EXHIBIT
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| STATE OF SOUTH CAROLINA<br><br>COUNTY OF EDGEFIELD<br><br>Barry Lanham and Obvia Gamble-Lanham,<br><br>Plaintiffs,<br><br>v.<br><br>Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG and Wumag Texroll GmbH & Co. KG,<br><br>Defendants.<br><br>Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG,<br><br>Third-Party Plaintiff,<br><br>v.<br><br>Wumag Texroll GmbH & Co. KG,<br><br>Third-Party Defendant. | IN THE COURT OF COMMON PLEAS<br><br>CIVIL ACTION NO.: 2021-CP-19-00005<br><br>**MEMORANDUM IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT** |



Defendant Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co.:GmbH & Co. KG ("Wumag II") has moved the Court to dismiss this action for insufficient service of process and lack of personal jurisdiction. Wumag II, a German corporation, seeks to avoid the jurisdiction of the Court by contending that it was not amenable to service pursuant to S.C. Code Ann. § 15-9-245, South Carolina's substitute service statute for foreign corporations. Wumag II also purports that it is not the successor in liability to a previous entity, Wumag Texroll GmbH & Co. KG ("Wumag I"), with the exact same name and believes that it cannot be bound to defend its products

within South Carolina because of an alleged lack of contacts or business presence within this State. However, Wumag II's contentions ignore common law principles providing that when a successor corporation assumes the debts and liabilities of its predecessor, it also is imputed with the forum contacts of its predecessor such that Wumag II would be subject to the Court's personal jurisdiction and amendable to service under S.C. Code Ann. § 15-9-245 because the jurisdictional contacts of Wumag I are considered to be the jurisdictional contacts of Wumag II.

Additionally, Wumag II's arguments fly in the face of German corporate law providing that it is the successor-in-liability to Wumag I because it has carried on the business activities of its predecessor in the exact same business name. Wumag II also ignores the extensive contacts it, and its predecessor, have made within the State of South Carolina by shipping their products into South Carolina through in-state importers and distributors, who in turn disseminate the products to textile manufacturers throughout the state, and by establishing a continuous and ongoing relationship with an in-state customer, Bondex, Inc. Through this system, Wumag I and Wumag II's products find a home in South Carolina factories such as the Bondex facility in Trenton that is the locus of this action.

The truth of the matter is that a foreign corporation, through principles of successor liability, has committed a tortious act in South Carolina via the intentional and directed flow of its products, including the machine that is the subject of this action, into the United States as a whole and South Carolina specifically. Its conduct has now severely injured a South Carolina citizen, and it seeks to escape the

jurisdiction of our courts through what amounts to jurisdictional sleight-of-hand and corporate fiction. Wumag II's motion lacks merit and should be denied in its entirety.

## FACTS

Wumag II is a German corporation headquartered in Düren, Germany that designs, manufactures and sells products such as cylinder dryers for textile drying and textile calender machines. (Ex. 1, Wumag Texroll website). Wumag II imports its products into South Carolina through the Port of Charleston, from where they are distributed into South Carolina and the United States generally by a number of entities who have been registered with the South Carolina Secretary of State, continuing a practice began by its predecessor Wumag I.[1] Further, as has been alleged in Plaintiffs' Amended Complaint, agents and employees of Wumag I personally visited the Bondex facility in Trenton, South Carolina and performed installation and service work on the specific machinery which injured Plaintiff. (Am. Compl. ¶¶ 7-8).

The machine that is the subject of this action was designed and manufactured by Wumag I and is known as a heat-setter or laminating calender machine. (Ex. 3, Walmsley Dep. 11:8-13:6). Prior to the machine's delivery and installation, Wumag I worked with Bondex and its employees to design and manufacture a custom-made machine tailored to Bondex's needs. (*Id.* at 14:12-15:3). Bondex met with the sales director for Wumag I and discussed criteria such as temperature, speed, accessibility, and machine guarding. (*Id.* at 15:4-22, 18:6-18, 69:19-70:21). Communications with

[1] Exhibit 2, Spreadsheet of U.S. Customs Records for Wumag Texroll GmbH & Co. KG.

Wumag I concerning the machine continued after it was installed within the Bondex facility, and Wumag I sent technicians to South Carolina at least two or three times after the machine was installed. (*Id.* at 70:25-71:12, 77:21-78:6). Wumag I was fully aware that it had sold the subject machine to and engaged in a continuous and ongoing business relationship with a customer within South Carolina. (*Id.* at 78:7-12).

On January 22, 2018, Barry Lanham was cleaning the laminating calender machine at the Bondex facility in Trenton. (Ex. 4, Barry Lanham Dep. 75:1-76:17). While cleaning the machine, Lanham's left arm and hand were pulled between its rollers, causing permanent disfigurement, the loss of his limb, and tremendous pain, mental suffering, and anguish. (*Id.* at 81:10-83:17). Plaintiffs have alleged that the incident causing Lanham's injuries was due to the machine's lack of adequate guarding and warnings. (*Id.* at ¶¶ 11, 15-16, 21). On January 6, 2021, Lanham filed this products liability suit against Wumag II as the designer, manufacturer, distributor, and seller of the subject machine under theories of negligence, breach of implied warranties and strict liability. (*See generally* Am. Compl.). A cause of action for loss of consortium was also alleged by Lanham's wife, Obvia Gamble-Lanham. (*Id.* at ¶ 22).

Unbeknownst to Lanham, after his injuries but prior to his commencement of this action, Wumag I had become insolvent and its assets were sold to Wumag II. (Ex. 5, Hess Decl. ¶¶ 6-10). The asset sale occurred on September 18, 2019. (*Id.* at ¶ 8). At that time, Wumag II ceased doing business as Kelzenberg + Co: GmbH & Co. KG and

assumed the name of Wumag Texroll GmbH & Co. KG, continuing the same business as the former Wumag entity with an identical name and identical logo. (*Id.* at ¶ 13). Thus, Wumag II has continued Wumag I's business enterprise under the same name, selling the same products, as Wumag I did prior to the asset purchase. In fact, on its website, Wumag II currently boasts that it is over 70 years old and has over 55 years of experience in the design of some of its products. (Ex. 1, Wumag Texroll website).

