

No. 20-231

In the

Supreme Court of the United States

ALADDIN MANUFACTURING CORPORATION,
MOHAWK CARPET, LLC, MOHAWK INDUSTRIES,
INC., AND SHAW INDUSTRIES, INC.,

Petitioners,

v.

THE WATER WORKS & SEWER BOARD OF THE
TOWN OF CENTRE AND THE WATER WORKS &
SEWER BOARD OF THE CITY OF GADSDEN,

Respondents.

*On Petition for a Writ of Certiorari to the
Supreme Court of Alabama*

**BRIEF IN SUPPORT OF PETITION
FOR WRIT OF CERTIORARI**

John M. Bergquist
PARSONS, LEE &
JULIANO, P.C.
600 Vestavia Parkway
Ste. 300
Birmingham, AL 35216
(205) 326-6600

Robert F. Parsley
Counsel of Record
W. Scott Parrish
M. Ellis Lord
Meredith C. Lee
Jenna W. Fullerton
MILLER & MARTIN PLLC
832 Georgia Ave., Ste. 1200
Chattanooga, TN 37402
(423) 756-6600
bob.parsley@millermartin.com

Counsel for Respondent The Dixie Group, Inc.

QUESTION PRESENTED

Whether a State may exercise specific personal jurisdiction over an out-of-state defendant because the defendant knew (or should have known) that its conduct would have in-state effects, where all of the defendant's relevant conduct occurred out of state and the in-state effects resulted from the unilateral actions of a third party.

**PARTIES TO PROCEEDING AND CORPORATE
DISCLOSURE STATEMENT**

Respondent The Dixie Group, Inc. was a petitioner in the Alabama Supreme Court.

Under Supreme Court Rule 29.6, The Dixie Group, Inc. states that it is a publicly held corporation (NASDAQ: DXYN). It has no parent company, and no publicly held company owns 10% or more of its stock

TABLE OF CONTENTS

Question Presented.....	i
Parties to Proceeding and Corporate Disclosure Statement.....	ii
Table of Authorities	iv
Brief in Support of Petition for Writ of Certiorari	1
Compliance with Supreme Court Rule 12.6	1
Statement of the Case	1
Reasons for Granting the Petition	3
I. The Court Should Grant the Petition for the Reasons Stated by Petitioners	3
II. The Court Should Grant the Petition to Clarify the Scope of <i>Calder v. Jones</i> After <i>Walden v. Fiore</i>	4
Conclusion.....	7

TABLE OF AUTHORITIES

Cases

<i>Acorda Therapeutics Inc. v. Mylan Pharms. Inc.</i> , 817 F.3d 755 (Fed. Cir. 2016)	5
<i>Aviation One of Fla., Inc. v. Airborne Ins. Consultants (PTY), Ltd.</i> , 722 F. App'x 870 (11th Cir. 2018).....	5
<i>Axiom Foods, Inc. v. Acerchem Int'l, Inc.</i> , 874 F.3d 1064 (9th Cir. 2017)	5
<i>Black v. United States</i> , 561 U.S. 465 (2010).	7
<i>Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty.</i> , 137 S. Ct. 1773 (U.S. 2017)	6
<i>Calder v. Jones</i> , 465 U.S. 783 (1984)	3, 4, 5, 6
<i>Defense Distributed v. Grewal</i> , --- F.3d ---, No. 19-50723, 2020 WL 4815839 (5th Cir. Aug. 19, 2020).....	5
<i>Harper v. BioLife Energy Sys., Inc.</i> , 426 P.3d 1067 (Alaska 2018)	4
<i>MAG IAS Holdings, Inc. v. Schmuckle</i> , 854 F.3d 894 (6th Cir. 2017)	6
<i>Old Republic Ins. Co. v. Cont'l Motors, Inc.</i> , 877 F.3d 895 (10th Cir. 2017)	4

<i>Raser Techs., Inc. ex rel. Houston Phoenix Grp., LLC v. Morgan Stanley & Co., LLC,</i> 2019 UT 44, 449 P.3d 150 (Utah 2019)	6
<i>SCVNGR, Inc. v. Punchh, Inc.,</i> 478 Mass. 324, 85 N.E.3d 50 (2017)	6
<i>Searcy v. Parex Res., Inc.,</i> 496 S.W.3d 58 (Tex. 2016)	5
<i>State v. LG Elecs., Inc.,</i> 186 Wash. 2d 169, 375 P.3d 1035 (2016).....	5
<i>State ex rel. State Treasurer of Wyo. v. Moody’s Inv’rs Serv., Inc.,</i> 349 P.3d 979 (Wyo. 2015).....	5
<i>Walden v. Fiore,</i> 571 U.S. 277 (2014)	3, 4, 5, 6

Court Rules

Sup. Ct. R. 10(a).....	6
Sup. Ct. R. 10(b).....	6
Sup. Ct. R. 12.6	1, 7
Sup. Ct. R. 29.6	ii

**BRIEF IN SUPPORT OF PETITION
FOR WRIT OF CERTIORARI**

Under Supreme Court Rule 12.6, Respondent The Dixie Group, Inc., which was aligned below in all relevant respects with Petitioners, respectfully supports the Petition for Writ of Certiorari filed by Petitioners Aladdin Manufacturing Corporation, Mohawk Industries, Inc., Mohawk Carpet, LLC, and Shaw Industries, Inc.

