complaint." Defendant TRCC's Motion to Dismiss, pg. 6 (emphasis in original). It states that the Plaintiff's allegation is that the Defendants "discharged wastewater to a *third party*, Dalton Utilities, located in *Dalton, Georgia*, and the wastewater, through *no* other purposeful action or conduct by TRCC, allegedly made its way many miles to the water supply in the Towne (sic) of Centre, Alabama." Id. (emphasis in original). TRCC pointed out in its Reply Brief Supporting its Motion to Dismiss for Lack of Per-

sonal jurisdiction, that Dalton Utilities was in violation of its permit from the Georgia Environmental Protection Division that stated that "[t]he wastewater and disposal system [maintain by Dalton Utilities] must be maintained as a no-discharge system." TRCC Reply Brief, pg. 7.

The primary areas of contention are that (1) TRCC did not direct any activity toward Alabama and (2) the acts complained of by the Plaintiff are actually acts of a third party (Dalton Utilities). It appears that there is no Alabama case law directly on point.

WHETHER THE ACTS WERE DIRECTED AT ALABAMA

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., 2004 WL 2578982 (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 . . ." Id. 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 smelter 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 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.

> "'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 that 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 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[.]"

For the purposes of the present Motion only, the Court finds in favor of the Plaintiff on the issue of specific personal jurisdiction.

Motion for Protective Order to Stay Discovery

Because the Court herein denies TRCC's Motion to Dismiss, the Motion for Protective Order to Stay Discovery is also denied.

Defendant Dorsett Industries, Inc.

Motion to Dismiss and Motion for Protective Order

Dorsett Industries, Inc. ("Dorsett"), asserts the same argument regarding personal jurisdiction as asserted by TRCC and for the same reasoning as set out above Dorsett's Motion to Dismiss is due to be denied.

However, Dorsett first makes the claim that the Plaintiff's allegations that it "utilize(s) various PFCs and their precursors in the manufacturing process" (Complaint, ¶ 49) is inaccurate. The Director of Manufacturing for Dorsett filed an affidavit in which he stated that "Dorsett does not apply any stain-resistant, grease-resistant, or water-resistant chemicals to its products at any point during the manufacturing process . . ." Goodroe Affidavit, ¶ 4. He further stated

that "Dorsett did not use any perflourinated stain-resistant, or water-resistant chemicals after January 1, 2009." Id. at ¶ 5.

The Plaintiff responded that these statements "do[] not conclusively refute the complaint's allegations which claim that [Dorsett] uses specific PFC's (e.g. PFOA, PFOS, and their precursors) that have these [stain, grease and water-resistant] qualities" and that the affidavit "indirectly admits that [Dorsett] used such chemicals until December 31, 2008" and that other companies contracted by Dorsett may have used these chemicals to "finish" products manufactured by Dorsett.

Given these factual considerations, the Court will hold the Motion to Dismiss in abeyance and allow the parties an opportunity to conduct discovery only specifically related to the three issues raised by the Plaintiff in its Response in Opposition to Defendant Dorsett Industries, Inc.'s Renewed Motion to Dismiss.

Defendant MFG Chemical, Inc.

Motion to Dismiss and Motion for Protective Order

MFG Chemical, Inc. ("MFG") stated in its Memorandum of Law in Support of its Motion to Dismiss that it "never used or produced chemicals with PFCs . . ." Memorandum, pg. 7. However, it failed to support this allegation with any evidentiary submission. MFG submitted an affidavit from its Chairman and CEO. That affidavit does not make the same statement that MFG did not use or produce chemicals with PFCs. Instead, MFG points to its pleadings for the basis that did not use or produce chemicals with PFCs. See, e.g., Defendant MFG Chemical, Inc.'s Reply to Plaintiff's Response in Opposition to Defendant

MFG's Motion to Dismiss, pg. 4 (citing MFG's Renewed Answer, First Defense).

MFG's Motion to Dismiss and Motion for Protective Order are both denied on the same reasoning as set out above relative to TRCC's Motions.

Defendant Shaw Industries, Inc.

***Motion to Dismiss for Lack of Personal Jurisdiction, and Alternatively, Under the Doctrine of* Forum non Conveniens**

Shaw Industries, Inc. ("Shaw") bases its Motion to Dismiss: (1) on a lack of personal jurisdiction, and (2) on the doctrine of *forum non conveniens*. Based on the same reasoning as set out above relative to TRCC's Motion to Dismiss, Shaw's Motion to Dismiss based on a lack of personal jurisdiction is denied.

The allegations made by the Plaintiff are relative to actions occurring in and around Dalton, Georgia. As stated by the Plaintiff in its Response in Opposition to Defendant Shaw Industries, Inc.'s Renewed Motion to Dismiss, Dalton, Georgia is only 68 miles from Centre, Alabama. The Plaintiff alleges actions taken by the Defendant in Dalton. The Court expects that witnesses from that area will be necessary witnesses in this case. However, the alleged harm is in Cherokee County, Alabama. The Court also expects that witnesses from this area will be necessary witnesses in this case.

Given both of these considerations, and given the relatively short distance between Dalton and Cherokee County, the Court denies Shaw's Motion to Dismiss Under the Doctrine of *Forum non Conveniens*.

Defendant Milliken and Company

Motion to Dismiss

Milliken and Company ("Milliken") bases its Motion to Dismiss: (1) on a lack of personal jurisdiction, and (2) on a claim that the Complaint fails to state a claim for relief. Based on the same reasoning as set out above relative to TRCC's Motion to Dismiss, Milliken's Motion to Dismiss based on a lack of personal jurisdiction is denied.

Milliken also seeks dismissal of "[e]ach individual count" of the Complaint because, it alleges, "the allegations of each Count in the Complaint (Compl. ¶¶ 65-95) constitute no more than threadbare recitals of the elements of the cause of action and do not show that Plaintiff is entitled to relief." Milliken's Motion to Dismiss and Memorandum of Law in Support, pg. 8.

As is well-known, Alabama is a "notice-pleading" state. This concept has been discussed as follows:

> "[T]he purpose of notice pleading is to provide defendants adequate notice of the claims against them." Ex parte International Ref. & Mfg. Co., 972 So. 2d 784, 789 (Ala. 2007). See also Rule 8, Ala. R. Civ. P., Committee Comments on 1973 Adoption ("Under [Rule 8] the prime purpose of pleadings is to give notice."). "Generally, the pleadings, in and of themselves, are considered relatively unimportant because cases are to be decided on the merits." Johnson v. City of Mobile, 475 So. 2d 517, 519 (Ala. 1985).
>
> "[Rule 8(a)] is complied with if the claim for relief gives to the opponent fair notice of the pleader's claim and the grounds upon which it

rests. Carter v. Calhoun County Board of Education, 345 So. 2d 1351 (Ala. 1977). The discovery process bears the burden of filling in the factual details. 5 C. Wright & A. Miller, Federal Practice and Procedure § 1215, p. 110 (1969).

A fair reading and study of the Alabama Rules of Civil Procedure lead to the determination that pleading technicalities are now largely avoided and that the pleading of legal conclusions is not prohibited, as long as the requisite fair notice is provided thereby to the opponent." Mitchell v. Mitchell, 506 So. 2d 1009, 1010 (Ala. Civ. App. 1987).

Furthermore, "pleadings are to be liberally construed in favor of the pleader." Adkison v. Thompson, 650 So. 2d 859, 862 (Ala. 1994). See also Rule 8, Ala. R. Civ. P., Committee Comments on 1973 Adoption ("Rule 8(f) [, Ala. R. Civ. P.,] . . . provides that the pleadings are to be construed liberally in favor of the pleader.").

"[T]he dismissal of a complaint is not proper if the pleading contains 'even a generalized statement of facts which will support a claim for relief under [Rule] 8, [Ala. R. Civ. P.]' (Dunson v. Friedlander Realty, 369 So. 2d 792, 796 (Ala. 1979)), because '[t]he purpose of the Alabama Rules of Civil Procedure is to effect justice upon the merits of the claim and to renounce the technicality of procedure.' Crawford v. Crawford, 349 So. 2d 65, 66 (Ala. Civ. App. 1977)."

McKelvin v. Smith, 85 So. 3d 386, 388–89 (Ala. Civ. App. 2010).

Given the considerations listed in the McKelvin v. Smith case and this Court's review of the Complaint, Milliken's Motion to Dismiss based on its claim that the Complaint fails to state a claim for relief (claims listed in pages 8 through 14 of its Motion to Dismiss) is denied.

Motion for Protective Order to Stay Discovery

Because the Court herein denies Milliken's Motion to Dismiss, the Motion for Protective Order to Stay Discovery is also denied.

Defendants Aladdin Manufacturing Corporation, Mohawk Industries, Inc. and Mohawk Carpet, LLC.

Motion to Dismiss

Aladdin Manufacturing Corporation, Mohawk Industries, Inc. and Mohawk Carpet, LLC. base their joint Motion to Dismiss: (1) on a lack of personal jurisdiction, and (2) on a claim that the Complaint fails to state a claim for relief. Based on the same reasoning as set out above relative to TRCC's Motion to Dismiss and Milliken's Motion to Dismiss, the Motion to Dismiss filed by these Defendants is denied.

Defendant 3M Company

Motion to Dismiss

3M Company ("3M") bases its Motion to Dismiss on a claim that the Complaint fails to state a claim for relief. Based on the same reasoning as set out above relative to the Motion to Dismiss filed by Milliken, the Motion to Dismiss filed by 3M is denied.

Defendant Lexmark Carpet Mills, Inc.

Motion to Dismiss and Motion for Protective Order and Stay of Discovery

Lexmark Carpet Mills, Inc. ("Lexmark") bases its Motion to Dismiss: (1) on a lack of personal jurisdiction, and (2) on a claim that the Complaint fails to state a claim for relief. Based on the same reasoning as set out above relative to TRCC's Motion to Dismiss, Milliken's Motion to Dismiss based on a lack of personal jurisdiction is denied.

However, like Dorsett, Lexmark claims that it "does not use [the chemicals complained of by the Plaintiff] in its manufacturing process or discharge them into any bodies of water." Lexmark's Motion to Dismiss, page 2. Lexmark submitted an affidavit from its Chief Financial Officer in which he stated that Lexmark does not and has not made or used PFCs, PFOAs or PFOSs in Dalton, Georgia. Affidavit of James E. Butler, ¶¶ 3-4.

The Plaintiff countered that Lexmark's "own product warranty literature establishes that [Lexmark] manufactures a number of different stain-resistant products . . . At least some of these products impart stain-resistance through the use of Scotchguard, a 3M product that contained PFOS as a key ingredient until June 2003 when it was reformulated." Plaintiff's Response in Opposition to Defendant Lexmark Carpet Mills, Inc.'s Motion to Dismiss, pg. 10.

Given these factual considerations, the Court will hold the Motion to Dismiss and Motion for Protective Order and Stay of Discovery in abeyance and allow the parties an opportunity to conduct discovery only specifically related to the issue of whether Lexmark ever

made, used, supplied or distributed any of the chemicals at issue in this case.

Defendant Kraus USA, Inc.

Motion to Dismiss

Kraus USA, Inc. ("Kraus"), asserts the same argument regarding personal jurisdiction as asserted by TRCC and for the same reasoning as set out above, Kraus's Motion to Dismiss is due to be denied.

Kraus's Motion also references its evidentiary submission stating that since 2010 the facility it owns in Dalton, Georgia, is a "storage facility only" and that "since 2010 Kraus has produced none of the . . . chemicals referenced in Plaintiff's Complaint . . ." Affidavit of Mark Cummings, ¶ 8.

As pointed out by the Plaintiff, this statement could be viewed as an admission "that [Kraus] **did** produce and use PFCs and related chemicals at this facility . . ." Plaintiff's Response in Opposition to Defendant Kraus USA, Inc.'s Renewed Motion to Dismiss, pg. 10 (emphasis in original). Given this consideration, the Motion to Dismiss is denied.

Defendant The Dixie Group, Inc.

Motion to Dismiss and Motion for Protective Order to Stay Discovery

The Dixie Group, Inc. ("Dixie"), asserts essentially the same argument regarding personal jurisdiction as asserted by TRCC and for the same reasoning as set out above Dixie's Motion to Dismiss and Motion for Protective Order to Stay Discovery are denied.

Defendant Harcos Chemical, Inc.

Motion to Dismiss, or in the Alternative, Motion for More Definite Statement

Harcos Chemical, Inc. ("Harcos") explicitly bases its Motion to Dismiss on the same argument asserted by 3M. For the same reasons stated above relative to 3M, Harcos' Motion to Dismiss is denied.

The Motion for More Definite Statement is denied. The Court finds that the Complaint sufficiently apprises Harcos of the allegations against it.

Defendant Dystar L.P.

Motion to Dismiss and Motion for Protective Order to Stay Discovery

Dystar L.P. ("Dystar") bases its Motion to Dismiss on its assertion that it "does not produce or use [the chemicals complained of the Plaintiff] at its Dalton, Georgia facility and has never discharged such chemicals from its Dalton facility to Dalton Utilities." Dystar's Reply Brief in Support of its Renewed and Amended Motion to Dismiss, pg. 1. In support of this assertion, it relies on an affidavit from its Chief Financial Officer.

The Plaintiff counters that Dystar "suppl[ies] chemical products to manufacturing facilities located upstream of Centre Water's intake site . . . Therefore, [Dystar] need not manufacture PFCs and related chemicals **in** Dalton, Georgia to be liable. Instead, Plaintiff alleges that [Dystar] supplies chemicals **to** manufacturing facilities in Dalton."

Given these factual considerations, the Court will hold the Motion to Dismiss and Motion for Protective Order and Stay of Discovery in abeyance and allow the

parties an opportunity to conduct discovery only specifically related to the issue of whether Dystar ever made, used, supplied or distributed any of the chemicals at issue in this case to any manufacturer in or near Dalton, Georgia.

Defendant J&J Industries, Inc.

Motion to Dismiss and Motion for Protective Order and to Stay Discovery

J&J Industries, Inc. ("J&J") asserts essentially the same argument regarding personal jurisdiction as asserted by TRCC and for the same reasoning as set out above J&J's Motion to Dismiss and Motion for Protective Order to Stay Discovery are denied.

Defendant Tandus Centiva US, LLC

Motion for Judgment on the Pleadings Pursuant to Ala. R. Civ. P. 12, or, Alternatively, Motion for Summary Judgment Pursuant to Ala. R. Civ. P. 56 and Motion For Protective Order to Stay Discovery

Tandus Centiva US, LLC ("Tandus") claims that it "is not a carpet manufacturer . . . and has never used or discharged the chemicals complained of by Plaintiff." Memorandum of Law in Support of its Motion for Judgment on the Pleadings, pg. 3.

Given these factual considerations, the Court will hold the Motion for Judgment on the Pleadings Pursuant to Ala. R. Civ. P. 12, or, Alternatively, Motion for Summary Judgment Pursuant to Ala. R. Civ. P. 56 and Motion for Protective Order to Stay Discovery in abeyance and allow the parties an opportunity to conduct discovery only specifically related to the issue of whether Tandus ever made, used, supplied or discharged any of the chemicals at issue in this case.

Defendant Engineered Floors, LLC

Motion to Dismiss and Motion for Protective Order and to Stay Discovery

Engineered Floors, LLC ("Engineered Floors") asserts essentially the same argument regarding personal jurisdiction as asserted by TRCC and for the same reasoning as set out above Engineered Floors' Motion to Dismiss and Motion for Protective Order to Stay Discovery are denied.

Defendant Arrowstar LLC

Renewed and Amended Motion to Dismiss

Arrowstar LLC ("Arrowstar") asserts essentially the same argument regarding personal jurisdiction as asserted by TRCC and for the same reasoning as set out above Arrowstar's Motion to Dismiss is denied.

Defendant Fortune Contract, Inc.

Motion to Dismiss Pursuant to Ala. R. Civ. P. 12(b)(2) and (6), and Alternatively, Motion for Summary Judgment Pursuant to Ala. R. Civ. P. 56

Fortune Contract, Inc. ("Fortune") claims that it "does not manufacture carpet or chemicals or use or discharge chemicals in the manufacture of rugs or carpet or any other product. It has never done so. Fortune has not utilized or supplied any chemicals related to the rug or carpet manufacturing process, including those named in the Complaint." Brief in Support of its Motion to Dismiss, pg. 2.

Given these factual considerations, the Court will hold the Motion to Dismiss Pursuant to Ala. R. Civ. P. 12(b)(2) and (6), and Alternatively, Motion for Sum-

mary Judgment Pursuant to Ala. R. Civ. P. 56 in abeyance and allow the parties an opportunity to conduct discovery only specifically related to the issue of whether Fortune ever made, used, supplied or discharged any of the chemicals at issue in this case.

Defendant NPC South, Inc.

Motion to Dismiss Pursuant to Ala. R. Civ. P. 12(b)(2) and (6), and Alternatively, Motion for Summary Judgment Pursuant to Ala. R. Civ. P. 56

NPC South, Inc. ("NPC") claims that it "does not manufacture carpet or chemicals or use or discharge chemicals in the manufacture of rugs or carpet or any other product. It has never done so. NPC has not utilized or supplied any chemicals related to the rug or carpet manufacturing process, including those named in the Complaint." Brief in Support of its Motion to Dismiss, pg. 2.

Given these factual considerations, the Court will hold the Motion to Dismiss Pursuant to Ala. R. Civ. P. 12(b)(2) and (6), and Alternatively, Motion for Summary Judgment Pursuant to Ala. R. Civ. P. 56 in abeyance and allow the parties an opportunity to conduct discovery only specifically related to the issue of whether NPC ever made, used, supplied or discharged any of the chemicals at issue in this case.

Defendant Indian Summer Carpet Mills, Inc.

Motion to Dismiss Pursuant to Ala. R. Civ. P. 12(b) and (c) and Ala. Code § 6-5-430 or, in the Alternative, Motion for Summary Judgment Pursuant to Ala. R. Civ. P. 56 and Motion for Protective Order

Indian Summer Carpet Mills, Inc. ("Indian Summer") claims that it "does not manufacture carpet treated with PFOA or PFOS. It has never done so. Indian Summer has never purchased any chemicals containing PFOA or PFOS. While some carpets sold by Indian Summer are treated with chemicals to make them stain-resistant, those chemicals are applied by entities unrelated to Indian Summer and do not contain PFOA or PFOS. Those chemicals were applied at facilities owned and operated by entities unrelated to Indian Summer." Indian Summer's Motion to Dismiss, pg. 3.

