DOCKET NO. SC-2024-0515

IN THE SUPREME COURT OF ALABAMA

Ex parte INV Performance Surfaces, LLC

In re:

The Water Works and Sewer Board of the City of Gadsden, Plaintiff,

v.

DuPont De Nemours, Inc., et al, Defendants.

FROM THE 16th JUDICIAL CIRCUIT - ETOWAH COUNTY
Case No. CV-2023-900332.00 (WBO)

BRIEF AMICUS CURAE OF THE NATIONAL ASSOCIATION OF MANUFACTURERS IN SUPPORT OF PETITIONER

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STATEMENT REGARDING ORAL ARGUMENT

The National Association of Manufacturers (NAM) adopts Petitioner's request for oral argument.

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STATEMENT OF JURISDICTION

The NAM is satisfied with and adopts Petitioner's basis for jurisdiction, and Petitioner's reasons why a writ of mandamus is an appropriate form of relief in this matter.

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INTRODUCTION AND INTEREST OF AMICUS CURIAE

The National Association of Manufacturers (NAM) submits this brief as *amicus curiae* in support of Petitioner.[1]

The NAM is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 States. Manufacturing employs 13 million men and women, contributes $2.87 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the Nation. The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

The NAM writes in this case because the trial court's decision, if allowed to stand, will distort the U.S. Supreme Court's binding case law governing States' exercise of specific personal jurisdiction. It will also

[1] No party or counsel for a party authored this brief in whole or in part. No party, counsel for a party, or person other than *amicus curiae* or its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

harm component manufacturers, which tend to be small businesses, forcing them to bear the risk of unpredictable lawsuits brought in jurisdictions that they have no connection with. And that uncertainty will ultimately harm Alabama residents, who will receive products containing components from manufacturers forced to allocate resources to tort lawsuits instead of innovation.

The Court should issue the writ and direct the trial court to grant INV's motion to dismiss for lack of personal jurisdiction.

STATEMENT OF THE CASE

The NAM is satisfied with and adopts Petitioner's statements concerning the nature of the case, course of proceedings, and discussion of the order made the basis of the petition.

STATEMENT OF THE ISSUES

The NAM is satisfied with and adopts Petitioner's statement of the issues raised in its petition.

STATEMENT OF THE FACTS

The NAM is satisfied with and adopts Petitioner's statement of the facts from the underlying case.

STATEMENT OF THE STANDARD OF REVIEW

The NAM is satisfied with and adopts Petitioner's statement of the standard of review.

SUMMARY OF THE ARGUMENT WHY WRIT SHOULD ISSUE

I. INV's petition correctly explains why, under *Ex Parte Aladdin Manufacturing Corp.*, 305 So. 3d 214 (Ala. 2019), the Alabama courts cannot exercise personal jurisdiction over INV on Plaintiff's claims. Dismissal is also required by the U.S. Supreme Court cases that *Aladdin Manufacturing* rests upon. The U.S. Supreme Court has repeatedly held both that the contacts with a forum State that give rise to personal jurisdiction must be the defendant's own contacts and that unilateral action in the forum State by third parties the defendant has contacts with do not count. The trial court violated both of those principles in finding personal jurisdiction over INV based on INV's sales to Georgia carpet

mills that contracted with a Georgia-based wastewater processor that allegedly discharged contaminated wastewater into Georgia rivers that eventually flowed in to Alabama.

At most, it may have been foreseeable that contaminated water would flow from the Georgia mills' wastewater-treatment contractor into Alabama. But the U.S. Supreme Court has held time and again that foreseeability is not enough to subject a defendant to suit in a State. It is also irrelevant that Alabama may be the most-convenient location to hear all of Plaintiff's claims against all defendants. Personal jurisdiction is a defendant-by-defendant analysis that addresses not just abstract notions of fairness, but guards against States overreaching in our federal system and adjudicating claims against defendants with no contacts with the forum. Convenience alone cannot make personal jurisdiction over INV in Alabama on Plaintiff's claims proper.