## ARGUMENT

### I. Plaintiffs' service of the Summons and Complaint complied with South Carolina law and therefore constitutes valid service of process to confer jurisdiction to the Court.

#### A. Plaintiff's service on the Secretary of State was proper and not within the scope of the Hague Service Convention.

Wumag II argues that service on the Secretary of State was improper because Wumag II has no business presence in South Carolina, and that the proper means of serving Wumag II in this action is by complying with the requirements of the Hague Service Convention. Wumag II ignores that the requirements of the Hague Service Convention only apply when service of process has been effectuated abroad, and here service was completed in-state through a statutorily designated domestic agent. The South Carolina Rules of Civil Procedure state that a corporation may be served by delivering a copy of the summons and complaint to any "agent authorized by appointment or by law to receive service of process . . . ." Rule 4(d)(3), SCRCP. Wumag II was properly served through an agent authorized by statute with a copy of the Summons and Complaint under S.C. Code Ann. § 15-9-245(a), which states:

> 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.

S.C. Code Ann. § 15-9-245(a) (1976) (emphasis added).

The Supreme Court of South Carolina has held that a plaintiff's service of process on a foreign defendant under S.C. Code Ann. § 15-9-245 is effective, complete, and legally sufficient to charge the defendant with notice of the pending action once process is delivered in-state to the Secretary of State:

> In construing statutes similar to the one at hand, this Court has held that service is effected when the designated agent is served. Similarly, the United States District Court for the District of South Carolina has held that service under § 15-9-245 is effected upon delivering suit papers to the Secretary of State. This accords with the general rule that service upon an agent designated by law is permissible without any need to personally serve the defendant. 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. We hold that service pursuant to § 15-9-245 is effective upon delivery of the S & C to the Secretary of State.

*Holman v. Warwick Furnace Co.*, 318 S.C. 201, 204, 456 S.E.2d 894, 895-96 (1995). Service under S.C. Code section 15-9-245 is complete once the summons and complaint have been delivered to the Secretary of State. *Id.*; *Hammond v. Honda Motor Co.*, 128 F.R.D. 638, 642 (D.S.C. 1989).

On the other hand, the Hague Service Convention only applies when service has been effectuated abroad. The Convention is a multilateral treaty that was "intended to provide a simpler way to *serve process abroad* . . . ." *Volkswagenwerk*

*Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 698, 108 S. Ct. 2104, 2107 (1988) (emphasis added). "Article 1 defines the scope of the Convention, which is the subject of controversy in this case. It says: '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, 108 S. Ct. at 2108 (emphasis added) (quoting Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters, Nov. 15, 1965 (Hague Service Convention), [1969] 20 U.S.T. 361, 362, T.I.A.S. No. 6638).

The Court in *Schlunk* goes on to state 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.

*Schlunk*, 486 U.S. at 700, 108 S. Ct. at 2108 (citations omitted). The Court later explains that "service abroad" is to be solely defined according to the law of the state that is requesting service of process, i.e., the forum state:

> The Yugoslavian delegate offered a proposal to amend Article 1 to make explicit that service abroad is defined according to the law of the state that is requesting service of process . . . . The inference we draw from this history is that the Yugoslavian proposal was rejected because it was superfluous, not because it was inaccurate, and that "service abroad" has the same meaning in the final version of the Convention as it had in the preliminary draft.

*Id.* at 701-02, 108 S. Ct. at 2109. Ultimately, the Court found that "where service on a domestic agent is valid and complete under both state law and the Due Process Clause, our inquiry ends and the Convention has no further implications." *Id.* at 707, 108 S. Ct. at 2112. The Court proceeded to hold that the Hague Service Convention did not apply to the in-state service at issue in *Schlunk*, and that service was proper because the Illinois long-arm statute authorized the plaintiff to serve a statutorily designated domestic agent without having to serve the defendant abroad. *Id.* at 706, 108 S. Ct. at 2111.

Wumag II refuses to acknowledge that in *Holman* the Supreme Court of South Carolina explicitly held that service under S.C. Code Ann. § 15-9-245 is complete upon delivery to the South Carolina Secretary of State and is effectuated *in-state*, not abroad, because such an acknowledgement would be fatal to its argument that domestic service on the Secretary of State is within the scope of the Hague Service Convention, which only prescribes methods for service of process *abroad*. Here, the law of the state that is requesting service of process, South Carolina, designates the South Carolina Secretary of State as a domestic agent for in-state service on foreign corporations who are engaged in business activities within the State without a certificate of authority, rather than requiring service abroad: "Service of 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." S.C. Code Ann. § 15-9-245. Thus, the internal law of the forum state designates a domestic agent for service of process rather than requiring service

abroad. An important objective of the Convention was to provide the means to facilitate service of process abroad to foreign entities, as opposed to in-state service through a domestic agent. *Schlunk*, 486 U.S. at 698, 108 S. Ct. at 2107. S.C. Code Ann. § 15-9-245 provides the means for a party to facilitate service of process in an organized and efficient manner through a statutorily designated *in-state* agent.

Rule 4(d)(3), SCRCP, provides that service on a corporation may be had through an agent authorized by statute by mailing a copy of the summons and complaint to the defendant if the statute so requires. Additionally, *Schlunk* contained dicta stating that "[i]f 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, 108 S. Ct. at 2108. However, by its terms S.C. Code Ann. § 15-9-245(b) explicitly does not require the transmittal of the documents to the defendant *to effect service*. Although section 15-9-245(b) instructs the Secretary of State, as the statutorily designated agent for in-state service of process, to immediately forward one of the copies of the process to the foreign defendant, it does not require that the process be actually transmitted: the in-state service is still effective and complete even if the defendant refuses to accept delivery of the process. S.C. Code Ann. § 15-9-245(b-c) ("[T]he refusal to accept delivery of the certified mail or to sign the return receipt shall not affect the validity of the service . . . ."); *Holman*, 318 S.C. at 204-05 n.3, 456 S.E.2d at 896 n.3.

