EXHIBIT
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF EDGEFIELD	)	CIVIL ACTION NO.: 2021-CP-19-00005
Barry Lanham and Obvia Gamble-Lanham,	)	
Plaintiffs,	)	
v.	)	**MOTION TO ALTER/AMEND AND MOTION TO CERTIFY ORDER PURSUANT TO RULE 54(b), SCRCP**
Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG and Wumag Texroll GmbH & Co. KG,	)	
Defendants.	)	
Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG,	)	
Third-Party Plaintiff,	)	
v.	)	
Wumag Texroll GmbH & Co. KG,	)	
Third-Party Defendant.	)	

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Feb 23 2026
SC Court of Appeals

Plaintiffs Barry Lanham and Obvia Gamble-Lanham respectfully move the Court pursuant to Rule 54(b), SCRCP, and Rule 59(e), SCRCP, to reconsider, alter, or amend, and clarify its September 19, 2025 order granting summary judgment to Defendant Wumag Texroll GmbH & Co. KG f/k/a Kelzenberg + Co: GmbH & Co. KG ("Wumag II"). Out of an abundance of caution, Plaintiffs also respectfully request that

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the Court certify its prior order and any order regarding this motion as final pursuant to Rule 54(b), SCRCP.[1]

The hearing on Wumag II's motion for summary judgment was on July 7, 2025. The Court gave the parties until July 11, 2025 to submit supplemental briefing. (Ex. 1, July 11, 2025 Letter). On July 11, 2025, Wumag II submitted a new declaration from Dr. Nils Derksen, a German attorney, setting forth his opinions on whether German law precluded Wumag II from being a successor-in-liability to Wumag I. On July 11, 2025, Plaintiffs requested a ten-day extension to submit supplemental briefing. (Ex. 2, July 11, 2025 Email). On July 18, 2025, the Court granted Plaintiff's request. (Ex. 3, July 18, 2025 Email). Plaintiffs filed their supplemental briefing on July 18, 2025.

Plaintiffs request that the Court reconsider its order to clarify its position and give an explicit ruling on Plaintiffs' argument set forth at the hearing and in their supplemental briefing. Plaintiffs specifically argued that the Court should apply the continuity of enterprise theory in conformity with dicta from the Supreme Court's decisions in *Long v. Carolina Baking Co.*, 190 S.C. 367, 3 S.E.2d 46 (1939) and *Nationwide Mutual Insurance Co. v. Eagle Window & Door, Inc.*, 424 S.C. 256, 818 S.E.2d 447 (2018), as well as Justice Burnett's dissenting opinion in *Simmons v. Mark Lift Industries, Inc.*, 366 S.C. 308, 622 S.E.2d 213 (2005). Plaintiffs advanced but did not elaborate on this argument at the hearing on Wumag II's motion for summary judgment.

[1] The Court has jurisdiction to modify its previous order to include certification of a partial final judgment pursuant to Rule 54(b), SCRCP.

Specifically, Plaintiffs argued that under successor liability's mere continuation exception as articulated in *Brown v. American Railway Express Co.*, 128 S.C. 428, 123 S.E. 97 (1924), a successor may be liable as the mere continuation of its predecessor not only if it has a commonality of officers, directors, and shareholders, but also if it continues the predecessor's business using its name, trademarks, logos, employees, products, and facilities, and benefits from the predecessor's goodwill and reputation. Plaintiffs argued that public policy supports adopting the continuity of enterprise doctrine under the current facts, as it would comport with *Brown*'s rationale and modern South Carolina product liability law's stated policy goals of shifting the risk of loss away from the consumer and deterring the sale of unsafe products. Out of similar fairness concerns, the United States Bankruptcy Code precludes an asset purchase agreement from extinguishing successor liability claims predicated on prepetition debtor conduct causing personal injury. *See In re Grumman Olson Indus.*, 467 B.R. 694, 703-05 (S.D.N.Y. Bkr. 2012).