II. The trial court's decision will hurt component manufacturers—most of whom are small businesses—by forcing them to litigate wherever a finished product containing their component part

ends up. Small manufacturers are unaccustomed to litigation in far-away forums and do not have the local legal knowledge or counsel networks that large, nationwide businesses do. And small businesses already bear a disproportionate cost of tort litigation in America; upholding the trial court's decision will force them to shoulder even more, requiring them to dedicate resources to tort suits that are better invested in innovation.

The complexities of national and global supply chains mean that component manufacturers like INV have no control over where products containing their components are sold. Yet the U.S. Supreme Court has emphasized that Due Process restrictions on personal jurisdiction are meant to give defendants predictability as to where their actions will and will not subject them to suit and allow them to take steps to mitigate the risk of lawsuits in other States. INV, which had no control over what the Georgia carpet mills did with its fibers and solvents or what the Georgia wastewater-treatment contractor did with wastewater from the mills, could not have done anything to avoid being subject to jurisdiction in

Alabama. That confirms that personal jurisdiction over INV on Plaintiff's claims is constitutionally inappropriate.

The writ should issue.

ARGUMENT WHY WRIT SHOULD ISSUE

I. Under settled U.S. Supreme Court precedent, a component manufacturer cannot be sued in Alabama just because its part is integrated into a finished product assembled by others and transported into the State, even if the integration and transportation is foreseeable.

INV's petition correctly explains (at 12-18) that the Alabama courts cannot exercise personal jurisdiction over it under this Court's decision in *Ex parte Aladdin Manufacturing Corp.*, 305 So. 3d 214 (Ala. 2019). That application of *Aladdin Manufacturing* is compelled not just by *Aladdin Manufacturing* itself, but by the U.S. Supreme Court cases that *Aladdin Manufacturing* is based on.

A. U.S. Supreme Court precedent forbids state courts from exercising personal jurisdiction over a component manufacturer based on third parties' actions.

For a State to exercise specific personal jurisdiction over a defendant, the plaintiff must demonstrate that the defendant has

"minimum contacts" with the State. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985). Although "[t]he application of that rule will vary with the quality and nature of the defendant's activity, . . . it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

The U.S. Supreme Court has put up guideposts for courts applying these broad principles. First, "[t]he contacts must be the defendant's own choice and not 'random, isolated, or fortuitous.'" *Ford Motor Co. v. Montana Eighth Judicial District Court*, 592 U.S. 351, 359 (2021) (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984)). Second, and relatedly, "[t]he unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." *Hanson*, 357 U.S. at 253. That is, "unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has

sufficient contacts with a forum State to justify an assertion of jurisdiction." *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984).

In short, "it is the defendant's conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him." *Walden v. Fiore*, 571 U.S. 277, 285 (2014). The "'minimum contacts' analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there," and the U.S. Supreme Court has "consistently rejected attempts to satisfy the defendant-focused 'minimum contacts' inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State." *Id.* at 284-285.

These principles apply the same when a defendant is the manufacturer or distributor of a product that is brought or sent to the forum State by others. The U.S. Supreme Court has explained that a car distributor that did not sell or service vehicles in the forum State and that did not solicit business in the forum State could not be sued there

because of the "fortuitous circumstance" that a car it sold happened to be driven into the forum. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980). A plurality of the U.S. Supreme Court has also explained that a State cannot exercise personal jurisdiction over a valve manufacturer whose valve was incorporated into a motorcycle-tire tube that ultimately ended up in the forum State absent "[a]dditional conduct" such as "designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State." *Asahi Metal Indus. Co. v. Superior Court of Cal.*, 480 U.S. 102, 112 (1987) (plurality opinion). And a plurality of the U.S. Supreme Court has reiterated that a manufacturer's "transmission of goods permits the exercise of jurisdiction only where the defendant can be said to have targeted the forum." *J. McIntyre Mach. Ltd. v. Nicastro*, 564 U.S. 873, 882 (2011) (plurality opinion). For manufacturers, just like any other defendant, "[t]he question is whether [the] defendant has followed

a course of conduct directed at the society or economy existing within the jurisdiction of a given sovereign, so that the sovereign has the power to subject the defendant to judgment concerning that conduct." *Id.* at 884.