Essentially, the forwarding of one of the copies of the process to the foreign defendant is analogous to a registered agent handing the summons and complaint to

its principal. While it is a step that is taken following service, it is not part of the act of serving process. In any event, when the above statement from *Schlunk* is read within the context of the entire decision, it becomes clear that the Court was referring to the "transmittal of documents abroad" as a necessary step to effectuate service abroad, whereas in the present case the Secretary of State's forwarding of the process is simply a notice requirement that is performed *after* service has already been effected:

> [Defendant] explains that, as a practical matter, [statutorily designated in-state agent] was certain to transmit the complaint to Germany to notify [defendant] of the litigation. Indeed, as a legal matter, the Due Process Clause requires every method of service to provide "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." [Defendant] argues that, because of this notice requirement, every case involving service on a foreign national will present an "occasion to transmit a judicial . . . document for service abroad" within the meaning of Article 1 . . . . We reject this argument . . . . *The only transmittal to which the Convention applies is a transmittal abroad that is required as a necessary part of service*. And, contrary to [defendant's] assertion, the Due Process Clause does not require an official transmittal of documents abroad every time there is service on a foreign national.

*Schlunk*, 486 U.S. at 707, 108 S. Ct. at 2112 (citations omitted) (emphasis added).

This concept is echoed in other federal and state court decisions. Indeed, the United States District Court for the District of South Carolina has found that the service of process on the Secretary of State under S.C. Code Ann. § 15-9-245 makes unnecessary the application of the provisions of the Hague Service Convention. *Hammond v. Honda Motor Co., Ltd.*, 128 F.R.D. 638, 642 (D.S.C. 1989). "When service upon a domestic agent is valid and complete according to state law and the due

process clause, the Convention procedures are not invoked." *Id.* While the court could not conclude whether the plaintiff in *Hammond* had complied with the requirements of S.C. Code Ann. § 15-9-245, it nevertheless determined that service under the statute is valid and complete in-state, negating the application of the Hague Service Convention to service pursuant to the statute.

Under S.C. Code Ann. § 15-9-245 and in the present circumstances, service was never effectuated by certified mail sent abroad, because Wumag II had already been effectively served in-state before the Summons and Complaint were ever forwarded to Germany. The court in *Hammond* is not alone in concluding that complete service on a domestic agent precludes the application of the Hague Service Convention, regardless of whether the process is subsequently forwarded to the defendant by the agent. *See Melia v. Les Grands Chais de France*, 135 F.R.D. 28, (D.R.I. 1991) ("Although the statute requires the secretary of state to forward notice to the defendant corporation, other states with similar statutes have interpreted the statutes to mean that service is complete when the secretary is served . . . . Thus, because the statute does not require that *plaintiff* mail notice directly to the defendant *in addition* to the service on the secretary of state, service may be completed without the transmission of documents abroad and the Hague Convention does not apply."); *Lamb By and Through Donaldson v. Volkswagenwerk Aktiengesellschaft*, 104 F.R.D. 95, 97 (S.D. Fla. 1985) ("By its terms, The Hague Convention is applicable only to attempts to serve process in foreign countries . . . . There is nowhere among the provisions of The Hague Convention any indication that

it is to control attempts to serve process on foreign corporations or agents of foreign corporations within the State of origin."); *McHugh v. Int'l Components Corp.*, 461 N.Y.S.2d 166, 167-68 (1983) ("Marcon Japan's reliance on the 'Hague Convention' is misplaced. The purpose of that treaty, as is clearly set forth in its title and declarations, is for assuring sufficient notice when service is made in a foreign country. Here, service was made within the United States . . . ."). Furthermore, the District of South Carolina has recently affirmed the *Hammond* decision and found that the provisions of the Hague Service Convention do not apply to the domestic service of a foreign corporation through the Secretary of State under section 15-9-245:

> [T]he court "anticipates" that the South Carolina Supreme Court would rule in lock-step with its holding in *Holman* and determine that, under § 15-9-245, (1) service is complete at the moment a plaintiff delivers the summons and complaint to the Secretary of State and (2) service does not "require the transmission of judicial documents *abroad*" to effectuate service; therefore, (3) the Hague Convention does not apply.

*Peake v. Suzuki Motor Corp.*, Case No. 0:19-cv-00382-JMC, 2019 WL 5691632 at *8 (D.S.C. Nov. 4, 2019). Other South Carolina state courts have also found that service on the Secretary of State under circumstances nearly identical to those presented by this action is proper. (Ex. 6, Orders).

Wumag II is not authorized to conduct business in South Carolina.[2] However, Wumag II engages in business activity in South Carolina by shipping its products in interstate commerce through the Port of Charleston and distributing its products within South Carolina through presumably independent contractors. *See* discussion

[2] Exhibit 7, Business Name Search- Wumag Texroll GmbH & Co. KG, South Carolina Secretary of State Business Entities Online, https://businessfilings.sc.gov/BusinessFiling/Entity/Search (last visited June 3, 2022).

*infra* Sections II.B, II.C.1.a. These contractors include entities such as Zima Corporation and Morrison Textile Machinery, Inc. who have South Carolina places of business and are registered to do business with the South Carolina Secretary of State. (Ex. 8, Zima Corp. filing; Ex. 9, Morrison Textile Mach. Inc. filing).

In the light most favorable to the Plaintiff, since Wumag II injects its products into this State through a network of presumably independent dealers and is engaged in interstate commerce by designing, manufacturing, and shipping its products to and through South Carolina without a certificate of authority, Wumag II is engaged in business activities that require the Secretary of State to act as Wumag II's agent for service of process, even if Wumag II is not required to have a certificate of authority. *See* S.C. Code Ann. §§ 15-9-245 and 33-15-110. As demonstrated in Sections II.B and II.C.1.a, *infra*, Wumag II engages in interstate commerce within South Carolina by shipping through the Port of Charleston.

