

STATE OF SOUTH CAROLINA

COUNTY OF EDGEFIELD

Barry Lanham and Obvia Gamble-Lanham,

Plaintiffs,

vs.

Wumag Texroll GmbH & Co. KG f/k/a  
Kelzenberg + Co: GmbH & Co. KG and  
Wumag Texroll GmbH & Co. KG,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2021-CP-19-00005

**DECLARATION OF DR. NILS  
DERKSEN**

**RECEIVED**

**Feb 23 2026**

**SC Court of Appeals**

COMES NOW, Dr. Nils Derksen, who deposes and states as follows:

1. My name is Dr. Nils Derksen, and I am over the age of eighteen (18) years and am competent to give sworn testimony. I have personal knowledge of the matters set forth in this declaration. I offer this declaration in support of Wumag Texroll GmbH & Co. KG's f/k/a Kelzenberg + Co: GmbH & Co. KG ("Kelzenberg-Wumag") Motion for Summary Judgment in the above-referenced matter.

2. I am an attorney with Loschelder Rechtsanwälte Partnerschaftsgesellschaft mbB in Cologne, Germany.

3. I have been a licensed attorney since 2014. As part of my practice, I advise and represent clients in the area of German insolvency law.

4. On September 1, 2019, insolvency proceedings concerning the assets of Wumag Texroll GmbH & Co. KG ("Wumag") commenced in the district court of Krefeld, Germany. Dr. Peter Minuth was appointed as insolvency administrator.

5. On or around September 18, 2019, Kelzenberg + Co: GmbH & Co. KG ("Kelzenberg-Wumag"), entered into an asset purchase agreement to purchase the assets of Wumag out of the opened insolvency proceeding (the "Asset Purchase Agreement").

6. Pursuant to the Asset Purchase Agreement, Kelzenberg-Wumag purchased certain assets of Wumag, including, inter alia, machinery, equipment, software licenses. Ownership of the purchased assets was transferred from Wumag to Kelzenberg-Wumag on October 1, 2019. After the asset purchase, Kelzenberg-Wumag adopted the "Wumag Texroll GmbH & Co. KG" name.

7. Under German law, an agreement to purchase assets out of an opened insolvency proceeding generally does not provide for the assumption of liabilities.

8. Kelzenberg-Wumag did not assume Wumag's liabilities pursuant to the Asset Purchase Agreement.

9. Section 25 (1) of the German Commercial Code (*Handelsgesetzbuch - HGB*) provides that: Anyone who continues a commercial business acquired inter vivos under the previous company name, with or without the addition of an addendum indicating the succession relationship, is liable for all liabilities of the previous owner arising from the operation of the business. The claims against the debtors arising from the business shall be deemed to have been transferred to the acquirer if the previous owner or his heirs have consented to the continuation of the business.

10. However, Section 25 (1) of the German Commercial Code does not apply to the acquisition of assets from the insolvency administrator out of an opened insolvency proceeding.

According to the case law of the German Federal Court of Justice (*Bundesgerichtshof – BGH*) and the general opinion in the legal literature, Section 25 is not applicable to the acquisition of a company from the insolvency administrator out of an opened insolvency proceeding. The German Federal Court of Justice argues in its decision of April 11, 1988 that the insolvency administrator's task of selling the company as a whole in the interest of the creditors should not be made more difficult by a possible liability of the purchaser for the debts of the previous company owner.

*„Aufgabe des Konkursverwalters ist es, die Vermögensgegenstände des Gemeinschuldners zu verwerten und dabei im Interesse der Gläubiger den höchstmöglichen Erlös zwecks anschließender Verwertung zu erzielen. Mit dieser Aufgabe wäre es unvereinbar, wenn der Erwerber eines zur Masse gehörenden Unternehmens nach § 25 I HGB (...) haften müßte. Eine Veräußerung des Unternehmens mit sämtlichen Schulden, die zum Zusammenbruch des bisherigen Trägers geführt haben, wäre nur in den seltensten Fällen erreichbar. Der Konkursverwalter wäre deshalb in aller Regel darauf beschränkt, eine Verwertung des Schuldnervermögens durch Zerschlagung durchzuführen. Dies würde Sinn und Zweck des § 25 I HGB (...), der den Gläubiger begünstigen soll, widersprechen (...).“*

The bankruptcy administrator's [*which corresponds to the insolvency administrator in current law*] task is to realize the assets of the bankrupt and to achieve the highest possible proceeds in the interests of the creditors for the purpose of subsequent realization. It would be incompatible with this task if the purchaser of a company belonging to the estate were to be liable in accordance with Section 25 (1) HGB (...). A sale of the company with all the debts that led to the collapse of the previous owner would only be achievable in the rarest of cases. The bankruptcy trustee would therefore generally be limited to liquidating the debtor's assets by breaking them up. This would contradict the meaning and purpose of Section 25 (1) HGB (...) which is intended to benefit the creditor.

