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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Robert J. Bonds, Circuit Court Judge

Appellate Case No. 2025-000840

Linda K. Reker, Individually and as Power of Attorney
for James W. Reker,.....Respondent,

v.

General Motors, LLC, Mike Reichenbach Chevrolet, Inc.,
BMW of North America, LLC, BMW Manufacturing Co., LLC, and
Bayerische Motoren Werke AG, ... Defendants,

of which Bayerische Motoren Werke AG is the .....Appellant.

RESPONDENT'S MOTION TO DISMISS APPEAL

The Court does not have appellate jurisdiction to review the Circuit Court's Order denying Appellant's Motion to Dismiss. It has been South Carolina law for at least one hundred years that an order denying a motion to dismiss or its equivalent is an interlocutory order that is not immediately appealable. South Carolina has always considered itself to be in the vanguard of protecting consumers, through both its courts and legislature and has evinced a public policy to provide the maximum protection to its citizens who have been injured by defective products. *Reynolds v. Ryland Grp., Inc.*, 340 S.C. 331, 338, 531 S.E.2d 917, 921 (2000). To that

end, if the Court were to permit Appellant Bayerische Motoren Werke AG ("BMW AG") to unnecessarily delay the underlying proceedings by perpetuating this Appeal, its decision would be at complete odds with this legacy.

BMW AG is directly involved in the design, manufacture, testing, and distribution of BMW-brand vehicles within this State, including the BMW X5 that is the subject of a number of Respondent's tort claims. One of BMW AG's products has now caused serious and debilitating injuries to one of this State's citizens. Despite these facts, BMW AG believes that service upon its statutorily authorized in-state agent is insufficient to confer a South Carolina court with jurisdiction to bind BMW AG to a judgment. Regardless of the validity of BMW AG's argument, it should not be permitted to deliberately protract the litigation by presenting the issue to the Court at this juncture because an order denying a Rule 12(b) motion to dismiss does not involve the merits of the case, prevent a judgment from which an appeal might be taken, or otherwise discontinue the case. Pursuant to Rule 240, SCACR, Respondent Linda K. Reker, Individually and as Power of Attorney for James W. Reker, respectfully moves this Court for an Order dismissing the above-captioned Appeal for lack of subject matter jurisdiction.

FACTUAL/PROCEDURAL BACKGROUND

This Appeal arises from a products liability action in which James W. Reker sustained life threatening and incapacitating injuries after a BMW X5 vehicle collided with the rear of a vehicle being operated by Mr. Reker after its Automatic Emergency Braking system failed. (Ex. A, Second Am. Compl. ¶¶ 13-21). The BMW

entities, under the control of BMW AG, hold themselves out as the BMW Group, which manufactured and distributed over 240,000 BMW X models from their South Carolina factory alone in 2019, including through the Port of Charleston, via a distribution network that is intentionally designed to sell its vehicles in South Carolina. (*Id*. at ¶¶ 4-10).

Ms. Linda Reker filed this products liability action in the Jasper County Court of Common Pleas on November 26, 2024. On January 13, 2025, in lieu of answering, BMW AG filed a motion to dismiss the Second Amended Complaint due to insufficient process and service of process, arguing that Ms. Reker was required to comply with the Hague Service Convention. (Ex. B, BMW AG Mot. To Dismiss). Ms. Reker opposed the Motion, arguing that service was in-state such that the Hague Service Convention would not apply, and that service upon the South Carolina Secretary of State as BMW AG's statutorily authorized domestic agent, pursuant to S.C. Code Ann. section 15-9-245, was proper. (Ex. C, Pls.' Mem. in Opp. To Mot. to Dismiss). The Circuit Court predictably denied the Motion in a Form 4 Order on April 7, 2025. (Ex. D, Apr. 7, 2025 Order). When a foreign manufacturer and distributor without a certificate of authority makes minimum contacts with South Carolina through its manufacturing efforts and the stream of commerce, in an effort to reach the South Carolina market either directly or indirectly, under section 15-9-245 it is deemed to have designated the Secretary of State as its domestic agent for service of process for actions related to or arising from those

efforts. BMW AG filed and served a Notice of Appeal of the Order on April 29, 2025.[1] (Ex. E, Notice of Appeal).

ARGUMENT

The Court should dismiss this Appeal for the simple fact that it does not have appellate jurisdiction. The Court

> [I]s constituted a court for the correction of errors of law in law cases, and the only method of exercising its power of review is by appeal; hence in the exercise of that power it is obliged to exercise in a limited way its appellate jurisdiction. The Constitution provides that the correction of errors of law shall be conducted under "such regulations as the General Assembly may by law prescribe"; and the General Assembly by section 11, subd. D, of the Code 1912, has prescribed the method of appeal.

Sandel v. State, 128 S.C. 178, 122 S.E. 571 (1922).

Section 11, subd. D of the 1912 Code is currently codified at S.C. Code Ann. section 14-3-330 and defines the Court's appellate jurisdiction when correcting errors of law in law cases as follows:

> (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas . . . and final judgments in such actions . . . .
>
> (2) An order affecting a substantial right made in an action when such order in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, grants or refuses a new trial or strikes out an answer or any part thereof or any pleading in any action . . . .

[1] Anticipating that BMW AG was likely to argue that service under section 15-9-245 was improper, efforts to effectuate service pursuant to the Hague Convention were initiated on March 26, 2025. (Ex. F, March 26, 2025 APS International, Ltd. Letter). Plaintiff did not discover BMW AG's involvement in the incidents giving rise to this action until after BMW of North America, LLC and BMW Manufacturing Co., LLC were added as Defendants on September 21, 2023. Therefore, even if the Court had subject matter jurisdiction over this Appeal, which it does not, it is highly likely the Appeal will be mooted during its pendency by service on BMW AG under the Hague Convention.

It proscribes the immediate appeal of interlocutory orders in a case such as this where the order does not involve the merits, even if the order affects a "substantial right", when the order does not "in effect determine[] the action and prevent a judgment from which an appeal might be taken or discontinue[] the action." Thus, even if the Circuit Court's Order impacted a substantial right, reviewing the Order would be violative of the plain text of the appellate jurisdiction statute, as the Order does not in any reasonable way determine the underlying action. Review of the Order would clearly implicate the separation of powers doctrine, infringe upon the General Assembly's constitutional duty to prescribe the appellate jurisdiction of this Court, and unnecessarily delay the case through piecemeal litigation, necessitating an immediate dismissal of this Appeal.

I. The Circuit Court's Order does not in effect determine the action and prevent a judgment from which an appeal might be taken or discontinue the action.

South Carolina courts have long recognized that for an order that does not involve the merits of the case to be immediately appealable, it must satisfy two prongs of section 14-3-330(2). While the first prong requires that an order affect a substantial right, the second prong requires that an order must "in effect determine[] the action and prevent[] a judgment from which an appeal might be taken or discontinue[] the action" in order for it to be immediately appealable. S.C. Code Ann. § 14-3-330(2).

> To bring the case within this second subdivision of Section 11, it must appear to be an order affecting a substantial right, made in an action, when such order in effect determines the action, and prevents a

> judgment from which an appeal might be taken, and when such order grants or refuses a new trial. *It must therefore appear that the order in question is such as to prevent a judgment in an action.* The present order is not of that character. At most it affects the security of the plaintiff for the satisfaction of any judgment he may obtain, but does not preclude him from proceeding to judgment against the defendant.

Allen v. Partlow, 3 S.C. 417, 418 (1872) (emphasis added). "For the order to be appealable, it must not only affect a substantial right, but it must also in effect determine the action and prevent a judgment from which an appeal could be taken . . . ." *Garlington v. Copeland*, 25 S.C. 41, 43 (1886). The second prong of section 14-3-330(2) is not superfluous; it is mandatory.

Here, it is clear that the subject Order does not in any way determine Reker's action, discontinue it, or prevent a final judgment from which BMW AG could appeal the insufficiency of process and service of process issue. The Order does not resolve the action and prevent an appealable final judgment. In response, BMW AG could argue that due to the weight and significance of the due process rights implicated by service of process and the conferral of jurisdiction, the Circuit Court's Order effectively eradicates BMW AG's ability to seek meaningful redress by appeal and thus impacts a substantial right in a manner that prevents an appealable final judgment. In other words, by the time this case reaches final judgment, by being forced to litigate this action in a South Carolina court BMW AG's due process rights will have been trampled upon to such an extent that any favorable outcome on appeal would be meaningless.

There is a certain emotional appeal to this argument, but its logic is unsound and again ignores the second prong of section 14-3-330(2). Under this rationale,

virtually every interlocutory order affecting a substantial right would be immediately appealable, regardless of whether it in effect determines the action. Interlocutory discovery orders affecting trade secrets, confidential private information, confidential business information, or involving expansive, costly discovery would be subject to the same logic, as would interlocutory orders involving specific and general personal jurisdiction, privilege, and orders granting or denying motions to change venue. By their very nature, every interlocutory order supposedly affecting a substantial right could lead to some infringement upon that right for the remaining duration of the litigation; this does not mean those orders in effect determine the action or foreclose the losing party from seeking redress on appeal.

Such an interpretation of the statute would render its second prong superfluous, would open virtually all Rule 12(b) motions to immediate appeal, and would constitute legal error. *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) ("In that vein, we must read the statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous, for the General Assembly obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law."). Every time a substantial right is affected by an order, of necessity that right will be impacted throughout the duration of litigation; this does not mean that the order in effect determines the action and prevents a judgment from which the right-holder can appeal, which are the only circumstances under which such an order is immediately appealable.

Additionally, if BMW AG were to make this argument, it misrepresents any substantial right that could be implicated by any due process concerns. Due process within the context of service of process and the conferral of jurisdiction does not guarantee an individual the right to be free from litigation and its associated costs in a forum whenever there is a technical error in the attempt of the plaintiff to invoke jurisdiction. Instead, the Due Process Clause only protects an individual's liberty interest "in not being *subject to the binding judgments of a forum . . . .*" *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 105 S. Ct. 2174, 2181, 85 L. Ed. 2d 528 (1985) (emphasis added). If process or service of process is insufficient and jurisdiction has not been conferred over BMW AG, then its substantial right interest in not being subject to a binding judgment of the Jasper County Court of Common Pleas can be adequately protected by a later filed motion for summary judgment, or even an appeal after final judgment, and in fact the substantial right is not even implicated until after an adverse final judgment has been entered by the Circuit Court. There are no mental gymnastics BMW AG could lead the Court through to somehow arrive at the conclusion that the subject Order has effectively determined the underlying action.

II. Ignoring section 14-3-330(2)'s requirements that an interlocutory order must in effect determine the action and either prevent a judgment from which an appeal might be taken or discontinue the action would violate the separation of powers doctrine.

By having the Court essentially ignore the second prong of section 14-3-330(2), BMW AG would have this Court venture into forbidden territory. The Constitution of South Carolina describes the appellate jurisdiction of the Supreme

Court over legal claims as follows: "[t]he Supreme Court shall constitute a court for the correction of errors at law *under such regulations as the General Assembly may prescribe*." S.C. Const. Art. V § 5 (emphasis added). The General Assembly has, beyond question, the duty and authority to define the Court's appellate jurisdiction to correct errors at law.

The General Assembly has mandated that the Court does not have appellate jurisdiction to review some interlocutory trial court rulings until the appeal of a final judgment. S.C. Code Ann. § 14-3-330 defines the appellate jurisdiction of this Court, and only permits the immediate appeal of an order affecting a substantial right when the order in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, grants or refuses a new trial or strikes out an answer or any part thereof or any pleading in any action. Reviewing an interlocutory order affecting a substantial right that does not effectively determine an action and prevent a judgment would judicially expand the Court's appellate jurisdiction beyond its outer limits as defined by the General Assembly.

Article I, section 8 of the Constitution of South Carolina provides that "[i]n the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other." The separation of powers mandate encompasses Article V, which preserves for the General Assembly the power to define the Court's

appellate jurisdiction in law cases. *See State ex rel. McLeod v. McInnis*, 278 S.C. 307, 312, 295 S.E.2d 633, 636 (1982).

> One of the prime reasons for separation of powers is the desirability of spreading out the authority for the operation of the government. It prevents the concentration of power in the hands of too few, and provides a system of checks and balances. The legislative department makes the laws; the executive department carries the laws into effect; and the judicial department interprets and declares the laws. History reveals that there has been much litigation at the national level and at the state level because of conflicts which have arisen relative to the usurpation of power by one of the three branches of government.

