

I N D E X

(No witnesses were called.)

E X H I B I T S

(No exhibits were submitted.)

P R O C E E D I N G S

1
2 THE COURT: So the first case, we have a motion for
3 summary judgment on Barry Lanham vs. Wumag Texroll GMBH &
4 Company, formerly known as Kelzenberg & Company.

5 Gentlemen, Ms. Johnson may know y'all, she may not, so
6 please state your name and who you represent before you
7 start talking.

8 MR. OSBORNE: Your Honor, Rob Osborne on behalf of one
9 of the Defendants, Wumag Texroll, formerly known as
10 Kelzenberg Wumag. And I'll refer to my client as Kelzenberg
11 Wumag today in the hearing.

12 We've done a good bit of briefing here, Your Honor.
13 I've got some notebooks if that would be helpful to the
14 Court?

15 THE COURT: Sure.

16 MR. OSBORNE: I apologize, Your Honor, one notebook
17 felt kind of light and I think I forgot to put the
18 Plaintiff's opposition in there. That should go under Tab
19 1. I apologize.

20 THE COURT: Thank you.

21 All right, sir, I'm not trying to cut you short in any
22 way, I'm going to listen to everything you have to tell me,
23 but what I got out of the reading I did is that you're
24 saying your company took on assets without an agreement to
25 take on the liability and you were improperly served. Am I

1 correct?

2 MR. OSBORNE: That's correct. That's one argument.

3 THE COURT: Okay. And then that is the basis for you
4 asking for the case be dismissed. You've got a summary
5 judgment, but you had moved for a dismissal earlier and now,
6 you've done discovery and you're saying these are still
7 issues?

8 MR. OSBORNE: Yes, Your Honor. There's three bases for
9 our motion. One is insufficient service of process, which
10 you just referenced. Related to that is lack of personal
11 jurisdiction. And then beyond procedural grounds on the
12 merits, we think that the law is clear, there's no evidence
13 in the record that my client agreed or can be liable as a
14 successor entity. So those are the three bases for the
15 motion.

16 And I'll go through the first two relatively quickly,
17 Your Honor, because I do think that to a certain extent,
18 those are moot because once you get to the merits, it is
19 clear that my client cannot be liable as a successor.

20 THE COURT: Okay.

21 MR. OSBORNE: Provide a little bit of background. It
22 sounds like you've read this, but Mr. Lanham, the Plaintiff
23 in this case, one of the Plaintiffs in this case was injured
24 in 2018. His arm was caught in an industrial machine in
25 Trenton, South Carolina. He, unfortunately, lost his arm,

1 had to be amputated as a result of the accident.

2 For all intents and purposes, when the accident
3 happened in 2018, my client did not exist. In September of
4 2019, about 18 months after the accident, my client, which
5 is Kelzenberg & Company, a German company, bought the assets
6 of Wumag, who was the company that manufactured, sold,
7 designed the machine and installed it at the Bondex facility
8 here in Edgefield. That sale asset purchased was governed
9 through German insolvency proceedings, which is their
10 version of bankruptcy. And as part of that, it was an
11 asset-only deal. It did not assume any liabilities.

12 This suit was filed in January of 2021, almost three
13 years to the day after the accident occurred. At the time
14 that the suit was filed, my client did not do any business
15 whatsoever in South Carolina.

16 So, Your Honor, those are undisputed facts. Mr. Woods
17 represents a codefendant in the case, the other Wumag.
18 Originally when this case was brought, they were not a party
19 to the case. We defended the case and said this isn't us,
20 you need to sue the other company. There's an amended
21 complaint now where Wumag has been brought into the case.
22 They're defending the case. We understand that they have
23 insurance involved to a certain degree and they're here now.

24 We moved at the outset of the case again to dismiss on
25 insufficient service process and lack of personal

1 jurisdiction. Judge McLeod heard that motion almost three
2 years ago today. And he didn't deny the motion outright, he
3 denied it at that time and instructed the parties to go
4 conduct additional discovery to see if there was evidence to
5 support the argument that my client, Kelzenberg Wumag, did
6 business in South Carolina prior to being served such that
7 it could be subject to service under Section 15-9-245, which
8 is how we were served. After three years, there's no
9 additional evidence to support that argument.