(German Federal Court of Justice, April 11, 1988 – II ZR 313/87, NJW 1988, 1912).

This case law was confirmed in further judgments of the German Federal Court of Justice: November 4, 1991 - II ZR 85/91, NJW 1992, 911; September 24, 2008 - VIII ZR 192/06, DStR 2009, 383; December 3, 2019 - II ZR 457/18, BeckRS 2019, 35515.

The German Federal Labor Court has also ruled:

*„Die Anwendung von § 25 I HGB auch im Falle des Erwerbs vom Insolvenzverwalter stünde im Widerspruch zu den bestimmenden Grundsätzen des Insolvenzverfahrens und der dem Insolvenzverwalter darin zugewiesenen Funktion. Die Veräußerung in der Insolvenz duldet wesensgemäß eine Schuldenhaftung des Erwerbers nach § 25 I HGB nicht (...). Aufgabe des Insolvenzverwalters ist es, die Vermögensgegenstände des Gemeinschuldners zu verwerten und dabei im Interesse der Insolvenzgläubiger den höchstmöglichen Erlös zwecks anschließender Verteilung zu erzielen. Mit dieser Aufgabe wäre es unvereinbar, wenn der Erwerber eines zur Masse gehörenden Unternehmens nach § 25 I HGB (...) haften müsste. Eine Veräußerung des Unternehmens mit sämtlichen Schulden, die zum Zusammenbruch geführt haben, wäre in den seltensten Fällen erreichbar. Die Unanwendbarkeit des § 25 I HGB auf Unternehmensveräußerungen durch den Konkursverwalter beruht, wie der BGH in seiner Entscheidung vom 11. 4. 1988 (BGHZ 104, 151 = NJW 1988, 1912) ausgeführt hat, maßgeblich auf dem Gesichtspunkt, dass die Aufgabe des Konkursverwalters, das Unternehmen im Interesse der Gläubiger an der schnellstmöglichen Verwertung der Masse im Ganzen zu veräußern, nicht durch eine mögliche Haftung des Erwerbers für die Schulden des bisherigen Unternehmensträgers erschwert werden soll.“*

The application of Section 25 (1) HGB also in the case of acquisition from the insolvency administrator would be contrary to the determining principles of the insolvency proceedings and the function assigned to the insolvency administrator therein. By its very nature, the sale in insolvency does not tolerate the acquirer's liability for debts in accordance with Section 25 (1) HGB (...). The task of the insolvency administrator is to realize the assets of the debtor-in-possession and to achieve the highest possible proceeds in the interests of the insolvency creditors for the purpose of subsequent distribution. It would be incompatible with this task if the acquirer of a company belonging to the estate were to be liable in accordance with Section 25 (1) HGB (...). A sale of the company with all the debts that led to its collapse would only be achievable in the rarest of cases. The inapplicability of Section 25 (1) HGB to company sales by the bankruptcy trustee is based, as the BGH stated in its decision of April 11, 1988 (BGHZ 104, 151 = NJW 1988, 1912), primarily on the aspect that the bankruptcy trustee's task of selling the company as a whole in the interest of the creditors in the fastest possible realization of the assets should not be made more difficult by a possible liability of the purchaser for the debts of the previous company owner.

(German Federal Labor Court, September 20, 2006 – 6 AZR 215/06, NJW 2007, 942)

11. Based on my review of the Asset Purchase Agreement and applicable German law, Kelzenberg-Wumag did not assume liability for the injuries claimed by the Plaintiffs in this case.

12. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

Date: July, 11 2025

A handwritten signature in blue ink that reads "N. Derksen". The signature is written in a cursive style with a large, stylized initial "N".

Dr. Nils Derksen