Id. at 312-13, 295 S.E.2d at 636.

Immediate review of the subject Order is problematic because it encroaches upon the General Assembly's authority to define the Court's appellate jurisdiction. It would be one thing if BMW AG could convince the Court that section 14-3-330(1) or the second prong of section 14-3-330(2) has been met, and that it has been prevented from effectively seeking an appeal of a final judgment in this case. However, BMW AG cannot do so. BMW AG retains the opportunity to meaningfully appeal and have the process and service of process issue reviewed by this Court after final judgment, and persuasive and binding authority suggests that when a motion to dismiss for insufficient process and service of process is denied by an order, the order does not involve the merits, determine the action, prevent a final judgment from which an appeal might be taken, or discontinue the action.

III. The law of South Carolina and other state jurisdictions would prohibit the immediate appeal of an interlocutory order denying a motion to dismiss for lack of insufficient process or service of process under both sections 14-3-330(1) and 14-3-330(2).

South Carolina law provides that the subject Motion to Dismiss is an interlocutory order that does not involve the merits. While there does not appear to be a case precisely on point, the South Carolina Supreme Court has previously held in *Mid-State Distributors., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 336, 426 S.E.2d 777, 781 (1993) that "the denial of a motion to dismiss under Rule 12(b)(2), SCRCP is interlocutory and not directly appealable." This is because a motion to dismiss for lack of personal jurisdiction, much like a motion to dismiss for insufficient process and service of process, does not involve the merits under section 14-3-330(1):

> South Carolina case law has established what constitutes an interlocutory appeal. If there is some further act which must be done by the court prior to a determination of the rights of the parties, then the order is interlocutory. *Adickes v. Allison & Bratton*, 21 S.C. 245 (1884). If a judgment determines the applicable law while leaving open questions of fact, it is not a final judgment. *Good v. Hartford Accident and Indemnity Co.*, 201 S.C. 32, 21 S.E.2d 209 (1942).

Mid-State Distribs., Inc., 310 S.C. at 335, 426 S.E.2d at 780; *see also Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 630 S.E.2d 464 (2006) ("An order 'involves the merits,' as that term is used in Section 14-3-330(1) and is immediately appealable when it *finally* determines some substantial matter forming the whole or part of some cause of action or defense."). Likewise, the subject Order is interlocutory because it does not determine the rights of the parties, and it leaves open questions of fact determinative of the merits of the case.

Mid-State Distributors, Inc. also provides an explanation of why the subject Order does not in effect determine the action by preventing an appeal or discontinuing the action as required by section 14-3-330(2):

> [The defendant] has not arrived at the end of the road. *A party who is denied a dismissal under Rule 12 has forfeited nothing, they must simply continue to trial* . . . . If there is some further act which must be done by the court prior to a determination of the rights of the parties, then the order is interlocutory. If a judgment determines the applicable law while leaving open questions of fact, it is not a final judgment.

Id. at 334-35, 426 S.E.2d at 780 (citations omitted) (emphasis added). Therefore, according to the Supreme Court, the denial of BMW AG's Motion did not in effect determine the action, prevent an appeal, or discontinue the action, as BMW AG "has not lost a defense; and in fact, [its service of process] defense will remain viable until there is a final order in the case." *Id.* at 334 n.4, 426 S.E.2d at 780 n.4. This is because the Order is interlocutory and "is subject to revision at any time before the entry of judgment adjudicating all the claims and rights and liabilities of all the parties." Rule 54(b), SCRCP.

> Like the denial of a motion for summary judgment, the denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be raised again at a later stage of the proceedings. Therefore, the denial of a motion to dismiss is not directly appealable . . . .

McLendon v. S.C. Dep't of Highways & Pub. Transp., 313 S.C. 525, 526 n.2, 443 S.E.2d 539, 540 n.2 (1994). BMW AG cannot satisfy its burden of proving that the requirements of section 14-3-330 have been met, and consequently the Court does not have appellate jurisdiction.

There is no possible explanation for how an order denying a motion to dismiss for insufficient process or service of process effectively determines the action or creates a result that would be impossible for an appellate court to resolve. *Mid-State Distributors, Inc.* adequately explains why BMW AG will not and cannot offer any explanation for how the Circuit Court's Order has effectively ended the action: because BMW AG has "forfeited nothing", it has not lost the ability to have the Order effectively reviewed after final judgment.

While there is no binding South Carolina authority specifically discussing the immediate appealability of an order denying a motion to dismiss pursuant to Rule 12(b)(4) and Rule 12(b)(5), North Carolina courts have addressed this issue. North Carolina has statutorily authorized the immediate appeal of a number of interlocutory orders, including an order denying a motion to dismiss for lack of personal jurisdiction. N.C. Gen. State. § 1-277(b). However, even in North Carolina, an order denying a motion to dismiss for insufficient process and service of process is not immediately appealable because it is interlocutory, subject to the trial court's revision at any time, and can be adequately reviewed by an appellate court after final judgment.

"[E]rrors in service of process are challenged pursuant to Rule 12(b)(5), not Rule 12(b)(2). Our appellate courts have made clear that denial of a motion to dismiss based upon insufficiency of service of process is not immediately appealable." *Bennett v. Bennett*, 239 N.C. App. 466, 770 S.E.2d 388 (Table), 2015 WL 681006, at *3 (N.C. Ct. App. 2015); *see also Spack v. Puorro*, 689 A.2d 589 n.1

(Me. 1997) ("The substance of defendant's appeal, insufficiency of service of process, was properly asserted in a motion to dismiss pursuant to M.R.Civ.P. 12(b)(5). The Superior Court's denial of that motion, however, is not immediately appealable.").

> The rule forbidding interlocutory appeals is designed to promote judicial economy by eliminating the unnecessary delay and expense of repeated fragmentary appeals and by preserving the entire case for determination in a single appeal from a final judgment. *E.g., Harrell v. Harrell*, 253 N.C. 758, 117 S.E.2d 728 (1961); *City of Raleigh v. Edwards*, 234 N.C. 528, 67 S.E.2d 669 (1951). Additionally, appellate courts are almost always better able to decide the legal issues when they have before them a fully developed record . . . . Defendant here challenged the sufficiency of the process itself and the sufficiency of the service to give notice. These objections fall within the ambit of Rule 12(b)(4) and Rule 12(b)(5), respectively . . . . Any procedural matters about the issues which defendant attempted to raise in this purported appeal may later be considered on appeal of this cause in its entirety should the matter again be brought before the appellate division.

Love v. Moore, 305 N.C. 575, 580-82, 291 S.E.2d 141, 147-47 (N.C. 1982). The same logic holds true here. BMW AG should not be permitted to delay the litigation and frustrate the resolution of this case through an unauthorized, unnecessary, protracted, piecemeal appellate review process.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court dismiss this Appeal

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

By:_____

May 6, 2025
Hampton, South Carolina

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EXHIBIT
A

STATE OF SOUTH CAROLINA COUNTY OF JASPER Linda K. Reker, Individually and as Power of Attorney for James W. Reker, Plaintiff, v. General Motors LLC, Mike Reichenbach Chevrolet, Inc., BMW of North America, LLC, BMW Manufacturing Co., LLC, and Bayerische Motoren Werke AG, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2022-CP-27-00008 **SECOND AMENDED SUMMONS** (*Jury Trial Requested*)

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Second Amended Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber at P.O. Box. 487 Hampton, SC 29924, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

(Signature block on following page)

PARKER LAW GROUP, LLP

By: *s/Derek D. Tarver*
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November 26, 2024
Hampton, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF JASPER Linda K. Reker, Individually and as Power of Attorney for James W. Reker, Plaintiff, v. General Motors LLC, Mike Reichenbach Chevrolet, Inc., BMW of North America, LLC, BMW Manufacturing Co., LLC, and Bayerische Motoren Werke AG, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2022-CP-27-00008 **SECOND AMENDED COMPLAINT** (*Jury Trial Requested*)

The Plaintiff alleges:

The Parties, Jurisdiction, & Venue

1. Linda K. Reker and James W. Reker are citizens and residents of Beaufort County, South Carolina. Linda K. Reker files this suit for claims of bystander damages, and loss of consortium. Among other injuries, Mr. Reker sustained life threatening and total incapacitating injuries. Linda K. Reker brings his case in her capacity as Power of Attorney for James W. Reker.

2. That the Defendant General Motors, LLC (hereinafter "GM") is a foreign corporation engaged in the manufacture and sale of passenger vehicles; that GM sells its vehicles in South Carolina through a dealership network with the intent that its vehicles would be purchased and used in South Carolina. GM placed the vehicle which is the subject of this action, a 2020 Chevrolet Corvette Stinger Coupe bearing VIN: 1G1Y62D49L5108000 into the stream of commerce.

3. That the Defendant Mike Reichenbach Chevrolet, Inc., (hereinafter "MRC") is a South Carolina Corporation in the business of selling General Motors vehicles. MRC sold the subject vehicle to James W. Reker on or about the 10th day of September for the sales prices of $65,590.00.

4. That the Defendant BMW of North America, LLC, ("BMW of North America") is a foreign corporation engaged in the design, testing, manufacture, distribution, importation, and sale of passenger vehicles; BMW of North America sells its vehicles in South Carolina through a dealership network with the intent that its vehicles would be purchased and used in South Carolina.

5. That the Defendant BMW Manufacturing Co., LLC, ("BMW Manufacturing") is a Delaware limited liability company physically located in and principally conducting its business in Spartanburg County, South Carolina and is engaged in the design, testing, manufacturing, distribution, and sale of passenger vehicles, including BMW's X5 models.

6. That the Defendant Bayerische Motoren Werke AG ("BMW AG") is a foreign entity with its principal place of business in Munich, Germany. BMW AG directly and through its possession and control of its subsidiaries BMW of North America and BMW Manufacturing, and through its control over BMW-brand distributors, intentionally targets, seeks to serve, and in fact does serve the consumer automobile market in South Carolina.

7. The BMW entities hold themselves out collectively to the public and consumers as "BMW Group," without distinction as to the rolls of the entities.

8. Defendants BMW of North America and BMW Manufacturing designed, manufactured, tested, assembled, distributed, sold, and/or placed into the general stream of commerce a **2019 BMW X5, VIN: 5UXCR6C50KLL21050** ("BMW X5"), the vehicle driven by Todd Allen Blackwell, which was involved in the collision giving rise to this Complaint.

9. BMW AG is a parent entity of BMW of North America and BMW Manufacturing, and exercises possession and control over each of these entities and, by its control over the "BMW" brand and warranties, over BMW-brand dealers throughout the United States, including South Carolina. BMW manufactures and designs BMW-brand vehicles, many of which are manufactured in South Carolina by BMW Manufacturing, and which are sold to BMW of North America for distribution in the United States, including South Carolina. As it relates to the BMW X5 in this case, BMW AG was directly involved in the design, manufacture, testing, and distribution of the BMW X5 in the United States, including South Carolina. Specifically, BMW AG designed, tested, and approved for manufacture the BMW X5 model line with the express knowledge and intent that the BMW X5 model line would, at BMW AG's direction, be assembled at its subsidiary BMW Manufacturing's facility in South Carolina, and distributed to consumers by its subsidiary BMW of North America in South Carolina. Further, at BMW AG's instruction, certain component parts comprising the BMW X5 were shipped into the State of South Carolina for assembly at the BMW Manufacturing facility in Greer, South Carolina. BMW AG also authored and published the English version of the Owners Manual for the Subject BMW X5, with express recognition that it would accompany vehicles sold in the United States, including South Carolina. Based on the foregoing contacts with South Carolina, this Court has specific personal jurisdiction over BMW AG in this case.