Given these factual considerations, the Court will hold the Motion to Dismiss Pursuant to Ala. R. Civ. P. 12(b) and (c) and Ala. Code § 6-5-430 or, in the Alternative, Motion for Summary Judgment Pursuant to Ala. R. Civ. P. 56 and Motion for Protective Order in abeyance and allow the parties an opportunity to conduct discovery only specifically related to the issue of whether Indian Summer ever made, used, supplied or discharged any of the chemicals at issue in this case.

Defendants ECMH, LLC D/B/A Clayton Miller and Emerald Carpets, Inc.

Defendants ECMH, LLC D/B/A Clayton Miller ("Clayton Miller") and Emerald Carpets, Inc. ("Emerald Carpet") filed a Motion for Summary Judgment. This Motion will be set for hearing by separate order. The parties may engage in discovery relative to the

Plaintiff's claims against Clayton Miller and Emerald Carpets.

DONE this 15th day of May, 2018.

/s/ JEREMY S TAYLOR
CIRCUIT JUDGE

APPENDIX C

IN THE CIRCUIT COURT OF ETOWAH COUNTY, ALABAMA

THE WATER WORKS AND SEWER BOARD OF THE CITY OF GADSDEN,	)	**CIVIL ACTION NO: 31-CV-2016-900676.00**
Plaintiff,	)	
v.	)	
3M COMPANY, INC., et al.,	)	August 13, 2018
Defendants.	)	

ORDER ON DEFENDANTS' DISPOSITIVE MOTIONS AND MOTIONS FOR PROTECTIVE ORDER

Before the Court are motions to dismiss, motions for summary judgment, and motions for a protective order to stay discovery filed by various Defendants. The Court will address each motion separately.

FACTS

Plaintiff, the Water Works and Sewer Board of the City of Gadsden ("Plaintiff"), provides residential and commercial customers in Etowah County with drinking water. Plaintiff utilizes the Coosa River as its raw water source, specifically drawing its source water from Lake Neely Henry in the Middle Coosa Basin. Coosa River tributaries above Plaintiff's water intake

point includes the Conasauga River which is located just to the east of Dalton, Georgia. Dalton is home to over 150 carpet manufacturing plants, and more than 90% of the world's carpet is produced within a 65-mile radius of the city.

Defendants are owners and operators of, or the chemical suppliers to, manufacturing facilities in and around Dalton, Georgia. Plaintiff alleges that these manufacturing facilities apply perflourinated chemicals ("PFCs") including, but not limited to, perfluorooctanoic acid ("PFOA"), perfluorooctane sulfonate ("POSE"), and related chemicals in the manufacturing process to impart stain resistance to their carpet. Plaintiff further states that these chemicals pose certain health risks to individuals who drink water contaminated with PFCs and its related chemicals. Because of these health risks, the United States Environmental Protection Agency ("EPA") issued a new drinking water health advisory for PFOA and PFOS, stating that the combined concentration of these chemicals in drinking water pose a lifetime health risk when they reach concentration that levels of greater than 70 parts per trillion.

Plaintiff alleges the Defendant chemical suppliers and carpet manufacturers caused PFCs and their related chemicals to enter the Conasauga River that contaminated Plaintiff's water source from the Coosa River. As a result, Plaintiff claims it must expend resources to remove these chemicals from the source water to ensure it can deliver safe drinking water to its customers.

ANALYSIS

The motions filed by the Defendants can mostly be placed into three different categories. First, most of the Defendants seek dismissal or summary judgment for lack of personal jurisdiction either because they claim they did not supply or use the chemicals at issue in the complaint or did not engage in any activities in the State of Alabama to warrant this court's jurisdiction. Second, some Defendants attack the sufficiency of the allegations in Plaintiff's complaint and move to dismiss for failure to state a claim upon which relief can be granted pursuant to ALA. R. CIV. P. 12(b)(6). Finally, several Defendants also moved for a protective order staying discovery pursuant to ALA. R. CIV. P. 26(c) until this Court rules on the accompanying dispositive motion seeking dismissal from the case.

For ease of review, the Court will discuss the governing law for each of these issues, then will address the Defendants' motions separately.

I. Personal Jurisdiction

Alabama courts may exercise personal jurisdiction over an out-of-state defendant as permitted by Alabama's long-arm provision, Ala. R. Civ. Pro. 4.2(b). "This rule extends the personal jurisdiction of Alabama courts to the limit of due process under the United States and Alabama Constitutions." *Ex parte City Boy's Tire,* 87 So. 3d 521, 528 (Ala. 2011). Alabama Courts do not look to statutes or rules, but instead look to the essence of due process. *Id.* Stated another way, instead of simply applying formulas, the court relies on principles of fairness and justice. *Id.* There are two types of jurisdiction a court may exercise over a defendant: general and specific.

a. General Jurisdiction

General jurisdiction exists when a defendant's "continuous . . . operations within a state [are] so substantial and of such a nature as to justify suit against [the defendant] on causes of actions arising from dealings entirely distinct from those activities" *Hinrichs v. General Motors of Canada, Ltd.,* 222 So. 3d 1114, 1121 (Ala. 2016) *cert. denied,* 137 S. Ct. 2291(2017) (quoting *Goodyear,* 564 U.S. at 924). It requires "continuous and systematic" contacts with the forum state so as to render the defendant essentially at home there. *Id.* (quoting *Goodyear,* 564 U.S. at 919 (2011). A corporation's home may include its state of incorporation, its principal place of business, or wherever it has "some other comparable level of intensity of contact." *Hinrichs,* 222 So. 3d at 112. Notably, *"Goodyear* did not hold that a corporation may be subject to general jurisdiction **only** in a forum where it is incorporated or has its principal place of business; it simply typed those places paradigm all-purpose forums." *Id.* (quoting *Daimler AG v. Bauman,* 134 S. Ct. 746, 760-62 (2014) (emphasis original)). The *Hinrichs* court interpreted *Daimler* to hold that the key inquiry is whether a defendant's contacts with Alabama are "so 'continuous and systematic' that it is essentially 'at home' there." *Hinrichs,* 222 So. 3d at 1125. Therefore, the court may still analyze the extent of a defendant's contacts with the forum state to determine whether it is "essentially" at home there.

b. Specific Jurisdiction

Three elements must be satisfied for Alabama courts to have specific personal jurisdiction:

> First, the defendant must have 'purposefully avail[ed] itself of the privilege of conducting

> activities within the forum State.' *Hanson v. Denckla,* 357 U.S. 235, 253 (1958). The requirement that a defendant purposefully direct activity to the forum state precludes the exercise of jurisdiction over a defendant whose affiliation with the forum state is 'random,' fortuitous,' or 'attenuated,' or the unilateral activity of another party or a third person.' *Burger King v. Rudzwicz,* 471 U.S. 462, 475 (internal citation marks omitted) . . .
>
> Second, the action must 'arise out of or relate to' the foreign defendant's 'activities in the forum State.' *Helicopteros Nacionales de Colombia, S.A., v. Hall.,* 466 U.S. 408, 414 (1984); *Burger King,* 471 U.S. at 472 . . .
>
> Finally, a court must examine whether the exercise of jurisdiction over a foreign defendant comports with fair play and substantial justice, taking into account various factors deemed relevant, including an evaluation of the burden on a defendant, the forum state's interest in obtaining convenient and effective relief, the interstate judicial system's interest in efficient resolution of the controversies, and furthering fundamental social policies. *Asahi Metal Industry Co. v. Superior Court,* 480 U.S. 102, 113 (1987); *Burger King,* 471 U.S. at 476-77.

Hinrichs, 222 So. 3d at 1121-22.

Where the plaintiff alleges that the defendant committed an intentional tort, the effects test may be applied to determine whether the defendant has the requisite contacts with the forum state. 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 (11th Cir. 2009). Importantly, physical presence in the forum state is not necessary for jurisdiction as a physical entry into the forum state through "some other means" is a relevant contact. *Walden v. Fiore,* 134 S. Ct. 1115, 1122 (2014) (citing *Keeton v. Hustler Magazine, Inc.,* 465 U.S. 770, 773-74 (1984)).

These cases establish that a defendant must direct some act towards a particular state to warrant personal jurisdiction and being hauled into court there. However, this reasoning, and the cases that established the current jurisdictional analysis, are factually distinguishable from the matter before this Court and other environmental contamination cases involving a continuous tort that occurs over time and migrates from one state into another. Indeed, the United States Supreme Court has recognized that "even the simplest sort of interstate pollution case [is] an awkward vehicle to manage." *Ohio v. Wyandotte Chemicals Corp.,* 401 U.S. 493, 504 (1971). Thus, any jurisdictional analysis must consider the more complex nature of interstate environmental pollution cases such as that before this Court.

In similar water pollution cases, courts have not dismissed lawsuits for lack of personal jurisdiction when a resident plaintiff sued a non-resident defendant that discharged pollution into water or released water that ultimately caused damage to the plaintiff in the forum state. *See, e.g. People of State of Illinois*

v. City of Milwaukee, 599 F.2d 151 (7th Cir. 1979) (water pollution originating in Wisconsin causing injury in Illinois), *aff'd,* 451 U.S. 304 (1981); *International Paper Co. v. Ouellette*, 479 U.S. 481 (1987) (water pollution originating in New York causing injury in Vermont); *Ohio v. Wyandotte Chemicals Corp.*, 401 U.S. 493, 500-501 (1971) (water pollution from Canada causing damage in the U.S.); *Pakootas v. Teck Cominco Metals, Ltd.,* No. CV-04-256-AAM, 2004 WL 2578982 (E.D. Wash. Nov. 8, 2004), *aff'd* 452 F.3d 1066 (9th Cir. 2006) (water pollution from Canada causing damage in U.S.); and *Horne v. Mobile Area Water & Sewer System,* 897 So.2d 972 (Miss. 2004) (release of water in Alabama causing property damage in Mississippi). Indeed, the Supreme Court specifically rejected one defendant's argument that "all state-law suits must be brought in [the] source-state *courts." Ouellete,* 479 U.S. at 499 (emphasis original). Thus, jurisdiction was deemed proper where the injury occurred.

This Court finds the *Horne* and *Pakootas* cases particularly instructive. In both 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 was 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 . . ." *Horne* 897 So.2d at 979. This act and this knowledge was sufficient for the court to determine 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 suit under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) against a Canadian corporation that operated a smelter ten miles north of the U.S.–Canada border. The plaintiffs alleged that the defendants discharged harmful substances into the waters that flowed downstream to the plaintiffs' location and caused damage. The court found personal jurisdiction existed under these facts.

Thus, a defendant who engaged in conduct that foreseeably impacted a plaintiff in another state was sufficient to confer personal jurisdiction in the state where the plaintiff was injured. This finding comports with the due process requirement that it be fair to force a defendant to litigate in the selected forum. *International Shoe Co. v. Washington,* 326 U.S. 310, 316 (1945). This ultimately turns on foreseeability and whether a defendant's conduct could have predictably caused an injury in the forum state. *See Allstate Ins. Co. v. Hague,* 449 U.S. 302 (1981). If so, then the defendant could reasonably anticipate being hauled into court there.

II. Failure to State a Claim

Under ALA. R. CIV. P. 8(a), a complaint must contain a "short and plain statement of the claim showing

that the pleader is entitled to relief." This pleading standard does not require that a plaintiff show that it will "ultimately prevail, but only whether the plaintiff may possibly prevail." *Liberty Nat'l Life Ins. Co. v. University of Alabama Heath Servs. Found., P.C.* 881 So.2d 1013, 1017 (Ala. 2003). Dismissal under ALA. R. CIV. P. 12(b)(6) is only proper if "it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief." *Id.*

Pleadings are construed liberally in favor of the plaintiff. *Adkison v. Thompson,* 650 So. 2d 859, 862 (Ala. 1994). A well-pleaded complaint may proceed even if it appears "that a recovery is very remote and unlikely." *Scheuer v. Rhodes,* 416 U.S. 232, 236 (1974). "Generally, the pleadings, in and of themselves, are considered relatively unimportant because cases are to be decided on the merits." *Johnson v. City of Mobile,* 475 So.2d 517, 519 (Ala. 1985). "The purpose of the Alabama Rules of Civil Procedure is to effect justice upon the merits of the claim and to renounce the technicality of procedure." *Crawford v. Crawford,* 349 So. 2d 65, 66 (Ala. Civ. App. 1977). Further, the court must accept all allegations of the plaintiff s complaint as true unless they are controverted by the defendant's affidavits. *Corporate Waste Alternatives, Inc. v. McLane Cumberland, Inc.,* 896 So. 2d 410, 413 (Ala. 2004).

Plaintiff asserts the following claims against all defendants: negligence, nuisance, trespass, wantonness/punitive damages, and injunctive relief. A handful of Defendants argue these claims are not sufficiently plead under ALA. R. CIV. P. 12(b)(6) and, as a result, seek dismissal.

III. Standard Governing Granting a Protective Order

Several Defendants seek a halt of discovery until this Court determines whether it has jurisdiction over them. There is no law or mandate to stay discovery while a dispositive motion is pending before a court. Instead, this Court retains discretion to grant a stay only if the moving party establishes "good cause" to protect a party "from annoyance, embarrassment, oppression, or undue burden or expense." Ala. R. Civ. P. 26(c). Courts have imposed various limitations when determining whether there is good cause to grant a protective order staying discovery. The Alabama Supreme Court recognized that limiting discovery should occur "sparingly and with real discretion rather than as an absolute rule." *Ex parte Windom,* 776 So. 2d 799, 803 (Ala. 2000) (quoting 8 Wright & Miller, *Federal Practice and Procedure*, § 2040 (1994)). "[T]he movant must meet this burden with a 'particular and specific demonstration of fact as distinguished from stereotyped and conclusory statements.'" *Smith v. Life Ins. Co. of North America,* 33 F.Supp.3d 1324, 1326 (N.D. Ala. July 30, 2014) (quoting *United States v. Garrett,* 571 F.2d 1323, 1326 n. 3 (5th Cir. 1978)).[1] Thus, mere conclusory statements about discovery creating an undue burden or expense are insufficient.

---

[1] Federal courts' analyses of the analogous Federal Rule of Civil Procedure 26 are "authority for construction of the Alabama Rules." *Ex parte Scott,* 414 So.2d 939, 941 (Ala. 1982); *see also Baldwin v. Baldwin,* 160 So. 3d 34, 40 (Ala. Civ. App. 2014) (citing *Ex pane Novartis Pharms. Corp.,* 975 So. 2d 297, 300 n.2 (Ala. 2007)) ("the opinions of federal courts construing the federal rule are persuasive authority as to the proper construction of" Rule 26(c)).

Rule 26(c) also requires the moving attorney to submit a statement along with the motion for protective order confirming that attorney met and conferred with opposing counsel to attempt to resolve the dispute:

> "A motion for a protective order **shall** be accompanied by a statement of the attorney for the moving party stating that the attorney, **before filing the motion**, has endeavored to resolve the subject of the discovery motion through correspondence or discussion with opposing counsel . . ." (emphases added).

The supplied emphases clearly establish this meet and confer requirement is mandatory prior to counsel moving this Court for a protective order. Indeed, the committee comments elaborating on this requirement confirm its desire that parties resolve a discovery dispute before involving the Court. Failure to submit the meet and conferral statement is a ground for denying a motion for protective order. *See Smith v. Savage,* 655 So.2d 1022, 1025 (Ala. Civ. App. 1995) (stating that the trial court should reconsider the granting of a protective order when the moving party failed to file the conferral statement).

APPLICATION

The Court will now analyze each Defendant's motion.

I. Defendant MFG Chemical, Inc.

a. Motion to Dismiss for Lack of Personal Jurisdiction

MFG Chemical, Inc. ("MFG") argues this Court lacks sufficient contacts with Alabama to warrant this Court exercising specific jurisdiction. In support, it

relies upon the affidavit of Chairman and CEO Charles E. Gavin, III who states that MFG is incorporated in Georgia, maintains no manufacturing or office locations in Alabama, and does not discharge anything directly into the Conasauga River but, instead, discharges its wastewater to the wastewater treatment facility owned and operated by Dalton Utilities. Doc. 218, Ex. A. MFG also points out that, even if its discharges had contained PFCs, it did not pollute Plaintiff's waters because it transferred its discharges to Dalton Utilities for treatment and Dalton Utilities' alleged failure to decontaminate is an intervening act directed at Alabama which breaks the chain of causation.

Plaintiff responds that Mr. Gavin's affidavit does not sufficiently controvert its allegations that MFG manufactured and discharged wastewater containing PFCs to Dalton Utilities. Plaintiff also highlights that Mr. Gavin's affidavit fails to state that MFG "never" manufactured or discharged PFCs, inferring that MFG could have manufactured and sold PFCs in previous years which is pertinent because these chemicals persist in the environment for years and can bioaccumulate in humans, causing a variety of illnesses. Doc. 498, pgs. 9-11. Plaintiff also emphasizes that MFG's discharge of pollutants to Dalton Utilities is not an intervening act breaking the chain of causation because MFG was aware of the PFC contamination issues involving Dalton Utilities and the Conasauga River for several years yet continued to contribute to the pollution with its manufacture and discharge of PFCs. In support, Plaintiff cited to publicly available studies which examined the toxicity of PFCs dating back to 1999 and one report released by the EPA in 2008 revealing high levels of PFCs in the Conasauga River downstream of Dalton, Georgia. *Id.* at pgs. 7-9.

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 MFG's 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 brought into court in that foreign jurisdiction. Thus, an entity causing chemicals to enter the Conasauga River should expect that since that river is a tributary of the Coosa River, then the chemicals can enter the Coosa River. That entity should further expect that those chemicals will flow downstream and reach Alabama once the Coosa River crosses the Georgia/Alabama state line. Therefore, the act of causing the chemicals to enter the Conasauga River is an act directed at Alabama.