Plaintiffs also argued that under numerous factors articulated by Justice Burnett in *Simmons* that Wumag II was the successor of Wumag I. Plaintiffs request that the Court give an explicit ruling on whether the evidence introduced by Plaintiffs relevant to their continuity of enterprise theory satisfies Justice Burnett's factors, and if it does, whether public policy, the above mentioned authorities, and South Carolina product liability law support application of the continuity of enterprise theory in this instance.

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Plaintiffs also request that the Court certify its order as final pursuant to Rule 54(b), SCRCP. While Plaintiffs believe that the Court's order is immediately appealable under S.C. Code Ann. § 14-3-330(1) as an intermediate judgment involving the merits of Plaintiffs' claim against Wumag II, Plaintiffs also believe that certification is warranted pursuant to Rule 54(b) because immediate appeal would preserve the judicial system's resources, eliminate unnecessary delay, and promote the ends of justice.

Rule 54(b) provides:

> When more than one claim for relief is presented in an action . . . or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order . . . however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order . . . is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Three prerequisites must be satisfied for Rule 54(b) certification: (1) there must be multiple claims for relief or multiple parties, (2) a judgment entered on the certified claim would be final, and (3) the trial court must expressly state its reasoning and findings of fact supporting its reasoning. *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 351 S.C. 459, 466, 570 S.E.2d 197, 200 (Ct. App. 2002). The first two prerequisites are undisputedly satisfied in this case: there are two defendants, and the Court's order is an ultimate disposition that precludes

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Plaintiffs from seeking relief against Wumag II under the only available theory of recovery.

Under the third prerequisite, the Court's reasoning and findings of fact for granting certification will be reviewed by the appellate courts under an abuse of discretion standard, therefore, if there is any evidence supporting the Court's findings, certification will be affirmed on review. *Id.* Here, there are multiple explanations for why there is no just reason for delay. First, Plaintiffs' claims against Wumag II are entirely predicated on theories of successor liability, which involve their own unique sets of facts and evidence, thereby eliminating the potential for the appellate courts to have to review the same facts if the case were then tried and appealed on liability issues. *See id.* (stating that Rule 54(b)'s limitation is meant to spare the court of appeals from relearning the same facts on successive appeals). The evidence relevant to Wumag II's motion that will be reviewed by the appellate courts in this instance is separate from, unrelated to, and does not overlap with the merits of Plaintiffs' product liability claims against Wumag I.

Second, if the orders are not certified, and Plaintiffs are incorrect that the orders will be immediately appealable under S.C. Code Ann. § 14-3-330(1), Plaintiffs will be forced to mediate and try the case against Wumag I without having Wumag II meaningfully participate in mediation or defend the underlying tort claim. This will potentially frustrate the resolution of Plaintiff's claim against Wumag I and potentially deprive Wumag II of the opportunity to present its own witnesses and

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evidence when it could be subject to res judicata principles as to liability such as issue or claim preclusion.

Lastly, as the Court is aware, it is undisputed that Wumag I is a dissolved corporation that does not possess any assets with which to satisfy a judgment. Wumag II, on the other hand, is a going business concern. It would be unfair to require Plaintiffs to try their case against Wumag I without Wumag II's participation, possibly obtain a judgment against an insolvent Wumag I, appeal the Court's orders after a final judgment is entered, then potentially have to retry the case in its entirety against Wumag II if res judicata principles do not apply. Plaintiffs cannot realistically formulate a strategy and gauge the risk of litigating a case against Wumag I as a sole defendant based on its insolvent status and the above-described uncertainties.

For these reasons, there is no just reason to delay immediate review of the Court's orders granting summary judgment to Wumag II. For these reasons and any that may be presented to the Court at a hearing on this matter, Plaintiffs respectfully request that the Court reconsider, alter or amend, or clarify its order and certify the orders pursuant to Rule 54(b), SCRCP. Further should the Court grant Plaintiffs' motion for certification, Plaintiffs believe that a stay of the action would be appropriate pursuant to Rule 62(h), SCRCP.

[SIGNATURE PAGE TO FOLLOW]

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