10. The BMW entities, under the control of BMW AG, hold themselves out collectively as "BMW Group." As "BMW Group," these entities have represented that "[d]uring 2019, the South Carolina plant exported 246,014 BMW X models with a total export value of approximately $9.6 billion. The BMWs produced in Spartanburg, South Carolina, were exported through the Port of Charleston, SC (nearly 195,000 units), and through five other southeastern ports . . . . More than 18,000 BMWs were also exported via rail." *See* BMW Group, *BMW Manufacturing Remains Largest*

U.S. Automotive Exporter by Value, https://www.bmwgroup-werke.com/spartanburg/en/news/2020/bmw-manufacturing-remains-largest-u-s--automotive-exporter-byva.html#:~:text=%E2%80%9COur%20Inland%20Port%20Greer%20 operation,to%20more%20than%20125%20countries. "Our Inland Port Greer operation brings behicles from the Upstate to the Lowcountry via rail, and the Port of Charleston enables BMW to export 70% of its South Carolina-made vehicles to more than 125 countries." *Id.* The "BMW Group" further touted that "BMW Group Plant Spartanburg produced more than 1,500 vehicles each day and has an annual capacity of up to 450,000 vehicles." *Id.*

11. BMW AG regularly releases statements regarding the collective performance, operations, and profits of the "BMW Group," indicating overlap in these regards. These include statements regarding collective profits:

> Your investment in the BMW Group must be worth it. Your Company is robust and financially strong. Our Automotive EBIT margin for financial year 2023 was within our upwardly adjusted target range of 9.0 to 10.5 %. As you know, we are still targeting a range of 8 to 10 % in the long term. At Group level, our EBT margin for 2023 of 11 % exceeded our strategic target of 10 %.
>
> Our profitability puts us in a position where we can once again pay you an attractive dividend. We are making major investments in our future. The same applies to 2023 as well as to the current financial year. Our R&D spending focus on our products, further electrification and digitalisation of our line-up and automated driving. At the same time, we are investing in the NEUE KLASSE mega-project, our modular kits, construction of high-voltage battery production facilities in various markets, and the new plant in Debrecen, to name just a few examples. Your Company is going to profit noticeably from all this in the coming years.

See BMW Group, *Statement of the Chairman of the Board of Management,* https://www.bmwgroup.com/en/report/2023/to-our-stakeholders/statement-chairman-board-of-management/index.html (last accessed Oct. 11, 2024).

Collective employment:

> People like working for the BMW Group. Last year, renowned US publication Time Magazine and online platform Statista compared 750 international companies. Your Company did exceptionally well to make it into the top 10, and

was, in fact, the highest-ranked automotive manufacturer in the global comparison. Three criteria were decisive for this assessment: revenue growth, sustainability and employee satisfaction. These three are not opposing factors but belong together.

With regard to employees: in autumn 2023, we once again asked our global team to share their opinion. For the first time, all 150,000 associates worldwide were able to take part. 84 % took advantage of this opportunity.

The vote was unequivocal: 85 % support our strategy – our BMW way. Another very clear majority of 88 % said they would recommend our Company as an employer. 93 % are proud to work for the BMW Group.

Is there any better foundation for continuing on our successful course together?

Id.

Collective operations:

Personally, and on behalf of the entire Board of Management, I would like to thank all our associates. Everyone made a valuable contribution. I would also like to thank all our customers worldwide, our retail organisation and our suppliers.

All of us at BMW are united by a can-do spirit: think ahead – perform – succeed!

Id.

And collective performance:

Courage, pride in performance and resilience. That is what makes your Company different. We dare to chart our own course, even in turbulent times; we are able to withstand the headwinds, as long as we are convinced that we are on the right path.

Your Company is a high-performance organisation. That is why we once again have ambitious plans for 2024: on the automotive side, 14 new models will go into production and BMW Motorrad will release a further 12 new models – not to mention numerous model updates and engine variants. We have never postponed a launch and we will not waver from this.

All of this shows that we are continually laying the foundation for our future success. That is continuous progress. In other words: DRIVING THE NEXT ERA.

Id.

Based on the foregoing and BMW Groups collective operations, this Court has specific personal jurisdiction over each of the entities comprising the BMW Group arising out of the design, manufacture, testing, and distribution of vehicles manufactured in the "BMW Group" South Carolina facility.

12. Venue is proper in Jasper County as the principal place of business of MRC is in Jasper County as defined by S. C. Code Ann § 15-7-30.

Facts

13. On November 21, 2020, the subject vehicle was in the same or substantially the same condition as when placed into the stream of commerce by GM and MRC were being used in a manner consistent with their intended purpose.

14. On or about November 21, 2020, James W. Reker was the belted driver of the subject vehicle traveling East on US Highway 278 at the intersection of Burnt Church Road near the Town of Bluffton, South Carolina. Linda Reker, wife of James W. Reker, was the belted passenger in the subject vehicle.

15. Plaintiff was stopped at a traffic signal and was rear ended by Todd Allen Blackwell, driving the BMW X5, resulting in a low-speed collision.

16. That as a result of the collision J. Reker struck his head on the interior of the subject vehicle and was rendered unconscious suffering a massive brain injury that has permanently debilitated him to a point he is non-functional and in need of care for the remainder of his life. Linda Reker was ambulatory at the scene of the collision.

17. At the time of the events giving rise to this action, the subject vehicle was in the same or substantially the same condition as when sold except for normal and expected wear.

18. The BMW X5 was equipped with an Automatic Emergency Braking system ("AEB"), which is intended to detect objects in front of the vehicle and automatically apply the vehicle's brakes without driver input such that the vehicle automatically brakes to avoid, prevent, and/or minimize the severity of collisions.

19. BMW equips its BMW X5 vehicles with an AEB as standard equipment.

20. BMW intended, expected, and/or reasonably foresaw that the drivers of their vehicles would rely on their vehicle's AEB to prevent collisions and/or protect and prevent injury to the motoring public, including Plaintiff.

21. At the time of the collision, the BMW X5's AEB failed to activate, automatically apply the brakes, detect Plaintiff's vehicle, and/or otherwise failed to stop or slow the BMW X5, causing the BMW X5 to rear end Plaintiff's vehicle, resulting in a low speed collision and severe injuries.

22. The conditions and speeds at the time of the collision were such that BMW X5's AEB should have activated and stopped or slowed the BMW X5.

23. Had the BMW X5's AEB functioned properly, activated, detected Plaintiff's vehicle, and/or automatically applied its brakes, the collision could have been avoided entirely or the severity of the collision could have been minimized.

24. At the time of the collision, the BMW X5 was in the same or substantially the same condition as when placed in the stream of commerce by BMW, save for normal and expected wear.

25. The collision which forms the basis of this Complaint was a foreseeable collision event arising out of ordinary use of both the Subject Vehicle and BMW X5 at the time.

26. That as a result of the negligent, careless, grossly negligent, reckless, willful and wanton acts of the defendants the plaintiffs suffered, among other injuries and damages, the following:

BYSTANDER – NEGLIGENCE - INFLICTION OF EMOTIONAL DISTRESS

- Linda K. Reker suffered damage as a result of witnessing her husband be tragically injured in this crash. As a passenger she observed her beloved husband be instantly transformed from a vibrant healthy man to a man unable to care for his own basic daily needs of living. Mr. Reker is permanently and totally disabled. As a result, Linda Reker observing her husband's tragic and devastating injuries and the aftermath of those injuries she has suffered and will continue to suffer severe mental, physical and emotional aguish.

LOSS OF CONSORTIUM

- Linda and James had a lawful and valid marriage. Linda K. Reker has lost the society, love, companionship, guidance and counsel of her beloved husband James W. Reker as a result of Mr. Reker's devastating and permanent injuries requiring him to be cared for in a skilled nursing facility for the rest of his life. This loss of consortium claim is brought under S.C. Code Ann. §15-75-20.

PERSONAL INJURY

- James W. Reker suffered total incapacitating and permanent injuries in this wreck. In addition to a traumatic brain injury he sustained injury and damage to other parts of his body all of which has caused and will continue to cause great physical, mental and emotional pain and suffering. He was reduced from a vibrant retiree loving and enjoying life to a man unable to care for his basic activities of daily living. He now requires and will for the remainder of his life require skill nursing care. He has spent and will continue to spend significant sums of money for his damages and ongoing care.

27. The injuries and damages complained of to both Mr. and Mrs. Reker were the direct and proximate result of the negligent, careless, grossly negligent, reckless, willful, and/or wanton conduct of the Defendants in some and/or all of the following particulars:

FOR A FIRST CAUSE OF ACTION
(Negligence)

28. Each and every allegation contained in this Complaint which is not inconsistent with this cause of action is hereby incorporated by reference as if repeated verbatim herein.

AS TO DEFENDANT GM

a. In failing to design the interior of the vehicle with sufficient padding or material to absorb forces reasonably foreseeable to be imparted to an occupant's head in a low speed rear end collision;

b. In failing to provide adequate driver head protection in a rear end impact collision;

c. In failing to design the subject vehicle with an adequate level of crashworthiness to protect an occupant's head in a rear end collision;

d. In failing to warn of the lack of crash worthiness of the subject vehicle;

e. In failing to act as a reasonably prudent company would act under the same or similar circumstances;

f. In placing into the stream of commerce a vehicle not fit for its intended purpose; and

g. In such other particulars as the facts will show.

AS TO DEFENDANT MRC

a. In failing to warn of the lack of crash worthiness of the subject vehicle;

b. In failing to act as a reasonably prudent company would act under the same or similar circumstances;

c. In placing into the stream of commerce a vehicle not fit for its intended purpose; and

d. In such other particulars as the facts will show.

AS TO BMW OF NORTH AMERICA, BMW MANUFACTURING, & BMW AG

(the "BMW" Defendants")

a. In designing, manufacturing, testing, assembling, distributing, and/or selling the BMW X5 with its associated AEB when it knew, or should have known, that it was defective, unfit, unsafe, and/or unreasonably dangerous because of its propensity for its AEB to fail, malfunction, not activate, not detect objects in front of it, not automatically apply the brakes without driver input, and/or otherwise fail to stop or slow down the vehicle under conditions where the AEB should have activated, applied the brakes, and/or otherwise stop or slow the vehicle, allowing the vehicle to crash into, collide with, and/or rear end other vehicles, causing the occupants of such vehicles to sustain injuries during the BMW X5's intended, expected, and/or reasonably foreseeable use, which was inherent in the design of the BMW X5 with its associated AEB;

b. In designing, manufacturing, distributing, and/or selling the BMW X5 with its associated AEB in such a manner that the AEB presents an unreasonable danger and risk of injury to the motoring public, including Plaintiff;

c. In failing to design the BMW X5's AEB in such a way that the AEB would prevent and/or minimize the severity of low speed collisions by automatically braking without driver input;

d. In failing to warn of the BMW X5's defective and unreasonably dangerous AEB;

e. In designing and/or manufacturing the BMW X5 in a defective, unfit, unsafe, and/or unreasonably dangerous manner that presented an unreasonable risk to the motoring public when safer alternative designs were available to BMW at the time the BMW X5 was distributed and/or sold; and

f. In such other particulars as the evidence will show.

29. GM and MRC owed a duty of due care to manufacture and sell the subject vehicle in a manner such that it would protect occupants, including James W. Reker in a reasonably foreseeable crash including such as occurred in the above described collision.

30. GM and MRC breach their duty of due care in the design, manufacture, and sale of the subject vehicle.

31. Each BMW Defendant owed a duty of care to the motoring public, including James and Linda Reker, to design, manufacture, and sell the BMW X5 with its associated AEB that it placed

into the stream of commerce in a condition that was safe, fit, not defective, and/or not unreasonably dangerous for its intended, expected, and/or reasonably foreseeable use.

32. Each BMW Defendant breached its duty of care in the design, manufacture, and sale of the BMW X5 with its associated AEB.

33. The damages sustained by Plaintiff were due to and proximately caused by the negligent and reckless conduct of GM, MRC, and each BMW Defendant.

FOR A SECOND CAUSE OF ACTION
(Strict Liability)

34. Each and every allegation contained in this Complaint which is not inconsistent with this cause of action is hereby incorporated by reference as if repeated verbatim herein.

AS TO DEFENDANTS GM AND MRC

35. The subject vehicle was defective and unreasonably dangerous to the Plaintiff and similarly situated consumers in the condition in which it was released for sale to the public.

36. The subject vehicle had not been altered and was being used in a reasonably foreseeable manner at the time of the events alleged in this Complaint.

37. GM and MRC sold the subject vehicle in an unreasonably dangerous and defective condition and as a result Defendants are strictly liable pursuant to S.C. Code § 15-73-10, to Plaintiff in an amount to be ascertained by the jury at the trial of this action.