MFG argues that Dalton Utilities' treatment, or alleged failure thereof, is an intervening cause which breaks the chain of causation and, consequently, any claim that MFG purposefully directed activities at Alabama cannot stand. This does not occur, however, if the intervening cause was foreseeable. Foreseeability is the cornerstone of proximate cause. *Alabama Power Company v. Taylor,* 306 So.2d 236 (Ala. 1975). A defendant is held legally responsible for all consequences which a prudent and experienced person,

fully acquainted with all the circumstances, at the time of his negligent act, would have thought reasonably possible to follow that act. *Prescott v. Martin,* 331 So.2d 240 (Ala. 1976). This includes the negligence of others. *Williams v. Woodman,* 424 So.2d 611 (Ala. 1982).

A cause is considered the proximate cause of an injury if, in the natural and probable sequence of events, and without intervention of any new or independent cause, the injury flows from the act. *City of Mobile v. Havard,* 268 So.2d 805 (Ala. 1972). To be an intervening cause, a subsequent cause also must have been unforeseeable and must have been sufficient in and of itself to have been the sole "cause in fact" of the injury. *Vines v. Plantation Motor Lodge,* 336 So.2d 1338, 1339 (Ala.1976). If an intervening cause could have reasonably been foreseen at the time the tortfeasor acted, it does not break the chain of causation between his act and the injury. *Id.*

MFG'S supposed lack of control over its wastewater discharge from Dalton Utilities is not the pertinent issue, and Dalton Utilities' own control over its treatment and discharge of MFG'S PFC-laden wastewater does not break the causal chain. Any supposed inability of Dalton Utilities to sufficiently treat and remove PFCs from its wastewater was certainly foreseeable based on publicly available documents. As discussed above, the Dalton carpet industry and their chemical suppliers have been on notice for nearly a decade that the industrial wastewater discharged from their operations have introduced PFC contamination into the Coosa River Watershed after passing through Dalton Utilities. MFG's argument that it could not foresee its wastewater discharge would ultimately pollute Plaintiff's drinking water source, and

that its actions were not aimed at Alabama residents, is unavailing.

MFG cannot, at this stage in the litigation, avail itself 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 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]." Compl. at ¶ 48. In other words, the chemicals treated by Dalton Utilities by the Defendants cannot be treated and removed from the environment by Dalton Utilities. Therefore, 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'" and (2) the exercise of personal jurisdiction would "comport with fair play and substantial justice."

Therefore, the Court finds in favor of the Plaintiff on the issue of specific personal jurisdiction and denies MFG's Motion to Dismiss.

b. Motion for Protective Order to Stay Discovery

Because the Court denies MFG's Motion to Dismiss, its Motion for Protective Order to Stay Discovery is also denied.

II. The Dixie Group, Inc.

a. Motion to Dismiss for Lack of Personal Jurisdiction

Defendant The Dixie Group, Inc. ("Dixie Group") makes similar arguments regarding personal jurisdiction as asserted by MFG and, for the same reasoning as set out above, its motion is to be denied.

It is also worth noting one additional argument made by Dixie Group. Dixie Group also argues that "foreseeability alone is insufficient as a matter of law to trigger personal jurisdiction in the forum state." *Thompson v. Taracorp, Inc.,* 684 So. 2d 152, 156-57 (Ala. Civ. App. 1996). Dixie Group claims the court in *Taracorp* found that, even though the improper disposal of a battery by an Alabama company or use of those batteries in a manner harming the Alabama company was foreseeable, it declined to find personal jurisdiction. In actuality, the court held it was not foreseeable to Taracorp that its conduct would pollute the plaintiff's property and be sued in Alabama. *Id.* at 156. The *Taracorp* court dismissed the Georgia-based defendant because Taracorp's only contacts with Alabama involved two transactions with the resident defendant. The court determined that Taracorp had no knowledge of how the defendant disposed of the batteries or information concerning environmental problems caused by the batteries' disposal. *Id.* at 156.

Unlike Taracorp, Dixie Group and other Defendants here applied PFCs and PFC-related chemicals in its manufacturing process and discharged contaminated water for an unknown time. Based on publicly available information discussed below, Dixie Group was well aware of the environmental harm incurred

by those downstream in Alabama due to this ongoing conduct. Dixie Group's statement that the winding and attenuated path of these chemicals down 150 river miles of waterways is unavailing for reasons discussed above in Section I(a).

Therefore, the Court finds in favor of the Plaintiff on the issue of specific personal jurisdiction and denies Dixie Groups Motion to Dismiss.

b. Motion for Protective Order to Stay Discovery

Because the Court denies Dixie Group's Motion to Dismiss, its Motion for Protective Order to Stay Discovery is also denied.

III. J&J Industries, Inc.

a. Motion to Dismiss for Lack of Personal Jurisdiction

Defendant J&J Industries, Inc. makes similar arguments regarding personal jurisdiction as asserted by Dixie Group and, for the same reasoning as set out above, its motion is denied.

b. Motion for Protective Order to Stay Discovery

Because the Court denies J&J's Motion to Dismiss, its Motion for Protective Order to Stay Discovery is also denied.

IV. Dorsett Industries, Inc.

a. Motion to Dismiss for Lack of Personal Jurisdiction

Defendant Dorsett Industries, Inc. makes similar arguments regarding personal jurisdiction as asserted

by Dixie Group and, for the same reasoning as set out above, its motion is to be denied.

b. Motion for Protective Order to Stay Discovery

Because the Court denies Dorsett's Motion to Dismiss, its Motion for Protective Order to Stay Discovery is also denied.

V. Shaw Industries, Inc.

a. Motion to Dismiss for Lack of Personal Jurisdiction and, Alternatively, Under the Doctrine of Forum Non-Conveniens.

i. This Court has Specific and General Personal Jurisdiction over Shaw

1. General Jurisdiction Exists

Defendant Shaw Industries, Inc. ("Shaw") is the only defendant against which Plaintiff contends this Court has general jurisdiction. Although Shaw is incorporated in Georgia and states its principal place of business in Dalton, it can still be subject to general jurisdiction if its contacts with Alabama arise to "some other comparable level of intensity of contact" and is essentially "at home" in Alabama. *Hinrichs,* 222 So.3d at 1122, 1125.

Shaw is the world's largest carpet manufacturer with more than $4 billion in revenue and approximately 25,000 employees worldwide.[2] It has manufacturing and distribution facilities in twenty-nine (29) states and other manufacturing facilities in Australia, Belgium, Brazil, Canada, Chile, China, India, Mexico, Singapore, the United Arab Emirates, and the United

[2] https://shawfloors.com/why-shaw/about-us/shaw-history.

Kingdom.[3] It operates thirty-one (31) distribution centers and twenty-seven (27) redistribution centers across the United States.[4] According to the Department of Transportation, Shaw's transportation subsidiary has over 1,000 drivers[5] while Shaw employs 400 drivers operating out of its 29 distribution centers who make 4,200 deliveries per day.[6] Since 2013, Shaw has hosted tradeshows throughout the southeast, including Atlanta and Dallas.[7] Tradeshows are also scheduled in these cities for 2018.[8]

Shaw's contacts with Alabama are extensive. Shaw has had a manufacturing facility in Andalusia, Alabama since 1992 and announced in April that it would spend an additional $184 million on new machinery.[9] Until July 2017, Shaw also operated a plant in Valley Head, Alabama which opened in 1971.[10] In

---

[3] https://www.linkedin.com/company/shaw-industries/.

[4] http://www.shawtransport.com/Driver-Opportunities/Regional-Operations.aspx.

[5] https://safer.fmcsa.dot.gov/query.asp?query_type=queryCarrierSnapshot&query param=USDOT&query string=188556.

[6] http://www.shawtransport.com/Driver-Opportunities/Regional-Operations.aspx.

[7] Plaintiff's counsel used an internet archive database called the Wayback Machine which allows a user to interact with certain websites as they appeared in the past. Defendant's website only provided upcoming tradeshows in 2018, so this tool was utilized to show past shows. https://web.archive.org/web/20111204223851/http://www.shawshows.com:80/.

[8] http://www.shawshows.com/

[9] http://www.andalusiastarnews.com/2017/04/05/shaw-plans-184m-project/.

[10] http://www.al.com/business/index.ssf/2016/05/shaw_industries_closing_in_val.html.

addition to its manufacturing operations, Shaw also specifically marketed to Alabama customers. It advertises its Alabama dealers on its website and, in turn, its dealers advertise Shaw products in Alabama.[11] Shaw's presence in Alabama is further bolstered by the eleven (11) "network" retailers here, an additional twenty-nine (29) retailers outside the network[12], and the three full time sales representatives that market to all types of customers throughout the state.[13] Shaw's carpet is sold by Lowe's which, as of January 29, 2016, has thirty-seven locations throughout Alabama.[14] Shaw provides marketing materials for Lowe's and other retailers.

These contacts are sufficiently substantial, continuous, and systematic to essentially render Shaw at home in Alabama. Therefore, it is subject to general jurisdiction in Alabama.

1. Specific Jurisdiction Exists

Although the Court need not rule on the issue of specific jurisdiction because it holds Shaw is subject to general personal jurisdiction, it will nonetheless address the issue. Shaw makes similar arguments regarding personal jurisdiction as asserted by MFG and

---

[11] https://shawfloors.com/stores/storelist.

[12] https://shawfloors.com/stores.

[13] Carmen Preston, Jim Estes, and Justin Bixeman market to business engaged in the following fields: education, healthcare, hospitality, schools and government, retirement homes, and retail.

[14] https://www.lowes.com/pl/Carpet-Carpet-carpet-tile-Floorin/4294825283?refinement=4294942474; https://www.mystore411.com/stor/list state/12/alabama/Lowes-store-locations.

Dixie Group and, for the same reasoning as set out above, its motion is to be denied.

Shaw relies upon the affidavit of its Vice President, Karen Tallon, in support of its argument it lacks sufficient contacts with Alabama because it is incorporated in Georgia and maintains its principal place of business in Dalton. *See* Doc. 182. Importantly, it does not refute that Defendant manufactures carpet using PFCs at its locations in Alabama, markets that carpet to customers in Alabama, ships to those Alabama, or sells its products at many retailers in Alabama. In other words, Shaw does not deny it engaged in the activity giving rise to this suit in Alabama but, instead, merely seeks to downplay its connections with Alabama by stating its presence in Georgia. As discussed above, this is unavailing in cases where polluting activities occurred across state lines.

Simply stated, Ms. Tallon's affidavit does not constitute convincing evidence contradicting Plaintiff's assertion that it has been, and continues to be, damaged because of Shaw's use and discharge of PFCs, including PFOA, PFOS, and their precursors. To the extent any conflict exists between Plaintiff's allegations and Shaw's proffered affidavit, such conflict must be resolved in Plaintiff's favor. *See Corporate Waste Alternatives, Inc.,* 896 So. 2d at 412. Moreover, discovery is in its infancy in this case and must be conducted before this Court agrees to dismiss Shaw.

ii. Alabama is the Proper Forum to Adjudicate this Lawsuit

Shaw also seeks dismissal under Ala. Code. § 6-5-430 on forum non conveniens grounds and suggests that Dalton is the more appropriate venue. The burden is on the party seeking dismissal to prove a more

appropriate forum outside the state exists, based on the location of acts giving rise to the lawsuit occurred, the convenience of parties and witnesses, and the interests of justice. Ala. Code. § 6-5-430; *Malsch v. Bell Helicopter Textron, Inc.,* 916 So. 2d 600 (Ala. 2005). All these factors must be positively found to justify dismissal. *Donald v. Transport Life Ins. Co.,* 595 So. 2d 865 (Ala. 1992).

A court is less likely to find it inconvenient for a corporation to litigate a case in a foreign state. *See Ex parte Integon Corp.,* 672 So.2d 497 (Ala. 1995) (holding trial court did not abuse its discretion in denying motion to dismiss based on forum non conveniens despite the corporate defendant's principal place of business was located in North Carolina, its president was resident of North Carolina, and many acts giving rise to claims in North Carolina). This makes sense given that corporations can easily arrange for its witnesses and documents to appear in another state. In *Ex parte Integon Corp.,* the court determined that the plaintiff's principal place of business in Birmingham meant that Alabama was the appropriate forum. *Id.* Unlike the parties in that case that were states apart, Gadsden is only 90 miles from Dalton. Shaw's expenses to litigate this action in Gadsden are minimal for a $4 billion corporation such as itself. Consequently, Alabama is the most appropriate forum, and so the Court denies Shaw's request to dismiss the action under forum non conveniens grounds.

VI. Kaleen Rugs, Inc.

a. Motion to Dismiss or, in the Alternative, Motion for Summary Judgment

Defendant Kaleen Rugs, Inc. ("Kaleen") bases its dispositive motion on the statement that it did not engage in the complained of conduct. In support, it submitted two affidavits — one from Senior Vice President Blake Dennard and another from Chief Operating Officer Monty Rathi. *See* Docs. 106 and 818. Mr. Dennard's affidavit states that Kaleen does not manufacture carpet, use any of the chemicals set forth in the complaint, or discharge any chemicals into any water supply. Mr. Rathi states that Kaleen has "never ordered, requested, directed or specified" for any treatment to be applied to its carpet and has no knowledge that PFCs were used on the rugs it received or sold.

Although informative, these affidavits fail to conclusively establish that Kaleen did not previously engage in the conduct giving rise to this lawsuit. Mr. Dennard's affidavit states that Kaleen does not **presently** manufacture rugs or carpet, utilize or supply chemicals related to the carpet manufacturing process or discharge these chemicals into any water supply. Doc. 106 at ¶¶ 2, 4, 5. Importantly, the affidavit does not say that Defendant never engaged in these activities. As stated in Plaintiff's complaint, PFCs and related chemicals persist in the environment for years making any past application and discharge of these chemicals pertinent to this action. Compl. ¶ 50. Tellingly, Mr. Rathi's affidavit did not shore up this deficiency which Plaintiff mentioned in its Response to Kaleen's Motion to Dismiss. *See* Doc. 774, pg. 6. Consequently, at this stage in the litigation, Plaintiff's al-

legations against Kaleen are uncontroverted and prevent the Court from dismissing this Plaintiff. Therefore, Kaleen's Motion to Dismiss or, in the Alternative, Motion for Summary Judgment is denied.

b. Motion for Protective Order to Stay Discovery

Because the Court denies Kaleen's Motion to Dismiss, its Motion for Protective Order to Stay Discovery is also denied.

VII. 3M Company

a. Motion to Dismiss for Failure to State a Claim

Defendant 3M Company argues that each of Plaintiff's causes of action must be dismissed because Plaintiff failed to sufficiently allege each cause of action it asserts. Alabama, however, is a notice pleading state which merely requires that a complaint contain a "short and plain statement of the claim showing that the pleader is entitled to relief." ALA. R. CIV. P. 8(a). Rule 8(a) is complied with as long as the opponent is given "fair notice of the pleader's claim and the grounds upon which it rests." *Carter v. Calhoun County Board of Education,* 345 So.2d 1351 (Ala. 1997). "The discovery process bears the burdens in the factual details." *McKelvin v. Smith,* 85 So. 3d 386, 688-89 (Ala. Civ. App. 2010). For reasons stated below, Plaintiff has met its pleading burden under Rule 8, and 3M's Motion to Dismiss is denied.

3M also argues it cannot be liable for Plaintiff's damages because, as a chemical supplier, it had no control over how its PFCs and related chemicals were used or disposed of, nor could it foresee that these products would impact Plaintiff and other entities downstream of its customers. Plaintiff's Complaint,

however, alleges that 3M has known for 14 years that PFCs and related chemicals survive treatment at conventional wastewater treatment plants as evidenced by its finding of high concentrations of PFCs and related chemicals in a wastewater treatment plant a few miles downstream from one of its production facilities. Compl. at ¶ 53. Plaintiffs Response in Opposition states that 3M was aware of the contamination of public water supplies near its PFC manufacturing facility in Minnesota in the early 2000s which resulted in 3M's funding of a carbon filtration system to remove PFCs from public water systems as well as using carbon filtration to prevent further release of PFCs from its Cottage Grove, Minnesota PFC manufacturing plant through its wastewater discharge system. *See* Doc. 524, Exhibit B. Therefore, it was foreseeable to 3M that, based on its own release of PFCs through its facility's wastewater system in Oak Grove that contaminated public water systems, that other public water systems using water from areas where 3M's PFC compounds were used in large quantities could be contaminated. Not only was it foreseeable to 3M that its PFCs used in Dalton would find their way into drinking water supplies, 3M *knew* that it was likely. *See id.* Exhibit C.

i. Plaintiff Sufficiently Pled its Negligence Claim

3M argues that Plaintiff's negligence claim fails because the complaint did not sufficiently allege that 3M owed Plaintiff a duty, that 3M's conduct was the proximate cause of Plaintiff's harm, and that no damages are recoverable. Under Alabama law, the elements of a claim for negligence are: (1) duty; (2) breach of duty; (3) proximate cause; and (4) damages. *Glass v. Birmingham Southern R.R.,* 905 So.2d 789,

794 (Ala.2004). "In determining whether a duty exists in a given situation, however, courts should consider a number of factors, including public policy, social considerations, and foreseeability. The key factor is whether the injury was foreseeable by the defendant." *Patrick v. Union State Bank,* 681 So.2d 1364, 1368 (Ala. 1996).

Foreseeability is also the cornerstone of proximate cause. *Alabama Power Company v. Taylor,* 306 So.2d 236 (1975). A defendant is held legally responsible for all consequences which a prudent and experienced person, fully acquainted with all the circumstances, at the time of his negligent act, would have thought reasonably possible to follow that act. *Prescott v. Martin,* 331 So.2d 240 (Ala.1976). This includes the negligence of others. *Williams v. Woodman,* 424 So.2d 611 (Ala.1982).