These principles decide this case. INV does not have any carpet-manufacturing operations in Alabama; has never discharged or released PFAS from any carpet mill; and did not direct Georgia carpet mills to discharge their wastewater to Dalton Utilities, which spread the wastewater in such a way that it allegedly entered waters that ultimately flowed into Alabama. *See* Pet. Tab 2, Ex. A ¶¶ 9, 11, 14. INV, in short, has not "'purposefully availed [it]self' of the 'benefits and protections' of [Alabama's] laws," *Kulko v. Superior Court of Cal.*, 436 U.S. 84, 94 (1978) (citation omitted), "in such a way that would justify bringing [it] before an [Alabama] tribunal," *Shaffer v. Heitner*, 433 U.S. 186, 216 (1977).

INV may have availed itself of the privilege of *Georgia*'s laws when it sold its carpet fibers and other manufacturers' PFAS-containing topical formulations to Georgia carpet mills. *See* Pet. Tab 2, Ex. A ¶ 13. But once INV sold the carpet fibers and topical formulations to the Georgia

carpet mills, it was *those mills*—not INV—that decided to have Dalton Utilities treat their wastewater. Pet. Tab 1 ¶ 41. And it was then *Dalton Utilities*—not INV—that decided to discharge the wastewater onto a Land Application System that allegedly resulted in contaminated runoff entering Georgia waters that eventually flowed into Alabama. *Id.* *Aladdin Manufacturing* held that the carpet mills are subject to jurisdiction in Alabama, but there is no transitive property of personal jurisdiction. INV's contacts with the carpet mills are not INV contacts with Alabama. *See Hanson*, 357 U.S. at 253 (explaining that the "unilateral activity" of a third party that has contacts with the defendant cannot create contacts between the defendant and the forum); *see also Helicopteros*, 466 U.S. at 417 (same). Under the U.S. Supreme Court's binding precedent, the focus is solely on *INV*'s actions. *See Walden*, 571 U.S. at 285. And INV took no action targeted at Alabama that would warrant an Alabama court exercising jurisdiction over it on Plaintiff's claims.

B. Federalism, not foreseeability or convenience, is the touchstone of personal jurisdiction.

Although unreasoned, the trial court's order appears to rest on two grounds. First, INV could have foreseen the third-party topical formulations that it sold with its carpet fibers would end up in Georgia water that flowed to Alabama. Second, it is convenient to hear Plaintiff's case in Alabama because that is whose water was allegedly contaminated, where Plaintiff was injured, and where Plaintiff's claims against INV's co-defendants will be heard. Both grounds are insufficient under U.S. Supreme Court precedent.

Start with foreseeability. The U.S. Supreme Court has squarely held that "'forseeability' alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause." *World-Wide Volkswagen*, 444 U.S. at 296. Indeed, "[a]lthough it has been argued that foreseeability of causing injury in another State should be sufficient to establish such contacts there when policy considerations so require, the Court has consistently held that this kind of foreseeability is not a 'sufficient benchmark' for exercising personal jurisdiction." *Burger King*,

471 U.S. at 474 (citation, emphasis, and footnote omitted). Plaintiff therefore could not show only that INV could possibly foresee that wastewater contamination was possible or even that INV could possibly foresee that contaminated wastewater might reach Alabama to establish personal jurisdiction. Plaintiff had to show that INV's "conduct and connection with [Alabama] [is] such that [INV] should reasonably anticipate being haled into court []here." *World-Wide Volkswagen*, 444 U.S. at 297. Plaintiff never did.