AS TO THE BMW DEFENDANTS

38. The BMW X5 was defective and unreasonably dangerous in the condition in which it was sold by BMW.

39. The BMW X5 had not been altered and was being used in a reasonably foreseeable manner at the time of the events alleged in this Complaint.

40. Each BMW Defendant is strictly liable for all damages caused by the defective and unreasonably dangerous condition of the BMW X5.

FOR A THIRD CAUSE OF ACTION
(Breach of Warranty)

41. Each and every allegation contained in this Complaint which is not inconsistent with this cause of action is hereby incorporated by reference as if repeated verbatim herein.

AS TO GM AND MRC

42. GM and MRC expressly warranted that the subject vehicle was safe and crashworthy in reasonably foreseeable crashes.

43. GM and MRC impliedly warranted through the sale of the subject vehicle that it was safe and crashworthy in reasonably foreseeable crashes.

44. GM and MRC breached expressed and implied warranties in selling the subject vehicle in an unsafe and uncrashworthy condition not fit for its intended purpose.

45. The breach of warranties in the sale of the subject vehicle in a defective condition was the proximate cause of the serious, severe, and permanent injuries sustained by the Plaintiff.

AS TO THE BMW DEFENDANTS

46. Each BMW Defendant expressly and impliedly warranted that the BMW X5 was a safe and fit vehicle to be used upon the highways of this State.

47. Each BMW Defendant breached its expressed and implied warranties in selling the BMW X5 in a defective and unreasonably dangerous condition not fit for its intended purpose.

48. The breach of warranties in the sale of the BMW X5 in a defective condition was the proximate cause of serious, severe, and permanent injuries sustained by the Plaintiffs.

DAMAGES

49. That as a result of the described acts and omissions of the Defendants, both Plaintiffs endured and continue to endure severe pain, suffering and mental anguish. James W. Reker has incurred and will continue to incur extensive medical expenses. They have suffered other damages, which are ongoing. Linda K. Reker has suffered severe damages as a result of being a witness (bystander) to her husband's tragic injuries as well as the loss of her husband's companionship, society, services, care, support and comfort, for which she is entitled to recover.

50. That as a result of the crash James W. Reker sustained critical life threating injuries from which he has suffered and will continue to suffer. He has incurred and will incur in the future cost for medical care, personal care and ancillary cost associated with his injuries. He is and will likely remain permanently and totally disabled requiring twenty-four hour care. He has lost the enjoyment of life he had before the crash and has sustained other damages as the evidence will show.

WHEREFORE, Plaintiffs pray for judgment against the defendants for actual damages, together with punitive damages in an appropriate amount, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

(Signature Page to Follow)

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ATTORNEYS FOR PLAINTIFF

November 26, 2024
Hampton, South Carolina

EXHIBIT
B

STATE OF SOUTH CAROLINA **COUNTY OF JASPER** Linda K. Reker, Individually and as Power of Attorney for James W. Reker, Plaintiff, v. General Motors LLC, Mike Reichenbach Chevrolet, Inc., BMW of North America, LLC, BMW Manufacturing Co., LLC, and Bayerische Motoren Werke AG, Defendants.	**IN THE COURT OF COMMON PLEAS** **CASE NO.: 2022-CP-27-00008** **BAYERISCHE MOTOREN WERKE AG'S RULES 12(b)(4) AND 12(b)(5) MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT**

Bayerische Motoren Werke AG ("BMW AG"), by and through its undersigned attorneys, hereby moves this Court for an order dismissing Plaintiffs' Second Amended Complaint improperly served upon it pursuant to Rules 12(b)(4) and (b)(5) of the South Carolina Rules of Civil Procedure. This motion is based on the following grounds:

Factual Background

This is a products liability action arising from a car crash that occurred in Jasper County on November 21, 2020. At the time of the crash, Plaintiffs James Reker was driving a 2020 Chevrolet Corvette (the "Corvette") with Plaintiff Linda Reker as the sole passenger. Shortly before the crash occurred, the Corvette came to a complete stop at a stoplight at the intersection of U.S. Highway 278 and Burnt Church Road. While stationary, the Corvette was struck from behind by a 2019 BMW X5 (the "X5") driven by an intoxicated Todd Allen Blackwell. Plaintiffs allege James Reker suffered catastrophic head injuries in the crash that have rendered him completely disabled.

Plaintiffs originally filed this action on January 7, 2022 against General Motors, LLC and Mike Reichenbach Chevrolet, Inc., alleging that the Corvette was defective because it failed to prevent Jame Reker's head injuries during the subject crash. On September 21, 2023, Plaintiffs filed an Amended Complaint adding product liability claims against BMW North America, LLC, and BMW Manufacturing Co., LLC, alleging that the X5 was also defective because it should have automatically applied its brakes without driver input to prevent or mitigate the collision with the Corvette. BMW NA and BMW MC are corporate entities organized under Delaware law and are registered to do business in South Carolina. BMW NA and BMW MC timely answered and are participating in the litigation. Finally, on November 26, 2024, Plaintiffs filed a Second Amended Complaint adding BMW AG as a party.

BMW AG, a German corporation with its principal place of business located in Munich, Germany, received Plaintiff's Second Amended Complaint via certified mail on or about January 8, 2025. The Second Amended Complaint was accompanied by a letter from the South Carolina Secretary of State indicating that the Secretary of State had accepted service of the Second Amended Complaint on December 13, 2024.

LEGAL STANDARD

"A summons is not a mere notice, but a means for giving jurisdiction to the court, and unless it is waived, the court cannot otherwise obtain personal jurisdiction." *Brown v. Evatt*, 322 S.C. 189, 194, 470 S.E.2d 848, 850 (1996). Rules 4 and 4.1 of the South Carolina Rules of Civil Procedure requires the summons and complaint in all civil actions to be properly served on each defendant. The purpose of this service of process is to provide the defendant with reasonable notice of the action and to confer the court's personal jurisdiction on the defendant. *Roche v. Young Brothers, Inc.*, 318 S.C. 207, 209 (S.C. 1995). "A judgment is void if a court acts without personal

jurisdiction." *BB&T v. Taylor*, 369 S.C. 548, 551 (S.C. 2006) *(*citing *Thomas Howard Co. v. T.W. Graham Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995)).

"Rule 12(b)(5) is the proper vehicle for challenging both 'the mode of delivery or the lack of delivery of the summons and complaint.'" *Unisun Ins. v. Hawkins*, 342 S.C. 537, 543, 537 S.E.2d 559, 562 (Ct. App. 2000) (quoting 5A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure Civil 2d § 1353 (1990)).

For the below reasons, Plaintiffs have failed to properly serve BMW AG and therefore this Court lacks personal jurisdiction on BMW AG. BMW AG brings this Motion to dismiss Plaintiffs' attempt to serve it via certified mail under SCRCP Rule 12(b)(4) and 12(b)(5) without waiving any arguments about lack of personal jurisdiction.

ARGUMENT

Plaintiffs have failed to properly serve BMW AG because they have not complied with the Hague Service Convention ("the Hague Convention"). "The Hague [ ] Convention is an international treaty that ***pre-empts inconsistent methods of service prescribed by state law in all cases where service abroad is required***." *Bakala v. Bakala*, 352 S.C. 612, 626, 576 S.E.2d 156, 163 (2003) (citing *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694 (1988) (emphasis added). Both Germany and the United States are signatories to the Hague Convention, so it applies here. *Schlunk,* 486 U.S. at 698.

The Hague Convention exists to "simplify, standardize, and generally improve the process of serving documents abroad." *Water Splash, Inc. v. Menon*, 137 S. Ct. 1504 (2017). It requires that each country establish a central authority to receive requests for service from other countries, serve the documents, and provide certificates of service. *See* 20 U.S.T. 361, at Arts. 2-6. A country may consent to foreign methods of service other than a request to its central authority, if it

affirmatively chooses not to object to Article 10. *Id.* at Art. 10(a); *accord Bakala*, 352 S.C. at 626, 576 S.E.2d at 163. However, Germany has objected to Article 10. *See* Declarations, Hague Conference on Private International Law Conférence de La Haye de droit international privé, https://www.hcch.net/en/instruments/conventions/statustable/notifications/?csid=402&disp=resdn ("Service pursuant to Article 10 of the Convention shall not be effected."). Therefore, in Germany, service is only permitted through the Central Authority. *See* Service of Documents between the US and Germany, German Missions in the United States, available at https. Plaintiffs have not served BMW AG through the German Central Authority. Their Second Amended Complaint is therefore subject to dismissal as to BMW AG under Rule 12(b)(5) for insufficient service of process.

BMW AG anticipates Plaintiffs will respond that they properly served BMW AG through the South Carolina Secretary of State under South Carolina Code Ann. § 15-9-245. But this method of service does not comply with the Hague Convention because it relies on service via certified mail. *See* § 15-9-245(b) ("The Secretary of State immediately shall cause one of the copies to be forwarded by certified mail, addressed to the corporation . . ."). Because Germany has objected to Article 10 of the Hague Convention, service by mail is not permissible. *Bakala*, 352 S.C. at 626, 576 S.E.2d at 163. And to the extent South Carolina law is inconsistent with the Hague Convention, it is preempted. *Id.*

Moreover, SCRCP 4.1 undercuts any argument that South Carolina Code Ann. § 15-9-245, which is titled "[s]ervice of process on foreign corporation not authorized to do business in state," governs service in foreign countries. In 2022, the South Carolina Supreme Court adopted SCRCP 4.1, titled "Service of Process in Foreign Countries." SCRCP 4.1 "is intended to provide guidance as to the proper methods of service and proof of service in foreign countries." *See* SCRCP Rule

4.1(d) & Reporter's Note. Rule 4.1 states that a foreign corporation may be served in any manner prescribed in Rule 4.1(a) for serving a foreign individual, including:

> (1) by any internationally agreed means of service that is reasonably calculated to give notice, *such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents*;
>
> ...
>
> (3) by other means not prohibited by international agreement, as the court orders.

Rule 4.1(a), (d), SCRCP. Accordingly, BMW AG may only be served by internationally agreed-upon methods, or "by other means *not prohibited by international agreement*." Because Germany has objected to Article 10 of the Hague Convention, service by mail is prohibited. Service under South Carolina Code Ann. § 15-9-245 therefore does not satisfy SCRCP 4.1.

CONCLUSION

For these reasons, Plaintiff's attempt to serve BMW AG via certified mail does not serve as a basis for proper service under the South Carolina Rules of Civil Procedure. This motion is based on the pleadings, the South Carolina Rules of Civil Procedure, any forthcoming memoranda in support of the motion, and the common and statutory law of the State of South Carolina. BMW AG respectfully requests this Court enter an Order dismissing Plaintiff's Second Amended Complaint as to BMW AG.

Dated: January 13, 2025

Respectfully submitted,

BOWMAN AND BROOKE LLP

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Attorney for Defendants BMW of North America, LLC and BMW Manufacturing Co., LLC

Attorney for Bayerische Motoren Werke AG for purposes of this Motion

CERTIFICATE OF SERVICE

I hereby certify that **Bayerische Motoren Werke AG's Motion to Dismiss Plaintiff's Second Amended Complaint** was electronically filed with the Clerk of Court using the CM/ECF System which will serve notice on all counsel of record:

By: */s/ Patrick J. Cleary*
Patrick J. Cleary
Attorney for Defendants BMW of North America, LLC and BMW Manufacturing Co., LLC

Attorney for Bayerische Motoren Werke AG for purposes of this Motion

January 13, 2025
Columbia, South Carolina

EXHIBIT C

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF JASPER	)	C/A No.: 2022-CP-27-00008
	)	
Linda K. Reker, Individually and as Power of Attorney for James W. Reker,	)	**Plaintiff's Response in Opposition To Bayerische Motoren Werke AG's Rule 12(b)(4) and 12(b)(5) Motion to Dismiss Plaintiff's Second Amended Complaint**
Plaintiff,	)	
v.	)	
General Motors LLC, Mike Reichenbach Chevrolet, Inc., BMW of North America, LLC, BMW Manufacturing Co., LLC, and Bayerische Motoren Werke AG,	)	
Defendants.	)	

Plaintiff submits this Response in Opposition to Defendant Bayerische Motoren Werke AG's ("BMW AG") Rule 12(b)(4) and 12(b)(5) Motion to Dismiss Plaintiff's Second Amended Complaint.