The Secretary of State accepted service on behalf of Wumag II on January 11, 2021.[3] It is important to note that service was performed in-state on a statutorily designated agent of Wumag II. Plaintiff's service of process upon the South Carolina Secretary of State clearly does not fall within the ambit of the Hague Service Convention, which specifically contemplates the service of process *abroad*. *Schlunk*, 486 U.S. at 700, 108 S. Ct. at 2108 (emphasis added). Here, substituted service was completed by in-state delivery of the Summons and Complaint to the Secretary of State. *See Holman*, 318 S.C. at 204, 456 S.E.2d at 895-96 ("[T]his Court has held that

[3] Exhibit 10, Service of Wumag Texroll GmbH & Co. KG South Carolina Secretary of State.

service is effected when the designated agent is served"). This clearly meets the requirements of the South Carolina Rules of Civil Procedure and South Carolina statutory law, specifically Rule 4, SCRCP and S.C. Code §§ 15-9-245 and 33-15-110, and therefore service was properly completed in-state and outside the scope of the Hague Service Convention.[4]

**B. Wumag II was previously doing business within South Carolina and amendable to service of process through the Secretary of State under S.C. Code Ann. § 15-9-245 at the time of service because the forum contacts of Wumag I are imputed to Wumag II.**

S.C. Code Ann. § 15-9-245 provides that "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 . . . ." Business activities for which authority need not be obtained under S.C. Code Ann. § 33-15-101 include "selling through independent contractors" and "transacting business in interstate commerce." Thus, a corporation that is not

[4] Wumag II has argued that Plaintiffs failed to comply with section 15-9-245(c) by not providing the Court with a return receipt documenting the Secretary of State's forwarding of the Summons and Complaint to Wumag II. It is Plaintiffs' position that the statute has been complied with: "[t]here 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*." Plaintiffs have filed with the Court an affidavit of compliance and an official proof of delivery in the form of a USPS Product Tracking and Reporting System receipt that demonstrates Wumag received the Summons and Complaint. (Ex. 11, Aff. of Compliance). And even if Plaintiffs had not provided such proof of delivery, it is Plaintiffs' position that such a failure would not invalidate service under South Carolina law, as Wumag II does not contest that it received notice of the proceedings. *See Patel v. Southern Brokers Ltd.*, 277 S.C. 490, 494, 289 S.E.2d 642, 645 (1982) ("This Court has consistently overruled technical objections to service of process where the defendant has not been denied due process.").

authorized to do business in this State is considered to have designated the Secretary of State as its in-state agent for service of process if it sells through independent contractors and transacts business in interstate commerce within this State.

Wumag II argues that it is not amenable to service under section 15-9-245 because the declaration of Michael Hess, managing director of Wumag II, supposedly sets forth that Wumag II had never done business in South Carolina prior to being served. As will be explained below, when scrutinized it becomes clear that the declaration does not in fact deny that Wumag II has done business within South Carolina, including prior to being served with this lawsuit, and customs data demonstrates that Wumag II is and has engaged in importing products into South Carolina. However, even if Wumag II had never established jurisdictional contacts with South Carolina, under successor liability law it would still be amenable to service under section 15-9-245 because the forum contacts of Wumag I are imputed to Wumag II for all purposes as the successor-in-liability of Wumag I.

Wumag II argues it is not the successor to Wumag I. German law determines whether Wumag II in its current form would be liable for the tortious conduct of Wumag I, which did business in South Carolina under an identical name as Wumag II. Under the law of the forum, South Carolina, the Court must conduct a choice of law analysis prior to determining successor liability, as a true conflict exists between the law of South Carolina and the law of Germany regarding successor liability. *Thornton v. Cessna Aircraft Co.*, 703 F. Supp. 1228, 1230 (D.S.C. 1988). Here, there is a true conflict of law because German law provides that a successor may be liable

for the torts of its predecessor if it continues a business under the exact same name as its predecessor, while South Carolina law provides that there must be a commonality of ownership and control for successor liability to be established. Handelsgesetzbuch [HGB] [Commercial Code], § 25, http://www.gesetze-im-internet.de/englisch_hgb/englisch_hgb.html#p0165 (Ger.); *Nationwide Mut. Ins. Co. v. Eagle Window & Door, Inc.*, 424 S.C. 256, 266, 818 S.E.2d 447, 453 (2018); *Bouchillon v. Same Deutz-Fahr Group*, Civil Action No. 1:14CV00135-DMB-DAS, 2016 WL 11299892 at *14 (N. D. Miss. Dec. 8, 2016).

South Carolina follows common law choice of law rules. *Witt v. Am. Trucking Assocs., Inc.*, 860 F. Supp. 295, 300 (D.S.C. 1994). With regards to contracts, South Carolina courts apply the substantive law of the place where the contract at issue was formed, *lex loci contractus*. *O'Briant v. Daniel Constr. Co.*, 279 S.C. 254, 256, 305 S.E.2d 241, 243 (1983). Wumag II has asserted that it acquired the assets of Wumag I through an asset purchase agreement that was created and executed in Germany and that the agreement does not include the transfer of liabilities from Wumag I to Wumag II. Thus, the pertinent issue concerns an agreement entered in Germany, and whether it included the transfer of liabilities at the time of execution, and German law applies.

Section 25 of the German Commercial Code provides a form of successor liability if an entity "carries on a commercial business acquired *inter vivos* under the previous business name, *with or without* an addition indicating successorship." Handelsgesetzbuch [HGB] [Commercial Code], § 25 (emphasis added). The acquirer

is "liable for all obligations of the former owner incurred in the operation of the business. Where the former owner or his heirs have consented to continuation of the business name, claims arising out of the operation of the business shall, with respect to debtors, be deemed to have devolved to the transferee."

An obligation is incurred within the meaning of section 25 of the German Commercial Code if the statutory prerequisites of a cause of action for damages pursuant to section 1 subsection 1 of the German Products Liability Act are met. *Bouchillon*, 2016 WL 11299892 at *14. Under section 1 subsection 1 of the GPLA, a cause of action for damages arises when a person is injured as a result of a defective product. *Id.* at *11. In this case, Lanham was injured on January 22, 2018, over a year and a half before Wumag II acquired Wumag I's assets. Therefore, an obligation or claim under German law existed at the time of the transfer, and since Wumag II continued Wumag I's business in its exact same name, liability for the claim transferred to Wumag II at the time of the asset purchase agreement.

"The great weight of persuasive authority permits imputation of a predecessor's actions upon its successor *whenever* forum law would hold the successor liable for its predecessor's actions." *Richmond v. Madison Mgmt. Grp., Inc.*, 918 F.2d 438, 454 (4th Cir. 1990) (quoting *Simmers v. Am. Cyanamid Corp.*, 394 Pa. Super. 464, 576 A.2d 376, 385 (Pa. Super. 1990)). Courts have

> consistently acknowledged that it is compatible with due process for a court to exercise personal jurisdiction over an individual or corporation that would not ordinarily be subject to personal jurisdiction in that court when the individual or corporation is an alter ego or successor of a corporation that would be subject to personal jurisdiction in that court. The theory underlying these cases is that, because the two corporations

> . . . are the *same entity*, the jurisdictional contacts of one *are* the jurisdictional contacts of the other . . . .