10 One of the reasons I had the Plaintiff's memorandum in
11 opposition to the motion to dismiss that was filed three
12 years ago was to show you the evidence that they put forth
13 there is the exact same evidence as they put forth now in
14 terms of why we should be subject to service.

15 Again, if Judge McLeod found it was enough -- and one
16 of the things they argued is there are, and I will admit
17 this, my client has made shipments of machines through the
18 Port of Charleston since July of 2021. That was after it
19 served. That fact was the same when this motion was heard
20 previously by Judge McLeod. At that point, if Judge McLeod
21 thought that those contacts with South Carolina were
22 sufficient, he would have denied the motion outright. He
23 didn't do that. He said go conduct discovery and figure out
24 if there's anything that you can point to, Plaintiffs, that
25 took place before Wumag was served. And, again, there's no

1 evidence.

2 Again, going back to the argument on service, just to
3 clarify, we don't dispute that Section 15-9-245 is a proper
4 means of service and we don't think that the issue with the
5 Hague Convention is really before the Court. The issue is
6 whether or not my client did business in South Carolina such
7 that it would be served pursuant to that statute. Again,
8 the evidence is clear in that regard, Your Honor.

9 On that point, the failure to serve within 120 days of
10 the statute of limitations running is significant. At this
11 point, the case is time barred. Any attempt to try to
12 properly serve my client falls well outside that 120 days
13 and statute of limitations has run, Your Honor.

14 On the motion to dismiss for lack of personal
15 jurisdiction, again, it's similar in that the evidence is
16 undisputed that my client did not design, sell, manufacture,
17 install the machine. That took place before my client for
18 all intents and purposes existed. And in order to establish
19 personal jurisdiction, there has to be some connection to
20 the case and you have to have contacts with the State of
21 South Carolina.

22 Again, when this case was filed, which is the relevant
23 timeframe, and there are cases that we cited in our brief
24 that go straight to that point, my client, Kelzenberg Wumag,
25 had no contacts with South Carolina such that it could be

1 subject to personal jurisdiction here.

2 Again, same thing, in terms of additional evidence to
3 support this argument, in the now four years that this case
4 has been pending, there's nothing there to support that
5 there was any pre-suit connection with South Carolina that
6 my client had and any sales or shipments of unrelated
7 products into South Carolina after the filing of the
8 complaint are not relevant for personal jurisdiction.

9 Beyond that, Your Honor, on the merits of the case --
10 and, again, I think that the procedural grounds alone are
11 enough to dismiss the case. But when you look at it on the
12 merits, again, my client had nothing to do with the machine
13 that injured Mr. Lanham. Wumag now is here as a Defendant.
14 They are involved in the case and their Defendant, Mr.
15 Lanham's claims.

16 So there's no dispute there that we can't be in -- and
17 the complaint talks about how -- it references that Wumag
18 and Kelzenberg Wumag manufactured the machine. And I think
19 that shows the apparent confusion at the time the case was
20 filed about what was going on. That's no longer an issue
21 and it's clear from discovery that Wumag is the one -- they
22 admit they manufactured the machine. They sold it. They
23 designed it and they installed in. And that's part of the
24 interrogatory responses that are attached to our supporting
25 memorandum. You will see that Wumag admits all of that. So

1 the question becomes whether or not my client, Kelzenberg
2 Wumag, would be liable under a theory of successor
3 liability.

4 As an initial matter, South Carolina law applies to
5 this analysis, Your Honor. As part of the notebook I handed
6 up to you, I gave you the Nationwide Insurance case. And
7 that's a case that is very factually similar. It is
8 important for two points. First, that involved a sale of
9 assets that took place in the Ohio bankruptcy court. And
10 there was an injury in South Carolina. And the Court didn't
11 look to Ohio law to determine whether or not successor
12 liability applied, it applied South Carolina law.

13 Similarly, another similar case in successor liability
14 in South Carolina involved similar facts. There was a
15 bankruptcy asset purchase. And that's the Simmons vs. Mark
16 Lift Industries case. There, there was an asset purchased
17 out of California bankruptcy proceedings and an injury that
18 took place in South Carolina. Again, South Carolina Court
19 of Appeals in that case applied South Carolina law. It
20 didn't look to the jurisdiction where the asset purchase
21 took place. It looked to South Carolina law.