Introduction

Under S.C. Code § 15-9-245(a), a foreign business that is not authorized to conduct business in this State, but which conducts business in the State, is considered to have designated the Secretary of State as its domestic agent for in-state service of process for any legal action brought in the State. *See Holman v. Warwick Furnace Co.*, 318 S.C. 201, 204, 456 S.E.2d 894, 895-96 (1995); *Hammond v. Honda Motor Co., Ltd.*, 128 F.R.D. 638, 642 (D.S.C. 1989); *Peake v. Suzuki Motor Corp.*, 2019 WL 5691632, at *5 (D.S.C. Nov. 4, 2019).

Here, it is undisputed that BMW AG is an unregistered foreign corporation that conducts business in South Carolina by purchasing and selling wholesale vehicles manufactured at the BMW facility in Spartanburg, shipping parts and products into the state, and by conducting

business through its subsidiaries and agents. By doing so, under S.C. Code § 15-9-245(a), BMW AG has designated the South Carolina Secretary of State as its domestic agent for in-state service of process. Thus, Plaintiff served the Second Amended Complaint on BMW AG through the Secretary of State, pursuant to S.C. Code § 15-9-245.

BMW AG has filed a motion to dismiss under Rule 12(b)(4) and (5), SCRCP, claiming that service under S.C. Code § 15-9-245 is improper and in violation of the Hague Convention governing "service abroad" and Rule 4.1, SCRCP, which governs "service of process in foreign countries." BMW AG is incorrect, as both state and federal courts have repeatedly held that service under S.C. Code § 15-9-245 occurs in-state on a domestic agent of the defendant, obviating the need to transmit documents abroad to complete service, and is therefore neither governed by nor inconsistent with the Hague Convention. *See Holman v. Warwick Furnace Co.*, 318 S.C. 201, 204, 456 S.E.2d 894, 895-96 (1995) (holding service under S.C. Code Ann. § 15-9-245 is completed upon delivery to the Secretary of State as the domestic agent for the corporation: "Once a summons and complaint are delivered to the secretary of state, service is complete, regardless of whether the corporation actually receives notice of the suit."); *Hammond v. Honda Motor Co., Ltd.*, 128 F.R.D. 638, 642 (D.S.C. 1989) ("When service upon a domestic agent [pursuant to § 15-9-245] is valid and complete according to state law and the due process clause the [Hague] Convention procedures are not invoked. The Convention does not apply because . . . service upon an agent obviates the necessity of transmitting judicial documents abroad."); *Peake v. Suzuki Motor Corp.*, 2019 WL 5691632, at *5 (D.S.C. Nov. 4, 2019) ("[T]he Hague Convention was not the sole method of service available to [plaintiff]. That is, service through S.C. Code § 15-9-245 is an alternative method of service that is neither governed by, nor inconsistent with, the Hague Convention.").

Despite the clarity of these holdings, BMW AG argues that service under § 15-9-245 is not in compliance with the Hague Convention or Rule 4.1, SCRCP, because Germany has objected to international service by certified mail. BMW AG incorrectly argues that § 15-9-245 "relies on service by international mail" because the Secretary of State is instructed to "forward" the process to the defendant after it has been served. BMW AG's argument is based on a fundamental misconception that "forwarding" the document overseas is a predicate to service being effected under § 15-9-245. It is not. The Supreme Court of South Carolina has held that "[o]nce a summons and complaint are delivered to the secretary of state, service [under § 15-9-245] is complete, regardless of whether the corporation actually receives notice of the suit." *Holman*, at 204, 456 S.E.2d at 896 (citing 19 CJS *Corporations* § 959).

Further, BMW AG's Motion to Dismiss is procedurally premature. Even if service pursuant to § 15-9-245 was ineffective, Plaintiff still has time to effect service pursuant to the Hague Convention (a process that is currently underway). Thus, even if service under § 15-9-245 is "improper," Plaintiff still has time to effect service on BMW AG.[1]

Facts

On November 21, 2020, Plaintiff James W. Reker sustained a traumatic brain injury that left him in a permanent vegetative state when a 2019 BMW X5 crashed into the back of his 2020 Chevrolet Corvette Stingray. On January 7, 2022, Plaintiff Linda Reker, Individually and as Power of Attorney for Mr. Reker, filed the Complaint in this case asserting product liability claims against General Motors, LLC, and Mike Reichenback Chevrolet, Inc., for alleged

[1] Prior to BMW AG filing its motion, counsel for BMW AG disclosed they intended to contest the propriety of service under § 15-9-245. In anticipation of this argument, Plaintiff began the process for service pursuant to the Hague Convention, which is underway at the time of this filing. *See* Ex. 1, March 26, 2025, APS International, Ltd. letter.

crashworthiness defects in Mr. Reker's Corvette.

On September 21, 2023, Plaintiff filed an Amended Complaint asserting additional products liability claims against the Defendants BMW of North America, LLC, and BMW Manufacturing Co., LLC, for alleged defects in the 2019 BMW X5 that proximately caused the subject accident. On November 26, 2024, with leave of the Court, Plaintiff filed a Second Amended Complaint naming BMW AG as a defendant in this case, based on BMW AG's involvement in the design, manufacture, and testing of the subject BMW X5. Plaintiff thereafter served BMW AG pursuant to S.C. Code § 15-9-245.

I. BMW AG

BMW AG is a German entity that designed, manufactured, and tested the subject X5. BMW AG is not authorized to do business in the state of South Carolina, but regularly does so by: (i) directly shipping its products, including vehicles and replacement component parts, into the Port of Charleston; (ii) directly purchasing vehicles, including the subject vehicle, located in South Carolina, that were manufactured by BMW Manufacturing Co. in Spartanburg, South Carolina, and then selling those vehicles from South Carolina to BMW North America for distribution; and (iii) deriving profits from the business activity of its subsidiary, BMW Manufacturing Co., which is a registered corporation with the South Carolina Secretary of State. These facts are sufficient to establish that BMW AG "does business in the state" as defined by S.C. Code Ann. § 15-9-245(a). *See* Ex. 2, Order, *Peake v. Suzuki Motor Corp.*, 0:19-cv-00382-JMC, p. 6 (D.S.C. Oct. 7, 2019) (J. Childs) (ECF 58) (finding these facts sufficient to establish a Suzuki Motor Corp. "'does business in the state' as defined by § 15-9-245(a)"). BMW AG does not deny these facts or this conclusion.

II. Service of the Second Amended Complaint on BMW AG.

On December 9, 2024, Plaintiff served two copies of the Second Amended Summons and Complaint, along with a service letter and check for service fee, on the Secretary of State, as BMW AG's agent for service of process, pursuant to S.C. Code § 15-9-245. Ex. 3, Pl.'s Aff. of Compliance ¶ 2; Ex. 4, Service Letter to Sec. of State. On December 13, 2024, the Second Amended Summons and Complaint were delivered to the Secretary of State, which accepted service of process on behalf of BMW AG. Ex. 3, Pl.'s Aff. of Compliance ¶ 3; Ex. 5, Sec. of State Proof of Service on BMW AG. On December 16, 2024, the Secretary of State forwarded the Second Amended Summons and Complaint to BMW AG through First-Class International Registered Mail. Ex. 3, Pl.'s Aff. of Compliance ¶ 4; Ex. 5, Sec. of State Proof of Service on BMW AG. Plaintiff subsequently filed with the clerk of court Plaintiff's Affidavit of Compliance with S.C. Code § 15-9-245, including official proof of delivery of the Second Amended Summons and Complaint to the Secretary of State, and the Second Amended Summons and Complaint, as required by the statute.

BMW AG admits that it received the Second Amended Summons and Complaint "on or about January 8, 2025." However, prior to this, BMW AG was on notice of the Second Amended Summons and Complaint through its counsel, who also represent BMW MC and BMW NA. On January 13, 2025, BMW AG filed the subject motion asking the Court to "dismiss" Plaintiff's service on it through the Secretary of State.

For the following reasons, BMW AG's motion should be denied.

Law & Argument

I. Service under S.C. Code § 15-9-245 is an alternative method of in-state service neither governed by nor inconsistent with the Hague Convention or Rule 4.1, SCRCP – which only govern service effected in a foreign country.

South Carolina state and federal courts have repeatedly recognized that service pursuant to S.C. Code § 15-9-245 is a form of in-state service on a foreign corporation's domestic agent, and is neither governed by nor inconsistent with the Hague Convention or Rule 4.1, SCRCP, each of which apply only when service is effected in a foreign country. Because service under § 15-9-245 is completed in state, it does not require the service of judicial documents abroad, which is the trigger for invoking the requirements of both the Hague and Rule 4.1, SCRCP. *See Hammond v. Honda Motor Co., Ltd.* 128 F.R.D. 638, 642 (D.S.C. 1989).

In relevant part, S.C. Code § 15-9-245 provides that:

> **(a)** Every foreign business or nonprofit corporation which is not authorized to do business in this State, by doing in this State, either itself or through an agent, any business . . . . is considered to have designated the Secretary of State as its agent upon whom process against it may be served in any action or proceeding arising in any court in this State out of or in connection with the doing of any business in this State.
>
> **(b)** Service of the process is made by delivering to and leaving with the Secretary of State, or with any person designated by him to receive such service, duplicate copies of the process, notice, or demand. The Secretary of State immediately shall cause one of the copies to be forwarded by certified mail, addressed to the corporation either at its registered office in the jurisdiction of its incorporation, its principal place of business in the jurisdiction, or at the last address of the foreign business or nonprofit corporation known to the plaintiff, in that order.

The U.S. District Court's opinion in *Hammond v. Honda Motor Co., Ltd.*, 128 F.R.D. 638

(D.S.C. 1989) (J. Anderson), is instructive on the issue of whether service under § 15-9-245 contravenes the Hague Convention. In *Hammond*, the plaintiff asserted product liability claims against Japanese automobile manufacturer Honda Research & Development ("Honda"). *Id.* at 639. The plaintiff served Honda pursuant to § 15-9-245. *Id.* at 641. Honda thereafter filed a motion to dismiss under Rule 12(b)(4) and (5), asserting the same arguments BMW AG has in this case: that service under § 15-9-245 "was insufficient, as it did not comply with the requirements of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the Hague Convention)." *Id.* at 639.

The *Hammond* court rejected Honda's argument, holding that under § 15-9-245 service was completed upon delivery to the domestic agent, which obviated the need to transmit documents abroad to complete service that would trigger the Hague Convention. 128 F.R.D. 638, 642 (D.S.C. 1989) (J. Anderson). Judge Anderson explained: "When service upon a domestic agent [under § 15-9-245] is valid and complete according to state law and the due process clause, the Convention procedures are not involved. The Convention does not apply because under [those] circumstances service upon an agent obviates the necessity of transmitting judicial documents abroad." *Id.* (citing *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 707, 108 S.Ct. 2104, 2112 (1988)).

Six years later, in *Holman v. Warwick Furnace Co.*, the Supreme Court of South Carolina reaffirmed *Hammond*, confirming that service under § 15-9-245 is completed when process was delivered to the Secretary of State as the domestic agent for the corporation. *See* 318 S.C. 201, 204, 456 S.E.2d 894, 895-96 (1995) (citing 62B Am. Jur.2d *Process* § 239). The Supreme Court explained that this conclusion "accords with the general rule that service upon an agent designated by law is permissible without any need to personally serve the defendant." *Id.* The *Holman* court

further held that "[o]nce a summons and complaint are delivered to the secretary of state, service is complete, regardless of whether the corporation actually receives notice of the suit." *Id.* (citing 19 CJS *Corporations* § 959).

Since *Hammond* and *Holman*, courts have consistently held that service pursuant to § 15-9-245 is a permitted method of in-state service on a foreign defendant that is neither governed by nor inconsistent with the Hague Convention. For example, in 2019, in *Peake v. Suzuki Motor Corp.*, the U.S. District Court for the District of South Carolina thoroughly analyzed the interplay between service under § 15-9-245 and the Hague Convention, concluding that "the Hague Convention [i]s not the sole method of service available to [the plaintiff]. That is, service through S.C. Code § 15-9-245 is an alternative method of service that is neither governed by, nor inconsistent with, the Hague Convention." 2019 WL 5691632, at *5 (D.S.C. Nov. 4, 2019).