*Patin v. Thoroughbred Power Boats, Inc.*, 294 F.3d 640, 653 (5th Cir. 2002); *see e.g., Howard v. Everex Sys., Inc.*, 228 F.3d 1057, 1069 n.17 (9th Cir. 2000); *Minnesota Mining & Mfg. Co. v. Eco Chem Inc.*, 757 F.2d 1256, 1265 (Fed. Cir. 1985); *Duris v. Erato Shipping, Inc.*, 684 F.2d 352, 356 (6th Cir. 1982); *Marine Midland Bank, N.A. v. Miller*, 664 F.2d 899, 903 (2d Cir. 1981); *Lakota Girl Scout Council, Inc. v. Havey Fund-Raising Mgmt., Inc.*, 519 F.2d 634, 637-38 (8th Cir. 1975); *Huth v. Hillsboro Ins. Mgmt., Inc.*, 72 F. Supp. 2d 506, 510 (E.D. Pa. 1999); *Crawford Harbor Assoc. v. Blake Constr. Co.*, 661 F. Supp. 880, 883 (E.D. Va. 1987); *Explosives Corp. v. Garlam Enters. Corp.*, 615 F. Supp. 364, 367 (D.P.R. 1985); *Maryland Nat'l Bank v. Shaffer Stores Co.*, 240 F. Supp. 777, 780 (D. Md. 1965).

It is undisputed that Wumag I was doing business within South Carolina prior to the commencement of this action by entering a continuous, ongoing business relationship with Bondex, purposefully selling and sending a product into South Carolina, and subsequently sending its agents into South Carolina to perform maintenance and service on the subject machine. Additionally, as demonstrated within this Memorandum, within its current form Wumag II itself has continuing business contacts within South Carolina through its importation and distribution efforts. Because Wumag II and Wumag I were both doing business within the State of South Carolina through their importation, distribution, and sales efforts, and because Wumag I's contacts are imputed to Wumag II along with its liabilities, Wumag II was doing business in South Carolina by shipping its products through

interstate commerce and selling through independent contractors such that it would be amenable to service pursuant to section 15-9-245.

## II. Wumag II is subject to personal jurisdiction in South Carolina through the contacts with which Wumag II and Wumag I purposefully availed themselves of the privilege of conducting business activities within the State.

Wumag II's motion for summary judgment should be denied for the simple reason that this Court has specific personal jurisdiction over Wumag II. The Court has specific personal jurisdiction over Wumag II because: (1) as explained above, the jurisdictional contacts of Wumag I are imputed to Wumag II due to its status as successor-in-liability, (2) Wumag II has purposefully availed itself of the privilege of conducting business activities within South Carolina by serving the in-state market, both directly and indirectly, with its products, (3) Wumag II ships its products in interstate commerce through the Port of Charleston, and (4) Wumag II has deliberately and precisely chosen in-state importers and distributors to disseminate its products throughout the United States, including South Carolina.

### A. Wumag II is the successor-in-liability to Wumag I under German law, and Wumag I's contacts are imputed to Wumag II.

For the same reasons that Wumag II is amendable to substitute service under section 15-9-245, Wumag II is also deemed to have been imputed with the jurisdictional contacts of Wumag I. Imputation of Wumag's forum contacts upon Wumag II is permitted because under South Carolina choice of law principles and German successor liability law, Wumag II is liable for Wumag I's actions. "In evaluating whether this theory of personal jurisdiction applies, the court 'must construe all relevant pleading allegations in the light most favorable to the plaintiff,

assume credibility, and draw the most favorable inferences for the existence of jurisdiction.'" *Li Fen Yao v. Chen*, Civil Action No. TDC-23-0889, 2024 U.S. Dist. LEXIS 42834, at *15 (D. Md. March 11, 2024) (quoting *In re Celotex Corp.*, 124 F.3d 619, 628 (4th Cir. 1997)). Because Wumag II is the successor-in-liability to Wumag I, Wumag I's forum contacts in selling the subject machine, maintaining a continuous business relationship concerning the subject machine with Bondex, and sending its agents into South Carolina to inspect and service the subject machine are imputed to Wumag II and are sufficient to establish specific personal jurisdiction over Wumag II, even if Wumag II did not have its own jurisdictional contacts with South Carolina.

### B. The Court has jurisdiction over Wumag II pursuant to South Carolina's Long Arm Statute.

Under South Carolina precedent, courts may exercise personal jurisdiction over a foreign corporation when (1) such jurisdiction is authorized by the South Carolina long-arm statute; and (2) the nonresident's contacts in South Carolina are sufficient to satisfy due process requirements. *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 259, 423 S.E.2d 128, 130 (1992). South Carolina's long-arm statute allows South Carolina courts to establish personal jurisdiction over a foreign corporation as to a cause of action arising from the corporation's:

> (1) transacting any business in this State; (2) contracting to supply services or things in the State; (3) commission of a tortious act in whole or in part in this State; (4) *causing tortious injury or death in this State by an act or omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this State*; . . . (7) *entry into a contract to be performed in whole or in part by either party in this State*; or (8) *production, manufacture, or*

> *distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed.*

S.C. Code Ann. § 36-2-803 (emphasis added).

Wumag II would have the Court believe that it has no contacts with South Carolina that are "related to" the events giving rise to this cause of action. According to Wumag II, it has never registered with the South Carolina Secretary of State, it has never registered an agent for service of process with the South Carolina Secretary of State, does not have an office, manufacturing facility, or other place of business within South Carolina, nor does it employ any personnel based in South Carolina. (*See generally* Hess Decl.). However, these statements bear no significance on the statutory meaning of transacting business under section 36-2-803 as well as sections 15-9-245 and 33-15-101.