22 Again, that's the -- I'm going to butcher this, Your
23 Honor, but the Doctrine of Lex Loci Delicti. And that's
24 under traditional South Carolina law choice of law
25 principles, the substantive law governing the tort action is

1 determined by *lex loci delicti*, the law of the state in
2 which the injury occurred. And that's here in South
3 Carolina, Your Honor.

4 Briefly, Owen German law, which the Plaintiff's claim
5 applies. They point to one provision of the German code,
6 Section 25. According to Plaintiffs, under that code, when
7 a company acquires the assets of another company, they can
8 be liable for any pre-purchase liabilities. What's
9 important there is our research shows that provision does
10 not apply when there's an asset purchase out of German
11 insolvency proceedings, which is what took place here. I
12 did want to just mention that on the German law. Again,
13 it's our position that South Carolina law applies.

14 And when you look at South Carolina law, it's very
15 clear that for a successor to be liable, it has to fall
16 within one of four enumerated exceptions, and that's in the
17 Nationwide Insurance case. And what the exceptions are,
18 whether there was an agreement to assume the predecessor's
19 debts, the circumstances surrounding the transaction
20 indicate that consolidation or merger of the two
21 corporations, the successor is a mere continuation of the
22 predecessor or the transaction was fraudulently entered
23 into.

24 Plaintiffs have not specified which of these four
25 exceptions may apply. They just generally allege that

1 Kelzenberg Wumag is liable under the theory of successor in
2 liability. But when you look at it and you look at the
3 evidence, and I'll rely on our brief for this and not
4 belabor the point, but there's absolutely no evidence to
5 support any of these four exceptions.

6 Your Honor, again, I point to this Nationwide case,
7 Eagle Window and Door, it is pretty much directly on point
8 as to what we have here. There, there was an asset purchase
9 that took place. A parent company went bankrupt. There
10 was, again, an Ohio bankruptcy proceedings. This company's
11 assets were purchased out of that bankruptcy.

12 It continued on. There was a contribution action filed
13 by an insurer and the insurer argued that Eagle Window and
14 Door was a mere continuation of the prior company because it
15 retained a substantially similar name, produced the same
16 products in the same facility and benefited from Eagle and
17 Taylor's history, that was the prior company, by holding
18 itself out as a successor entity. That's exactly what the
19 Plaintiff's argued here.

20 The Supreme Court reversed the trial court and the
21 Court of Appeals and said that's not enough. And to show a
22 mere continuation, you have to show that they're the same
23 officers, directors and shareholders. You have to meet all
24 three of those things, not just one. Here, Plaintiffs can't
25 even prove one. There's no commonality of officers, no

1 commonality of directors and no commonality of shareholders.
2 So we think on clear South Carolina binding precedent, there
3 is no grounds to find that my client, Kelzenberg Wumag can
4 be liable as a successor.

5 Again, I think if you look at the briefs, and it sounds
6 like you have, there's a complete lack of evidence to show
7 any of the factors or exceptions may apply.

8 On those grounds, Your Honor, I'm happy to answer any
9 questions and would like the opportunity to reply to Mr.
10 Parker.

11 THE COURT: Certainly.

12 Before I get to Mr. Parker, what's your co-defendant's
13 position on this?

14 MR. WOODS: We take no position on this, Your Honor.
15 John Woods on behalf of co-defendant Wumag. Thank you.

16 THE COURT: Thank you. And you're representing the
17 original entity; is that correct?

18 MR. WOODS: We represent the pre-bankruptcy no default
19 entity.

20 THE COURT: What's the status of that entity?

21 MR. WOODS: It's a confusing status, Your Honor. It's
22 been in bankruptcy court. We're insolvent. We don't exist.
23 We are a nonexistent German company.

24 THE COURT: All right. Has it been dissolved then?

25 MR. WOODS: It has been dissolved.

1 THE COURT: Thank you, sir.

2 Yes, sir, Mr. Parker.

3 MR. PARKER: Thank you, Your Honor. I think a lot of
4 what Mr. Osborne argued to you now doesn't matter under our
5 theory of why there's personal jurisdiction and why service
6 is proper.