A cause is considered the proximate cause of an injury if, in the natural and probable sequence of events, and without intervention of any new or independent cause, the injury flows from the act. *City of Mobile v. Havard,* 268 So.2d 805 (Ala. 1972). To be an intervening cause, a subsequent cause also must have been unforeseeable and must have been sufficient in and of itself to have been the sole "cause in fact" of the injury. *Vines v. Plantation Motor Lodge,* 336 So.2d 1338, 1339 (Ala.1976). If an intervening cause could have reasonably been foreseen at the time the tortfeasor acted, it does not break the chain of causation between his act and the injury. *Id.*

The complaint contains numerous allegations satisfying all elements. *See* Compl. at ¶¶ 3 -5, 52, 53 and 64-66. It is clear from these complaint excerpts that Plaintiff has pled each element of a negligence claim

against 3M under Alabama law. Moreover, these allegations are sufficient to notify 3M of the claim of negligence against which it must defend: manufacturing and suppling chemicals to carpet manufacturing customers located in the Dalton, Georgia to impart stain resistance to carpet that would likely result in contamination of drinking water supplies. Similarly, these allegations, if proven, leave little doubt that Plaintiff would be entitled to relief under its negligence claim. As such, it does not appear beyond a doubt that Plaintiff cannot prove any set of facts which would entitle it to relief under ALA. R. CIV. P. 12.

Finally, the Complaint sufficiently alleges recoverable damages. *See* Compl. at ¶¶ 4, 5, 62, 66, 69, 71, 76, and 78. 3M contends that Gadsden "cannot recover under its negligence claim because Plaintiff has suffered no actual loss or damage to its property." Doc. 258 at 9. 3M, however, is incorrect. The water Plaintiff draws from the Coosa River and treats to sell to its customers unquestionably is "property" as the word is commonly understood and defined. *Merriam-Webster* defines "property" as "something owned or possessed"; "the exclusive right to possess, enjoy, and dispose of a thing"; or "something to which a person or business has a legal title". Once drawn, Plaintiff owns or possesses the water that it draws and is permitted by governmental entities to treat and distribute the treated water to its customers for a fee.

ii. Plaintiff Sufficiently Pled its Nuisance Claim

3M challenges the adequacy of Plaintiff's nuisance claim because the complaint failed to allege either a

private or public nuisance and, in either event, believes that Plaintiff fail to sufficiently allege either claim.

1. Plaintiff's Allegations Sufficiently Provided Fair Notice.

Plaintiff's nuisance allegations sufficiently stated that Plaintiff's property was damaged by the Defendant's discharge of PFCs and ultimate contamination of its water source, thereby causing it "hurt, inconvenience, and harm." Compl. at ¶¶ 67-69. The levels of these toxic chemicals in Plaintiff's water caused by 3M's conduct created a condition that threatens Plaintiff's operations, and it was foreseeable that its actions would cause, and continue to cause, substantial damages. *Id.* at ¶¶ 70-71. These allegations sufficiently state a claim for nuisance. *See, e.g. City of Birmingham v. City of Fairfield,* 375 So.2d 438, 441 (Ala. 1979) (holding that nuisance allegation is sufficient if it gives defendant notice of what plaintiff's claim is and the grounds upon which it is based). 3M contends that Plaintiff failed to give fair notice of its nuisance claim against it, but then argues extensively why Plaintiffs nuisance count fails to state claims for both public and private nuisance. Therefore, 3M's arguments belie its contention that Plaintiff has failed to give it fair notice of the grounds for its nuisance claim and fall short of warranting dismissal of Plaintiff's nuisance claim.

2. Plaintiff Suffered "Special Damages" Compared to the General Public.

3M then argues that Plaintiff has not stated a claim for public nuisance because it has not suffered "special damages" different in kind and degree from the damage to the general public. *See Russell Corp. v.*

Sullivan, 790 So. 2d 940, 951 (Ala. 2001); Ala. Code § 6-5-123. Plaintiff has pled damages that are different, if not unique. Plaintiff is the sole supplier of public drinking water to the citizens of the City of Gadsden. Plaintiff must treat the water that it provides to comply with water quality standards through that treatment. The presence of pollutants in Plaintiffs water source dictates the nature and extent of treatment that is required. Plaintiff has alleged that, due to the presence of 3M's PFCs, it has incurred monitoring and testing costs associated with determining contaminant levels and has lost revenues and profits as a result. Compl. ¶¶ 5, 62. These damages are not suffered by the public at large, are unique to Plaintiff, and thus establish the requisite special damages required to assert a claim for public nuisance. Similar allegations were sufficient in an analogous case. *See West Morgan-East Lawrence Water and Sewer Authority v. 3M Company,* 208 F.Supp.3d 1227, 1236 (N.D. Ala. Sept. 20, 2016). Clearly, Plaintiff's damages significantly differ in kind and degree from any damages to the public generally.

Additionally, Alabama law incorporates a much broader definition of the public for purposes of a special damages inquiry, *i.e.,* "the public", the "general public," or the "public in general." *See, e.g.*, Ala. Code § 6-5-123 (1975); *City of Birmingham,* 375 So.2d at 441; *Benefield v. Int'l Paper Co.,* 2009 WL 2601425 at *3 (M.D. Ala. 2009); *Russell,* 790 Sold at 951. Accordingly, the *Russell* court held:

> . . . the use and enjoyment of a public area is a public right. The alleged nuisance in this case affects anyone who would want to use and enjoy Lake Martin, not just those who live on its banks.

790 So.2d at 953 (emphasis added).

Applying this analysis in this case, the public is "anyone who would want to use and enjoy" the Coosa River, whether it be for recreation, transportation, industrial, or other uses. In contrast, as alleged in the complaint, Plaintiffs "special damages" are the contamination of its drinking water source, increased monitoring and testing costs associated with determining contaminant levels, lost revenues and profits, and other remediation costs to decontaminate its water. Compl. ¶¶ 5, 62. These damages are unique and different from those who merely "use and enjoy" the Coosa River.

3. Plaintiff Sufficiently Pled a Private Nuisance.

3M argues that any private nuisance claim must also fail because Plaintiff does not allege that it owns the Coosa River tributaries, and the effect of 3M's contamination of the Coosa River is not limited to one or a few individuals.

Plaintiff is not required to allege that it "owns" the Coosa River tributaries. As discussed above, Plaintiff has the right to remove water from the Coosa River and the water that is removed becomes the property of Plaintiff for treatment, distribution and sell to its customers. This right is unique to Plaintiff alone and is not open for the public. Based on the information currently before the court, it appears that the effect of 3M's nuisance on public water supplies is limited to the few water systems that draw water from the Coosa River downstream of Dalton, Georgia. Therefore, 3M's nuisance is sufficiently limited to support a private nuisance claim by Plaintiff.

iii. Plaintiff Sufficiently Pled its Trespass Claim

3M states that Plaintiff's trespass claim is due to be dismissed because Plaintiff consented to the invasion of PFCs into its water system; there was no intentional invasion on Plaintiff's property; and the complaint fails to allege substantial damage to the *res.*

Plaintiff alleged its property, including a water treatment plant, water distribution system, and offices were invaded by 3M's PFC's discharged upstream in Dalton. Compl. at ¶¶ 73-74. However, Plaintiff clearly states that it **did not** consent to this foreseeable invasion from 3M's chemicals which affected its interest in the exclusive possession of its property. *Id.* at 74-75. As a result, 3M should have known that the discharges upstream from Plaintiff would damage and impair Plaintiff's use of its property, including the operation of its water treatment system, until the trespass is abated. *Id.* at ¶¶ 76-78. These allegations are sufficient to notify 3M that Plaintiff seeks damages caused by PFCs in and on its property, including the finished water provided to the public and its water processing and distribution system.

Alabama has long recognized that the discharge of pollutants at one location that then migrate onto the property of another can constitute actionable trespass. *See Borland v. Sanders Lead Co.,* 369 So.2d 523, 530 (Ala.1979) (recognizing that pollutants discharged onto a plaintiff's land causing damages constituted a trespass); *Rushing v. Hooper-McDonald, Inc.,* 300 So.2d 94, 97-98 (Ala. 1974) (upholding trespass claim when defendant dumped asphalt on own land but eventually slid downhill onto plaintiff's land killing fish in his pond). It is not necessary that 3M

intended that its pollutants be placed on and in Plaintiffs property despite 3M's intimation to the contrary. 3M is intentionally providing PFC-containing products which it knew would likely contaminate area waters which is sufficient to sustain Plaintiff's claims for nuisance and trespass claims under *Borland* and *Rushing*. This is distinguishable from the case cited by 3M, *Antoine v. Oxmoor Preservation/One, LLC,* 130 So. 3d 1204 (Ala. Civ. App. 2012), because the defendant in *Antoine* committed no act that contributed to the alleged trespass asserted by plaintiff.

3M argues that Plaintiff consented to its causing the deposit of PFCs on and in Plaintiff's property which defeats its trespass claim and cites *Evans v. Walter Industries, Inc.,* 579 F. Supp. 2d 1349, 1370 (ND. Ala. 2008) in support of this contention. 3M's argument is untenable considering Plaintiff's specific allegation that it "did not consent" to the trespass (Compl. at ¶¶ 74, 75) and the fact that the plaintiffs in *Evans* failed to allege that they had not consented to defendant's trespass. Plaintiff never agreed to allow 3M to place anything on or in its property, much less harmful contaminates. This fact also distinguishes this case from *Evans* wherein it was undisputed that the plaintiffs agreed to allow the defendant to place the offending materials on plaintiffs' property. Plaintiff has never consented to 3M's trespasses as it has plainly stated in its complaint.

Finally, 3M contends that Plaintiff's trespass claims should be dismissed because Plaintiff failed to allege that "3M caused substantial damage to its property." Doc 258 at 18. Plaintiff's alleged damages include the contamination of its entire public water system with chemicals known to cause a wide range of serious human disease, including cancers. *See* Compl.

at ¶¶ 51-58. Plaintiff states the extent of the contamination will require the installation and operation of an expensive filtration system to remove Defendant's chemicals. *Id.* at ¶ 5. Viewing these allegations in a light most favorable to the Plaintiff, the claimed damages constitute substantial damage to Plaintiff's property.

iv. Plaintiff Sufficiently Pled its Wantonness/Punitive Damages

3M contends that Plaintiff's claim for punitive damages must also be dismissed because the complaint did not sufficiently allege that 3M consciously committed a wrongful act that caused Plaintiff's injuries. Alabama law defines wantonness as "the conscious doing of some act or the omission of some duty while knowing of the existing conditions and being conscious that, from doing or omitting to do an act, injury will likely or probably result" *Ex parte Essary,* 992 So. 2d 5, 9 (Ala. 2007). "[I]t is not necessary that the actor know that a person is within the zone made dangerous by his conduct; it is enough that he knows that a strong possibility exists that others may rightfully come within that zone." *Id.* (quoting *Joseph v. Staggs,* 519 So.2d 952, 954 (Ala. 1988)).

Plaintiff's allegations specifically describe 3M's conscious misconduct. Compl. ¶¶ 80-84. As a notice pleading state, this is sufficient at this stage in the litigation. Whether 3M's conduct arises to the standard to warrant punitive damages need not be decided now but is proper after discovery.

v. Plaintiff Sufficiently Pled its Claim for Injunctive Relief

Injunctive relief is a prime remedy for claims of nuisance and trespass. *See Water Works and Sewer*

Bd. of the City of Birmingham v. Inland Lake Investments, LLC, 31 So.3d 686, 691-692 (Ala. 2009). The elements required for a preliminary injunction are mostly the same as those for a permanent injunction, except the movant must only show a likelihood of success on the merits compared to actual success on the merits required for a permanent injunction. *Classroomdirect.com, LLC v. Draphix, LLC,* 992 So. 3d 692, 702 (Ala. 2008) (quoting *TFT, Inc. v. Warning Sys., Inc.,* 751 So.3d 1238, 1242 (Ala. 1999)). A preliminary injunction is warranted if a plaintiff demonstrates (1) the moving party would suffer irreparable injury without the injunction; (2) the moving party has no adequate remedy at law; (3) it has at least a reasonable chance of success on the ultimate merits of the case; and (4) the hardship imposed on the non-movant would not unreasonably outweigh the benefit to the movant. *Holiday Isle, LLC v. Adkins,* 12 So. 3d 1173, 1176 (Ala. 2008). 3M challenges whether Plaintiff's complaint satisfies only the first three elements.

3M states the complaint does not identify the "type of irreparable injury [Plaintiff] would suffer in the absence of injunctive relief' or state facts showing that Plaintiff will likely prevail. Doc. 258 at 20. The complaint, however, states that Plaintiff seeks an injunction requiring all defendants, including 3M, to remove its chemicals from Plaintiff's water supplies and property and, if none is granted, these chemicals will pose a continuing threat to Plaintiff's property. Compl. at ¶¶ 86-87. The irreparable injury is the consistent contamination of the Coosa River posed by 3M's continual sale of PFCs to carpet manufacturers who apply and discharge contaminated wastewater that foreseeably impacts downstream users such as Plaintiff.

Also, for the reasons discussed above, Plaintiff has sufficiently pled facts supporting its claims for negligence, nuisance, trespass, and wantonness, thus demonstrating it has a reasonable chance of success on the merits of the case. As a result, Defendant's Motion to Dismiss this claim and all Plaintiff's claims is denied.

VIII. Lexmark Carpet Mills, Inc.

a. Motion to Dismiss for Lack of Personal Jurisdiction and Failure to State a Claim.

Defendant Lexmark Carpet Mills, Inc. ("Lexmark") premises its Rule 12(b)(6) Motion to Dismiss for Failure to State a Claim on the same arguments made by 3M. For reasons discussed above, its Motion is denied. The Court will address Lexmark's argument it lacks personal jurisdiction.

Lexmark relies upon the affidavit of its Chief Financial Officer, James Butler, to support its argument this Court lacks personal jurisdiction. *See* Doc. 247. Mr. Butler claims that he has personal knowledge that Lexmark has never used, manufactured, or discharged PFCs at its Dalton, Georgia, manufacturing facility. *See Id.*

Plaintiff countered that Lexmark's "own product warranty literature establishes that [Lexmark] manufacturers a number of different stain-resistant products . . . At least some of these products impart stain-resistance through the use of Scotchgard, a 3M product that contained PFOS as a key ingredient until June 2003 when it was reformulated." Doc. 504 at 9-10. Plaintiff also claims Mr. Butler's affidavit only addresses "two of many PFCs (PFOA and PFOS), and as

such fails to address whether [Lexmark] used, manufactured, or discharged chemicals that could degrade or decay into PFC-type chemicals such as PFOA or PFOS." *Id.* at 10. Plaintiff emphasizes that its allegations are not limited to PFOA and PFOS but also includes "related chemicals." Compl. ¶ 1.

At this stage in the litigation and viewing the allegations in a light most favorable to Plaintiff, Mr. Butler's affidavit does not conclusively establish that Lexmark did not engage in the alleged conduct that harmed Plaintiff. Discovery is necessary to determine this issue. Consequently, its Motion to Dismiss is denied.

a. Motion for Protective Order to Stay Discovery

Because the Court denies Lexmark's Motion to Dismiss, its Motion for Protective Order to Stay Discovery is also denied.

IX. Harcros Chemical, Inc.

a. Motion to Dismiss for Failure to State a Claim or, in the Alternative, Motion for a More Definite Statement

Defendant Harcros Chemical, Inc. ("Harcros") incorporates 3M and Lexmark Carpet Mills Inc.'s Motion to Dismiss for Failure to State a Claim. For the same reasons discussed above, Harcros' Motion is denied.

Harcros is the only Defendant to move the court to order Plaintiff to provide a more definite statement of the claims against Harcros pursuant to ALA. R. CIV. P. 12(e). Rule 12(e) provides that a party may move for a more definite statement if a pleading requiring a

response "is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading." "The motion shall point out the defects complained of and the details asserted." *Id.*

Plaintiff's complaint satisfies the low notice pleading standard of Rule 8. It alleges that Harcros is an "owner and operator of, or the chemical supplier to, manufacturing facilities in Dalton, Georgia which utilize various PFCs and their precursors in the manufacturing process." Compl. at ¶ 49. These facilities are upstream of Plaintiffs water intake site and foreseeably contaminated Plaintiff's water supply. *Id.* at ¶ 3. Plaintiff further alleges that Harcros continued to sell PFCs and related chemicals to these carpet manufacturers despite knowing of the chemicals' toxicity and ability to resist treatment by Dalton Utilities. Contrary to Harcros' statement, the complaint identifies Defendant's wrongful conduct, specifies to whom it sold its chemicals, and states the chemicals it discharged that injured Plaintiff. These allegations are sufficient at this stage in the litigation under Alabama's notice pleadings standard, so Harcros's motion under Rule 12(e) is also denied.

X. Indian Summer Carpet Mills, Inc.

a. Motion to Dismiss for Lack of Personal Jurisdiction, Failure to State a Claim and Improper Venue or, in the Alternative, Motion for Summary Judgment.

Defendant Indian Summer Carpet Mills, Inc. ("ISCM") seeks dismissal on several grounds. For reasons stated above in 3M's section, its Motion to Dismiss for Failure to State a Claim is denied.

i. Motion to Dismiss for Lack of Personal Jurisdiction and Motion for Summary Judgment.

ISCM bases its Motion to Dismiss for Lack of Personal Jurisdiction and Motion for Summary Judgment on an affidavit submitted by its President Randall Hatch it argues proves it did not engage in any conduct causing Plaintiffs damages. Mr. Hatch states that ISCM "has never used chemicals containing PFOA or PFOS in its manufacturing process" and, since 2004, any "topical stain-resistant chemicals . . . were applied by mills Indian Summer hired to perform the finishing process on its carpets." Doc. 654 at ¶ 3. The specific chemicals applied are of "C6 chemistry" which allegedly "do not contain or degrade into PFOS or PFOA." *Id.* Mr. Hatch also states the "solution-dyeing" manufacturing process currently used by ISCM generates no wastewater. *Id.* at ¶ 4. Consequently, ISCM argues it is not responsible for Plaintiff's damages.

As Plaintiff points out, however, Mr. Hatch's affidavit fails to conclusively establish that ISCM did not engage in the conduct forming the basis of this lawsuit. First, the affidavit describes ISCM's current manufacturing process involves "solution dyeing" which it claims generates no wastewater. *Id.* Importantly, the affidavit does not state that ISCM has always used this manufacturing process and, as a result, never discharged any wastewater. As stated in the complaint, PFCs and related chemicals persist in the environment for years making any past application and discharge of these chemicals pertinent to this action. Compl. ¶¶ 1, 50.