In other words, under South Carolina's expansive long-arm statute, a foreign corporation unauthorized to do business in the United States is considered to be doing or transacting business if it sells through an independent contractor or engages in a persistent course of conduct such as engaging in interstate commerce; this is the case even if that foreign corporation does not do so directly. It is irrelevant whether Wumag II transacts business itself or through an agent as defined by South Carolina's long-arm statutes. And a careful reading of the Declaration of Michael Hess, submitted by Wumag II in support of its previously denied motion to dismiss for lack of personal jurisdiction, reveals that Wumag II does not deny that it designs, tests, manufactures, markets, sells, imports, distributes, delivers, or installs laminating calender machines or other products within this State; rather, it simply

claims that it did not manufacture, sell, import, deliver, and install the particular machine at issue in this action. However, this raises an issue of successor liability, not specific personal jurisdiction. For the purposes of the long-arm statutes, by shipping its products in interstate commerce into the Port of Charleston and importing them for use within the State and the United States as a whole, Wumag II has submitted itself to the personal jurisdiction of this Court for all actions related to the distribution and sale of its products, including the products sold by its predecessor in liability.[5]

Wumag II's conduct satisfies several provisions of South Carolina's long-arm statute. Wumag II contracts with precisely chosen companies such as Zima Corp. and Morrison Textile Mach. Inc., which are registered with the South Carolina Secretary of State and have places of business within South Carolina, to supply Wumag-manufactured products to customers within the United States, including textile facilities such as Bondex in South Carolina. Wumag II imports its products through the Port of Charleston for such distribution. This is sufficient to support the conclusion that Wumag II has a reasonable expectation that its products will be used or consumed within South Carolina. Therefore, under South Carolina statutory law, Wumag II is subject to this Court's personal jurisdiction, so long as the jurisdiction

[5] As to personal jurisdiction, under principles of successor liability and United States Supreme Court precedent, Wumag I's contacts concerning the subject machine are imputed to Wumag II, and a causal relationship does not have to exist between Wumag II's own contacts and the subject machine in this cause of action, so long as there is some degree of relatedness. *See* discussion Section II.A, *supra*; Section II.C.1.a., *infra*.

comports with due process requirements. *See S. Plastics Co.*, 310 S.C. at 259, 423 S.E.2d at 130.

### C. Establishing personal jurisdiction over Wumag II due to its contacts (both personal and imputed) with the State of South Carolina does not offend traditional notions of fair play and substantial justice.

The appropriate question for the Court in considering a personal jurisdiction defense raised by a foreign defendant is whether that defendant has minimum contacts with South Carolina such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *State v. NV Sumatra Tobacco Trading*, 379 S.C. 81, 89, 666 S.E.2d 218, 222 (2008) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 105 S. Ct. 2174 (1985)). Personal jurisdiction may be established through specific jurisdiction or general jurisdiction. *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007). Plaintiff concedes that the Court likely does not have general personal jurisdiction over Wumag II.

#### 1. This Court has specific personal jurisdiction over Wumag II.

Specific jurisdiction over a defendant exists when an action arises from *or is related to* sufficient contacts by the defendant within the forum state. *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 492, 611 S.E.2d 505, 508 (2005). To determine whether specific jurisdiction exists, the Supreme Court of South Carolina has created a two-part test. The proper test asks courts to examine whether (1) the defendant has the requisite minimum contacts with the forum such that the court would have the "power" to adjudicate the action, and (2) whether the exercise of jurisdiction is

"reasonable" or "fair." *S. Plastics Co.*, 310 S.C. at 260, 423 S.E.2d at 131. Even a single act by a defendant can be sufficient to satisfy the necessary quality and nature of such minimal contacts, depending on the circumstances of its commission. *Int'l Shoe Co. v. State of Washington*, 326 U.S. 310, 317-18, 55 S. Ct. 154, 159 (1945); *Springmasters*, 303 S.C. at 533, 402 S.E.2d at 194. Physical presence in the State is not required to establish personal jurisdiction. *NV Sumatra*, 379 S.C. at 90, 666 S.E.2d at 222.

As noted above, Wumag I's contacts are imputed to Wumag II, and Wumag II imports its products directly into the Port of Charleston and contracts with distributors located in-state to supply its products within the United States generally and South Carolina specifically. Therefore, Wumag II should and could reasonably anticipate being haled into court in South Carolina. Additionally, fairness and justice require this dispute to be heard in South Carolina, as the overwhelming majority of evidence is here, the State has a substantial interest in adjudicating the dispute, and it is the only venue available to Plaintiff.

**a. Wumag II has purposefully availed itself of the privilege of conducting activities in South Carolina by importing its products for use in South Carolina, as well as by shipping its products through the Port of Charleston.**

The first step of the jurisdictional analysis asks whether the defendant has the requisite minimum contacts with the forum such that the court would have the "power" to adjudicate the action. *NV Sumatra*, 379 S.C. at 89, 666 S.E.2d at 222. The defendant must have sufficient minimum contacts to have purposefully availed itself of the privilege of conducting activities within the forum state, such that it could

reasonably anticipate being haled into court there. *Id.* When considering whether an entity has purposefully availed itself of the laws of the forum state, courts should ask whether the entity has a reasonable expectation that goods it has placed into the stream of commerce will be used in the forum state, making it reasonably foreseeable that the entity could be haled into court there. *Id.* This is the stream of commerce theory, and it is the law of South Carolina. *Id.* at 89 n.5, 666 S.E.2d at 222 n.5.

The stream of commerce theory was endorsed by a majority of the Supreme Court of the United States as well in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S. Ct. 559, 567 (1980) (stating that a court may exercise personal jurisdiction over "a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State."). Wumag II has asserted that the subject machine in this action was not sold by Wumag II and that it was sold by Wumag I. However, under German law, South Carolina law and federal precedent, each of these could be true and Wumag II would still be subject to the Court's jurisdiction because Wumag I's forum contacts in selling, importing, and servicing the subject machine are imputed to Wumag II. This would apply even if Wumag I and Wumag II's products were imported and distributed within South Carolina by an independent contractor.

In *NV Sumatra*, the State of South Carolina filed an action against defendant NV Sumatra Tobacco Trading Co., a cigarette manufacturer under the Tobacco Escrow Fund Act, for failing to make the escrow deposit and certification required by the Act for cigarettes that had been sold in South Carolina. *NV Sumatra*, 379 S.C. at

84, 666 S.E.2d at 219. The defendant moved to dismiss for lack of personal jurisdiction, claiming that it was an Indonesian corporation, that it did not directly sell its products in South Carolina, that it sold its products in Indonesia solely to an independent Singapore corporation for distribution outside of Indonesia, and that it did not have any contractual relationships requiring it to sell its cigarettes in South Carolina. *Id.* at 85-86, 666 S.E.2d at 220.