Like *Hammond*, the facts and arguments raised in *Peake* were materially identical to those *sub judice*, and for that reason, *Peake* is instructive. In *Peake*, the plaintiff had asserted product liability claims against foreign automobile manufacturer Suzuki, and served Suzuki pursuant to § 15-9-245. *Id.* at *1. Suzuki argued that service under the statute was deficient, claiming (as BMW AG does here) that service under § 15-9-245 violated the Hague Convention because the statute instructed the Secretary of State to "forward" the process to the defendant by mail. *Id.* at *12. The district court rejected Suzuki's argument, reaffirming that: (i) the Hague Convention is controlling only where service is effected "abroad", *id.* at *12-*14 (quoting *See Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U. S. 694, 698, 108 S. Ct. 2104, 100 L. Ed. 2d 722 (1988)); and (ii) the Hague Convention was inapplicable because service under § 15-9-245 is effected in-state when process is delivered to the domestic statutory agent of the defendant. *Id.* at *17 (citing *Holman*, 318 S.C. at 204, 456 S.E.2d at 895).

As to the scope of the Hague Convention's application, the *Peake* court explained as follows:

> Article 1 of the Hague Convention defines the scope of the Convention, which is the subject of controversy in this case. It conditions: "The present Convention shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document ***for service abroad***." *Id.* at 699 (emphasis added) (quoting Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters, Nov. 15, 1965 (Hague Service Convention), [1969] No. 6638). *See Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U. S. 694, 698, 108 S. Ct. 2104, 100 L. Ed. 2d 722 (1988). To that end, the Hague Convention specifies certain approved methods of service and "pre-empts inconsistent methods of service" **wherever it applies**. *Id.* at 699. [Suzuki] would have this court accept the notion that the Hague Convention applies to every situation where judicial documents are mailed to a foreign company regardless of when service was complete and effective. However, the court is unpersuaded by this reasoning and the U.S. Supreme Court has rejected a strikingly similar argument. In *Schlunk*, the Court rejected the contention that "every case involving service on a foreign national will present an 'occasion to transmit a judicial...document for service abroad' within the meaning of [the Hague Convention]. *Id.* at 707.
>
> The *Schlunk* Court further states that:
>
> > The Convention does not specify the circumstances in which there is "occasion to transmit" a complaint "for service abroad." But at least the term "service of process" has a well-established technical meaning. Service of process refers to a formal delivery of documents that is legally sufficient to charge the defendant with notice of a pending action. **The legal sufficiency of a formal delivery of documents must be measured against some standard. The Convention does not prescribe a standard, so we almost necessarily must refer to the internal law of the forum state. If the internal law of the forum state defines the applicable method of serving process as requiring the transmittal of documents abroad, then the Hague Service Convention applies**.
>
> *Schlunk*, 486 U.S. at 700 (citations omitted) (emphasis added). The Court later explains that "**where service on a domestic agent is valid and complete under both state law and the Due Process Clause, [the] inquiry ends, and the Hague Convention has no implications**." *Schlunk* 486 U.S. at 707. (Emphasis added). In other words, **in situations where service is valid and effective under statelaw, the transmittal of documents abroad—while permitted to provide additional notice—is *not required to complete or effectuate service***. In those situations, the Hague Convention does not apply. *Id.*

Id. at*12-*14 (emphasis in original).

As to the issue of when service on a foreign defendant is complete under § 15-9-245, the *Peake* court explained:

> The *Holman* Court, held that "once a summons and complaint are delivered to the secretary of state, **service is complete**, regardless of whether the corporation actually receives notice of the suit." *Holman*, 318 S.C. at 204. Further, the court specifically held that **"service pursuant to § 15-9-245 is effective upon delivery of the summons and complaint to the Secretary of State."** *Id.* More importantly, the *Holman* Court distinguished "service by mail" upon a foreign defendant from "service upon a designated agent" on behalf of a foreign defendant. *Id.* at 205. In discussing the difference, the court stated, "service of process under [a different] longarm statute, S.C. Code Ann. § **36-2-806(1)(c)**, is not complete until delivery." However, if the foreign defendant is subject to § 15-9-245, the mode of service is not "by mail" but by "designated agent". The critical difference is that under the general long-arm statute § 36-2-806, a plaintiff is sending judicial documents by mail directly to a foreign defendant—with no intermediate agent. However, under the statute at issue, a foreign defendant is "considered to have designated the Secretary of State as its agent upon whom process against it may be served [by virtue of doing business in the state]." S.C. Code §15-9-245(a).
>
> Here, as the court has already determined in its Remand Order, Peake is more akin to the plaintiff in *Holman*. Precisely, Peake utilized "service upon a designated agent", not "service by mail." [Suzuki] conflates two wholly distinct and un-conflicting "modes [or methods] of service." Peake perfected service on a statutorily designated in-state, domestic agent, without the necessity of serving the Summons and Complaint abroad under the plain language of the statute. *Holman*, 318 S.C. at 204. *See also Hammond v. Honda Motor Co., Ltd.*, 128 F.R.D. 638 (D.S.C.1989). As such, the Hague Convention does not apply. *Schlunk*, 486 U.S. at 700 ("Where service on a domestic agent is valid and complete under...state law, our inquiry ends, and the Convention has no further implications."). That the Secretary of State is then directed to "forward copies" to the "corporation either at its registered office in the jurisdiction of its incorporation, its principal place of business in the jurisdiction, or at the last address of the foreign business known to the plaintiff, in that order" is not a requirement to effectuate service, but rather to provide additional notice.

Peake, at *17-*19 (emphasis in original).

Notwithstanding the clarity of the foregoing holdings, BMW AG has moved to dismiss based on the same arguments previously rejected in *Hammond* and *Peake*: (i) that any service on

a foreign defendant must be effected pursuant to the Hague Convention; and (ii) that service under S.C. Code § 15-9-245 violates the Hague Convention because it "relies on service via certified mail" by instructing the Secretary of State to "forward" the process by certified mail to the defendant. Def.'s Mot. p. 4. The errors in each of these arguments are thoroughly addressed in the district court's analysis in *Peake*, above. However, for the sake of thoroughness, Plaintiff addresses each of BMW AG's misconception in turn below.

First, the Hague Convention and Rule 4.1, SCRCP, are limited in scope to governing service effected "abroad" and "in foreign countries," respectively. *See Peake v. Suzuki Motor Corp.*, 2019 WL 5691632, at *5 (D.S.C. Nov. 4, 2019); *Hammond v. Honda Motor Co., Ltd.*, 128 F.R.D. 638, 642 (D.S.C. 1989). Specifically, Article 1 of the Hague Convention, by its plain terms, limits its application only to "where there is occasion to transmit a judicial or extrajudicial document **for service abroad**." *See Hague* Convention, Art. 1, https://www.hcch.net/en/instruments/conventions/full-text/?cid=17 (emphasis added). Similarly, Rule 4.1, SCRCP, titled "Service of Process **In Foreign Countries**," provides methods for service "**at a place not within any judicial district of the United States**." For the same reasons noted in *Hammond* and *Peake*, the Hague Convention and Rule 4.1, SCRCP, are relevant and controlling **only** where service is effected abroad. However, where service occurs domestically, such as is the case under S.C. Code § 15-9-245, neither the Hague Convention nor Rule 4.1, SCRCP, are controlling or applicable.

To the second misconception, BMW AG's argument that service under § 15-9-245 "relies on service via certified mail" is incorrect, as service under the statute is completed upon delivery to the domestic agent, not by mail. *See Peake*, at *17-*19 (citing *Holman* at 204). To this particular issue, the *Holman* court recognized the distinction between "service by mail" upon a

foreign defendant and "service upon a designated agent" on behalf of a foreign defendant. *Holman* at 205. In discussing the difference, the court stated, "service of process under [a different] longarm statute, S.C. Code Ann. § 36-2-806(1)(c), is not complete until delivery." However, if the foreign defendant is subject to § 15-9-245, the mode of service is not "by mail" but by "designated agent".

BMW AG has failed to advise the Court of any of the foregoing case law while arguing in direct contravention of the holdings. Further, BMW AG does not cite a single case that supports its argument. Regardless, it is clearly established that service under § 15-9-245 is a proper method of in-state service on a foreign defendant's statutory agent that is neither governed by nor inconsistent with the Hague Convention. Plaintiff's service on BMW AG pursuant to § 15-9-245 is proper and, as noted below, was perfected in accordance with the requirements of the statute. Accordingly, Plaintiff requests the Court deny BMW AG's motion.

II. Plaintiff perfected service on BMW AG pursuant to § 15-9-245.

S.C. Code § 15-9-245(c) provides in relevant part:

> Proof of service must be by affidavit of compliance with this section and filed, together with a copy of the process, with the clerk of court in which the action or proceeding is pending. There must be filed with the affidavit of compliance the return receipt signed by the foreign business or nonprofit corporation or other official proof of delivery . . . .

Breaking down this subsection, the statute requires Plaintiff to file: (i) An affidavit of compliance with (ii) a copy of the process; and (iii) either a copy of the signed return receipt or other official proof of delivery. S.C. Code § 15-9-245(c). Plaintiff has satisfied these requirements.

On January 10, 2025, Plaintiff filed an Affidavit of Compliance. *See* Ex. 3, Pl.'s Aff. of Compliance ¶ 6 ("This Affidavit is being offered as proof of compliance with requirements of S.C. Code Ann. § 15-9-245. . . ."). Attached to that Affidavit as Exhibit 1 was official proof of delivery

to the South Carolina Secretary of State with the copy of the process served on the defendant. *Id.* Accordingly, Plaintiff complied with the requirements of § 15-9-245(c), as it related to service of her original Complaint. Attached as Exhibit 3 to the Affidavit was official proof of delivery of the process to BMW AG. *Id.*

III. If service under S.C. Code § 15-9-245 is invalid, the correct remedy is to quash service – not dismiss the case.

If the Court determines that service under § 15-9-245 is invalid, the correct remedy is to quash service without dismissing the case. A plaintiff is normally given a reasonable opportunity to attempt to effect valid service of process on a defendant in a manner complying with the Hague Convention. *Vorhees v. Fischer*, 697 F.2d 574, 576 (4th Cir. 1983). "If the first service of process is ineffective, a motion to dismiss should not be granted, but rather the court should treat the motion in the alternation, as one to quash the service of process and the case should be retained on the docket pending effective service." *Id.*

Here, if service is deemed insufficient, Plaintiff has time remaining under Rule 3, SCRCP, to perfect service against BMW AG. Thus, if the Court is inclined to grant Plaintiff's motion, Plaintiff requests the Court grant it only as a motion to quash and to permit Plaintiff to remedy any deficiencies the Court identifies related to the service.

Conclusion

For the foregoing reasons, Plaintiff requests the Court deny BMW AG's motion to dismiss.

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April 2, 2025

EXHIBIT 1

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March 26, 2025

PARKER LAW GROUP
Ms. Adrienne Rizer
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Hampton, SC 29924

APS File #:	286488-0001
Case Name:	Reker v General Motors LLC
Defendant:	Bayerische Motoren Werke AG
Country:	Germany

Dear Ms. Rizer:

Enclosed please find the translations of your pleadings with respect to the above entitled action. Your documents are presently abroad for service. As soon as we learn of service being perfected, we will contact your office.

Remember: APS can handle all your translation needs. APS routinely translates business manuals, correspondence, evidentiary responses, etc. to and from English for our law firm, insurance and corporate clients. Call us for a quote, or email Trans@CivilActionGroup.com.

Thank you for using APS International.

Sincerely,

Glenda Fichtner

Glenda Fichtner
International Division
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Brandon Peake, Plaintiff, v. Suzuki Motor Corporation, American Suzuki Motor Corporation, and Suzuki Motor Corporation of America, Inc., Defendants.	Civil Action No. 0:19-cv-00382-JMC **ORDER AND OPINION**

This matter is before the court by way of Plaintiff Brandon Peake's ("Peake") Motion for Reconsideration (ECF No. 54) of this court's Order entered on September 5, 2019 (the "September Order") (ECF No. 53). In the September Order, the court denied Peake's Motion to Remand the case to the Fairfield County Court of Common Pleas. (ECF No. 53.) Defendant Suzuki Motor of America, Inc. ("SMAI") opposes the Motion for Reconsideration and asserts that Peake has not presented any arguments entitling him to reconsideration of the September Order. (ECF No. 55 at 1.) For the reasons stated below, the court **GRANTS** Peake's Motion for Reconsideration (ECF No. 54) and **REMANDS** the case to the Fairfield County Court of Common Pleas.

I. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

Peake filed this products liability action in the Fairfield County Court of Common Pleas on December 19, 2018. (*See generally* ECF No. 1-1 at 2–4.) Peake names three Defendants: (1) Suzuki Motor Corporation ("SMC"), (2) American Suzuki Motor Corporation ("ASMC"), and (3) SMAI (collectively, "Defendants"). *Id*. Peake's chief allegation is that the defective condition of a Suzuki Quadrunner 4WD—allegedly designed, manufactured, and sold by

Defendants—resulted in serious and severe head and bodily injuries to Peake. (*Id.* at 3-4; ECF No. 11 at 1-3.)

On February 11, 2019, SMAI filed its Notice of Removal (ECF No. 1), alleging that the case is removable to this federal court under 28 U.S.C. § 1441(b), based on diversity of citizenship. *See* 28 U.S.C. §1332; (ECF No. 1.)

On February 28, 2019, Peake filed his Motion to Remand (ECF No. 16). Peake's main argument supporting remand is that SMAI improperly removed the action without the consent of all "properly joined and served defendants" as required under the removal statute. 28 U.S.C. § 1446(b)(2)(A).[1] (*See generally* ECF No. 16.) Specifically, Peake argued that SMC was a "properly joined and served defendant" because the South Carolina Secretary of State accepted service on its behalf on January 7, 2019, pursuant to S.C. Code Ann. § 15-9-245(a) (2019).[2] Peake asserted that, despite being properly served, SMC failed to consent to removal. Peake did not attach any exhibits to his Motion to Remand.

On March 14, 2019, SMAI timely filed its Opposition to Peake's Motion to Remand (ECF No. 24), contending that SMC was not properly served because it does not "do business"

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[1] 28 U.S.C. § 1446(b)(2)(A) states, "When a civil action is removed solely under section 1441(a), **all defendants who have been properly joined and served must join in or consent to the removal of the action.**" (Emphasis added.)

[2] S.C. Code § 15-9-245(a) states,

> for foreign corporations doing business in South Carolina. Every foreign business or nonprofit corporation which is not authorized to do business in this State, **by doing in this State, either itself or through an agent**, **any business, including any business activity for which authority need not be obtained as provided by Section 33-15-101**, is considered to have designated the Secretary of State as its agent upon whom process against it may be served in any action or proceeding arising in any court in this State **out of or in connection with the doing of any business in this State.**

(Emphasis added.)

in South Carolina and therefore, service through the Secretary of State was improper. SMAI further argued that, because SMC is a foreign corporation with no business in South Carolina, Peake was required to serve SMC through the Hague Convention process and failed to do so.

On March 21, 2019—more than thirty days after the deadline to file his Motion to Remand—Peake filed a Reply (ECF No. 27) in response to SMAI's Response (ECF No. 26). In that Reply, Peake offered three documents in support of his Motion to Remand: (1) what appears to be a screenshot of a map showing several Suzuki car dealers located in South Carolina; (2) a screenshot of the "About Us" page on the Suzuki website, and (3) what appears to be Suzuki Motor of America, Inc.'s business filing with the South Carolina Secretary of State (which shows that SMAI is a foreign corporation incorporated in California). (ECF Nos. 27-1, 27-2, 27-3; ECF No. 45.) Then, again, on June 18, 2019—more than three months after he filed his motion to Remand—Peake filed an addendum to his Motion to Remand reiterating the same exhibits he offered in his Reply. In his June 18, 2019 filing (ECF No. 45), Peake explained, "in order to meet the 30-day requirement of 28 U.S.C. § 1447, Mr. Peake did not have ample time to conduct a thorough investigation of SMC's contacts with South Carolina before submitting his Motion to Remand…in support of his Motion to Remand, Mr. Peake respectfully requests the Court hereby incorporate the exhibits attached…alongside his Motion to Remand." (ECF No. 45 at 2.) The court denied Peake's Motion to Remand. Now, Peake's Motion for Reconsideration of the September Order is before the court, which the court considers below.

II. LEGAL STANDARD

A. Motion for Reconsideration

Rule 59 allows a party to seek an alteration or amendment of a previous order of the court. Fed. R. Civ. P. 59(e). Under Rule 59(e), a court may "alter or amend the judgment if the

movant shows either (1) an intervening change in the controlling law, (2) new evidence that was not available at trial, or (3) that there has been a clear error of law or a manifest injustice." *Robinson v. Wix Filtration Corp*., 599 F. 3d 403, 407 (4th Cir. 2010); *see also Collison v. Int'l Chem. Workers Union*, 34 F. 3d 233, 235 (4th Cir. 1994). It is the moving party's burden to establish one of these three grounds in order to obtain relief under Rule 59(e). *Loren Data Corp. v. GXS, Inc.*, 501 Fed. Appx. 275, 285 (4th Cir. 2012). The decision whether to reconsider an order pursuant to Rule 59(e) is within the sound discretion of the district court. *Hughes v. Bedsole*, 48 F. 3d 1376, 1382 (4th Cir. 1995). A motion to reconsider should not be used as a "vehicle for rearguing the law, raising new arguments, or petitioning a court to change its mind." *Lyles v. Reynolds*, C/A No. 4:14-1063-TMC, 2016 WL 1427324, at *1 (D.S.C. Apr. 12, 2016) (citing Exxon Shipping Co. v. Baker, 554 U.S. 471, 485 n.5 (2008)).

III. DISCUSSION

The court recaps the timeline because it is significant here. On February 11, 2019, SMAI filed its Notice of Removal. On February 28, 2019, Peake filed his Motion to Remand. Peake does not dispute that he did not attach any documents to his Motion to Remand at the time it was filed. On March 14, 2019, SMAI filed a Response to Peake's Motion to Remand and on March 27, 2019, Peake filed a *Reply* to the Response whereby Peake first attached documents in support of his Motion to Remand. Peake argues that the court erred by not granting his Motion to Remand based on new evidence submitted in his Reply brief and in an addendum filed four months after removal. As a threshold matter, under D.S.C. Local Rule 7.07, "replies to responses are discouraged." More importantly, a court's decision to decline review or consideration of a supplemental response or its attachments does not constitute a clear error of law, nor is it necessary to prevent manifest injustice. *See Motorists Mut. Ins. Co. v. Teel's Restaurant*

Inc., 2009 WL 5065223, *1 (N.D.Ind. Dec. 23, 2009) (holding that the court's failure to consider a reply brief in support of a motion before issuing its ruling was not manifest error of law such that motion for reconsideration should be granted).

While the court has not committed any clear error of law, Peak's Motion for Reconsideration has persuaded the court to review its previous decision. It is a well-established rule that when ruling a motion to remand, the decision is determined by the "well-pleaded complaint rule, which requires the court to examine the face of the plaintiff's properly pleaded complaint." *Rivet v. Regions Bank of Louisiana*, 522 U.S. 470, 475 (1998) (quoting *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987)). The court, however, "**may** consider materials outside of the complaint, including documents appended to a notice of removal or a motion to remand that convey information essential to the court's analysis…" *Romano v. Kazacos*, 609 F.3d 512, 520, 520 n.4 (2d Cir. 2010) (emphasis added); *see also Scott v. Greiner*, 858 F. Supp. 607, 609 n.1 (S.D. W. Va. 1994) (noting that a district court may look beyond the complaint to determine whether an essential federal question exists to preclude remand).

In the September Order, the court found that Peake had not alleged that SMC "does business in the state" as defined by § 15-9-245(a) and, therefore, Peake failed to show that SMC was properly served as to require its consent to removal.

Following this ruling, Peake filed the pending Motion for Reconsideration. After reviewing the true nature of the entire record more closely, the court **FINDS** that the even though Peake did not establish that SMC "does business in the state" in his Complaint or in his Motion to Remand,[3] Peake's later submitted evidence in his Reply brief and in his June 18, 2019

[3] In his Motion to Remand, without further evidence, Peake stated, "Defendant SMC is an unauthorized foreign corporation **doing business within the state of South Carolina**" (ECF No. 16-1 at 4.), but he never alleges this in his Complaint. In support of his statement, he cites to

Addendum does establish that SMC "does business in the state" as defined by § 15-9-245(a). Specifically, the exhibits show that (1) there are at least nine dealerships selling SMAI ATVs and motorcycles within the boundaries of South Carolina, (2) SMAI is a subsidiary of SMC that acts as a distributor of SMC products nationwide in the United States, and (3) SMAI is a registered corporation with the South Carolina Secretary of State. (ECF No. 27-1 at 7-12; ECF No. 27-2; ECF No. 27-3). The court considers this evidence because the key issue in his motion revolves around whether SMC is a "properly joined and served" party and that determination

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portions of his Amended Complaint. Specifically, Peake cites to ECF No. 11 pp.1-2 ¶¶ 5,8, which states the following:

> ¶5:
> The plaintiff's injuries were proximally caused by the following acts of negligence and recklessness by the defendants:
> a) In designing and manufacturing a defective steering column;
> b) In manufacturing a steering column with defective and improper materials;
> c) In failing to warn;
> d) In failing to instruct;
> …
> ¶ 8:
> The sale of the defective and unreasonably dangerous four-wheeler, manufactured and sold by the defendants, breached implied warranties. The defendants are in the business of selling four wheelers.

Neither of these allegations support the conclusion that SMC "does business in the state", which is necessary for the court to determine whether SMC's consent was required at the time of removal. Despite Peake's belief that he alleged that SMC was conducting business in the state by virtue of his reference to S.C. Code Ann. § 36-2-803 in paragraph one of his complaint (ECF No. 54 at 4.), he failed to make that allegation. Specifically, Peake argues that because § 36-2-803 imposes jurisdiction on foreign corporate defendants transacting business in the state, the court was required to assume that the statutory reference should be construed as an allegation or fact that SMC does business in the state. However, Peake is mistaken. Peake has already explained why he referenced § 36-2-803 in his Complaint and it was not to allege that SMC does business in the state. Indeed, in his Motion to Remand, Peake states that "defendants were subject to the court's jurisdiction pursuant to S.C. Code Ann. §§ 36-2-802 and 36-2-803 and "venue was proper in Fairfield County **because the most substantial part of the cause of action occurred in Fairfield County."** (ECF No. 16-1 at 2.) (Emphasis added.) In other words, Peake admittedly referenced the jurisdictional statute to establish the *location* where the incident occurred, not to allege that SMC does business in the state.

turns on whether SMC sells its products in South Carolina through SMAI. Because a thorough examination of the record shows that SMC is doing business in South Carolina through a subsidiary, the court **FINDS** that SMC was properly served through the Secretary of State. As such, SMC's consent to removal was required. SMAI does not deny that SMC did not provide consent to removal. Therefore, remand is proper. This case admittedly presents a close question of removal, but the fact that any doubt should be construed against removal is dispositive. *See Scott v. Greiner*, 858 F. Supp. 607, 610 (S.D. W. Va. 1994) ("Any doubts concerning the propriety of removal must be resolved in favor of state jurisdiction.").

IV. CONCLUSION

Accordingly, the court **GRANTS** Peak's Motion for Reconsideration (ECF No. 54) and **REMANDS** the case to the Fairfield County Court of Common Pleas. Further, all other pending motions are **DENIED AS MOOT**.

IT IS FURTHER ORDERED that the district court clerk is hereby directed to send the Order to the Fairfield County Court of Common Pleas and provide copies to counsel.

IT IS SO ORDERED.

October 7, 2019
Columbia, SC

United States District Judge

EXHIBIT 3

STATE OF SOUTH CAROLINA COUNTY OF JASPER Linda K. Reker, Individually and as Power of Attorney for James W. Reker, Plaintiff, v. General Motors LLC, Mike Reichenbach Chevrolet, Inc., BMW of North America, LLC, BMW Manufacturing Co., LLC, and Bayerische Motoren Werke AG, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2022-CP-27-00008 **Plaintiff's Affidavit of Compliance with S.C. Code §15-9-245**

Upon penalty of perjury, I, Derek D. Tarver, having first been duly sworn, deposed and say that the following is true and correct:

1. I am over the 18 and have personal knowledge and facts set forth in this Affidavit. I am a citizen of the State of South Carolina and am competent to swear to the matters set forth below and do so of my own free will.