**COMPLIANCE WITH SUPREME
COURT RULE 12.6**

This case was docketed in the Supreme Court on August 27, 2020. In compliance with Supreme Court Rule 12.6, on September 9, 2020, within 20 days after docketing, Respondent The Dixie Group, Inc. notified counsel of record for all parties of its intention to file a brief in support of the Petition. This brief is timely because, as required under Supreme Court Rule 12.6, it was filed within 30 days after docketing.

STATEMENT OF THE CASE

Like the Petitioners, Respondent The Dixie Group, Inc. manufactures carpet in northwestern Georgia. Pet. App. 138a–139a, 158a. The Alabama Supreme Court permitted the waterworks and sewer boards of the Town of Centre and the City of Gadsden to sue The Dixie Group, Inc. in the State of

Alabama even though none of its suit-related conduct occurred in Alabama. *See* Pet. App. 1a–50a.¹

Like the Petitioners, The Dixie Group, Inc. for a time allegedly used perfluorinated compounds (“PFCs”) in its carpet-manufacturing process. *See* Pet. App. 132a–134a, 139a, 152a–153a, 158a. Respondents the Town of Centre and City of Gadsden allege that The Dixie Group, Inc. sent PFC-containing wastewater to local treatment facilities, knowing or disregarding that those facilities, under a permit issued by Georgia’s environmental agency, in turn sprayed the water onto land near the Conasauga River. Pet. App. 138a–139a, 158a–159a. They allege that PFCs migrated into the Conasauga River, flowing with it into the Coosa River and then into the State of Alabama. Ultimately, trace amounts of PFCs allegedly ended up in the intake sources for drinking water for the Town of Centre and the City of Gadsden. Pet. App. 142a, 161a–162a. About that the municipalities complain. They assert state-law claims for negligence, nuisance, and trespass and seek compensatory and punitive damages and injunctive relief. Pet. App. 142a–147a, 162a–168a.

The Alabama Supreme Court concluded that such contacts with Alabama were enough for Alabama courts to exercise specific personal jurisdiction over the Petitioners, over The Dixie Group, Inc., and over other, similarly aligned Respondents. Pet. App. 1a–50a.

¹ The Dixie Group, Inc. was a defendant in both the City of Gadsden lawsuit, Pet. App. 136a, 138a, and the separate Town of Centre lawsuit, Pet. App. 156a–157a.

REASONS FOR GRANTING THE PETITION

I. The Court Should Grant the Petition for the Reasons Stated by Petitioners

The Court should grant the Petition for all the reasons stated by Aladdin Manufacturing, Mohawk Industries, Mohawk Carpet, and Shaw Industries—reasons which The Dixie Group, Inc. agrees with and adopts.

As Petitioners demonstrate, the Alabama Supreme Court’s finding of specific personal jurisdiction departs from *Walden v. Fiore*, 571 U.S. 277 (2014) and deepens a related split of authority. *Walden* requires “contacts with the forum State itself, not contacts with persons who reside there.” *Id.* at 284. And “mere injury to a forum resident is not a sufficient connection to the forum.” *Id.* at 290. That is especially so where, as here, a third person’s unilateral, intervening activity is necessary to make the connection. “The 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.” *Id.* The Court should accept this case to explain why there is no such meaningful connection under the circumstances of this case.

II. The Court Should Grant the Petition to Clarify the Scope of *Calder v. Jones* After *Walden v. Fiore*

The Court should grant certiorari also to clarify whether and to what extent the effects test of *Calder v. Jones*, 465 U.S. 783 (1984), remains applicable after *Walden* outside the context of defamation claims.

1. In *Calder*, this Court held that personal jurisdiction was proper in a state where the plaintiff had felt the brunt of the effects of libel that had been intentionally directed at the state. 465 U.S. at 788–90. Although the present case does not involve defamation claims, the Alabama Supreme Court’s personal-jurisdiction inquiry relied in part on *Calder*’s effects test. See Pet. App. 25a–26a, 30a. “Although *Calder* involved a libel claim, courts have applied its ‘effects test’ broadly to other intentional torts.” *Harper v. BioLife Energy Sys., Inc.*, 426 P.3d 1067, 1075 (Alaska 2018).

2. But as this Court explained in *Walden*, *Calder*’s effects test “was largely a function of the nature of the libel tort.” *Walden*, 571 U.S. at 287. *Walden* has thus strongly “suggested that the *Calder* effects test does not extend beyond the defamation context,” and so “there is reason to question its applicability” in other circumstances. See *Old Republic Ins. Co. v. Cont’l Motors, Inc.*, 877 F.3d 895, 916 n.34 (10th Cir. 2017).