7 I want to apologize first. I got an orthodontic device
8 put in my mouth about two weeks ago and it makes it really
9 difficult for me to talk without lisping. So if I'm going
10 slow or my mouth gets dry, it gets messy. I'm trying to
11 enunciated as clearly as I can so you can understand what
12 I'm saying.

13 THE COURT: Thank you, sir.

14 MR. PARKER: But with the way that we allege the
15 complaint in this, there is no confusion. Originally, we
16 didn't know that there was a predecessor and a successor.
17 Part of the reason we didn't know that is because it's kept
18 the exact same name, the exact same logo. On its website,
19 it represents that it's been around for 70 years and it's
20 been selling these products for 50 years that it sells now.
21 But we did come to find out that there was a predecessor and
22 a successor.

23 When we amended our complaint, there's no confusion.
24 The reason that we treat them as if both of them
25 manufactured the machine that injured my client is because

1 under successor liability law, it treats both the
2 predecessor and the successor as the exact same entity.

3 And the reason why that's important for the arguments
4 that Ms. Osborne is making is because all of this
5 jurisdictional contacts that the predecessor made when it
6 sold the machine to the Bondex facility in Trenton, when it
7 came over here and did maintenance and service work, when it
8 maintained its continuous and ongoing relationship with the
9 Bondex facility, all of those contacts are imputed to Mr.
10 Osborne's client if it truly is a successor in liability.

11 And so what we're saying is it doesn't matter, it
12 doesn't matter that they never had a business relationship
13 in South Carolina before the filing and service of this
14 lawsuit. What matters is whether or not the previous
15 contacts are imputed to them for the purpose one, of a
16 service analysis, two, of the jurisdictional analysis.

17 THE COURT: Your successor in liability is the fact
18 that they continue representing themselves to the public as
19 the same company?

20 MR. PARKER: And that's correct if you're looking at it
21 under German law. So again, if we look at the case law, in
22 South Carolina -- and you have to look outside -- basically,
23 this case that Mr. Osborne handed up, the Eagle Window case
24 and there's another case called Simmons vs. Mark Lift, those
25 are successor liability cases. They're the big recent ones

1 in South Carolina. But they kind of don't really matter
2 because they don't look at the choice of law analysis that
3 should have come in those cases.

4 If you look at case law from federal jurisdictions, the
5 majority of state jurisdictions, what it says is you have to
6 rely on state forum law to determine whether or not there's
7 a successor.

8 THE COURT: You got a South Carolina case for your
9 choice of law argument? You just cited federal and other --

10 MR. PARKER: Those citations are what are in our brief.
11 But there is no South Carolina casing saying yes or no.

12 THE COURT: Okay.

13 MR. PARKER: It just hasn't come up.

14 THE COURT: Okay.

15 MR. PARKER: But when you apply the law of the forum
16 state, I mean, any time you have any sort of conflict of
17 laws, you first have to do the choice of law analysis. And
18 the conflict lies here, is that under South Carolina law,
19 Mr. Osborne is right, there is no successor liability, but
20 there's four exceptions for that rule, which are the mere
21 continuation exception, you know, whether or not it's a
22 merger, whether there's an expressed assumption of
23 liabilities and there's one more, I can't remember what it
24 is. And that's South Carolina law.

25 The two big cases, actually, the Supreme Court in this

1 case has indicated the issue of an additional exception,
2 which would be continuity of enterprise. We would probably
3 adopt that if we had the opportunity, but it's not properly
4 before us.

5 Well, if you look at German law, commercial code --
6 there's German commercial code, Section 25 of that is a
7 codification of what's called continuity of enterprise
8 doctrine, which means when a business goes and buys assets
9 of a former business and they use the exact same trademark
10 and the same logo and the same name and it keeps selling the
11 same products and they benefit from the good will of that
12 previous entity, they are taking the liabilities along with
13 that.

14 THE COURT: I want to make sure I understand your
15 argument there. So you're arguing first that German law
16 should be your choice of law as to the successor in
17 liability; is that right?

18 MR. PARKER: Yes, Your Honor.

19 THE COURT: But you're, also, arguing that South
20 Carolina should adopt this continuity in enterprise; is that
21 correct?