2. On December 9, 2024, Plaintiff's counsel had served the South Carolina Secretary of State, as statutory agent for service of process for Bayerische Motoren Werke AG (BMW AG) pursuant to code S.C. Code § 15-9-245, two copies of the Second Amended Summons and Complaint via Certified U.S. Mail, along with a service cover letter and check for the service fee. Ex. 1, Pl. Cover Letter and Second Amended Summons and Complaint.

3. On December 13, 2024, Plaintiff's service letter, the two copies of the Second Amended Summons and Complaint, and check for the service fee were served upon the South Carolina Secretary of State as statutory agent for service of process of BMW AG, through U.S. certified mail. Ex. 2- U.S. Certified Mail Receipt. The U.S. Postal Service return to Plaintiff a complete receipt hereto as Exhibit 2, which serves as official proof of delivery of Plaintiff's service letter, the two copies of the Second Amended Summons and Complaint, and service fee check on the South Carolina Secretary of State as BMW AG's statuary agent for service of process, as required by S.C. Code § 15-9-245(c).

4. On December 16, 2024, the South Carolina Secretary of State sent BMW AG a letter: (1) advising BMW AG that on December 13, 2024 the Secretary of State had accepted service of the Second Amended Summons and Complaint as BMW AG's statutory agent for service of process pursuant to S.C. Code § 15-9-245; and (ii) forwarding an enclosed copy

of the Second Amended Summons and Complaint to BMW AG through First-Class International Registered Mail at Petuelring 130, Munich, Bavaria 80809, Germany. *See* Ex. 3, S.C. Secretary of State Proof of Delivery.

5. On January 3, 2025, the South Carolina Secretary of State sent Plaintiff the same correspondence referenced in Paragraph 4 of this Affidavit and attached hereto as Exhibit 3, which serves as further official proof of delivery of the Second Amended Summons and Complaint, as required by S.C. Code § 15-9-245(c).

6. This Affidavit of compliance is offered as proof of compliance with requirements of S.C. Code § 15-9-245.

7. I declare under penalty of perjury, under the laws of the State of South Carolina, that the above is true and correct.

AS TO ANYTHING FURTHER, THE AFFIANT SAITH NOT

Derek D. Tarver

Sworn to before me this
10 of 1 2025

Notary Public in South Carolina
My Commission Expires 11.4.30

ADRIENNE E. RIZER
NOTARY PUBLIC
MY COMMISSION EXPIRES 11/4/2030
SOUTH CAROLINA

EXHIBIT 4

December 9, 2024

SC Secretary of State's Office
Attn: Service of Process
1205 Pendleton Street, Suite 525
Columbia, SC 29201

Re: Linda Reker, Individually and as Power of Attorney for James W. Reker v. General Motors, LLC, et al
C.A. #: 2022-CP-27-00008

To Whom It May Concern,

Enclosed please find two copies of the filed second amended summons and complaint of the above captioned action and a $10.00 check for service of the amended summons and complaint on Bayerische Motoren Werke AG. Please serve the complaint on the entity and address listed below.

Bayerische Motoren Werke AG
Petuelring 130, 80809 Munich
Germany

Please forward our office a copy of the letter of service and International Evidence Return Receipt.

With kind regards, I am

Sincerely,

s/Adrienne Rizer
Adrienne Rizer
Paralegal to Ronnie L. Crosby
and Derek. D. Tarver

/ar
Enclosures

DEREK D. TARVER | DTARVER@PARKERLAWGROUPSC.COM | DIRECT: 803-903-1872 | OFFICE: 803-903-1781
101 MULBERRY ST. E, PO BOX 487, HAMPTON, SC 29924 | WWW.PARKERLAWGROUPSC.COM
PARALEGAL: ADRIENNE RIZER | ARIZER@PARKERLAWGROUPSC.COM

EXHIBIT
5

State of South Carolina
Office of the Secretary of State
The Honorable Mark Hammond

1205 PENDLETON STREET, SUITE 525
COLUMBIA, SC 29201

803-734-2170
sos.sc.gov

December 16, 2024

INTERNATIONAL REGISTERED MAIL
RETURN RECEIPT REQUESTED

Bayerische Motoren Werke AG
Petuelring 130
Munich, Bavaria 80809
Germany

RE: Bayerische Motoren Werke AG, 2022-CP-27-00008

Dear Madam/Sir:

In accordance with South Carolina Code § 15-9-245, we are enclosing herewith a copy of the Second Amended Summons; and Second Amended Complaint in the above-entitled case. Service was accepted on December 13, 2024 and a copy has been duly filed in our office as of this date. The fee of $10.00 has been paid.

Yours very truly,

Allyson Green

Allyson Green
South Carolina Secretary of State's Office

Enclosures

cc: Parker Law Group, LLP
Adrienne Rizer for Derek D. Tarver
101 Mulberry St. E, P.O. Box 487
Hampton, SC 29924

EXHIBIT D

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Jasper
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP2700008

Linda K. Reker, As Spouse And Poa For James K. Reker
PLAINTIFF(S)

General Motors, Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

This matter came before the Court upon Defendant Bayerische Motoren Werke AG's ("BMW AG") Rule 12(b)(4) and 12(b)(5) Motion to Dismiss Plaintiff's Second Amended Complaint. After careful consideration, BMW AG's Motion to Dismiss is respectfully denied. The Court finds that the service was proper under S.C. Code Section 15-9-245(a) and adopts the reasoning for such from Peake v. Suzuki Motor Corp., 2019 WL 5691632 at *5 (D.S.C. Nov. 4, 2019).

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/07/2025 .

Doyet A. Early, III
Bayerische Motoren Werke AG (BMW AG)

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

Jasper Common Pleas

Case Caption: Linda K. Reker, As Spouse And Poa For James K. Reker VS General Motors, Llc , defendant, et al

Case Number: 2022CP2700008

Type: Order/Electronic Form 4

So Ordered

s/ Robert Bonds, 2770

EXHIBIT
E

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Robert Bonds, Circuit Judge

Case No. 2022-CP-27-00008

BMW of North America, LLC, et al.,

Appellant

v.

Linda K. Reker, etc.,

Respondent.

NOTICE OF APPEAL

Bayerische Motoren Werke AG appeals the order of the Honorable Robert Bonds filed April 7, 2025, denying its motion to dismiss Plaintiff's Second Amended Complaint under Rule 12(b)(4) and 12(b)(5). Appellant received notice of this Order on April 7, 2025.

Respectfully submitted,

BOWMAN AND BROOKE LLP

By: *Patrick J. Cleary*
Patrick J. Cleary (SC Bar No.: 80808)
Patrick.Cleary@bowmanandbrooke.com
1441 Main Street, Suite 1200
Columbia, South Carolina 29201
Telephone: (803) 726-7420
Facsimile: (803) 726-7421

Attorney for Bayerische Motoren Werke AG

April 29, 2025
Columbia, South Carolina

OTHER COUNSEL OF RECORD		
Ronnie L. Crosby Daniel E. Henderson Derek D. Tarver Parker Law Group, LLP P.O. Box 487 Hampton, SC 29924 Telephone : 803-903-1781 rcrosby@parkerlawgroupsc.com dhenderson@parkerlawgroupsc.com dtarver@parkerlawgroupsc.com **ATTORNEYS FOR PLAINTIFF**		Lee Anne Walters WALTERS LAW FIRM LLC 36 Professional Village Circle Beaufort, South Carolina 29907 Telephone: 843-379-0973 *leeanne@walterslawsc.com* J. Chandler Bailey (*pro hac vice*) Rachel M. Lary (*pro hac vice*) M. Wesley Smithart (*pro hac vice*) LIGHTFOOT, FRANKLIN & WHITE, L.L.C. The Clark Building 400 North 20th Street Birmingham, Alabama 35203-3200 Telephone: 205-581-0700 *cbailey@lightfootlaw.com* *rlary@lightfootlaw.com* *wsmithart@lightfootlaw.com* **ATTORNEYS FOR GENERAL MOTORS, LLC & MIKE REICHENBACH CHEVROLET, INC**

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Robert Bonds, Circuit Judge

Case No. 2022-CP-27-00008

BMW of North America, LLC, et al.,

Appellant

v.

Linda K. Reker, etc.,

Respondent.

PROOF OF SERVICE

I, the undersigned of Bowman and Brooke LLP, attorneys for Defendants BMW of North America, LLC and BMW Manufacturing Co., LLC, do hereby certify that, on this 29th day of April 2025, a copy of this ***Notice of Appeal*** was served via electronic mail and United States First Class Mail, postage pre-paid, as follows:

Ronnie L. Crosby
Daniel E. Henderson
Derek D. Tarver
Parker Law Group, LLP
P.O. Box 487
Hampton, SC 29924
Telephone : 803-903-1781
rcrosby@parkerlawgroupsc.com
dhenderson@parkerlawgroupsc.com
dtarver@parkerlawgroupsc.com

Lee Anne Walters
WALTERS LAW FIRM LLC
36 Professional Village Circle
Beaufort, South Carolina 29907
Telephone: 843-379-0973
leeanne@walterslawsc.com

J. Chandler Bailey (*pro hac vice*)
Rachel M. Lary (*pro hac vice*)
M. Wesley Smithart (*pro hac vice*)
LIGHTFOOT, FRANKLIN & WHITE, L.L.C.
The Clark Building
400 North 20th Street
Birmingham, Alabama 35203-3200
Telephone: 205-581-0700
cbailey@lightfootlaw.com
rlary@lightfootlaw.com
wsmithart@lightfootlaw.com

Honorable Keith Horton
Jasper County Clerk of Court
265 Russell Street
Ridgeland, SC
Telephone: 843-726-7710

BOWMAN AND BROOKE LLP

By: *Patrick J. Cleary*
Patrick J. Cleary (SC Bar No.: 80808)
Patrick.Cleary@bowmanandbrooke.com
1441 Main Street, Suite 1200
Columbia, South Carolina 29201
Telephone: (803) 726-7420
Facsimile: (803) 726-7421

Attorney for Bayerische Motoren Werke AG

April 29, 2025
Columbia, South Carolina

APS International, Ltd.

APS International Plaza • 7800 Glenroy Rd.
Minneapolis, MN 55439-3122

(952) 831-7776
Fax (952) 831-8150
Toll Free (800) 328-7171

www.CivilActionGroup.com

EXHIBIT
F

March 26, 2025

PARKER LAW GROUP
Ms. Adrienne Rizer
PO Box 487
Hampton, SC 29924

APS File #:	286488-0001
Case Name:	Reker v General Motors LLC
Defendant:	Bayerische Motoren Werke AG
Country:	Germany

Dear Ms. Rizer:

Enclosed please find the translations of your pleadings with respect to the above entitled action. Your documents are presently abroad for service. As soon as we learn of service being perfected, we will contact your office.

Remember: APS can handle all your translation needs. APS routinely translates business manuals, correspondence, evidentiary responses, etc. to and from English for our law firm, insurance and corporate clients. Call us for a quote, or email Trans@CivilActionGroup.com.

Thank you for using APS International.

Sincerely,

Glenda Fichtner

Glenda Fichtner
International Division
GEF@CivilActionGroup.com

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Robert J. Bonds, Circuit Court Judge

Appellate Case No. 2025-000840

Linda K. Reker, Individually and as Power of Attorney for James W. Reker,.....Respondent,

v.

General Motors, LLC, Mike Reichenbach Chevrolet, Inc., BMW of North America, LLC, BMW Manufacturing Co., LLC, and Bayerische Motoren Werke AG, ... Defendants,

of which Bayerische Motoren Werke AG is the .....Appellant.

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing Notice of Appearance and Respondent's Motion to Dismiss has been served upon the following counsel of record by emailing a copy of the same, this 6th day of May 2024.

Lee Anne Walters
WALTERS LAW FIRM LLC
36 Professional Village Circle
Beaufort, South Carolina 29907
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leeanne@walterslawsc.com

J. Chandler Bailey (pro hac vice)
Rachel M. Lary (pro hac vice)
M. Wesley Smithart (pro hac vice)
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ATTORNEYS FOR APPELLANTS

By:_____

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Hampton, SC 29924
Phone: (803) 943-2111
jayparker@parkerlawgroupsc.com

ATTORNEYS FOR RESPONDENT