On that question—whether or to what extent *Calder*'s effects test remains applicable after *Walden* outside the defamation context—courts around the country now disagree. Compare, e.g., *Defense Distributed v. Grewal*, --- F.3d ---, No. 19-50723, 2020 WL 4815839, at *8–10 (5th Cir. Aug. 19, 2020) (Higginson, J., concurring) (stating that majority wrongly applied *Calder* post-*Walden* to non-defamation claims), *Acorda Therapeutics Inc. v. Mylan Pharms. Inc.*, 817 F.3d 755, 759 (Fed. Cir. 2016) (stating that “what conduct is suit-related” includes “specifically the nature of the claim asserted,” citing *Walden*'s gloss on *Calder* that *Calder*'s finding of personal jurisdiction “was largely a function of the nature of the libel tort,” and not applying effects test in majority opinion to non-defamation claim), and *State ex rel. State Treasurer of Wyo. v. Moody's Inv'rs Serv., Inc.*, 349 P.3d 979, 985 (Wyo. 2015) (distinguishing *Calder* with respect to non-defamation claim) with, e.g., *Axiom Foods, Inc. v. Acerchem Int'l, Inc.*, 874 F.3d 1064, 1069 (9th Cir. 2017) (“Where, as here, a case sounds in tort, we employ . . . the ‘effects’ test” of *Calder* and applying it post-*Walden* to copyright-infringement claim), *Aviation One of Fla., Inc. v. Airborne Ins. Consultants (PTY), Ltd*, 722 F. App'x 870, 879 (11th Cir. 2018) (stating that *Calder* applies “in intentional tort cases”), *Searcy v. Parex Res., Inc.*, 496 S.W.3d 58, 67–71 (Tex. 2016) (applying *Calder* post-*Walden* to non-defamation claim and stating that “[t]he crux was not the nature of the claim”), and *State v. LG Elecs., Inc.*, 186 Wash. 2d 169, 194–97, 375 P.3d 1035, 1048–50 (2016) (en banc) (McCloud, J., concurring in part and dissenting in part)

(contending that majority should have applied *Calder*'s effects test to antitrust claim); see *MAG IAS Holdings, Inc. v. Schmuckle*, 854 F.3d 894, 901 (6th Cir. 2017) (questioning in dicta the “exact scope of *Walden* and its effect on *Calder*”); *SCVNGR, Inc. v. Punchh, Inc.*, 478 Mass. 324, 324–25, 85 N.E.3d 50, 52 (2017) (noting that “the parties disputed the proper application of two United States Supreme Court cases [*Calder* and *Walden*] that partially define the constitutional parameters guiding the exercise of personal jurisdiction over a nonresident defendant”); *Raser Techs., Inc. ex rel. Houston Phoenix Grp., LLC v. Morgan Stanley & Co., LLC*, 2019 UT 44, 449 P.3d 150, 162 n.15 (Utah 2019) (discussing disagreement over *Walden*'s impact on *Calder*).

3. As this Court has more recently stated, “[w]hat is needed—and what is missing here—is a connection between the forum and the *specific claims at issue*.” See *Bristol-Myers Squibb Co. v. Superior Court of Cal., San Francisco Cty.*, 137 S. Ct. 1773, 1781 (U.S. 2017) (emphasis added). In other words, specific personal jurisdiction depends in part on the nature of the claims asserted. Respondent The Dixie Group, Inc. contends that *Calder*'s effects test should have had nothing to do with the Alabama Supreme Court's personal-jurisdiction inquiry here.

The Court should grant certiorari to clarify whether and to what extent *Calder*'s “effects” overlay for minimum contacts applies under the circumstances of a non-defamation case. See Sup. Ct. R. 10(a)–(b) (stating that conflicting decisions on the

same important matter among United States Courts of Appeals and State courts of last resort can warrant granting certiorari). This case cleanly presents the issue.

CONCLUSION

For the reasons stated above, the Court should grant the Petition for Certiorari filed by Petitioners Aladdin Manufacturing, Mohawk Industries, Mohawk Carpet, and Shaw Industries. The Court should then summarily reverse, grant plenary review to resolve splits of authority, or hold the petition pending the Court's forthcoming decision in *Ford Motor Co. v. Montana Eighth Judicial District Court*, No. 19-368 (scheduled for argument Oct. 7, 2020). In any event, the Court should reverse the Alabama Supreme Court's personal-jurisdiction ruling.

Respondent The Dixie Group, Inc. reserves the right to file merits briefs and to seek to benefit to the same extent as the Petitioners from any judgment entered by this Court. *See* Sup. Ct. R. 12.6; *Black v. United States*, 561 U.S. 465, 468 n.1 (2010).

Respectfully submitted,

Robert F. Parsley

Counsel of Record

W. Scott Parrish

M. Ellis Lord

Meredith C. Lee

Jenna W. Fullerton

MILLER & MARTIN PLLC

832 Georgia Ave., Ste. 1200

Chattanooga, TN 37402

(423) 756-6600

bob.parsley@millermartin.com

John M. Bergquist

PARSONS, LEE & JULIANO, P.C.

600 Vestavia Parkway, Ste. 300

Birmingham, AL 35216

(205) 326-6600

*Counsel for Respondent The Dixie
Group, Inc.*