It is similarly insufficient that the trial court may have believed that it was convenient for Plaintiff's claims against INV to be heard in Alabama alongside Plaintiff's claims against INV's codefendants. Plaintiff's claims against INV's codefendants are irrelevant because the Due Process Clause's requirements "must be met as to each defendant over whom a state court exercises jurisdiction." *Rush v. Savchuk*, 444 U.S. 320, 332 (1980). In any case, the "primary concern" in any personal-jurisdiction analysis is "the burden on the defendant." *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 582 U.S. 255, 263 (2017). "Assessing

this burden obviously requires a court to consider the practical problems resulting from litigating in the forum, but it also encompasses the more abstract matter of submitting to the coercive power of a State that may have little legitimate interest in the claims in question." *Id.* The Due Process Clause's "restrictions on personal jurisdiction 'are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States.'" *Id.* (quoting *Hanson*, 357 U.S. at 251). This focus on federalism is constitutionally compelled because "[t]he sovereignty of each State . . . implie[s] a limitation on the sovereignty of all of its sister States—a limitation express or implicit in both the original scheme of the Constitution and the Fourteenth Amendment." *World-Wide Volkswagen*, 444 U.S. at 293. And "at times, this federalism interest may be decisive." *Bristol-Myers Squibb*, 582 U.S. at 263.

Like here. Even if the trial court thought that INV "would suffer minimal or no inconvenience from being forced to litigate before the tribunals of [Alabama]; even if [Alabama] has a strong interest in

applying its law to the controversy; even if [Alabama] is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment." *World-Wide Volkswagen*, 444 U.S. at 294.

In the end, "a rule based on general notions of fairness and foreseeability . . . is inconsistent with the premises of lawful judicial power." *J. McIntyre Mach.*, 564 U.S. at 883 (plurality opinion). This Court should apply the U.S. Supreme Court's personal-jurisdiction teachings and grant the writ to direct the trial court to dismiss Plaintiff's claims against INV.

II. Exercising personal jurisdiction over component manufacturers because their components are integrated into others' finished products would subject component manufacturers to litigation exposure far from home, harming smaller businesses and contradicting core due-process principles.

Manufacturing even the simplest item is a complex task, involving dozens of firms and potentially thousands of employees throughout the supply chain. Creating a pencil—to take a classic example from economics—involves components provided by a logger in Oregon, a lumber mill in California, a graphite mine in Sri Lanka, and a clay refinery in Mississippi. Leonard E. Read, *I, Pencil* 4-7 (Foundation for Economic Education 2019) (1958), https://fee.org/wp-content/uploads/ebooks/i-pencil-final-proof-for-website-pdf.pdf. Each of those components has dozens of firms behind it, too, from the makers of the powerful saws that split the logs into boards at the lumber mill to the shovels that dig the clay out of the pit. *See id.* at 6. Modern supply chains are even more complex than that, with the Government Accountability Office observing that "a semiconductor product may cross international borders as many as 70 times before reaching the final consumer." U.S.

Government Accountability Office, *Supply Chain Resilience: Agencies Are Taking Steps to Expand Diplomatic Engagement & Coordinate With International Partners* 6 (Feb. 2023), https://www.gao.gov/assets/gao-23-105534.pdf.

Although supply chains can crisscross the globe, each link in the chain is a discrete actor. There are almost 600,000 small manufacturers in the United States, and 99% of all manufacturers are small ones. U.S. Small Business Administration, *Support for Manufacturing Businesses*, https://www.sba.gov/about-sba/organization/sba-initiatives/support-manufacturing-businesses#id-how-sba-helps-small-manufacturing-businesses (Nov. 13, 2023). And these small manufacturers "are the backbone of the manufacturing supply chain, often producing key components for larger firms." The National Association of Manufacturers, *NAM: Regulatory Onslaught Disproportionately Hits Small Manufacturers*, Feb. 15, 2024, https://nam.org/nam-regulatory-onslaught-disproportionately-hits-small-manufacturers-30174/?stream=policy-legal.