Additionally, the defendant was not registered to do business in South Carolina, had no office in South Carolina, and a representative of the defendant had never been in South Carolina. *Id.* at 90, 666 S.E.2d at 222. Despite this, the court found that the defendant

> [H]as minimum contacts with the United States as a whole and, via the stream of commerce theory, the State has shown Sumatra has minimum contacts with South Carolina . . . . Regardless of how the cigarettes arrived in South Carolina, minimum contacts are established by the above information. Sumatra's actions indicate that it purposely availed itself of conducting business in all 50 states, including South Carolina. It is troubling that Sumatra insists it could engage in the activities listed above but avoid paying into state escrow accounts and avoid suit in each and every state of the nation by asserting the lack of personal jurisdiction in each state. We find Sumatra should have reasonably anticipated that it would be haled into court in a state such as South Carolina.

*Id.* at 90, 666 S.E.2d 222-223.

In *World-Wide Volkswagen*, an automobile purchased by New York residents from a New York retailer was involved in an accident causing severe burn injuries to the purchasers and their children in Oklahoma during a cross-country move. *Id.* at 288, 100 S. Ct. at 562. The purchasers brought a products liability action against the vehicle manufacturer, importer, distributor, and retail dealer in Oklahoma alleging

defective design of the automobile's gas tank and fuel system. *Id.* The New York dealer and regional distributor contested the Oklahoma court's exercise of jurisdiction over them, claiming that it violated the Due Process Clause. *Id.*

The facts presented to the District Court showed that the dealer and distributor were fully independent of one another, did no business in Oklahoma, and did not ship or sell any products to or in Oklahoma. *Id.* at 289, 100 S. Ct. at 563. There was no showing that any automobile sold by the dealer or distributor had ever entered Oklahoma except the single vehicle involved in the accident. *Id.* In holding that the Oklahoma court's exercise of jurisdiction over the nonresident dealer and distributor was unconstitutional, the Court found that the dealer and distributor availed themselves of none of the privileges and benefits of Oklahoma law, and that jurisdiction had been based on a single, isolated, fortuitous occurrence. *Id.* at 296, 100 S. Ct. at 566. The Court then articulated a rule permitting a court to exercise personal jurisdiction when "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *Id.* at 297, 100 S. Ct. at 567 (citations omitted).

> *Hence if the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others.* The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.

*Id.* at 297-98, 100 S. Ct. at 567 (citation omitted) (emphasis added). Thus, while the Supreme Court found that the distributor and dealer were not subject to the Oklahoma court's jurisdiction, it found that these facts *would permit* Oklahoma to exercise jurisdiction over the manufacturer and importer. It is important to note that the *World-Wide Volkswagen* decision was reached by a *majority* of the Court and still has valid and controlling precedential value.

Furthermore, the Supreme Courts of the United States and South Carolina have unequivocally held that if the sale of a product of a manufacturer is not simply an isolated, fortuitous occurrence, but arises from the efforts of the manufacturer to serve indirectly the market for its product in South Carolina, it is not unreasonable to subject it to suit in South Carolina if its defective products cause an injury. Here, Wumag II manufactures and sells its products through in-state entities that it deliberately chose for distribution purposes.

Wumag II maintains that it has no contacts with South Carolina sufficient to bring it under the Court's jurisdiction; however, this is not the case. A preliminary search of U.S. Customs data shows that Wumag II has been the shipper of textile manufacturing products and parts to the Port of Charleston, South Carolina as recently as this year.[6] These shipments have originated from Germany on numerous occasions and list Wumag Texroll GmbH & Co. KG as the shipper, both prior to and after the asset purchase. Wumag II has been the shipper of imports consigned by companies with South Carolina addresses in Spartanburg, Trenton, and Fort Lawn.

[6] Exhibit 2, U.S. Customs Records for Wumag Texroll GmbH & Co. KG.

The majority of Wumag II's products enter the United States through the Port of Charleston. These activities constitute substantial evidence that Wumag II, both itself and through the imputed contacts of Wumag I, not only had a reasonable expectation that its products would end up in South Carolina, but that it did something more: it relied on South Carolina and the protection of its laws in utilizing a distribution network that would generate a considerable stream of income for itself.

Wumag II is likely to argue that it is not subject to specific personal jurisdiction in South Carolina because any contacts it has with South Carolina in importing and distributing its products through the Port of Charleston are not causally related to the sale and installation of the subject machine that injured Plaintiff. In other words, because Wumag II's ostensibly unrelated shipping and importing activities did not give rise to the sale of the subject machine and subsequent injuries, those contacts are not sufficient to establish specific personal jurisdiction over this action. Plaintiff has already demonstrated why the argument as to imputed contacts is erroneous. *See* discussion Section II.A, *infra*. As for the former argument, it has been unanimously rejected by the Supreme Court of the United States.

In *Ford Motor Co. v. Montana Eighth Judicial District Court*, 592 U.S. 351, 141 S. Ct. 1017, 209 L. Ed. 2d 225 (2021), Ford argued that it was not subject to specific personal jurisdiction in states where accidents involving used Ford vehicles occurred because it had not sold the subject vehicles within those states, even though Ford had established sufficient minimum contacts within those states through its activities in selling and distributing other automotive products. *Ford Motor Co.*

concerned two consolidate cases, and in each case, the accident happened in the forum state, and Ford had in-state contacts through marketing, selling, and servicing the model of vehicle at issue in the suits.

The Court began its analysis by noting that a plaintiff's claims "must arise out of or relate to the defendant's contacts" with the forum, and that "there must be an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Id.* at 359-60, 141 S. Ct. at 1025 (punctuation and citations omitted). This is because specific jurisdiction is founded on "an idea of reciprocity between a defendant and a State: When (but only when) a company exercises the privilege of conducting activities within a state – thus enjoying the benefits and protection of its laws – the State may hold the company to account for *related misconduct*." *Id.* at 360, 141 S. Ct. at 1025 (punctuation and citations omitted) (emphasis added).