Also, ISCM can be liable for the acts committed other companies (i.e. finishers) it used to apply PFCs

that, although may not degrade into PFOA or PFOS, still have similar stain-resistant qualities. Mr. Hatch specifically states that, since 2004, ISCM has hired finishers to treat its carpets with topical stain-resistant chemicals consisting of "C6 chemistry." *Id.* at ¶ 3. Although Mr. Hatch states that C6 chemicals do not contain or degrade into PFOS or PFOA, Plaintiff states that C6 chemicals have similar stain-resistant qualities and fail to degrade in the environment. *See* Doc. 776, Ex. B. C6 (also known as perfluorohexane sulfonate, Phis or perfluorohexanoic acid, Phal) is one of the PFCs being studied by the National Toxicology Program, *id.* at 2, and was measured in surface waters and sediments below Dalton Utilities' land application site. *See* Doc 776, Ex. D and Ex. E. Therefore, ISCM's statement that its finishers use C6 instead of PFOS or PFOA does not necessarily rule out that it used any of the other 146 PFCs or 469 fluorochemicals that have been identified as potentially able to degrade into other PFCAs. *See* Exhibit A. Plaintiff's complaint states that its injury was caused by water contaminated with PFC, including PFOS, PFOA and **related chemicals**. Compl. at ¶¶ 1, 46, 47, 50, 51, 64, 69, 76, 80. Mr. Hatch's affidavit fails to state that ISCM was not involved, in any way, in the selection or application of PFC or related chemicals such as C6 in the finishing process or otherwise exercised control over the discharge of those chemicals.

ISCM's use of finishers to apply PFCs such as C6 does not relieve it of liability. A manufacturer's duty is not limited to only those parts of a product that the manufacturer makes itself. It has long been recognized in Alabama that a manufacturer who uses component parts in manufacturing or assembling a product for sale as a complete unit may be liable under ap-

propriate circumstances where the defect is in a component part. *See, Casrell v. Altec Industries, Inc.,* 335 So.2d 128, 134 (Ala. 1976); *Atkins v. American Motors Corp.,* 335 Sold 134 (Ala.1976). A manufacturer can also be liable for its negligence in designating the components or providing specifications to be incorporated into its products by third parties. *See e.g., Hicks v. Vulcan Eng. Ca,* 749 So.2d 417 (Ala. 1999). Like these cases, ISCM cannot escape liability even if another entity, such as a finisher, applied the PFCs.

In sum, Mr. Hatch's affidavit does not conclusively establish it did not engage in the activities resulting in Plaintiff's damages, thereby leaving a genuine issue of material fact. Therefore, ISCM's Motions to Dismiss and for Summary Judgment are denied.

ii. Motion to Dismiss for Forum Non Conveniens and Improper Venue.

Finally, ISCM challenges venue and, in the event this Court finds venue is proper, seeks dismissal for forum non conveniens under Ala. Code § 6-3-7(a). Venue is proper under ALA. CODE §§ 6-3-7(a)(3) because Plaintiff's principal office is in Etowah County and, although ISMC states it does not do business by agent in Etowah County, other named Defendants in this action do which is sufficient for venue to be proper. *See Roland Pugh Min. Co. v. Smith,* 388 So.2d 977, 978-89 (Ala. 1980) (holding venue was proper for one defendant and, as a result, was proper to the other defendants which did not do business in the challenged venue). The Court in *Roland Pugh Min. Co.* specifically noted that "[u]nder ARCP 82(c), '(w)henever an action has been commenced in a proper county, additional claims and parties may be joined, . . . as ancillary thereto, **without regard to whether**

that county would be proper venue for an independent action on such claims or against such parties.'" *Id.* (emphasis added). Therefore, Etowah County is the proper venue if it is proper regarding one defendant.

Based on available information, venue is, at the very least, proper to Shaw Industries, Inc. and the Mohawk Defendants (Mohawk Industries, Inc. and Mohawk Carpet, LLC). Proof of a registered agent in a county "is not a prerequisite to a finding that the corporation is doing business in that county." *Ex parte Reliance Ins. Co.,* 484 So.2d 414, 418 (Ala. 1986). Instead, venue is proper over a foreign corporation qualified to do business in Alabama if that corporation conducts "some of the business functions for which it was created." *Id.* at 417 (quoting *Ex parte Jim Skinner Ford, Inc.,* 435 So.2d 1235, 1237 (Ala. 1983)). One of these business functions includes engaging in the sale of its products. *See Ex parte Cavalier Home Builders, LLC,* 920 So.2d 1105, 1109-10 (Ala. 2005). Shaw Industries, Inc.'s website shows four different retailers sell its products within 15 miles[15] of Gadsden while the Mohawk Defendants have one retailer.[16] Therefore, venue is proper to both Shaw Industries, Inc. and the Mohawk Defendants because they do business in Etowah County which, in turn, means venue is proper as to all other Defendants, including ISCM.

---

[15] See https://shawfloors.com/stores. Counsel for Plaintiff used the zip code for the Etowah County Courthouse (35901) in the search. Lowe's Home Improvement, Alley's Floor & Wall Covering, Foote Brothers Carpet One, and Knights Flooring.

[16] https://www.mohawkflooring.com/find-mohawk-retail-store?zip=35901. Alleys Carpet of Gadsden.

The Court finds that, for reasons stated above in Section V(a)(ii), ISMC's motion to dismiss for forum non conveniens is also denied.

b. Motion for Protective Order to Stay Discovery

Because the Court denies ISCM's dispositive motions, its Motion for Protective Order to Stay Discovery is also denied.

XI. ECMH, LLC d/b/a Clayton Miller and Emerald Carpets, Inc.

a. Motion for Summary Judgment

Defendant ECMH, LLC d/b/a Clayton Miller and Emerald Carpets, Inc. (collectively, "ECMH") move for summary judgment on the basis that they did not engage in any conduct that contaminated Plaintiffs drinking water supply. In support ECMH submitted the affidavits of Tom Boykin (Business Unit Manager for Emerald Carpets) and Hugh McCain (President of Clayton Miller) and contend the undisputed facts show that they do not manufacture carpet, have never applied PFCs or related chemicals to their carpets, and have never discharged any chemicals. *See* Docs. 171 and 172.

Plaintiff contends that ECMH does not dispute that carpet it manufactured and sold was treated with PFCs to impart stain resistance — only that *they* did not apply these chemicals. Plaintiff asserts this evidence does not establish that PFCs were not applied by other companies at ECMH's direction, with their knowledge or that they did not specify the type of chemical treatment to be used on its carpets during the finishing process. Both affidavits state that "any chemicals that are applied to carpets sold by Clayton Miller and Emerald Carpets are made and applied by

other companies." (Doc. 171 at ¶ 6; Doc. 172 at ¶ 5). In other words, ECMH utilizes other companies known as finishers that could apply PFC and other related chemicals to impart stain-resistance to their carpets.

As explained above in Section X(a)(i) regarding ISCM, this does not necessarily absolve ECMH from liability for Plaintiffs damages because it does not establish the absence of a genuine issue of material fact as to whether they are responsible for causing or allowing the discharge of PFCs into Coosa River tributaries by the entities they retained to apply these chemicals to its carpet in the Dalton, Georgia area. Further discovery on this issue is warranted before this Court can determine no genuine issue of material fact exists. Consequently, ECMH's Motion for Summary Judgment is denied.

XII. Mohawk Industries, Inc. and Mohawk Carpet, LLC (collectively, "Mohawk")

a. Motion for Judgment on the Pleadings

Mohawk's dispositive motion argues this Court does not have personal jurisdiction and, even if it did, the complaint should be dismissed for failure to state a claim. Notably, unlike most of the other Defendants, Mohawk did not submit an affidavit refuting the allegations in the complaint. Therefore, Plaintiffs allegations must be accepted as true. *See Corporate Waste Alternatives, Inc.,* 896 So. 2d at 413. Mohawk utilizes PFC-related chemicals and their precursors in its manufacturing process to impart stain-resistant qualities to their carpet. Compl. at ¶ 47. Because of applying these chemicals, Mohawk discharges industrial wastewater containing these chemicals to the City of Dalton's wastewater treatment system before

it is land-applied to a spray field. *Id.* This spray field is bordered by a tributary of the Coosa River, which allows runoff contaminated with PFCs to pollute Plaintiffs water source upstream of its intake site. *Id.* at ¶¶ 48-49.

Plaintiff states that Mohawk's discovery responses, answered by their affiliate Aladdin Manufacturing Corporation ("AMC")[17], support its allegations in the complaint. Specifically, in response to Plaintiff's First Set of Interrogatories, Mohawk admitted to using "Raw Materials [that] may contain PFCs that may degrade into PFOA and/or PFOS and may have been used in the manufacturing processes for various carpet and flooring products at certain AMC manufacturing facilities in Whitfield County, Georgia." Doc. 762, Ex. C., p. 7. Mohawk then listed eleven different "Raw Materials" (i.e. "material that is used to produce goods or finished products") used in their manufacturing process and identified three manufacturing facilities in Dalton, Georgia that may have used these Raw Materials. *Id.* at 7-9. Mohawk stated that each of these facilities pretreated the wastewater generated at these facilities to remove particulates and adjust the pH level before discharging to the Dalton Utilities. *Id.* at 10-11. Mohawk identified two other manufacturing facilities located outside Whitfield County in Calhoun, Georgia that discharge either directly into the environment or to a wastewater treatment plant that discharges into the Coosa River. *Id.* at 11-12.

---

[17] Plaintiff notes that Mohawk's affiliate Aladdin Manufacturing Corporation ("AMC") responded to discovery on their behalf. The Court finds that discovery against Mohawk is necessary to determine their association with AMC and their liability in this case and will construe AMC's responses as pertaining to the Mohawk Defendants.

Now, it is unknown whether these facilities use Raw Materials that may contain PFCs or degrade into such chemicals and discharge wastewater contaminated with these chemicals into the Conasauga or Coosa Rivers. Based on both the uncontroverted allegations in the complaint as well as Mohawk's responses to Plaintiff s discovery, Mohawk engaged in the conduct Plaintiff alleges caused its damages.

Moreover, it is fair for Mohawk to litigate in Alabama because its business activities were purposefully aimed at Alabama residents. "[P]lacement of a product into the stream of commerce may bolster an affiliation germane to specific jurisdiction.'" *Daimler AG v. Bauman,* 134 S. Ct. 746, 757 (2014) (quoting *Goodyear* 564 U.S. at 926). Mohawk advertises, markets, distributes, and sells their products throughout the world and Alabama. Although Mohawk considers the applicable fora for each entity are Delaware and Georgia, they have significant connections to the State of Alabama. Mohawk Carpet, LLC is a subsidiary of Mohawk Industries, Inc. Mohawk Industries, Inc. employs 37,800 and maintains manufacturing operations in 15 nations and sales distribution across more than 160 countries. *See* Doc. 762, Ex. G, pg. 6. As of December 31, 2016, it owns a manufacturing and distribution facility in Florence, Alabama and a manufacturing facility in Roanoke, Alabama. *Id.* at Mohawk Form 10-K, p. 13. Mohawk Industries, Inc.'s website currently shows job listings for 22 different positions in Alabama, with 10 positions available at a location in Bridgeport, Alabama.[18] The website also lists retailers selling its carpet and flooring products

[18] https://mohawkindustries.jobs/jobs/?location=alabama.

in more than 70 cities in Alabama.[19] In addition to the foreseeable conduct aimed at Alabama residents discussed above, these purposeful contacts with Alabama bolster Mohawk's affiliations with the State.

Therefore, for these reasons and those stated above in Section I, this Court has personal jurisdiction over Mohawk and its Motion to Dismiss is denied. In addition, Mohawk's Judgment on the Pleadings for failure to state a claim is denied for reasons stated above in Section VII addressing similar arguments raised by 3M.

XIII. Oriental Weavers USA, Inc.

a. Motion to Dismiss for Lack of Personal Jurisdiction, Improper Venue, and Failure to State a Claim.

Defendant Oriental Weavers USA, Inc. ("Oriental Weavers") seeks dismissal for lack of personal jurisdiction, claims Etowah County is an improper venue, and argues the complaint's allegations are insufficient to state a claim. For reasons stated above, Oriental Weaver's Motion to Dismiss for improper venue and failure to state a claim are denied. The court will address Oriental Weaver's argument regarding lack of personal jurisdiction.

Oriental Weaver's submitted three affidavits in support of its argument the Court lacks personal jurisdiction. *See* Doc. 162. Its CFO, Darrel V. McCay, states that Oriental Weavers is incorporated in Georgia and maintains its principal place of business there, including its two manufacturing facilities and distribution facilities. *Id.,* Ex. B at ¶¶ 4-5. David

---

[19] https://www.mohawkflooring.com/flooring-carpet-stores/AL.

Flood, who holds the position of Masterbatch Manager, states 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" and has not since after January 1, 2009. *Id.*, Ex. A at ¶¶ 5, 7. Mr. Flood then attests that Defendant's chemical supplier, Phoenix Chemical, Inc. does not supply Defendant with products that contain PFCs. *Id.* at 6. Phoenix Chemical's Vice President, Mr. Todd Mull, also submitted an affidavit stating that the chemicals his company sells to Defendant do not contain PFCs such as PFOA and PFOS. *Id.*, Ex. C at ¶¶ 4-6. Oriental Weavers argues these affidavits conclusively establish that it did not engage in the activities giving rise to this lawsuit and venue is improper in Etowah County.

Plaintiff claims these affidavits collectively do not specifically refute the complaint's allegations that Oriental Weavers is liable for Plaintiff's damages. First, Mr. Flood states that Oriental Weavers does not use, and has not used, any stain-resistant, grease-resistant, or water-resistant chemicals after January 1, 2009. Ex. A at ¶ 7. Importantly, the affidavit does not say that it "never" engaged in these activities prior to January 1, 2009. Mr. Mull's affidavit also fails to confirm that Phoenix Chemical did not supply these chemicals prior to this date, nor can it because his affidavit, which is based on his personal knowledge alone, does not clarify how long he has been with the company. As stated in the complaint, PFCs and related chemicals persist in the environment for years making any past application and discharge of these chemicals pertinent to this action. Compl. ¶ 50.

Plaintiff also claims that Mr. Flood's affidavit fails to definitively state whether it hired other companies

to apply PFCs and related chemicals to Oriental Weaver's rugs and discharged contaminated wastewater generated from that application. Although Mr. Flood mentions that he is familiar with all stages of the manufacturing process, *see* Ex. A. at ¶ 4, the following paragraphs pertain only to Oriental Weaver's alleged nonuse of PFCs and related chemicals.

Therefore, the affidavit fails to establish that PFCs were not applied by other companies at Oriental Weaver's direction, with its knowledge, or that it did not specify the type of chemical treatment to be used on its carpets during the finishing process. As explained above, this does not absolve Defendant from liability for Plaintiffs damages. Therefore, Oriental Weaver's Motion to Dismiss for Lack of Personal Jurisdiction is denied.

a. Motion for Protective Order to Stay Discovery

Because the Court denies Oriental Weaver's dispositive motion, its Motion for Protective Order to Stay Discovery is also denied.

XIV. Savannah Mills Group, LLC

a. Motion to Dismiss for Lack of Personal Jurisdiction, Failure to State a Claim, and Summary Judgment.

Defendant Savannah Mills Group, LLC ("SMG") seeks dismissal or, alternatively, summary judgment because it did not contribute to the pollution of Plaintiff's drinking water. In support, it submitted multiple affidavits from its Managing Member B.J. Bandy, III stating that SMG has never manufactured carpets or rugs, purchases only finished products for distribution, has never utilized or supplied PFCs or related

chemicals in the carpet manufacturing process, has never discharged any chemicals from the manufacturing process into any water supply, and has never ordered, requested directed, or specified that any particular treatment be applied to rugs it received and sold. *See* Docs. 205 and 738. Mr. Bandy's original affidavit also attests to SMG's lack of contacts with Alabama.

The Court finds that SMG has met its burden that it did not engage in the alleged conduct that contaminated Plaintiff's drinking water. Therefore, its Motion to Dismiss is granted, without prejudice, with each party to bear its own costs. The Court also notes that Plaintiff agreed to dismiss SMG in the companion case *The Water Works and Sewer Board of the Town of Centre v. 3M Company, Inc. et al.,* Case No. 13-CV-2017-900049.00.

b. Motion for Protective Order to Stay Discovery

SMG's Motion for Protective Order is now moot given the Court granted its Motion to Dismiss and, Alternatively, Motion for Summary Judgment.

XV. Tandus Centiva US, LLC

a. Motion for Judgment on the Pleadings or, Alternatively, Motion for Summary Judgment

Defendant Tandus Centiva, US, LLC ("Tandus Centiva") seeks dismissal for lack of personal jurisdiction and failure to state a claim. Like SMG, it submitted an original and supplemental affidavit from its President Leonard F. Ferro stating that Tandus Centiva has never manufactured carpet or flooring products, has never purchased PFCs and related chemicals, has never utilized or supplied these chemicals, has never discharge wastewater containing these

chemicals, and has never directed any other entity to use or apply these chemicals to flooring materials it markets and distributes. *See* Docs. 283 and 688.

A motion for summary judgment will be granted if the evidence shows "there is no genuine issue as to any material fact" and the movant "is entitled to a judgment as a matter of law." ALA. R. CIV. P. 56(c)(3). The Court finds that Tandus Centiva has met its burden that it did not engage in the alleged conduct that contaminated Plaintiffs drinking water. Therefore, its Motion to Dismiss is granted, without prejudice, with each party to bear its own costs.

b. Motion for Protective Order to Stay Discovery

Tandus Centiva's Motion for Protective Order is now moot given the Court granted its Motion for Judgment on the Pleadings or, Alternatively, Motion for Summary Judgment.

XVI. Daltonian Flooring, Inc.

a. Motion for Summary Judgment

Like SMG and Tandus Centiva, Defendant Daltonian Flooring, Inc. ("Daltonian") moves for summary judgment on the basis that it has not engaged in the conduct alleged by Plaintiff in the complaint. This is based on the affidavits of its Chief Financial Officer and Controller, which made substantially the same statements as those made by the affiants for SMG and Tandus Centiva. *See* Docs. 239 and 725.

As a result, the Court finds that there is no genuine issue of material fact and Daltonian "is entitled to a judgment as a matter of law." ALA. R. CIV. P. 56(c)(3). Therefore, its Motion for Summary Judgment is granted with each party to bear its own costs.