22 MR. PARKER: No, South Carolina -- my argument and what
23 I'm saying is there's two things that are occurring here.
24 Either there's a conflict between German law and South
25 Carolina law or there is not. It could be either because,

1 technically, the South Carolina Supreme Court has indicated
2 that given the opportunity, it would adopt this Section 25
3 -- not Section 25 of the German commercial code, but the
4 doctrine underlying that. This indicated it would do that.
5 It hasn't done that yet.

6 So really, there is a true conflict of law here in that
7 Germany has codified this theory that South Carolina hasn't
8 taken up yet. And when you look at the conflict of law
9 analysis, the first thing it says is if here's a true
10 conflict between two different places, then that's where we
11 get into this argument that Mr. Osborne is saying. Under
12 South Carolina common law, if it's a tort action, typically,
13 you apply the substantive tort law of the state where the
14 injury occurred.

15 But the analysis that we're doing with this has nothing
16 to do with our tort claim against them. This has to do with
17 contract law. Because whether or not his client and his
18 client have the successor/predecessor relationship, that's
19 not determined by South Carolina, that's determined by asset
20 purchase agreement that was entered in Germany pursuant to
21 German law. So what South Carolina says in that instance is
22 when you're looking at contract law, you apply the law of
23 the place where the contract was entered, which is Germany.

24 THE COURT: The Defendant is saying that their German
25 purchase was assets only pursuant to German law and not

1 liability. And you're saying that German law has a
2 continuity of enterprise issue that should come in for the
3 South Carolina contacts to get you your jurisdictional basis
4 as well as why there are tortious --

5 MR. PARKER: That's correct. Once you analyze, okay,
6 whose law applies to whether or not -- because the first
7 question you're trying to answer is Mr. Osborne's --

8 THE COURT: Under the continuity of enterprise, could
9 they not exclude liability contractually?

10 MR. PARKER: No, they cannot. That statute supercedes
11 any sort of contractual obligation. It's just like in the
12 United States. If we had something that made it against
13 public policy for parties to bargain for and agree to
14 amongst themselves in a contract, if there's a statute that
15 says that's against public policy, you can't do that, then,
16 of course, the statute overrides the contract. You can't
17 contract amongst yourselves and do something the legislators
18 say you can't do. So in Germany --

19 THE COURT: Well, I guess what I'm hinging on is
20 they're saying insolvency proceedings, so, basically, it
21 would be doing the court doing the sale and then you get an
22 asset on the purchase.

23 MR. PARKER: That's correct. This is a new argument
24 that wasn't part of our last motion, but I looked at it last
25 night. The decision that Mr. Osborne has cited, it's from

1 the German high court. I don't speak German, so I can't
2 pronounce that, but it was from December of 2019. And this
3 is all in footnote 8 of Mr. Osborne's memo. That decision
4 is from December of 2019. The asset purchase agreement was
5 executed in September of 2019, which would be three months
6 before that decision.

7 I don't speak German. I cannot pull up the German West
8 Law and tell you where the law is, but I did do a Google
9 search and will represent to you what I found last night,
10 which is the German commercial law is not retroactive. It
11 does not apply backwards to transactions that occurred
12 before that law was enacted or before the decision was
13 issued.

14 So our position on that is yes, I can't read the case,
15 but I can read online what it says the case says. If that
16 is accurate, then now, yes, if there is an asset purchase
17 agreement that is entered as part of an insolvency
18 proceeding in Germany, Section 25 of the German commercial
19 code does not apply. But our purchase agreement took place
20 three months before that decision came out.

21 THE COURT: Okay.

22 MR. PARKER: And if there is no retroactivity to that
23 transaction that occurred three months ahead of time, then
24 it doesn't get the protection of that decision, in which
25 case, Section 25 still applies. It says if you continue on

1 in the business on the exact same of the predecessor, then
2 regardless of what's in your contract, you assume their
3 liabilities along with their assets. Which in that case,
4 you are a true successor in liability and then under the
5 personal jurisdiction analysis, all of the predecessor's
6 contacts from the forum state are imputed to the successor.