The trial court's decision opens small component manufacturers to suit in Alabama any time a finished product containing their part is transported here. And these suits will impose a real burden on small firms. The U.S. legal system is twice as expensive as other major industrialized nations like Japan, France, Canada, and the United Kingdom, and "litigation costs divert resources away from investments in the workforce, new equipment and other opportunities for manufacturers to grow and compete." The National Association of Manufacturers, *Regulatory and Legal Reform: Reducing Barriers to Economic Growth* (Feb. 2024), https://nam.org/wp-content/uploads/2024/03/Competing-to-Win-February-2024-DigitalSpread-Regulartory-and-Legal-Final.pdf. One analysis found that "small businesses continue to shoulder a disproportionately large share of tort liabilities," with small businesses accounting "for just 20 percent of the business revenues" while bearing "48 percent of the costs of the commercial tort system." U.S. Chamber of Commerce Institute for Legal Reform, *Tort Costs for Small Businesses* 2-3 (Dec. 2023),

https://instituteforlegalreform.com/wp-content/uploads/2023/12/Tort-Costs-for-Small-Businesses-12.5.23.pdf. And the burdens of being forced to litigate in an Alabama forum are particularly acute for small firms, which are unused to managing an out-of-state legal docket and may lack local legal knowledge or local counsel relationships that national companies take for granted. *See Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 161-162 (2023) (Alito, J., concurring) ("Large companies may be able to manage the patchwork of liability regimes, damages caps, and local rules in each State, but the impact on small companies, which constitute the majority of all U. S. corporations, could be devastating.")

Worse still, under the trial court's decision, there is no way for component sellers like INV to manage where they will be subject to suit, an outcome contrary to the due-process principles underlying the U.S. Supreme Court's personal-jurisdiction precedent. The Court has explained the Due Process Clause's restrictions on States' exercise of personal jurisdiction "give[ ] a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with

some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen*, 444 U.S. at 297. Armed with that predictability, firms can "alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to consumers, or, if the risks are too great, severing its connection with the State." *Id.*

Allowing component manufacturers to be sued in Alabama whenever a finished product containing their parts ends up in the State leaves component manufacturers in a bind. A component manufacturer generally has no right to control where the finished-product manufacturer sells its goods containing the component manufacturer's part. And for finished-product manufacturers that have multiple suppliers of the same component, whether a component manufacturer can be sued in Alabama may depend on the fortuity of whether its part goes into a unit that is shipped to Alabama and not some other State. There is no way for the component manufacturer to accurately assess its Alabama exposure or take prudent steps to manage it.

These problems from mine-run product-liability cases are compounded when more-exotic tort claims are involved. Take this case. How could INV "structure [its] primary conduct" to ensure that it will not be sued in Alabama on Plaintiff's claims? *Id.* Ceasing sales to Alabama wouldn't work because the sales here were made to Georgia carpet mills. So what could INV do? Insist on knowing who the Georgia carpet mills were using as their wastewater-treatment contractor? Somehow obtain promises that the Georgia mills' wastewater-treatment contractors won't discharge treated wastewater on a Land Application System, a method permitted by the Georgia Department of Natural Resources? *See* Pet. Tab 1, Compl. ¶ 41. Somehow prohibit the Georgia mills' wastewater-treatment contractors from spraying treated wastewater on a Land Application System that runs off into waters with a hydrological connection to any Alabama river? It is impossible for a small component manufacturer—whose primary business is creating its particular component, not dictating the environmental practices of its customers' contractors—to manage its exposure to suit in Alabama under the trial

court's decision. And that reality confirms that Plaintiff's claims cannot constitutionally proceed in Alabama.

CONCLUSION

For the foregoing reasons, the petition should be granted and a writ of mandamus issue directing the trial court to grant INV's motion to dismiss for lack of personal jurisdiction.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this motion complies with the words limitation set forth in Ala.R.App.P. 28(j)(1). According to the word-count function of the most recent version of Microsoft Word, the relevant portions of this document contain 3,544 words. I further certify that this motion complies with the font requirements set forth in Ala.R.App.P. 32(a)(7). The motion was prepared in Century Schoolbook font using 14-point type. *See* Ala.R.App.P. 32(d).

/s/ Scott W. Hunter

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of September, 2024, I have served a copy of this pleading to:

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