XVII. Dystar, LP

a. Motion to Dismiss for Lack of Personal and Subject Matter Jurisdiction

Defendant Dystar, LP ("Dystar") moves to dismiss arguing that it has never manufactured or produced stain, grease, or water-resistant chemicals such as PFCs or related chemicals at its plant in Dalton and has never sold, shipped, delivered, or supplied these chemicals to any facilities in Whitfield County, Georgia. *See* Affidavits of Chief Financial Officer Steve Hennen, Docs. 388 and 662.[20]

The Court finds that Dystar has met its burden that it did not engage in the alleged conduct that contaminated Plaintiff's drinking water and its Motion to Dismiss is granted, without prejudice, with each party to bear their own costs.

b. Motion for Protective Order to Stay Discovery

Dystar's Motion for Protective Order is now moot given the Court granted its Motion to Dismiss.

DONE this the 13th day of August 2018.

/s/ William H. Rhea, III
CIRCUIT JUDGE

Processed by: Sue Hall

---

[20] Although Mr. Hennen's Supplemental Affidavit was filed with its Reply Brief in the similar case filed in Cherokee County *(The Water Works and Sewer Board of the Town of Centre v. 3M Company, Inc. et al.,* Case No. 13-CV-2017900049.00.) the facts stated therein are applicable to this case.

APPENDIX D

IN THE SUPREME COURT OF ALABAMA

March 27, 2020

1170864 Ex parte Aladdin Manufacturing Corporation et al. PETITION FOR WRIT OF MANDAMUS: CIVIL (In re: The Water Works and Sewer Board of the Town of Centre v. 3M Company, et al.) (Cherokee Circuit Court: CV-17-900049).

CERTIFICATE OF JUDGMENT

WHEREAS, the ruling on the application for rehearing filed in this case and indicated below was entered in this cause on March 27, 2020:

Application Overruled. **No Opinion.** Stewart, J. — Parker, C.J., and Wise, and Bryan, JJ., concur. Bolin, Sellers, and Mendheim, JJ., dissent. Shaw and Mitchell, JJ., recuse themselves.

WHEREAS, the appeal in the above referenced cause has been duly submitted and considered by the Supreme Court of Alabama and the judgment indicated below was entered in this cause on December 20, 2019:

Petition Denied. Stewart, J. — 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.

NOW, THEREFORE, pursuant to Rule 41, Ala. R. App. P., IT IS HEREBY ORDERED that this Court's judgment in this cause is certified on this date. IT IS FURTHER ORDERED that, unless otherwise ordered by this Court or agreed upon by the parties, the costs of this cause are hereby taxed as provided by Rule 35, Ala. R. App. P.

I, Julia J. Weller, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true, and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 27th day of March, 2020.

/s/ Julia J. Weller
Clerk, Supreme Court of Alabama

APPENDIX E

IN THE SUPREME COURT OF ALABAMA

March 27, 2020

1171182 Ex parte Mohawk Industries, Inc., et al. PETITION FOR WRIT OF MANDAMUS: CIVIL (In re: The Water Works and Sewer Board of the City of Gadsden v. 3M Company et al.) (Etowah Circuit Court: CV-16-900676).

CERTIFICATE OF JUDGMENT

WHEREAS, the ruling on the application for rehearing filed in this case and indicated below was entered in this cause on March 27, 2020:

Application Overruled. **No Opinion**. Stewart, J. — Parker, C.J., and Wise, and Bryan, JJ., concur. Bolin, Sellers, and Mendheim, JJ., dissent. Shaw and Mitchell, JJ., recuse themselves.

WHEREAS, the appeal in the above referenced cause has been duly submitted and considered by the Supreme Court of Alabama and the judgment indicated below was entered in this cause on December 20, 2019:

Petition Denied. Stewart, J. — 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.

NOW, THEREFORE, pursuant to Rule 41, Ala. R. App. P., IT IS HEREBY ORDERED that this Court's judgment in this cause is certified on this date. IT IS FURTHER ORDERED that, unless otherwise ordered by this Court or agreed upon by the parties, the costs of this cause are hereby taxed as provided by Rule 35, Ala. R. App. P.

I, Julia J. Weller, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true, and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 27th day of March, 2020.

/s/ Julia J. Weller
Clerk, Supreme Court of Alabama

APPENDIX F

IN THE CIRCUIT COURT OF ETOWAH COUNTY, ALABAMA

THE WATER WORKS AND SEWER BOARD OF THE CITY OF GADSDEN,	)	
Plaintiff,	)	
v.	)	
3M COMPANY; APRICOT INTERNATIONAL, INC.; ARROWSTAR, LLC; BEAULIEU GROUP, LLC, BEAULIEU OF AMERICA, INC.; COLLINS & AIKMAN FLOOR COVERING INTERNATIONAL, INC.; DALTONIAN FLOORING, INC.; DEPENDABLE RUG MILLS, INC.; DORSETT INDUSTRIES, INC.; DYSTAR, L.P.; ECMH, LLC d/b/a CLAYTON MILLER HOSPITALITY CARPETS; EMERALD CARPETS, INC.; FORTUNUE CONTRACT, INC.; HARCROS CHEMICAL, INC.; HOME CARPET INDUSTRIES, LLC; INDIAN SUMMER CARPET MILLS, INC.;	)	**CIVIL ACTION NO:** ***TRIAL BY JURY REQUESTED***

INDUSTRIAL CHEMICALS, INC.; J&J INDUSTRIES, INC.; KALEEN RUGS, INC.; LEXMARK CARPET MILLS, INC.; LYLE INDUSTRIES, INC.; MFG CHEMICAL, INC.; MOHAWK CARPET, LLC; MOHAWK GROUP, INC.; MOHAWK INDUSTRIES, INC.; NPC SOUTH, INC.; ORIENTAL WEAVERS USA, INC.; S & S MILLS, INC.; SAVANNAH MILLS GROUP, LLC; SHAW INDUSTRIES, INC.; TANDUS CENTIVA, INC.; TANDUS CENTIVA US, LLC; THE DIXIE GROUP, INC.; TIARCO CHEMICAL COMPANY, INC.; VICTOR CARPET MILLS, INC.; and FICTITIOUS DEFENDANTS A-J, those persons, corporations, partnerships or entities who acted either as principal or agent, for or in concert with the other named Defendants and/or whose acts caused or contributed to the damages sustained by the Plaintiff, whose identities are unknown to the Plaintiff, but which will be substituted by

amendment when ascertained,	)
	)
Defendants.	)
	)

COMPLAINT

Plaintiff Water Works and Sewer Board of the City of Gadsden ("Gadsden Water") brings this Complaint against Defendants 3M Company, Apricot International, Inc., ArrowStar, LLC, Beaulieu Group LLC, Beaulieu of America, Inc., Collins & Aikman Floor covering International, Inc., Daltonian Flooring, Inc., Dependable Rug Mills, Inc., Dorsett Industries, Inc., Dystar, L.P., ECMH, LLC d/b/a Clayton Miller Hospitality Carpets, Emerald Carpets, Inc., Fortune Contract, Inc., Harcros Chemical, Inc., Home Carpet Industries LLC, Indian Summer Carpet Mills, Inc., Industrial Chemicals, Inc., J&J Industries, Inc., Kaleen Rugs Inc., Lexmark Carpet Mills Inc., Lyle Industries, Inc., MFG Chemical, Inc., Mohawk Carpet LLC, Mohawk Group, Inc., Mohawk Industries, Inc., NPC South, Inc., Oriental Weavers USA, Inc., S & S Mills, Inc., Savannah Mills Group, LLC, Shaw Industries, Inc., Tandus Centiva Inc., Tandus Centiva US LLC, The Dixie Group, Inc., Tiarco Chemical Company, Inc., and Victor Carpet Mills, Inc. ("Defendants"), and allege as follows:

STATEMENT OF THE CASE

1. Plaintiff, Gadsden Water, has and continues to be damaged due to the negligent, willful and wanton conduct of the Named and Fictitious Defendants, as well as nuisance and trespass caused by the Defendants' past and present release of toxic chemicals, including perfluorinated compounds ("PFC") perfluorooctanoic acid ("PFOA"), perfluorooctane sulfonate

("PFOS"), and related chemicals from their manufacturing facilities in and around the City of Dalton, Georgia.

2. Gadsden Water provides drinking water directly to its own residential and commercial customers in Etowah County, and also sells finished water to the Attalla Water Works Board, Highland Water Authority, Northeast Etowah Water Co-op, Utilities Board of Rainbow City, Reece City water system, Southside Water Department, Tillison Bend Water Authority, West Etowah County Water Authority, and Whorton Bend Water Authority, who provide water to their own customers in surrounding areas. Gadsden Water utilizes the Coosa River as its raw water source, specifically drawing its source water from Lake Neely Henry in the Middle Coosa Basin.

3. Named and Fictitious Defendants operate, or supply chemical products to, manufacturing facilities located upstream of Gadsden Water's intake site, in or near the City of Dalton, Georgia. Names and Fictitious Defendants use PFCs, such as PFOA and PFOS, at their facilities to impart water, stain, and grease resistance to their carpet and other textile products. Industrial wastewater discharged from Named and Fictitious Defendants' manufacturing plants contains high levels of PFOA and PFOS. These chemicals resist degradation during processing at Dalton Utilities' wastewater treatment center and contaminate the Conasauga River. The Conasauga River is one of the Coosa River's five major tributaries.

4. Named and Fictitious Defendants' toxic chemicals have contaminated the water in the Coosa River at Gadsden Water's intake site, and the chemicals cannot be removed by the water treatment processes

utilized by Gadsden Water's C.B. Collier Water Treatment Plant.

5. As a direct and proximate result of Named and Fictitious Defendants' contamination of the Plaintiffs raw water source, Plaintiff Gadsden Water has suffered substantial economic and consequential damage, including, but not limited to, expenses associated with the future installation and operation of a filtration system capable of removing the Named and Fictitious Defendants' chemicals from the water; expenses incurred to monitor PFC contamination levels; and lost profit and sales.

6. Wherefore, Plaintiff Gadsden Water seeks compensatory and punitive damages to the fullest extent allowed by award from a jury. Plaintiff also seeks equitable and injunctive relief compelling the Named and Fictitious Defendants to remediate their contamination and prevent additional releases of PFCs, including PFOS and PFOA, into the water supply.

JURISDICTION

7. Jurisdiction is proper in this Court pursuant to ALA. CODE § 12-11-30(1)(1975), as Plaintiff's claims exceed $10,000.

8. Plaintiff asserts no federal cause of action in this Complaint.

PARTIES

9. Plaintiff Gadsden Water is a domestic municipal corporation formed pursuant to Ala. Code § 11-50-230, with its principal place of business in Etowah County, Alabama.

10. Defendant 3M Company ("3M") is a foreign corporation qualified to do business in the State of Alabama, and is causing injuring in Etowah County, Alabama.

11. Defendant Apricot International, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

12. Defendant Arrowstar, LLC, is a foreign corporation causing injury in Etowah County, Alabama.

13. Defendant Beaulieu Group LLC is a foreign corporation causing injury in Etowah County, Alabama.

14. Defendant Beaulieu of America, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

15. Defendant Collins & Aikman Floor Covering International, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

16. Defendant Daltonian Flooring, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

17. Defendant Dependable Rug Mills, Inc., is a foreign corporation qualified to do business in the State of Alabama, and is causing injury in Etowah County, Alabama.

18. Defendant Dorsett Industries, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

19. Defendant Dystar, L.P., is a foreign corporation causing injury in Etowah County, Alabama.

20. Defendant ECMH, LLC d/b/a Clayton Miller Hospitality Carpets is a foreign corporation causing injury in Etowah County, Alabama.

21. Defendant Emerald Carpets, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

22. Defendant Fortune Contract, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

23. Defendant Harcros Chemical, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

24. Defendant Home Carpet Industries LLC is a foreign corporation causing injury in Etowah County, Alabama.

25. Defendant Indian Summer Carpet Mills, Inc., is a foreign corporation qualified to do business in the State of Alabama, and is causing injury in Etowah County, Alabama.

26. Defendant Industrial Chemicals, Inc., is a domestic corporation with its principal place of business in Birmingham, Alabama, and is causing injury in Etowah County, Alabama.

27. Defendant J&J Industries, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

28. Defendant Kaleen Rugs, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

29. Defendant Lexmark Carpet Mills, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

30. Defendant Lyle Industries, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

31. Defendant MFG Chemical, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

32. Defendant Mohawk Carpet, LLC, is a foreign corporation causing injury in Etowah County, Alabama.

33. Defendant Mohawk Group, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

34. Defendant Mohawk Industries, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

35. Defendant NPC South, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

36. Defendant Oriental Weavers USA, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

37. Defendant S&S Mills, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

38. Defendant Savannah Mills Group, LLC, is a foreign corporation causing injury in Etowah County, Alabama.

39. Defendant Shaw Industries, Inc., is a foreign corporation qualified to do business in the State of Alabama, and is causing injury in Etowah County, Alabama.

40. Defendant Tandus Centiva, Inc., is a foreign corporation qualified to do business in the State of Alabama, and is causing injury in Etowah County, Alabama.

41. Defendant Tandus Centiva US, LLC, is a foreign corporation qualified to do business in the State of Alabama, and is causing injury in Etowah County, Alabama.

42. Defendant The Dixie Group, Inc., is a foreign corporation qualified to do business in the State of Alabama, and is causing injury in Etowah County, Alabama.

43. Defendant Tiarco Chemical Company, Inc., is a foreign corporation qualified to do business in the State of Alabama, and is causing injury in Etowah County, Alabama.

44. Defendant Victor Carpet Mills, Inc., is a foreign corporation causing injury in Etowah County, Alabama.

45. Fictitious Defendants A, B, C, D, E, F, G, H, I, & J are those persons, corporations, partnerships, or entities who discharged PFOA, PFOS, or other related chemicals into the water supply upstream of Plaintiff Gadsden Water's intake site, who acted either as principal or agent, for or in concert with the named Defendants, and/or who acts caused or contributed to the damages sustained by the Plaintiff, whose identities are unknown to Plaintiff, but which will be substituted by amendment when ascertained.

FACTUAL ALLEGATIONS

46. The City of Dalton, Georgia, contains over 150 carpet manufacturing plants, and more than 90% of the world's carpet is produced within a 65-mile radius

of the city. These manufacturing plants have used PFOA, PFOS, and other related chemicals in the stain-resistant carpeting manufacturing process.

47. Defendants are owners and operators of, or the chemical suppliers to, manufacturing facilities in and around Dalton, Georgia, which utilize various PFCs and their precursors in the manufacturing process. Defendants discharge PFOA, PFOS, and related chemicals in their industrial wastewater, which is then treated by Dalton Utilities wastewater treatment plants before being pumped to a 9,800-acre Land Application System ("LAS") where it is sprayed onto the property.

48. PFOA and PFOS, along with many other PFCs, resist degradation during the treatment process utilized by Dalton Utilities and can increase in concentration as waste accumulates in the LAS. The LAS is bordered by the Conasauga River, and runoff contaminated with PFCs pollutes the river as it flows past the LAS.

49. The United States Environmental Protection Agency ("EPA") has identified industrial wastewater from defendants' manufacturing facilities as the source of PFOA and PFOS being applied to the LAS and entering the Conasauga River.

50. The human health risks caused by exposure to low levels of PFOA, PFOS, and related chemicals include testicular cancer, kidney cancer, ulcerative colitis, thyroid disease, high cholesterol, and pregnancy-induced hypertension. The stable carbon-fluorine bonds that make PFOA and PFOS so pervasive in industrial and consumer products also results in their environmental persistence, as there is no known envi-

ronmental degradation mechanism for these chemicals. They are readily absorbed into biota and have a tendency to accumulate with repeated exposure.

51. The association of exposure to these chemicals and certain cancers has been reported by the C8 Health Project, an independent Science Panel charged with reviewing the evidence linking PFOA, PFOS, and related chemicals to the risk of disease. The C8 Panel determined that kidney and testicular cancers have a "probable link" to PFOA exposure. Epidemiological studies of workers exposed to PFOA support the association between PFOA exposure and kidney and testicular cancers. These studies also suggest associations between PFOA exposure and prostate and ovarian cancers and non-Hodgkin lymphoma. Rodent studies also support the link with cancer. The majority of a United States Environmental Protection Agency ("EPA") Science Advisory Board expert committee recommended in 2006 that PFOA be considered "likely to be carcinogenic to humans."

52. Defendant 3M Company has long been aware of the persistence and toxicity of PFOA, PFOS, and related chemicals, yet it knowingly and intentionally continued to sell these chemicals to the carpet and textile manufacturing industry. Blood tests of 3M workers conducted in 1978 found elevated organic fluorine levels proportionate to the length of time the employees had spent in production areas. Furthermore, a 1979 3M study of the effects of fluorochemical compounds on Rhesus monkeys was terminated after only 20 days after every monkey, at every dosage level, died from exposure to the chemicals.

53. Defendant 3M Company has also known for at least 14 years that PFOA, PFOS, and related chemicals are not effectively treated by conventional

wastewater treatment plant processes after finding high concentrations of these chemicals in samples taken from the effluent of a wastewater treatment plant located only a few miles downstream from one of its production facilities.

54. The EPA took regulatory action on March 11, 2002, and December 9, 2002, by publishing two significant new use rules under the Toxic Substances Control Act to limit the future manufacture and use of PFOA, PFOS, and related chemicals.

55. The State of New Jersey adopted a drinking water health advisory in 2006 for PFOA that is 0.04 ppb.

56. The EPA in 2009 published provisional drinking water health advisories for PFOA and PFOS, the limits being 0.4 ppb for PFOA and 0.2 ppb for PFOS.

57. More recent studies have shown that the 2009 EPA advisory limits were far too high. In 2014, the EPA released a draft of its proposed "reference dose" for PFOA, which is an estimate of how much a person could safely consume daily over their lifetime. That proposed reference dose translated to a limit of 0.1 ppb for PFOA, which was one-quarter the 2009 advisory level.