7 And then when you get to that point, then you start
8 looking at -- we've submitted to the Court as part of our
9 memo in opposition an exhibit, it's got a history of 40 plus
10 shipments that have been done by these two entities in the
11 South Carolina Port of Charleston, a large number of which
12 are two distributors or entities in South Carolina,
13 especially in Spartanburg, but, also, they were the
14 predecessor's contacts and business relations specifically
15 with the Bondex facility here in Edgefield -- or Trenton.

16 And they haven't disputed personal jurisdiction, so the
17 question is whether or not their contacts are imputed onto
18 Mr. Osborne's client. We say that they are. Once you do
19 the entire choice of law analysis, these two cases, the one
20 I just handed up to you, the Eagle case and the Simmons
21 case, you know, I don't think they stand for the fact you
22 don't have to do the choice of law analysis or that South
23 Carolina law actually controls whether or not an
24 out-of-state or foreign corporation is a successor. I mean,
25 we all know corporate law is always dictated by the place

1 where a corporation is born or where they engaged in their
2 contracts.

3 I think in these cases, probably the Plaintiff just
4 didn't make the argument that under the choice of law
5 analysis that California law wouldn't apply. So I don't
6 know what we can take out of this. I don't think they stand
7 for the idea that South Carolina controls whether or not Mr.
8 Osborne's client is truly a successor in liability. We're
9 arguing that Germany law certainly controls that. And once
10 you make that decision, their contacts imputed, which means
11 for the purposes of Section 15-9-245, which is the
12 substitute service statute where we were allowed to service
13 the Secretary of State, they're considered as been doing
14 business.

15 THE COURT: Are you acknowledging that if South
16 Carolina applies, then there's an issue for you there?

17 MR. PARKER: Our argument would be that if South
18 Carolina law does apply, there is a conflict with German law
19 that South Carolina applies, that the Supreme Court has not
20 said no to the continuity of enterprise theory doctrine. In
21 fact it's indicated in the dicta we are inclined to endorse
22 this given the opportunity, but it's not properly before us
23 right now.

24 THE COURT: So that gives you an argument not being
25 here now?

1 MR. PARKER: That's correct. And it's the same
2 argument, it's they purchased all the assets, they're using
3 the same logo, they're using the same facilities, they're
4 using the same name. They're holding out to the world on
5 through their website, the English-speaking world that they
6 are the same company. That's, essentially, what the
7 continuity enterprise theory works off of.

8 And in the case that Mr. Osborne handed up, I don't
9 know if it's got the factors in this one, but I think either
10 in this one or the Simmons case that's referenced in here
11 what has actually happened. It's a three-element test. But
12 those are, essentially, what the elements are, what I just
13 described to you.

14 But our argument would be that if South Carolina law
15 does apply, the continuity of enterprise doctrine has not
16 been categorically ruled out as something the court would
17 endorse.

18 THE COURT: And there was an expression if South
19 Carolina applies, then -- are you saying whether the
20 successor in interest test is, essentially, not the
21 enterprise or no?

22 MR. PARKER: It's not under those four that are right
23 now cited, but it's within the dicta of this case that's in
24 the materials that are handed up.

25 THE COURT: Do you have any argument for getting into

1 the [indiscernible] tests?

2 MR. PARKER: No, no, we don't.

3 THE COURT: All right.

4 MR. PARKER: Again, under 15-9-245, the prior contacts
5 are imputed to his client. That would be considered doing
6 business in South Carolina for the purposes of not just
7 personal jurisdiction analysis, but, also, service.

8 And then just real quick argument, Mr. Osborne stated
9 we haven't complied with 15-9-245, subsection C. We didn't
10 go into a lot of depth about that, but if you looked at the
11 filings, we did file an affidavit of compliance, which is
12 what 15-9-245(c) requires. And then with that affidavit is
13 an official proof of delivery from the post office
14 demonstrating that the Secretary of State did successfully
15 transmit these documents to his client. So our argument is
16 that helps us conform with requirements of the statute.

17 So with that, Your Honor, I think that would address
18 giving you a good idea of where we're coming from, which is
19 it doesn't matter if they didn't manufacture the machine.
20 What matters is whether or not there actually is a successor
21 in liability under German law.