Ford argued that even though it had minimum contacts within the forum states, those activities were not sufficiently related to the conduct alleged in the suits because there was no causal link between its in-state activities and the accidents: Ford sold the subject vehicles in other states, they were brought to the forum states by the acts of third parties, and therefore its acts of marketing, distributing, and selling its products within the forum states were not causally connected to the plaintiff's claims. *Id.* at 361, 141 S. Ct. at 1026. The Court disagreed. "As just noted, our most common formulation of the rule demands that the suit arise out of *or relate*

to the defendant's contacts with the forum." *Id.* at 362, 141 S. Ct. at 1026 (emphasis added). Citing *World-Wide Volkswagen*, the Court explained that specific jurisdiction attaches when a manufacturer like Ford serves a market for a product in the forum State and the product malfunctions there, even if the product was designed and manufactured overseas and sold in a different state. *Id.* at 363, 141 S. Ct. at 1027. Therefore, "a company thus purposefully availing itself of the [in-state] auto market has clear notice of its exposure in that State to suits arising from local accidents involving its cars." *Id.*

> Ford's causation-only approach finds no support in this Court's requirement of a "connection" between a plaintiff's suit and a defendant's activities. That rule indeed serves to narrow the class of claims over which a state court may exercise specific jurisdiction. But not quite so far as Ford wants. None of our precedents has suggested that only a strict causal relationship between the defendant's in-state activity and the litigation will do. As just noted, our most common formulation of the rule demands that the suit "arise out of *or relate to* the defendant's contacts with the forum." The first half of that standard asks about causation; but the back half, after the "or," contemplates that some relationships will support jurisdiction without a causal showing . . . . [W]e have never framed the specific jurisdiction inquiry as always requiring proof of causation-*i.e.*, proof that the plaintiff's claim came about because of the defendant's in-state conduct.

*Ford*, 141 S. Ct. 1017, 1026, 209 L. Ed. 2d 225 (2021) (citations omitted).

In this case, Plaintiff's claim is clearly related to Wumag I's and Wumag II's activities in seeking to import and distribute their products, including textile machinery, for use into South Carolina specifically, and the United States as a whole, even if there was not a "but-for" causal relationship between Wumag II's activities (importing, distributing, and selling textile machinery) and the litigation. If not for Wumag I's (and by operation of law Wumag II's) importation efforts, the subject

machine would never have arrived within South Carolina to injure Plaintiff.[7] Such a showing of minimum contacts is sufficient to survive a motion for summary judgment under both South Carolina and federal law.

**b. The exercise of personal jurisdiction over Wumag II is constitutionally reasonable and fair.**

The second prong of the analysis requires that the court consider whether the exercise of jurisdiction is "reasonable" or "fair." *S. Plastics Co.*, 310 S.C. at 260, 423 S.E.2d at 131. Courts may look to the following factors to determine if the exercise of jurisdiction is reasonable: (1) the burden on the defendant of litigating in the forum; (2) the interest of the forum state in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the shared interest of the states in obtaining efficient resolution of disputes; and (5) the interests of the states in furthering substantive social policies. *Id.* at 263, 423 S.E.2d at 132 (citation omitted).

Plaintiff was injured in an accident caused by a defective machine designed and manufactured by Wumag I and, under successor liability principles, Wumag II. Wumag II continues to sell machinery utilized by the textile industry within South Carolina, and it continues to sell the same machinery developed by Wumag I under the same brand and same name. Plaintiff's claim that he was injured by a defective "Wumag" product is directly related to "Wumag's" activity of selling its products for distribution throughout the United States, including South Carolina in particular.

[7] Under successor liability theories, a successor and predecessor corporation are considered to be the same entity. *See Patin*, 294 F.3d at 654 (stating that a successor corporation is the same corporate entity as the predecessor corporation, simply wearing a "new hat.").

Wumag II has not come forward with any evidence that Wumag I's and Wumag II's products are not distributed and sold within the State because it cannot.

Wumag II appears to believe that maintenance of this suit in South Carolina is inconvenient, burdensome, or unfair due to its unsupported belief that it is not responsible for the liabilities and obligations of Wumag I under the terms of the asset purchase agreement. This position is astoundingly hypocritical. Wumag II benefits from the good will, branding, business connections, and distribution channels established by Wumag I. Wumag II holds itself out to the public as being the same entity as Wumag I and having been in business for decades as Wumag I. Wumag II enjoys profits, potentially in the millions of dollars, through the sale of its products in South Carolina and the United States. It's not in any way unfair to require it to answer the bell of responsibility under theories of successor liability when a product it designed, manufactured, and sold permanently injures one of our citizens.

Any burden Wumag II might undertake in defending itself in South Carolina will be minimal. It was not inconvenient or burdensome for it to send its agents into South Carolina in connection with a product sale, so it should not be inconvenient for Wumag II to appear before this Court. Even if the case were adjudicated elsewhere, Wumag II would have to come to South Carolina to investigate and gather the evidence. The accident that injured Plaintiff occurred in South Carolina. South Carolina law will be applied to the merits of the tort claims. No other forum has a more compelling connection to this case, as it is South Carolina that should have the final word in discouraging injuries that occur within the State.

It is primarily in the interest of this Court, not a German court, to adjudicate the merits of this dispute. The majority of evidence, from medical records, witnesses, to the subject machine and facility themselves, are present within the State of South Carolina. Wumag II sends its products into this State for its own immense profit. Not only is it fair and constitutionally reasonable for Wumag II to be required to defend the products it sends into South Carolina when they injure a South Carolina citizen within the boundaries of the State, it would be blatantly unfair to require Plaintiff to seek a remedy against Wumag II in Germany. Plaintiff has no means to seek a judgment from a German court. Wumag II's premise that it cannot be haled into a South Carolina court represents a distortion of our personal jurisdiction jurisprudence that would leave Plaintiff without a means of redress against Wumag II. If that is not offensive to "traditional notions of fair play and substantial justice," then nothing is. The motion for summary judgment should be denied.

## CONCLUSION

Wumag II is a corporation which seeks to reap all the benefits of selling Wumag products in the United States, including South Carolina, without incurring the resulting liabilities and costs. South Carolina and German law do not permit it to do so. Wumag II by virtue of its status as successor-in-liability to Wumag I is subject to the Court's jurisdiction in this action and has been properly served. For the foregoing reasons, Wumag II's motion should be denied.

[SIGNATURE PAGE TO FOLLOW]

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