58. In May 2016, the EPA issued a new drinking water health advisory for PFOA and PFOS, warning that exposure to elevated levels of these compounds can lead to a number of health problems, such as cancer in adults and developmental effects in fetuses and breastfed infants. This advisory stated that, in order to provide a margin of protection from lifetime exposure to PFOA and PFOS in drinking water, the combined concentration of these chemicals should be no greater than 0.07 ppb. The EPA health advisory was

based on peer-reviewed studies of the effects of PFOA and PFOS on laboratory animals, as well as epidemiological studies of human populations exposed to these chemicals.

59. Gadsden Water began regular testing for PFOA and PFOS in its water supply following the issuance of the May 2016 EPA health advisory, and has consistently found PFOA and PFOS levels that combine to meet or exceed the 0.07 ppb limit.

60. Gadsden Water's current water filtration system, found at the C.B. Collier Water Treatment Plant, is not capable of removing or reducing levels of PFOA or PFOS.

61. Due to the high levels of PFOA and PFOS found in its water supply, many of Gadsden Water's residential consumers have turned to alternate sources of drinking water, resulting in Plaintiff's lost profits and sales. If the levels of PFOA and PFOS found in Plaintiff's water supply continue to meet or exceed the 0.07 ppb EPA advisory limit, Plaintiff's water system purchase customers will be forced to find an alternate water supply, resulting in further lost profits and sales.

62. As a direct and proximate result of Defendants' contamination of Plaintiff's water supply, Plaintiff Gadsden Water has been damaged, including, but not limited to past and future monitoring and testing expenses, lost revenues and profits, and expenses in remediating and maintaining its water system.

COUNT ONE
Negligence

63. Plaintiff incorporates all prior paragraphs by reference as if fully set forth herein.

64. Named and Fictitious Defendants owe a duty to Plaintiff to exercise due and reasonable care in their manufacturing and chemical supply operations to prevent the discharge of toxic chemicals, including PFOA, PFOS, and related chemicals, into the water supply.

65. Named and Fictitious Defendants breached the duty owed to Plaintiff, and under the circumstances, Defendants' breaches constitute negligent, willful, and/or reckless conduct.

66. As a direct, proximate, and foreseeable result of the Named and Fictitious Defendants' conduct, practices, actions, and inactions, Plaintiff Gadsden Water has incurred expenses and will incur reasonably ascertainable expenditures in the future.

WHEREFORE PREMISES CONSIDERED, Plaintiff demands judgment for compensatory damages against all defendants, both named and fictitious, jointly and severally, in an amount to be determined by a struck jury in an amount in excess of the jurisdictional minimum of this court, past and future, plus interest and costs.

COUNT TWO
Nuisance

67. Plaintiff re-alleges all prior paragraphs as if set forth fully herein.

68. Plaintiff Gadsden Water owns and occupies property used to serve its water customers and other water utilities, including a water treatment plant, water distribution system, and offices.

69. Named and Fictitious Defendants have created a nuisance by their discharge of PFOA, PFOS,

and related chemicals into the Coosa River's tributaries, which has caused contamination of the Plaintiff's water supply, thereby causing Plaintiff Gadsden Water hurt, inconvenience, and harm.

70. The levels of toxic chemical contamination found in the Plaintiff's water supply, directly caused by the Named and Fictitious Defendants' pollution, have created a condition that threatens the health and well-being of Gadsden Water's employees and customers.

71. It was reasonably foreseeable, and in fact known to the Named and Fictitious Defendants, that their actions would place, and have placed, the Plaintiff at risk of harm. The nuisance has caused substantial damages, and will continue to cause damages until it is satisfactorily abated.

WHEREFORE PREMISES CONSIDERED, Plaintiff demands judgment for compensatory damages against all Defendants, both named and fictitious, jointly and severally, in an amount to be determined by a struck jury in an amount in excess of the jurisdictional minimum of this court, past and future, plus interest and costs.

COUNT THREE
Trespass

72. Plaintiff re-alleges all prior paragraphs as if set forth fully herein.

73. Plaintiff Gadsden Water owns and occupies property used to serve its water customers and other water utilities, including a water treatment plant, water distribution system, and offices.

74. Named and Fictitious Defendants' intentional acts in discharging PFOA, PFOS, and related chemicals, knowing that they would contaminate the water supply and flow downstream, caused an invasion of Plaintiff's property by Defendants' chemicals, which has affected and is affecting Plaintiff's interest in the exclusive possession of its property.

75. Plaintiff did not consent to the invasion of its property by Named and Fictitious Defendants' chemicals.

76. Named and Fictitious Defendants knew or should have known that their discharges of PFOA, PFOS, and related chemicals could contaminate the water supply and result in an invasion of Plaintiff's possessory interest in their property.

77. Named and Fictitious Defendants' trespass is continuing.

78. Named and Fictitious Defendants' continuing trespass has impaired Plaintiff's use of its property and has caused it damages by diminishing its value.

WHEREFORE PREMISES CONSIDERED, Plaintiff demands judgment for compensatory damages against all Defendants, both named and fictitious, jointly and severally, in an amount to be determined by a struck jury in an amount in excess of the jurisdictional minimum of this court, past and future, plus interest and costs.

COUNT FOUR
Wantonness and Punitive Damages

79. Plaintiff re-alleges all prior paragraphs as if restated herein.

80. Named and Fictitious Defendants owe a duty to Plaintiff to exercise due and reasonable care in

their manufacturing and chemical supply operations to prevent the discharge of toxic chemicals, including PFOA, PFOS, and related chemicals, into the water supply.

81. In breaching the duties described above, Named and Fictitious Defendants acted in a wanton, willful, and reckless manner.

82. Named and Fictitious Defendants knew or should have known the danger to Plaintiff created by Defendants' conduct, practices, actions, and inactions.

83. Named and Fictitious Defendants knew or should have known of the likely impact, harm, damage, and injury their conduct would have on the Plaintiff.

84. Named and Fictitious Defendants' conduct, practices, and inactions evidence Defendants' reckless disregard for Plaintiff's property.

WHEREFORE PREMISES CONSIDERED, Plaintiff demands judgment for punitive damages against all Defendants, both named and fictitious, jointly and severally, in an amount to be determined by a struck jury in an amount in excess of the jurisdictional minimum of this court, past and future, plus interest and costs.

COUNT FIVE
Injunctive Relief

85. Plaintiff re-alleges all prior paragraphs as if set forth fully herein.

86. Plaintiff requests that this Court enter an Order enjoining Named and Fictitious Defendants from continuing the conduct described above and requiring Named and Fictitious Defendants to take all steps

necessary to remove their chemicals from Plaintiff's water supplies and property.

87. There is continuing irreparable injury to Plaintiff if an injunction does not issue, as Named and Fictitious Defendants' chemicals in its water supplies pose a continuing threat to Plaintiff's property interests, and there is no adequate remedy at law.

WHEREFORE PREMISES CONSIDERED, Plaintiff demands injunctive relief against all Defendants, both named and fictitious, jointly and severally, requiring Defendants to remove their chemicals from Plaintiff's water system and to prevent these chemicals from continuing to contaminate Plaintiff's water supply.

RELIEF DEMANDED

Wherefore, Plaintiff Gadsden Water respectfully requests this Court grant the following relief:

a) Award Plaintiff damages in an amount to be determined by a jury sufficient to compensate it for real property damage, out of pocket expenses, lost profits and sales, and future expenses;

b) Issue an injunction requiring Named and Fictitious Defendants to remove their chemicals from Plaintiffs water supply and to prevent these chemicals from continuing to contaminate Plaintiffs water supply;

c) Award attorney fees and costs and expenses incurred in connection with the litigation of this matter;

d) Award such other and further relief as this Court may deem just, proper, and equitable.

JURY DEMAND

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY ON ALL ISSUES OF THIS CAUSE.

Dated: September 22, 2016.

Respectfully submitted,

s/ Rhon E. Jones
JERE L. BEASLEY (BEA020)
Jere.Beasley@beasleyallen.com
RHON E. JONES (JON093)
Rhon.Jones@beasleallen.com
RICHARD D. STRATTON (STR021)
Rick.Stratton@beasleallen.com
GRANT M. COFER (C0F008)
Grant.Coferbeasleallen.com
Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.
P.O. Box 4160
Montgomery, Alabama 36103
T: 334-269-2343
F: 334-954-7555

ROGER H. BEDFORD
senbedford@aol.com
Roger Bedford & Associates, P.C.
P.O. Box 370
Russellville, Alabama 35653
T: 256-332-6966
F: 256-332-2800

Attorneys for Plaintiff

APPENDIX G

IN THE CIRCUIT COURT OF CHEROKEE COUNTY, ALABAMA

THE WATER WORKS AND SEWER BOARD OF THE TOWN OF CENTRE, Plaintiff,	)	
v.	)	**CIVIL ACTION NO: _____**
3M COMPANY; ALADDIN MANUFACTURING CORPORATION APRICOT INTERNATIONAL, INC.; ARROWSTAR, LLC; BEAULIEU GROUP, LLC, BEAULIEU OF AMERICA, INC.; DALTONIAN FLOORING, INC.; DEPENDABLE RUG MILLS, INC.; DORSETT INDUSTRIES, INC.; DYSTAR, L.P.; ECMR, LLC d/b/a CLAYTON MILLER HOSPITALITY CARPETS; E.I. DU PONT DE NEMOURS AND COMPANY; EMERALD CARPETS, INC.; ENGINEERED FLOORS, LLC; FORTUNUE CONTRACT, INC.;	)	***TRIAL BY JURY REQUESTED***

HARCROS CHEMICAL, INC.; KRAUS USA, INC. (f/k/a BARRETT CARPET MILLS, INC.); INDIAN SUMMER CARPET MILLS, INC.; INDUSTRIAL CHEMICALS, INC.; J&J INDUSTRIES, INC.; LEXMARK CARPET MILLS, INC.; LYLE INDUSTRIES, INC.; MFG CHEMICAL, INC.; MILLIKEN & COMPANY; MOHAWK CARPET, LLC; MOHAWK GROUP, INC.; MOHAWK INDUSTRIES, INC.; NPC SOUTH, INC.; ORIENTAL WEAVERS USA, INC.; S & S MILLS, INC.; SAVANNAH MILLS GROUP, LLC; SHAW INDUSTRIES, INC.; TANDUS CENTIVA, INC.; TANDUS CENTIVA US, LLC; THE DIXIE GROUP, INC.; TEXTILE RUBBER AND CHEMICAL COMPANY, INC.; VICTOR CARPET MILLS, INC.; and FICTITIOUS DEFENDANTS A-J, those persons, corporations, partnerships or entities who acted either as principal or

agent, for or in concert with the other named Defendants and/or whose acts caused or contributed to the damages sustained by the Plaintiff, whose identities are unknown to the Plaintiff, but which will be substituted by amendment when ascertained,	)
Defendants.	

COMPLAINT

Plaintiff, The Water Works and Sewer Board of the City of Centre ("Centre Water"), brings this Complaint against Defendants 3M Company, Aladdin Manufacturing Corporation, Apricot International, Inc., ArrowStar, LLC, Beaulieu Group LLC, Beaulieu of America, Inc., Daltonian Flooring, Inc., Dependable Rug Mills, Inc., Dorsett Industries, Inc., Dystar, L.P., ECMH, LLC d/b/a Clayton Miller Hospitality Carpets, E.I. DuPont De Nemours and Company, Emerald Carpets, Inc., Engineered Floors, LLC, Fortune Contract, Inc., Harcros Chemical, Inc., Indian. Summer Carpet Mills, Inc., Industrial Chemicals, Inc., J&J Industries, Inc., Kraus USA, Inc. (f/k/a Barrett Carpet Mills, Inc.), Lexmark Carpet Mills Inc., Lyle Industries, Inc., MFG Chemical, Inc., Milliken & Company, Mohawk Carpet LLC, Mohawk Group, Inc., Mohawk Industries, Inc., NPC South, Inc., Oriental Weavers USA, Inc., S & S Mills, Inc., Savannah Mills Group, LLC, Shaw Industries, Inc., Tandus Centiva Inc., Tandus Centiva US LLC, The Dixie Group, Inc., Textile Rubber and Chemical Company, Inc. and Victor Carpet Mills, Inc. ("Defendants"), and allege as follows:

STATEMENT OF THE CASE

1. Plaintiff, Centre Water, has and continues to be damaged due to the negligent, willful, and wanton conduct of the Named and Fictitious Defendants, as well as nuisance and trespass caused by the Defendants' past and present release of 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 from their manufacturing facilities in and around the City of Dalton, Georgia.

2. Centre Water provides drinking water directly to its own residential and commercial customers in Cherokee County. Centre Water utilizes the Coosa River as its raw water source, specifically drawing its source water from Weiss Lake in the Coosa River Basin.

3. Named and Fictitious Defendants operate, or supply chemical products to, manufacturing facilities located upstream of Centre Water's intake site, in or near the City of Dalton, Georgia. Named and Fictitious Defendants use chemical compounds that contain or degrade into PFCs, including, but not limited to PFOA and PFOS at their facilities to impart water, stain, and grease resistance to their carpet and other textile products. Industrial wastewater discharged from Named and Fictitious Defendants' manufacturing plants contains high levels of PFCs, including, but not limited to, PFOA and PFOS. These chemicals resist degradation during processing at Dalton Utilities' wastewater treatment center and contaminate the Conasauga River. The Conasauga River is one of the Coosa River's five major tributaries.

4. Named and Fictitious Defendants' toxic chemicals have contaminated the water in the Coosa River at Centre Water's intake site, and the chemicals cannot be removed by the water treatment processes Centre Water currently utilizes.

5. As a direct and proximate result of Named and Fictitious Defendants' contamination of the Plaintiff's raw water source, Centre Water has suffered substantial economic and consequential damage, including, but not limited to, expenses associated with the future installation and operation of a filtration system capable of removing the Named and Fictitious Defendants' chemicals from the water; expenses incurred to monitor PFC contamination levels; expenses incurred to purchase water from Cherokee County Water Authority; and lost profits and sales.

6. Wherefore, Plaintiff Centre Water seeks compensatory and punitive damages to the fullest extent allowed by award from a jury. Plaintiff also seeks equitable and injunctive relief compelling the Named and Fictitious Defendants to remediate their contamination and prevent additional releases of PFCs and other toxic chemicals, including, but not limited to PFOS and PFOA, into Centre Water's raw water source.

JURISDICTION

7. Jurisdiction is proper in this Court pursuant to ALA. CODE § 12-11-30(1.)(1975), as Plaintiff's claims exceed $10,000.

8. Plaintiff asserts no federal cause of action in this Complaint.

PARTIES

9. Plaintiff Centre Water is a domestic municipal corporation formed pursuant to Ala. Code § 11-50-230, with its principal place of business in Cherokee County, Alabama.

10. Defendant 3M Company ("3M") is a foreign corporation qualified to do business in the State of Alabama, and is causing injury in Cherokee County, Alabama.

11. Defendant Aladdin Manufacturing Corporation is a foreign corporation qualified to do business in Cherokee County, Alabama.

12. Defendant Apricot International, Inc., is a foreign corporation causing injury in Cherokee County, Alabama.

13. Defendant Arrowstar, LLC, is a foreign corporation causing injury in Cherokee County, Alabama.

14. Defendant Beaulieu Group LLC is a foreign corporation causing injury in Cherokee County, Alabama.

15. Defendant Beaulieu of America, Inc., is a foreign corporation causing injury in Cherokee County, Alabama.

16. Defendant Daltonian Flooring, Inc., is a foreign corporation causing injury in Cherokee County, Alabama.

17. Defendant Dependable Rug Mills, Inc., is a foreign corporation qualified to do business in the State of Alabama, and is causing injury in Cherokee County, Alabama.

18. Defendant E.I. du Pont de Nemours and Company is a foreign corporation qualified to do business

in the State of Alabama, and is causing injury in Cherokee County, Alabama.

19. Defendant Dorsett Industries, Inc., is a foreign corporation causing injury in Cherokee County, Alabama.

20. Defendant Dystar, L.P., is a foreign corporation causing injury in Cherokee County, Alabama.

21. Defendant ECMH, LLC d/b/a Clayton Miller Hospitality Carpets is a foreign corporation causing injury in Cherokee County, Alabama.

22. Defendant Emerald Carpets, Inc., is a foreign corporation causing injury in Cherokee County, Alabama.

23. Defendant Engineered Floors, LLC is a foreign corporation causing injury in Cherokee County Alabama.

24. Defendant Fortune Contract, Inc., is a foreign corporation causing injury in Cherokee County, Alabama.

25. Defendant Harcros Chemical, Inc., is a foreign corporation causing injury in Cherokee County, Alabama.

26. Defendant Indian Summer Carpet Mills, Inc., is a foreign corporation qualified to do business in the State of Alabama, and is causing injury in Cherokee County, Alabama.

27. Defendant Industrial Chemicals, Inc., is a domestic corporation with its principal place of business in Birmingham, Alabama, and is causing injury in Cherokee County, Alabama.

28. Defendant J&J Industries, Inc., is a foreign corporation causing injury in Cherokee County, Alabama.

29. Kraus USA, Inc. is a foreign corporation causing injury in Cherokee County, Alabama.

30. Defendant Lexmark Carpet Mills, Inc., is a foreign corporation causing injury in Cherokee County, Alabama.

31. Defendant Lyle Industries, Inc., is a foreign corporation causing injury in Cherokee County, Alabama.

32. Defendant MFG Chemical, Inc., is a foreign corporation causing injury in Cherokee County, Alabama.

33. Milliken & Company is a foreign corporation causing injury in Cherokee County, Alabama.

34. Defendant Mohawk Carpet, LLC, is a foreign corporation causing injury in Cherokee County, Alabama.

35. Defendant Mohawk Group, Inc., is a foreign corporation causing injury in Cherokee County, Alabama.

36. Defendant Mohawk Industries, Inc., is a foreign corporation causing injury in Cherokee County, Alabama.

37. Defendant NPC South, Inc., is a foreign corporation causing injury in Cherokee County, Alabama.

38. Defendant Oriental Weavers USA, Inc., is a foreign corporation causing injury in Cherokee County, Alabama.

39. Defendant S&S Mills, Inc., is a foreign corporation causing injury in Cherokee County, Alabama.

40. Defendant Savannah Mills Group, LLC, is a foreign corporation causing injury in Cherokee County, Alabama.

41. Defendant Shaw Industries, Inc., is a foreign corporation qualified to do business in the State of Alabama, and is causing injury in Cherokee County, Alabama.