22 Thank you, Your Honor.

23 THE COURT: Thank you.

24 Yes, sir, do you have some reply?

25 MR. OSBORNE: Very briefly, Your Honor.

1 THE COURT: Well, talk to me about choice of law as to
2 --

3 MR. OSBORNE: Sure. Well, I guess on that point on
4 personal jurisdiction. If you look at Page 17 of the
5 Plaintiff's brief, this is a quote from their -- and their
6 argument as to the prior Wumag's contacts would be imputed
7 to my client. This is a quote from their brief. A great
8 way to persuasive authority permits, imputation of a
9 predecessor's actions upon a successor whenever forum law
10 would hold the successor liable for its predecessor's
11 action. So, again, that's a Fourth Circuit case that I
12 think clearly says the forum law, South Carolina applies.
13 That's on the point for imputation of contacts of personal
14 jurisdiction.

15 On the choice of law related to the asset purchase,
16 Your Honor, again, I think it's a moot point and I don't
17 contend to be a German lawyer. But the case that we cited
18 looked at whether or not a self-administered bankruptcy or
19 insolvency proceeding, would that same rule would apply for
20 Section 25 -- would not apply? And the German high court
21 said yes, we're going to base this on our prior precedent
22 that says when you have an insolvency proceeding and asset
23 purchase that comes out of that, then Section 25 does not
24 apply.

25 If it would be helpful for Your Honor, I can try to get

1 a translated copy of that case for you. We could try and
2 submit some additional information on German law --

3 THE COURT: No, I'm just going to Google, I'm good at
4 that sort of thing.

5 MR. OSBORNE: We can work on that. But, again, Your
6 Honor, I think the law is clear that South Carolina law
7 applies. The same situation came up in the Eagle Window and
8 Door case. It was a bankruptcy sale that took place in
9 Ohio. It wasn't Ohio law that applied. Same thing in the
10 Simmons case, the bankruptcy sale took place in California.
11 It wasn't California law that our appellate courts looked at
12 and applied. The Nationwide case, that's a Supreme Court
13 case. And it, also, goes against the lex loci delicti,
14 which says when you have a tort claim that you're going to
15 apply the law of the forum state. We think South Carolina
16 law clearly applies and we think it's clear that there's no
17 liability under any of those exceptions there.

18 Any other questions on that point, Your Honor?

19 THE COURT: No, sir.

20 MR. OSBORNE: Just very briefly, on Wumag's
21 involvement, there is insurance that's involved in the case.
22 I know that because my client made a claim against the
23 policy and we were told you're not a named insured under the
24 policy because you're a different entity. So we've been
25 proceeding without insurance throughout this time. There is

1 an insurance policy involved for the prior entity.

2 Your Honor, I think you've heard a lot from us. Again,
3 I think the briefing is fairly substantial. Certainly, if
4 the Court has any other questions, I'm happy to answer those
5 or if you feel like an additional briefing on these issues
6 is appropriate, be happy to do that as well. Thank you for
7 your time.

8 THE COURT: Thank you, gentlemen. I'll take this under
9 advisement and if I need that case translated, I'll let you
10 know.

11 MR. WOODS: Your Honor, to clarify one point that Mr.
12 Osborne made, when he says insurance is involved, I guess
13 that is technically correct. The insurance company that is
14 involved has not made a decision as to whether there is
15 insurance that applies to this case. We are a nonexistent
16 dissolved entity.

17 THE COURT: Thank you.

18 Y'all are welcome to submit anything else until the end
19 of the week.

20 MR. OSBORNE: Thank you.

21 MR. PARKER: Thank you, Your Honor.

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CERTIFICATE OF REPORTER

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4 STATE OF SOUTH CAROLINA)
5 COUNTY OF EDGEFIELD)
6

7 I, PENNY M. JOHNSON, Official Court Reporter for the
8 Second Judicial Circuit of the State of South Carolina, do
9 hereby certify that the foregoing is a true, accurate, and
10 complete Transcript of Record of the proceedings had and the
11 evidence introduced in the hearing of the captioned case,
12 relative to appeal, in the Court of Common Pleas for
13 Edgefield County, South Carolina, on the 7th day of July,
14 2025.

15 I do further certify that I am neither of kin, counsel,
16 nor interest to any party hereto.
17

18 December 9, 2025
19
20

21 Penny M. Johnson
22 Penny M. Johnson
23 Official Court Reporter
24
25