42. Defendant Tandus Centiva, Inc., is a foreign corporation qualified to do business in the State of Alabama, and is causing injury in Cherokee County, Alabama.

43. Defendant Tandus Centiva US, LLC, is a foreign corporation qualified to do business in the State of Alabama, and is causing injury in Cherokee County, Alabama.

44. Defendant The Dixie Group, Inc., is a foreign corporation qualified to do business in the State of Alabama, and is causing injury in Cherokee County, Alabama.

45. Defendant Textile Rubber & Chemical Co., Inc., is a foreign corporation qualified to do business in the State of Alabama, and is causing injury in Cherokee County, Alabama.

46. Defendant Victor Carpet Mills, Inc., is a foreign corporation causing injury in Cherokee County, Alabama.

47. Fictitious Defendants A, B, C, D, E, F, G, H, I, & J are those persons, corporations, partnerships, or entities who discharged. PFCs and their precursor compounds, including, but not limited to PFOA, PFOS and related chemicals into the water supply upstream

of Centre Water's water intake site, who acted either as principal or agent, for or in concert with the named Defendants, and/or who acts caused or contributed to the damages sustained by the Plaintiff, whose identities are unknown to Plaintiff, but which will be substituted by amendment when ascertained.

FACTUAL ALLEGATIONS

48. The City of Dalton, Georgia, contains over 150 carpet manufacturing plants, and more than 90% of the world's carpet is produced within a 65-mile radius of the city. These manufacturing plants have used PFOA, PFOS, and other related chemicals in the stain-resistant carpeting manufacturing process.

49. Defendants are owners and operators of, or the chemical suppliers to, manufacturing facilities in and around Dalton, Georgia, which utilize various PFCs and their precursors in the manufacturing process. Defendants discharge PFCs, including, but not limited to PFOA, PFOS, their precursors and related chemicals in their industrial: wastewater, which is then treated by Dalton Utilities wastewater treatment plants before being pumped to a 9,800-acre Land Application System ("LAS") where it is sprayed onto the property.

50. PFCs including, but not limited to, PFOA and PFOS, resist degradation during the treatment process utilized by Dalton Utilities and increase in concentration as waste accumulates in the LAS. The LAS is bordered by the Conasauga River, and runoff contaminated with PFCs pollutes the river as it flows past the LAS.

51. The United States Environmental Protection Agency ("EPA") has identified industrial wastewater from defendants' manufacturing facilities as the

source of PFCs including, but not limited to, PFOA and PFOS being applied to the LAS and entering the Conasauga River.

52. The human health risks caused by exposure to low levels of PFCs such as PFOA, PFOS, and related chemicals include testicular cancer, kidney cancer, ulcerative colitis, thyroid disease, high cholesterol, and pregnancy-induced hypertension. The stable carbon-fluorine bonds that make PFOA and PFOS so pervasive in industrial and consumer products also results in their environmental persistence, as there is no known environmental degradation mechanism for these chemicals. They are readily absorbed into biota and have a tendency to accumulate with repeated exposure.

53. The association of exposure to these chemicals and certain cancers has been reported by the C8 Health Project, an independent Science Panel charged with reviewing the evidence linking PFOA, PFOS, and related chemicals to the risk of disease. The C8 Panel determined that kidney and testicular cancers have a "probable link" to PFOA exposure. Epidemiological studies of workers exposed to PFOA support the association between PFOA exposure and kidney and testicular cancers. These studies also suggest associations between PFOA exposure and prostate and ovarian cancers and non-Hodgkin lymphoma. Rodent studies also support the link with cancer. The majority of a United States Environmental Protection Agency ("EPA") Science Advisory Board expert committee recommended in 2006 that PFOA be considered "likely to be carcinogenic to humans."

54. Defendant 3M Company has long been aware of the persistence and toxicity of PFOA, PFOS, and related chemicals, yet it knowingly and intentionally

continued to promote and sell these chemicals to the carpet and textile manufacturing industry. Blood tests of 3M workers conducted in 1978 found elevated organic fluorine levels proportionate to the length of time the employees had spent in production areas. Furthermore, a 1979 3M study of the effects of fluorochemical compounds on Rhesus monkeys was terminated after only 20 days after every monkey, at every dosage level, died from exposure to the chemicals.

55. Defendant 3M Company has also known for at least 14 years that PFCs including, but not limited to, PFOA, PFOS, and related chemicals are not effectively treated by conventional wastewater treatment plant processes after finding high concentrations of these chemicals in samples taken from the effluent of a wastewater treatment plant located only a few miles downstream from one of its production facilities.

56. The EPA took regulatory action on March 11, 2002, and December 9, 2002, by publishing two significant new use rules under the Toxic Substances Control Act to limit the future manufacture and use of PFOA, PFOS, and related chemicals.

57. The State of New Jersey adopted a drinking water health advisory in 2006 for PFOA that is 0.04 ppb.

58. The EPA in 2009 published provisional drinking water health advisories for PFOA and PFOS, the limits being 0.4 ppb for PFOA and 0.2 ppb for PFOS.

59. More recent studies have shown that the 2009 EPA advisory limits were far too high. In 2014, the EPA released a draft of its proposed "reference dose" for PFOA, which is an estimate of how much a person could safely consume daily over their lifetime. That proposed reference dose translated to a limit of 0.1 ppb

for PFOA, which was one-quarter the 2009 advisory level.

60. In May 2016, the EPA issued a new drinking water health advisory for PFOA and PFOS, warning that exposure to elevated levels of these compounds can lead to a number of health problems, such as cancer in adults and developmental effects in fetuses and breastfed infants. This advisory stated that, in order to provide a margin of protection from lifetime exposure to PFOA and PFOS in drinking water, the combined concentration of these chemicals should be no greater than 0.07 ppb. The EPA health advisory was based on peer-reviewed studies of the effects of PFOA and PFOS on laboratory animals, as well as epidemiological studies of human populations exposed to these chemicals.

61. Centre Water began regular testing for PFOA and PFOS in its water supply following the issuance of the May 2016 EPA health advisory, and has consistently found PFOA and PFOS levels that combine to meet or exceed the 0.07 ppb limit.

62. Centre Water's current water filtration system is not capable of removing or reducing levels of PFCs including, but not limited to PFOA and PFOS.

63. Due to the high levels of PFOA and PFOS found in its water supply, Centre Water has and will continue to purchase water from the Cherokee County Water Authority resulting in additional expenses and lost profits.

64. As a direct and proximate result of Defendants' contamination of Plaintiff's water supply, Centre Water has been damaged, including, but not limited to, past and future monitoring and testing expenses,

lost revenues and profits, expenses in purchasing water from other water providers, and expenses in remediating, operating and maintaining its water system.

COUNT ONE
Negligence

65. Plaintiff incorporates all prior paragraphs by reference as if fully set forth herein.

66. Named and Fictitious Defendants owed a duty to Plaintiff to exercise due and reasonable care in their manufacturing and chemical supply operations to prevent the discharge of toxic chemicals including, but not limited to PFOA, PFOS, and related chemicals, into the water supply.

67. Named and Fictitious Defendants breached the duty owed to Plaintiff, and under the circumstances, Defendants' breaches constitute negligent, willful, and/or reckless conduct.

68. As a direct, proximate, and foreseeable result of the Named and Fictitious Defendants' conduct, practices, actions, and inactions, Centre Water has incurred expenses and will incur reasonably ascertainable expenditures in the future.

WHEREFORE PREMISES CONSIDERED, Plaintiff demands judgment for compensatory damages against all defendants, both named and fictitious, jointly and severally, in an amount to be determined by a struck jury in an amount in excess of the jurisdictional minimum of this court, past and future, plus interest and costs.

COUNT TWO
Public Nuisance

69. Plaintiff re-alleges all prior paragraphs as if set forth fully herein.

70. Plaintiff Centre Water owns and occupies property used to serve its water customers, including a water treatment plant, water distribution system, and offices.

71. Named and Fictitious Defendants have created a nuisance by their discharge of PFCs including, but not limited to PFOA, PFOS, and related chemicals into the Coosa River's tributaries, which has caused contamination of the Plaintiff's water supply, thereby causing Centre Water hurt, inconvenience, and harm.

72. The specific damages incurred by Plaintiff include, but are not limited to, expenses associated with the future installation and operation of a filtration system capable of removing Named and Fictitious Defendants' chemicals from the water; expenses incurred to monitor PFC contamination levels; expenses incurred to purchase water from the Cherokee County Water Authority; and lost profits and sales. These special damages are unique to Centre Water.

73. In addition to the special damages sustained by Plaintiff, the levels of toxic chemical contamination found in the Plaintiff's water supply, directly caused by the Named and Fictitious Defendants' pollution, have created a condition that threatens the health and well-being of Centre Water's customers.

74. It was reasonably foreseeable, and in fact known to the Named and Fictitious Defendants, that their actions would place, and have placed, the Plaintiff at risk of harm. The nuisance has caused substantial damages, and will continue to cause damages until it is satisfactorily abated.

WHEREFORE PREMISES CONSIDERED, Plaintiff demands judgment for compensatory dam-

ages against all Defendants, both named and fictitious, jointly and severally, in an amount to be determined by a struck jury in an amount in excess of the jurisdictional minimum of this court, past and future, plus interest and costs.

COUNT THREE
Private Nuisance

75. Plaintiff re-alleges all prior paragraphs as if set forth fully herein.

76. Named and Fictitious Defendants have created a nuisance by their discharge of PFCs including, but not limited to PFOA, PFOS, and related chemicals into the Coosa River's tributaries, which has caused contamination of the Plaintiff's water supply, thereby causing Centre Water hurt, inconvenience, and harm.

77. The contamination of the water at Centre Water's intake site constitutes a private nuisance depriving Centre Water of its ability to deliver clean and uncontaminated water to its customers.

78. It was reasonably foreseeable, .and in fact known to the Named and Fictitious Defendants, that their actions would contaminate, and have contaminated, the water at Plaintiff's intake site. The nuisance has caused substantial damages, and will continue to cause damages until it is satisfactorily abated.

79. WHEREFORE PREMISES CONSIDERED, Plaintiff demands judgment for compensatory damages against all Defendants, both named and fictitious, jointly and severally, in an amount to be determined by a struck jury in an amount in excess of the jurisdictional minimum of this court, past and future, plus interest and costs.

COUNT FOUR
Trespass

80. Plaintiff re-alleges all prior paragraphs as if set forth fully herein.

81. Plaintiff Centre Water owns and occupies property used to serve its water customers and other water utilities, including a water treatment plant, and offices.

82. Named and Fictitious Defendants' intentional acts in discharging PFOA, PFOS, and related chemicals, knowing that they would contaminate the water supply and flow downstream, caused an invasion of Plaintiff's property by Defendants' chemicals, which has affected and is affecting Plaintiffs interest in the exclusive possession of its property.

83. Plaintiff did not consent to the invasion of its property by Named and Fictitious Defendants' chemicals.

84. Named and Fictitious Defendants knew or should have known that their discharges of PFOA, PFOS, and related chemicals could contaminate the water supply and result in an invasion of Plaintiffs possessory interest in their property.

85. Named and Fictitious Defendants' trespass is continuing.

86. Named and Fictitious Defendants' continuing trespass has impaired Plaintiff's use of its property and has caused it damages by diminishing its value.

WHEREFORE PREMISES CONSIDERED, Plaintiff demands judgment for compensatory damages against all Defendants, both named and fictitious, jointly and severally, in an amount to be determined by a struck jury in an amount in excess of the

jurisdictional minimum of this court, past and future, plus interest and costs.

COUNT FIVE
Wantonness and Punitive Damages

87. Plaintiff re-alleges all prior paragraphs as if restated herein.

88. Named and Fictitious Defendants owed a duty to Plaintiff to exercise due and reasonable care in their manufacturing and chemical supply operations to prevent the discharge of PFCs and their precursors, including, but not limited to PFOA, PFOS, and related chemicals, into the water supply.

89. In breaching the duties described above, Named and Fictitious Defendants acted in a wanton, willful, and reckless manner.

90. Named and Fictitious Defendants knew or should have known the danger to Plaintiff created by Defendants' conduct, practices, actions, and inactions.

91. Named and Fictitious Defendants knew or should have known of the likely impact, harm, damage, and injury their conduct would have on the Plaintiff.

92. Named and Fictitious Defendants' conduct, practices, and inactions evidence Defendants' reckless disregard for Plaintiff's property.

WHEREFORE PREMISES CONSIDERED, Plaintiff demands judgment for punitive damages against all Defendants; both named and fictitious, jointly and severally, in an amount to be determined by a struck jury in an amount in excess of the jurisdictional minimum of this court, past and future, plus interest and costs.

COUNT SIX
Injunctive Relief

93. Plaintiff re-alleges all prior paragraphs as if set forth fully herein.

94. Plaintiff requests that this Court enter an Order enjoining Named and Fictitious Defendants from continuing the conduct described above and requiring Named and Fictitious Defendants to take all steps necessary to remove their chemicals from Plaintiff's water supplies and property.

95. There is continuing irreparable injury to Plaintiff if an, injunction does not issue, as Named and Fictitious Defendants' chemicals in its water supplies pose a continuing threat to Plaintiff's property interests, and there is no adequate remedy at law.

WHEREFORE PREMISES CONSIDERED, Plaintiff demands injunctive relief against all Defendants, both named and fictitious, jointly and severally, requiring Defendants to remove their chemicals from Plaintiff's water system and to prevent these chemicals from continuing to contaminate Plaintiff's water supply.

RELIEF DEMANDED

Wherefore, Centre Water respectfully requests this Court grant the following relief:

a) Award Plaintiff damages in an amount to be determined by a jury sufficient to compensate it for real property damage, out of pocket expenses, lost profits and sales, and future expenses;

b) Issue an injunction requiring Named and Fictitious Defendants to remove their chemicals from Plaintiff's water supply and to prevent these chemicals from continuing to contaminate Plaintiff's water supply;

c) Award attorney fees and costs and expenses incurred in connection with the litigation of this matter;

d) Award such other and further relief as this Court may deem just, proper, and equitable.

JURY DEMAND

PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY ON ALL ISSUES OF THIS CAUSE.

Dated: May 25, 2017

Respectfully submitted,

s/ Rhon E. Jones

JERE L. BEASLEY (BEA020)
Jere.Beasley@beasleyallen.com
RHON E. JONES (JON093)
Rhon.Jones@beasleyallen.com.
RICHARD D. STRATTON
(STR021)
Rick.Stratton@beaslevallen.com.

GRANT M. COFER (COF008)
Grant.Cofer@beasleyallen.com.
J. RYAN KRAL (KRA016)
Ryan.Kral@beaslevallen.com.
Beasley, Allen, Crow,
Methvin, Portis & Miles, P.C.
P.O. Box 4160
Montgomery, Alabama 36103
T: 334-269-2343
F: 334-954-7555

ROGER H. BEDFORD
senbedfordeaol.com.
Roger Bedford & Associates, P.C.
P.O. Box 370
Russellville, Alabama 35653
T: 256-332-6966
F: 256-332-2800

Attorneys for Plaintiff

APPENDIX H

IN THE SUPREME COURT OF ALABAMA

EX PARTE MOHAWK INDUSTRIES, INC.; MOHAWK CARPET, LLC; SHAW INDUSTRIES, INC.; J&J INDUSTRIES, INC.; LEXMARK CARPET MILLS, INC.; MFG CHEMICAL, INC.; THE DIXIE GROUP, INC.; DORSETT INDUSTRIES, INC.; KALEEN RUGS, INC.; ORIENTAL WEAVERS USA, INC.; AND INDIAN SUMMER CARPET MILLS, INC.

(In re: The Water Works and Sewer Board of the City of Gadsden v. 3M Company, et al.)

ON PETITIONS FOR WRIT OF MANDAMUS

FROM THE CIRCUIT COURT OF ETOWAH COUNTY, ALABAMA (CV-16-900676)

THE WATER WORKS AND SEWER BOARD OF THE CITY OF GADSDEN'S CONSOLIDATED ANSWER TO THE PETITIONS FOR WRIT OF MANDAMUS FILED BY PETITIONERS MOHAWK INDUSTRIES, INC., ET AL.

Jere L. Beasley Rhon E. Jones Richard D. Stratton Grant M. Cofer J. Ryan Kral Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. Post Office Box 4160 Montgomery, Alabama 36103 T: 334-269-2343 F: 334-954-7555 Jere.Beasley@beasley-allen.com Rhon.Jones@beasley-allen.com Rick.Stratton@beasley-allen.com Grant.Cofer@beasley-allen.com Ryan.Kral@beasley-allen.com	ROGER H. BEDFORD Roger Bedford & Associates, P.C. Post Office Box 370 Russellville, Alabama 35653 T: 256-332-6966 F: 256-332-2800 senbedford@aol.com
Thomas O. Sinclair SIN018) Lee P. Fernon, Jr. (FER036) Sinclair Law Firm, LLC 2000 South Bridge Parkway, Suite 601 Birmingham, AL 35209 T: 205.868.0818 F: 205.868.0894	

tsinclair@sinclairlaw-firm.com lfernon@sinclairlaw-firm.com	
Counsel for Respondent The Water Works and Sewer Board of the City of Gadsden	

* * *

* * *

Petitioners filed motions to dismiss and motions for summary judgment generally alleging that the court lacked personal jurisdiction.[2] On August 13, 2018, the trial court issued an order denying Petitioners' dispositive motions. (App. E, Order on Defendants' Dispositive Motions and Motions for Protective Order). The trial court found that "[Petitioners] 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.'" *Id.* More specifically, the trial court held that "the act of causing the chemicals to enter the Conasauga River is an act directed at Alabama." *Id.*

III. ARGUMENT

A. This Court Has Specific Personal Jurisdiction over the Petitioners.[3]

1. *Petitioners Have Sufficient Contacts With Alabama to Establish Specific Personal Jurisdiction.*

* * *

---

[2] Petitioners have included copies of the relevant motions to dismiss as exhibits to their Petitions.

[3] Respondent does not challenge Petitioner Shaw Industries, Inc.'s argument that it is not subject to general personal jurisdiction[.]